



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



In the matter of:)	
)	
)	ADP Case No. 14-02878
)	
Applicant for Public Trust Position)	
)	

Appearances

For Government: Robert Kilmartin, Esquire, Department Counsel
For Applicant: *Pro se*

05/13/2015

Decision

DAM, Shari, Administrative Judge:

Applicant has a history of illegally using marijuana and failed to disclose that information in her March 2013 e-QIP. She is resolving delinquent student loans, but has not addressed delinquent medical debts. She failed to rebut or mitigate the trustworthiness concerns raised under Guideline H, Drug Involvement, Guideline E, Personal Conduct, or Guideline F, Financial Considerations. Her eligibility for a public trust position is denied.

On March 7, 2013, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On September 24, 2014, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns under Guideline H, Drug Involvement, Guideline E, Personal Conduct, and Guideline F, Financial Considerations. 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); DoD 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 November 7, 2014, Applicant answered the SOR in writing and elected to have her case decided on the written record in lieu of a hearing. (Item 4.) On January 22, 2015, Department Counsel prepared a File of Relevant Material (FORM).¹ He mailed Applicant a complete copy of the FORM on February 20, 2015. Applicant received the FORM on March 3, 2015, and had 30 days from its receipt to file objections and submit additional information. Applicant timely submitted four documents, which I marked as Applicant Exhibits (AE) A through D, and admitted into the record without objection from Department Counsel. On April 9, 2015, the Defense Office of Hearings and Appeals (DOHA) assigned the case to me.

Findings of Fact

In her Answer to the SOR, Applicant admitted the allegations contained in the SOR. She further admitted them in a subsequent email dated December 5, 2014. (Item 3.)

Applicant is 24 years old and unmarried. In January 2013 she began her current position with a healthcare company, managing benefits for veterans. She also works as a part-time biller for a private company. From March 2010 to February 2011 she attended a program to become a pharmacy technician. (Item 4.)

In November 2010 Applicant tested positive for marijuana during a random drug screening for an externship at a pharmacy. She was subsequently terminated from her position. The state pharmacy board placed her license on probation for two years and required her to complete drug tests twice a month. She failed to complete the tests, resulting in further action by the pharmacy board to prohibit her from practicing for seven years. She admitted that she illegally used marijuana in 2005, and from April 2009 to November 2010. (Items 3, 4.) She did not present any evidence that she participated in a substance abuse evaluation or treatment.

When Applicant completed her e-QIP in March 2013, she failed to disclose the information about her frequent illegal use of marijuana in response to a question in Section 23, inquiring into illegal drug use within the past seven years. Instead, she stated that a former roommate in 2011 used it when [Applicant] was sleeping or not present. She said she never “intentionally consumed or inhaled the substance.” (Item 4.)

¹ Department counsel submitted seven Items in support of the SOR allegations. Item 7 is inadmissible and will not be considered. It is the summary of an unsworn interview of Applicant conducted by an interviewer from the Office of Personnel Management on April 2, 2013. It was never adopted by Applicant as her own statement, or otherwise certified by her to be accurate. Under Directive ¶ E3.1.20, this Report of Investigation summary is inadmissible in the absence of an authenticating witness.

Based on credit bureau reports (CBR) dated March 15, 2013, and August 28, 2014, the SOR alleged seven delinquent debts, which accumulated between 2010 and 2014. The allegations consisted of six medical bills and one allegation referencing three student loans. (Items 5, 6.)

Applicant submitted evidence that she is paying the three student loans, alleged in SOR ¶ 3.g. In July 2014 she agreed to make monthly payments of \$50 on the recorded \$16,253 balance. She has complied with the agreement as of February 2015. (AE B.) The remaining five medical debts totaling \$3,049 remain unaddressed.

There is no evidence that Applicant obtained credit or financial counseling. She did not provide a workable budget, from which her ability to resolve the unaddressed delinquencies and avoid additional debt problems could be predicted with any certainty. She submitted a February 2015 performance evaluation that documented “Exceeds Expectation” as the performance summary. (AE C.) She provided no character references describing her judgment, trustworthiness, integrity, or reliability.

Policies

Positions designated as ADP I, II, and III are classified as “sensitive positions.” (See DoD 5200.2- R ¶¶ 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 Adjudicative Guidelines (AG). 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 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. . . .” The applicant 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 H, Drug Involvement

AG ¶ 24 expresses the trustworthiness concerns pertaining to drug involvement:

Use of an illegal drug or misuse of a prescription drug can raise questions about an individual's reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations.

AG ¶ 25 describes two conditions that could raise a trustworthiness concern and may be disqualifying in this case:

- (a) any drug abuse; and
- (b) testing positive for illegal drug use.

Applicant admitted that she used marijuana in 2005, and from April 2009 until November 2010, when she tested positive for it on a urinalysis. The evidence raises both security concerns, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

AG ¶ 26 provides two conditions that could mitigate the trustworthiness concerns raised under this guideline:

(a) the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment.

(b) a demonstrated intent not to abuse any drugs in the future, such as:

(1) disassociation from drug-using associates and contacts;

(2) changing or avoiding the environment where drugs were used;

(3) an appropriate period of abstinence; and

(4) a signed statement of intent with automatic revocation of clearance for any violation.

Applicant admitted to relatively recent use of marijuana with some frequency. She presented no evidence to document that she has not used it since November 2010, nor did she document a demonstrated intent not to abuse drugs in the future. Neither of the above two mitigating conditions apply.

Guideline E, Personal Conduct

AG ¶ 15 expresses the trustworthiness concerns pertaining to personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes a condition that could raise a trustworthiness concern and may be disqualifying:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment

qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant admitted that she failed to disclose her illegal use of marijuana when she completed an e-QIP. Instead, she fabricated a misrepresentation of her involvement with the marijuana by incriminating her roommate.

AG ¶ 17 includes two conditions that could mitigate the trustworthiness concerns arising under this guideline:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

There is no evidence that Applicant attempted to correct her falsification before being confronted with the facts. The offense is not minor, given her attempt to conceal her illegal conduct in the March 2013 e-QIP. Neither mitigating condition applies.

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.

From 2010 to 2013, Applicant accumulated delinquent debts that she was unable or unwilling to begin to address until July 2014. The evidence raises both security concerns.

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

(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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant did not provide evidence that she participated in credit or financial counseling, established a budget, or developed a plan to manage the unresolved debts. However, there are some indications that her financial problems are coming under control, based on the payment plan she arranged for her student loans. AG ¶ 20(c) has application to those debts alleged in SOR ¶ 3.g. By complying with a repayment plan since August 2014 she is demonstrating a good-faith effort to resolve those debts. Thus, AG ¶ 20(d) applies to that allegation, but not the remaining allegations.

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 24-year-old woman, who began working for a defense contractor in 2013. When she completed an e-QIP, she failed to disclose her past illegal use of marijuana, and instead stated that her roommate used it in their apartment, implying that she did not use it. Since August 2014 she has been repaying her student loans, whose balance totals about \$16,000, and leaving about \$3,000 in medical debts to address. She did not submit a budget or articulate a plan to resolve those. Overall, the record evidence leaves me with substantial questions

as to Applicant's 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 drug involvement, personal conduct, and financial problems.

Formal Findings

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

Paragraph 1, Guideline H:	AGAINST APPLICANT
Subparagraphs 1.a and 1.b:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a and 2.b:	Against Applicant
Paragraph 3, Guideline F:	AGAINST APPLICANT
Subparagraphs 3.a through 3.f:	Against Applicant
Subparagraph 3.g:	For 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 information is denied.

SHARI DAM
Administrative Judge