



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



In the matter of:)	
)	
-----)	ADP Case No. 14-00352
)	
Applicant for Public Trust Position)	

Appearances

For Government: John B. Glendon, Esq., Department Counsel
For Applicant: *Pro se*

06/30/2015

Decision

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings and exhibits, I conclude that Applicant did not mitigate trustworthiness concerns regarding her personal conduct. Eligibility to hold a public trust position is denied.

History of the Case

On May 19, 2014, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) detailing reasons why DOD adjudicators could not make the preliminary affirmative determination of eligibility to hold a public trust position, and recommended referral to an administrative judge to determine whether eligibility to hold a public trust position should be granted, continued, denied, or revoked. The action was taken under DOD Regulation 5200.2R (Regulation); DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines (AGs) implemented by the DOD on September 1, 2006.

Applicant responded to the SOR (undated), and elected to have her case decided on the basis of the written record. Applicant received the Government's File of

Relevant Material (FORM) on March 24, 2015, and did not respond to the FORM. The case was assigned to me on May 28, 2015.

Summary of Pleadings

Under Guideline E, Applicant allegedly incurred 13 traffic citations between September 1994 and July 2013. The citations include charges of operating on a revoked or suspended license, speeding, non-vehicle registration, and disregarding posted signs.

In her response to the SOR, Applicant admitted most of the alleged traffic-related charges without explanations. She denied the allegations in subparagraph 1.a. and offered no explanations for her denial.

Findings of Fact

Applicant is a health adviser for a defense contractor who seeks eligibility to hold a public trust position. The allegations covered in the SOR and admitted by Applicant are adopted as relevant and material findings. Additional findings follow.

Background

Applicant married in July 2010 and has no children from this marriage. (Item 1) She earned technical school credits in 2013 but claimed no degree or diploma. (Item 1) Applicant claimed no military service.

Traffic citations

Between September 1994 and July 2013, Applicant incurred 12 traffic citations. (Items 1 and 2). Her citations covered charges of operating a vehicle on a revoked or suspended license, speeding, and disregarding official signs. Several of the charges resulted in reported fines. For those allegations she admitted, no independent proof is required to sustain the allegation. Her denial to the allegations contained in subparagraph 1.a required substantial evidence to sustain the allegation. Without any evidence of her being charged with operating on a revoked license in July 2013 in her home state, no adverse inferences may be drawn with respect to these subparagraph 1.a allegations.

Applicant provided no evidence of satisfying the imposed fines associated with the charging allegations in subparagraphs 1.d-1.f, 1.j, and 1.l-1.m. Nor did she provide any evidence of work-related performance evaluations or proof of community and civic contributions.

Policies

Positions designated as ADP I and II are classified as "sensitive positions." (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." (Regulation ¶ C6.1.1.1) DoD contractor personnel are afforded the right to the procedures contained in the directive before any final unfavorable access determination may be made. (Regulation ¶ C8.2.1)

The AGs list guidelines to be used by administrative judges in the decision-making process covering public trust eligibility cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to hold a public trust position. These guidelines include "[c]onditions that could raise a security [trustworthiness] concern and may be disqualifying" (disqualifying conditions), if any, and many of the "[c]onditions that could mitigate security [trustworthiness] concerns." The AGs must be considered before deciding whether or not eligibility to hold a public trust position should be granted, continued, or denied. The guidelines do not require administrative judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision. Each of the guidelines is to be evaluated in the context of the whole person in accordance with AG ¶ 2(c).

In addition to the relevant AGs, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in AG ¶ 2(a) of the revised AGs, which are intended to assist the judges in reaching a fair and impartial commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable trust risk.

When evaluating an applicant's conduct, the relevant guidelines are to be considered together with the following AG ¶ 2(a) factors: (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.

Viewing the issues raised and evidence as a whole, the following individual guideline is pertinent in this case:

Personal Conduct

The Concern. 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 [hold a position of trust]. Of special interest is any failure to provide truthful and candid answers during the security clearance [trustworthiness] process or any other failure to cooperate with the security clearance [trustworthiness] process.

Burden of Proof

By virtue of the principles and policies framed by the AGs, a decision to grant or continue an applicant's eligibility to hold a public trust position may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a commonsense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility to hold a public trust position depends, in large part, on the relevance and materiality of that evidence. *See United States, v. Gaudin*, 515 U.S. 506, 509-511 (1995). As with all adversarial proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) it must prove by substantial evidence any controverted facts alleged in the SOR, and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a public trust position. The required materiality showing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a trustworthiness determination. Rather, the judge must consider and weigh the cognizable risks that an applicant may deliberately or inadvertently fail to demonstrate good judgment and trustworthiness.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the evidentiary burden shifts to the applicant for the purpose of establishing his or her eligibility to hold a public trust position through evidence of refutation, extenuation, or mitigation. Based on the requirement that eligibility to hold all public trust positions be clearly consistent with the national interest, the applicant has the ultimate burden of demonstrating his or her public trust eligibility. Like security clearance determinations, public trust determinations, or decisions involving trustworthiness "should err, if they must, on the side of denials." *See Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

Analysis

Applicant is a fully-employed health advisor for a defense contractor who accumulated a number of traffic-related citations between 1994 and 2013. Her citations cover charges of operating a vehicle on a revoked or suspended license, speeding, and disregarding official signs.

Some of the charges covered in the SOR drew fines imposed by the courts; with other charges, the record is not sufficiently developed to discern what

dispositions were made of the charges. The charges covered by subparagraphs 1.b-1.m warrant the application of one of the disqualifying conditions (DC) of the personal conduct guideline: DC ¶ 16(c), “credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information.”

Holding a public trust position involves a fiduciary relationship between the Government and the trust position holder. Quite apart from any agreement the trust position holder may have signed with the Government, the nature of the trust position holder’s duties and access to information protected by the Privacy Laws necessarily imposes important duties of trust and candor on the trust position holder that are considerably higher than those typically imposed on Government employees and contractors involved in other lines of Government business. See *Snepp v. United States*, 444 U.S. 507, 511 n.6 (1980).

Applicant’s series of traffic citations over an extended period of years, covering driving on a revoked or suspended license, speeding, non-vehicle registration, and disregard of posted signs, collectively represent serious offenses and disregard of laws designed to ensure safe and responsible driving. Her admitted offenses are cumulative and bear imposed fines in some cases.

Whole-person assessment does not enable Applicant to surmount the judgment questions raised by her accrual of so many traffic-related citations over a 20-year period. Applicant admissions to the allegations set forth in subparagraphs 1.b-1.m excused the Government from offering probative proof of the citations and dispositions with respect to these allegations. Only with respect to the allegations contained in subparagraph 1.a was Applicant excused from having to prove her innocence. Her actions associated with these admitted offenses reflect serious rule violations that have not been mitigated by time.

Taking into account all of the documented facts and circumstances surrounding Applicant’s recurrent driving offenses and lack of mitigating considerations, it is still too soon to make safe predictive judgments about her ability to comply with her state’s driving laws and restore her overall trustworthiness to levels commensurate with the minimum requirements for holding a public trust position.

More time is needed to facilitate Applicant’s making the necessary efforts to improve her driving record and demonstrate overall trustworthiness in her personal affairs. Compliance with traffic laws designed to ensure safe driving and demonstrated overall trustworthiness are necessary prerequisites to holding a public trust position. Unfavorable conclusions warrant with respect to the allegations covered by subparagraphs 1.b through 1.m of Guideline E. Favorable conclusions are warranted with respect to the allegations covered by subparagraph 1.a

Formal Findings

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact, conclusions, conditions, and the factors listed above, I make the following formal findings:

GUIDELINE E (PERSONAL CONDUCT):	AGAINST APPLICANT
Subpara. 1.a:	For Applicant
Subpara. 1.b-1.m:	Against Applicant

Conclusions

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's eligibility to hold a public trust position. Public trust position eligibility is denied.

Roger C. Wesley
Administrative Judge

