



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



In the matter of:)
)
) ADP Case No. 14-03070
)
)
Applicant for Public Trust Position)

Appearances

For Government: Allison O’Connell, Esquire, Department Counsel
For Applicant: *Pro se*

03/20/2015

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings and exhibits, I conclude that Applicant’s eligibility for access to sensitive information is denied.

Applicant completed and signed an Electronic Questionnaires for Investigations Processing (e-QIP) on January 6, 2014. The Department of Defense Consolidated Adjudications Facility, Division A (DOD CAF) issued a Statement of Reasons (SOR) detailing the trustworthiness concerns under Guideline F, financial considerations on July 29, 2014. The action was taken under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); Department of Defense Regulation 5200.2-R, *Personnel Security Program*, dated January 1987, as amended (Regulation); and the *Adjudicative Guidelines For Determining Eligibility for Access to Classified Information* (AG) implemented on September 1, 2006.

Applicant received the SOR on August 9, 2014. She submitted an undated, but notarized written response to the SOR allegations. She requested a decision on the written record in lieu of a hearing.

Department Counsel prepared a file of relevant material (FORM) and mailed Applicant a complete copy on December 17, 2014. Applicant received the FORM on January 7, 2015. She had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. She did not submit a response. DOHA assigned this case to me on March 16, 2015. The Government submitted seven exhibits, which have been marked as Items 1-7 and admitted into the record. Applicant's response to the SOR has been marked and admitted as Item 4, and the SOR has been marked as Item 1.

Findings of Fact

In her Answer to the SOR, Applicant admitted all the factual allegations in the SOR, with explanations. She also provided additional information to support her request for eligibility for a public trust position.

Applicant, who is 45 years old, works as a provider installation representative for a DOD contractor. She began her current employment in January 2014.

From April 1995 until June 2010, Applicant worked as a client service professional for a large corporation. As a result of a corporate decision to relocate her position to another state, Applicant lost her position. Applicant was unemployed from June 2010 until November 2011. In November 2011, she began working at a bank. She also worked 11 hours a week as a customer service representative for another company. In June 2012, she started working full time as a customer service representative for this company. From November 2012 until January 2014, she worked as a payment posting clerk.¹

Applicant graduated from high school in 1987. After her job loss, Applicant decided to return to school. She completed an associate's degree in Healthcare Administration and Medical Records in 2012.²

Applicant married in 1993 and divorced in 1999. She has three children, ages 20, 18 and 12. Her children live with her. It is unknown if her two older children are in school or are working.³

¹Item 5 (e-QIP); Item 7 (unsworn personal subject interview on February 18, 2014).

²Item 4 (Response to SOR); Item 5.

³Item 5.

Applicant used the money from her severance package and her unemployment benefits to pay her basic living expenses while she attended college and until she returned to work. She was unable to pay all the debts she had incurred around 2007 because she lost her job. She fell behind in paying these bills.⁴

The SOR identified a \$921 judgment and four other unpaid debts totaling \$24,127. During her investigative interview, Applicant confirmed the details of these accounts. In her response to the SOR, Applicant advised that she had established a payment plan for each debt, except the judgment. The judgment concerns a medical bill that Applicant believes her health insurance carrier should have paid. She has appealed the denial of payment. If her appeal is denied, she will pay the judgment through a tentatively arranged payment plan. She has not provided documentation of her appeal to her health insurance carrier or tentative agreement with the attorney for the creditor.⁵

As for the remaining four SOR debts, Applicant advised that she is paying the creditor in SOR ¶ 1.b (\$6,791 debt) \$140 a month; the creditor in SOR ¶ 1.c (\$11,499) \$75 a month; the creditor in SOR ¶ 1.d (\$3,569) \$35 a week for a total of \$140 a month, and the creditor in SOR ¶ 1.e (\$2,268) \$25 a month. Her monthly payments on debt resolution total \$380 a month. She has not provided any documentation that shows the payment agreements reached with her creditors or that shows the payments she has made on these debts since reaching an agreement with her creditors. The dates of these agreements are unknown.⁶

Applicant has not provided a budget outlining her monthly expenses and monthly payments. She has not provided a copy of her recent monthly earnings statements. The earnings statement would provide information about her monthly income, giving one an opportunity to assess her ability to pay her outstanding debts as agreed and her usual monthly living expenses. Applicant has not indicated that she received financial counseling.⁷

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

⁴Item 4.

⁵Item 4.

⁶Item 1; Item 4.

⁷Items 1 through 7.

adjudications will apply to cases forwarded to 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 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 the adjudicative process. The administrative judge's over-arching 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 applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion to obtain a favorable trustworthiness decision.

A person who seeks access to sensitive information enters 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 (EO) 10865 provides that decisions shall be "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 concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

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 [sensitive] information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise trustworthiness concerns. Under AG ¶ 19(a), an "inability or unwillingness to satisfy debts" is potentially disqualifying. Similarly under AG ¶ 19(c), "a history of not meeting financial obligations" may raise security concerns. Applicant accumulated delinquent debt and has been unable to pay all of her obligations. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

The guideline also includes examples of conditions that could mitigate trustworthiness concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where "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." Under AG ¶ 20(b), it may be mitigating where "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." Evidence that "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" is potentially mitigating under AG ¶ 20(c). Similarly, AG ¶ 20(d) applies where the evidence shows "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts."

In requesting an administrative determination, Applicant chose to rely on the written record. Applicant's unpaid debts developed following the loss of her job of 15 years. She did not work for 17 months, during which time she did attend school to improve her career opportunities. She has not provided evidence in the form of documentation reflecting that upon her return to work, she made an effort to contact at least one of her creditors to work out a resolution of her debt. AG ¶ 20(b) is only partially applicable because she did not act reasonably under the circumstances.

AG ¶ 20(a) is not applicable because her debts remain unpaid and ongoing. She did not have financial counseling and has not provided any documentation that indicates that her debts and current finances are under control, making AG ¶ 20(c) inapplicable. Applicant's response to the SOR reflects that she contacted her creditors and worked out a payment plan for all her debts, but the judgment, which is on appeal. Because Applicant has not provided any supporting documentation showing the agreed upon payment plans and her monthly payments on these debts as agreed, AG ¶ 20(d) is not applicable.

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 the 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) 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.”

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a public trust position must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. The decision to grant or deny a trustworthiness determination requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a trustworthiness concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a public trust position should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate trustworthiness concern.

In assessing whether an Applicant has established mitigation under Guideline F, the Appeal Board provided the following guidance in ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008):

In evaluating Guideline F cases, the Board has previously noted that the concept of “‘meaningful track record’ necessarily includes evidence of actual debt reduction through payment of debts.” See, e.g., ISCR Case No. 05-01920 at 5 (App. Bd. Mar. 1, 2007). However, an applicant is not required, as a matter of law, to establish that he has paid off each and

every debt listed in the SOR. See, e.g., ISCR Case No. 02-25499 at 2 (App. Bd. Jun. 5, 2006). All that is required is that an applicant demonstrate that he has “. . . established a plan to resolve his financial problems and taken significant actions to implement that plan.” See, e.g., ISCR Case No. 04-09684 at 2 (App. Bd. Jul. 6, 2006). The Judge can reasonably consider the entirety of an applicant’s financial situation and his actions in evaluating the extent to which that applicant’s plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) (“Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.”) There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. See, e.g., ISCR Case No. 06-25584 at 4 (App. Bd. Apr. 4, 2008). Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant’s nearly 18 months of unemployment beginning in June 2010 significantly impacted her finances, making it difficult for her to pay all her bills. She fell behind on her bill payments and has been unable to resolve these debts.

To establish mitigation in a financial case such as hers, Applicant must show a track record for paying unresolved debts. She need not pay all her old debts at once, but she must have a plan to resolve her debts and show through documentation that she is in compliance with her plan. Applicant’s response to the SOR indicates that she negotiated a payment plan for her unpaid debts. She, however, has not provided any documentation showing that she made the payments as agreed or that she and her creditors have an agreed-upon plan. She has not provided a budget or a copy of her earnings statement, which would allow the assessment of her ability to comply with the payment plans she negotiated. Given the lack of documentation in this record, I am unable to assess Applicant’s trustworthiness.

Overall, the record evidence leaves me with questions or doubts as to Applicant’s eligibility and suitability for a trustworthiness determination. For all these reasons, I conclude Applicant has not mitigated the trustworthiness concerns arising from her finances under Guideline F.

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 F:

AGAINST APPLICANT

Subparagraphs 1.a-1.e:

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 information is denied.

MARY E. HENRY
Administrative Judge