



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



In the matter of:)
)
Name Redacted)
)
) ADP Case No. 14-00324
)
Applicant for Position of Trust)

Appearances

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

12/17/2014

Decision

HOGAN, Erin C., Administrative Judge:

Applicant mitigated the financial considerations trustworthiness concerns. Eligibility for access to sensitive information is granted.

Statement of the Case

On May 19, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing trustworthiness concerns under Guideline F, financial considerations. The action was taken under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); DOD Regulation 5200.2-R, *Personnel Security Program* (January 1987), as amended (Regulation); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.

Applicant answered the SOR on June 20, 2014, and requested that her case be decided on the administrative record. On October 9, 2014, Department Counsel prepared a File of Relevant Material (FORM). The FORM was forwarded to Applicant on October 16, 2014. Applicant received the FORM on October 27, 2014. On November

13, 2014, Applicant responded to the FORM and submitted additional matters. Her response to the FORM is marked and admitted as Item 8. In a memorandum dated November 19, 2014, Department Counsel indicated no objection to Applicant's Response to the FORM. (Department Counsel's memorandum is marked as Hearing Exhibit A (HE A)). The file was forwarded to the DOHA Hearing Office on December 4, 2014. The case was assigned to me on that same date.

Findings of Fact

Applicant is a 46-year-old employee of a defense contractor. She has worked for her current employer since February 2003. She is applying for eligibility to hold a public trust position. She is single and has no children. She also currently works part-time. (Item 4)

The SOR alleges 16 delinquent debts with an approximate total of \$19,873. The debts include federal income tax debts for tax years 2008 to 2011 (SOR ¶¶ 1.a – 1.d; Item 8); a \$2,400 delinquent student loan account (SOR ¶ 1.e); nine consumer accounts including two medical collection accounts, an approximate total of \$2,692 (SOR ¶¶ 1.f – 1.n) and two judgments. One judgment appears to involve a rental issue and was entered against Applicant in August 1999 in the amount of \$1,487. (SOR ¶ 1.p). The second judgment was entered against Applicant in December 2002 in the amount of \$860. (SOR ¶ 1.o). In response to the SOR, Applicant denied SOR ¶¶ 1.b, 1.e, 1.o and 1.p. She admitted to the remaining debts alleged in the SOR. (Item 3)

In response to section 26 on her security clearance application, dated August 29, 2013, Applicant listed that she failed to timely file her 2009 federal income tax return. She also indicated that she had filed her 2009 federal income taxes and she has a payment plan with the Internal Revenue Service (IRS) for taxes owed. She also indicated that she added additional withholding to her paycheck to avoid having a large tax debt. (Item 4) In her response to the FORM, she provided proof that she filed her 2009 federal income tax return on August 3, 2009. (Item 8 at 9) I find for Applicant with respect to SOR ¶ 1.b because although she did not timely file her 2009 federal income tax return, she filed it four months late. The 2009 federal income tax returns were filed before the SOR was issued.

Applicant owes the IRS for unpaid federal income taxes for tax years 2008 to 2011. She has paid off the \$2,944 balance on her federal tax debt owed for tax year 2008. She still owes \$448.85 in accrued interest. (SOR ¶ 1.a: Item 8 at 9-10) She owes the IRS \$6,746.42, including penalties and interest, for tax year 2009. (SOR ¶ 1.b: Item 8 at 11-12); She owes the IRS \$7,104.03, including penalties and interest, for tax year 2010. (SOR ¶ 1.c: Item 8 at 13-14) She owes the IRS \$1,767.03, including penalties and interest, for tax year 2011. (SOR ¶ 1.d: Item 8 at 15-16). She filed and paid her 2012 and 2013 federal taxes. (Item 8 at 17–19) As of November 5, 2014, she owed the IRS approximately \$16,065.

Applicant entered into a payment agreement with the IRS in December 2013. She pays \$238.00 a month. She has provided copies of her payment history to the IRS

since January 2014. (Item 8 at 19 – 26). Applicant maintains that her payments to the IRS are current. I find Applicant has provided sufficient documentation to conclude that she is resolving her federal income tax debts.

Applicant listed a delinquent student loan account in response to section 26 on her security clearance application in the approximate amount of \$2,400. She indicated that “There are currently payments being taken out of paychecks.” (Item 4, section 26). A credit report dated September 12, 2013, lists a delinquent student loan account in the amount of \$2,379. (Item 5 at 9) In her response to the SOR, dated June 20, 2014, Applicant indicated that this debt was paid in March 2014. (Item 3) A credit report, dated October 10, 2014, lists the account as paid. (Item 6 at 2) The October 10, 2014 credit report corroborates her assertion. Applicant resolved the debt alleged in SOR ¶ 1.e.

Applicant is in the process of resolving the debts alleged in SOR ¶¶ 1.f – 1.n. All are relatively small amounts: \$306 (SOR ¶ 1.f); \$55 (SOR ¶ 1.g); \$270 (SOR ¶ 1.h); \$221 (SOR ¶ 1.i); \$31 (SOR ¶ 1.j); a \$105 medical collection account (SOR ¶ 1.k); a \$240 medical collection account (SOR ¶ 1.l); \$144 (SOR ¶ 1.m); and a \$1,320 delinquent credit card account. (SOR ¶ 1.n see Items 5 and 6)

Applicant initially denied owing the two judgments alleged in SOR ¶ 1.o, \$860.00 and SOR ¶ 1.p, \$1,487.00. She believed both judgments were paid. After she received the SOR, she contacted the courthouse where these two judgments were entered. Courthouse personnel told her that the judgment alleged in SOR ¶ 1.p was satisfied. They only keep records for seven years and do not have the information on the debt. Applicant states she has no idea how to prove this was taken care of years ago. She did discover that she still owes the \$860 judgment alleged in SOR ¶ 1.o. She apologizes for initially stating it was paid. She thought she had paid it years ago. (Item 8 at 1).

On November 12, 2014, Applicant met with a credit counselor with a church financial counseling service. She reviewed her monthly budget with the credit counselor. Her monthly net income is \$2,082. Her monthly living expenses are \$2,206. The expenses included her payment to the IRS and her car payment. If she entered into a payment plan for the remaining delinquent debts she would pay an additional \$487.14. She would have a negative monthly balance of \$611.14. Since she cannot afford the monthly debt payments through the credit counselor, she intends to take a loan out of her 401k to repay the delinquent debts. She intends to include the \$860 judgment in this figure. (Item 8 at 1, 4 – 8).

On the most recent credit report dated October 7, 2014, an additional charged off account involving an automobile loan was listed. This account is not alleged in the SOR, but was mentioned by Department Counsel in the FORM. In her response to the FORM, Applicant provided documentation that on October 26, 2014, she entered into a modified payment agreement with the automobile dealer which reduced her monthly payments from \$486.29 to \$316.09. She states the loan is now current. (Item 8 at 1, 3). This debt will not be considered as part of the SOR, but will be considered for matters of mitigation and under the whole-person factors.

In her response to the FORM, Applicant states that she understands that her credit is terrible and she is trying to take steps to clean it up. Her job means a lot to her. She grew up in the Army. Her father retired from the Army after 25 years. It means a lot to her to be able to help service members and their families get the care they need. Although her credit is in question, she would never do anything to jeopardize her job or her customers. She gives no excuses for her bad debt other than she has made bad decisions. She hopes that the actions she is taking shows that she is trying to get everything resolved. She hopes to be able to continue working for her company. (Item 8 at 1-2)

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 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 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.”

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 safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of sensitive information.

Analysis

Guideline F, Financial Considerations

The trustworthiness concern 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 classified 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. Three are potentially applicable in this case:

AG ¶ 19(a): inability or unwillingness to satisfy debts;

AG ¶ 19(c): a history of not meeting financial obligations; and

AG ¶ 19(g): failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

Applicant accumulated delinquent debts and was unable or unwilling to pay her financial obligations. The debts include delinquent federal taxes for tax years 2008 – 2011. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate financial considerations trustworthiness concerns are provided under AG ¶ 20. The following are potentially applicable:

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(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

AG ¶ 20(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant has a history of financial problems. She claims she has no excuse for her financial problems and takes full responsibility for her poor credit situation. Her tax debts appear to be caused by not having enough withholding taken out of her paycheck resulting in a large tax debt at the end of the tax year. She increased her withholding amount so that she no longer has this problem. She agreed to a payment plan with the IRS and is making payments towards the plan.

The \$2,400 student loan debt alleged in SOR ¶ 1.e was paid in full in March 2014. She researched the two judgments alleged in SOR ¶¶ 1.o and 1.p by going to the courthouse where the judgments were entered. She was told by the clerk that the judgment alleged in SOR ¶ 1.p in the amount of \$1,487 was paid a long time ago. The courthouse only keeps records available for the past seven years and they were unable to provide proof. The judgment was entered in 1999. Considering her active attempts to improve her financial situation, I find Applicant's explanation credible. She discovered that she still owed the \$860 judgment alleged in SOR ¶ 1.o. She apologized for her initial belief that she paid off this judgment and she intends to pay it.

The debts alleged in SOR ¶¶ 1.f – 1.n remain unresolved at the close of the record. However, Applicant indicated that she is in the process of taking a loan from her 401k account to pay off all of her delinquent debts to include the judgment alleged in SOR ¶ 1.o. Most of the unresolved debts are less than \$300 each. Aside from the \$860 judgment and a \$1,320 delinquent credit card account (SOR ¶ 1.n), the minor debts total \$1,372. The total amount of unresolved debt is \$3,552.

Applicant attended financial counseling with a church financial counseling service. She discovered that she could not afford to enter into a monthly repayment agreement to the counseling service to assist her with resolving her debts. As a result, she decided to take a loan from her 401k to pay the unresolved debt. She was in the process of doing this at the close of the record. Although not alleged in the SOR, Applicant encountered problems paying her car loan. She was able to modify the loan for a more affordable payment. This action indicates Applicant's focus is on resolving her financial problems.

A trustworthiness adjudication is not a debt collection procedure. It is a procedure designed to evaluate an applicant's judgment, reliability, and trustworthiness. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). An applicant is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. An applicant need only establish a plan to resolve the financial problems and take significant actions to implement the plan. There is no requirement that an applicant make payments on all

delinquent debts simultaneously, nor is there a requirement that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

I find that Applicant made a good-faith effort to pay her debts. She recently attended financial counseling to gain a better understanding of her finances. There are clear indications that her financial problems are being resolved. While Applicant did not resolve all of her debts at the close of the record, her attempts to resolve her debts shows that she is reliable, trustworthy, and has good judgment. AG ¶¶ 20(c) and 20(d) are 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 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.

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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

I considered Applicant's stable work history, her candor in admitting her financial irresponsibility, and the steps she has taken to remedy those problems. As indicated above, an applicant is not required to establish that she has paid every debt listed in the SOR. All that is required is that applicant establish a plan to resolve the financial problems and take significant actions to implement the plan. I find that Applicant has established a plan to resolve her financial problems and she has taken significant action to implement that plan.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a public trust position. For all these reasons, I conclude Applicant mitigated the financial considerations trustworthiness concerns.

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: For Applicant

Subparagraphs 1.a-1.p: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant Applicant eligibility for a public trust position. Eligibility for access to sensitive information is granted.

Erin C. Hogan
Administrative Judge