



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)	
)	
)	ADP Case No. 14-00110
)	
)	
Applicant for Public Trust Position)	

Appearances

For Government: Pamela Benson, Esquire, Department Counsel
For Applicant: *Pro se*

11/03/2014

Decision

WHITE, David M., Administrative Judge:

Applicant paid most of her former child support arrearage, but demonstrated no progress toward resolving five other delinquent debts totaling \$8,758. Applicant did not mitigate resulting trustworthiness concerns. Eligibility for a public trust position is denied.

On June 14, 2013, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP). On March 14, 2014, the Department of Defense (DoD) issued Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns under Guideline F, Financial Considerations. (Item 1.) The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); Department of Defense 5200.2-R, *Personnel Security Program*, dated January 1987, as amended (Regulation); and the adjudicative guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

On May 9, 2014, Applicant answered the SOR in writing and elected to have the case decided on the written record in lieu of a hearing. (Item 3.) On July 25, 2014, Department Counsel prepared a File of Relevant Material (FORM), containing six Items. The Defense Office of Hearings and Appeals (DOHA) mailed Applicant a complete copy of the FORM on July 31, 2014. Applicant received the FORM on August 7, 2014, and was provided 30 days from its receipt to file objections and submit additional information. She submitted no additional material in refutation, extenuation, or mitigation during that time; made no objection to consideration of any contents of the FORM; and did not request additional time to respond. On September 25, 2014, DOHA assigned the case to me.

Findings of Fact

The SOR alleges six delinquent debts totaling \$9,108. In her response to the SOR, Applicant admitted the truth of the allegations in SOR ¶¶ 1.a, 1.b, 1.c, and 1.f. She denied the \$576 collection account alleged in SOR ¶ 1.d because she did not know what it was for. She also denied owing the \$350 arrearage in child support payments alleged in SOR ¶ 1.e, and provided documentation showing that she had paid the past-due balance down to \$45.54 as of May 9, 2014. (Item 3.)

Applicant is 31 years old and has been married since July 2010. She has four children. Three of them, ages 13, 7, and 4, live with Applicant and her husband. Her 12-year-old son lives elsewhere, and she has been ordered to pay \$65 per month for child support. She graduated from high school in 2001, and took some courses from a technical college in 2004 and 2005. She reported being employed in various jobs for about five of the ten years before obtaining her current employment in May 2013. (Item 4.)

Applicant admitted owing a total of \$7,700 toward three delinquent student loan debts, as alleged in SOR ¶¶ 1.a through 1.c. They were placed for collection in May 2007. She said that she initially did not intend to repay these debts because she had personal issues with the school, but later began making \$50 monthly payments after encountering trouble obtaining housing and admission to other schools due to her debts. She provided neither proof of such payments, nor updated information on delinquent balances due. She also said that she was no longer making payments toward these debts in her answer to the SOR. The delinquencies alleged in the SOR are based on her June 27, 2013 credit report. These debts remain unresolved. (Item 3; Item 4; Item 5.)

The \$576 delinquent debt alleged in SOR ¶ 1.d was placed for collection in February 2008. Applicant said that she does not recognize the debt, or know what it was for. She provided no documented basis to dispute the legitimacy of this debt, which was reported by all three reporting agencies on her June 27, 2013 credit report. This debt is not resolved. (Item 3; Item 5.)

Applicant disclosed a \$582 arrearage in her court-ordered child support payments in her June 2013 e-QIP.¹ After beginning her current employment, she (or her employer) made regular payments toward this debt, reducing the balance due to \$45.54 as of May 1, 2014. Applicant said, in her answer to the SOR, that she would pay that amount but she provided no proof of having done so. This delinquent debt has been significantly, but not totally, resolved. (Item 3; Item 4; Item 5.)

Applicant admitted owing the \$482 delinquent telephone debt, alleged in SOR ¶ 1.f, that was placed for collection in August 2009. She said that she originally had no plans to pay it, since she considered it excessive and incorrect. In her e-QIP she said that she intended to pay it as soon as she was able to, and in her answer to the SOR she said that she was in the process of settling it after becoming aware of the impact it had on her ability to obtain credit. She provided no evidence of payments or other effort toward its resolution, however. It remains unresolved. (Item 3; Item 4 at 41-42; Item 5.)

The record contains no information concerning Applicant's current income and regular expenses, from which her ability to avoid incurring additional delinquent debt could be predicted. It also lacks evidence concerning the quality of her professional performance, the level of responsibility her duties entail, or her track record with respect to handling sensitive information and observation of security procedures. No character witnesses described her judgment, trustworthiness, integrity, or reliability. I was unable to evaluate her credibility, demeanor, or character in person since she elected to have her case decided without a hearing.

Policies

Positions designated as ADP I and ADP II are classified as "sensitive positions." (See Regulation ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3.) "The standard that must be met for . . . assignment to sensitive duties is that, based on all available information, the person's loyalty, reliability, and trustworthiness are such that . . . assigning the person to sensitive duties is clearly consistent with the interests of national security." (See Regulation ¶ C6.1.1.1.) The Deputy Under Secretary of Defense (Counterintelligence and Security) Memorandum, dated November 19, 2004, indicates trustworthiness adjudications will apply to cases forwarded to the DoD and DOHA by the Defense Security Service and Office of Personnel Management. Department of Defense contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination may be made. (See Regulation ¶ C8.2.1.)

When evaluating an applicant's suitability for a public trust position, the administrative judge must consider the disqualifying and mitigating conditions in the AGs. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in AG ¶ 2(a), describing the adjudicative process. The administrative

¹ This delinquent debt was alleged in the amount of \$350 in SOR ¶ 1.e based on the Item 5 credit report.

judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the whole-person concept. The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to [sensitive] information will be resolved in favor of national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable [trustworthiness] decision.”

A person who applies for access to sensitive information seeks to enter into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to sensitive information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of sensitive information.

Section 7 of Executive Order 10865 provides that “Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Guideline F, Financial Considerations

The trustworthiness concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to

protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

AG ¶ 19 describes two conditions that could raise trustworthiness concerns and may be disqualifying in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant accumulated substantial delinquent debt over the past decade or more, much of which she incurred despite the fact that she could not afford to pay it. This evidence raises security concerns under both of these conditions, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate trustworthiness concerns arising from Applicant's financial difficulties:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant's debts arose over many years, and more than \$8,800 in delinquencies continue at present without any apparent means of resolution. She did not show that the debts arose from conditions beyond her control, or that she acted responsibly under the circumstances. She has received no counseling to assist with debt resolution, nor did she demonstrate an ability to avoid recurrence of financial problems. All of the SOR-

alleged debts remain partially or totally unresolved, on the basis of record evidence, and no documented basis to dispute the legitimacy of any of them was provided. Applicant therefor failed to establish mitigation of trustworthiness concerns under AG ¶¶ 20(a) through 20(e).

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a public trust position by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

According to AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a trustworthiness determination must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of the facts and circumstances surrounding this case. Applicant is a mature individual who is accountable for the decisions and choices that led to her financial difficulties. She initially planned to ignore most of her voluntarily-incurred delinquent debts, and provided minimal evidence of efforts to resolve them despite more recent statements of intent to do so. She failed to demonstrate good judgment or permanent behavioral change. Her ongoing delinquent debts establish continuing potential for pressure, coercion, or duress, and make continuation of financial problems likely.

Overall, the record evidence leaves me with serious questions and doubts as to Applicant's present eligibility and suitability for a public trust position. For these reasons, I conclude Applicant did not meet her burden to mitigate the trustworthiness concerns arising from her ongoing financial situation.

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Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F: AGAINST APPLICANT

Subparagraphs 1.a through 1.f: Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a public trust position. Eligibility for access to sensitive ADP information is denied.

DAVID M. WHITE
Administrative Judge