



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



In the matter of:)
)
) ADP Case No. 14-00414
)
)
Applicant for Public Trust Position)

Appearances

For Government: Richard Stevens, Esq., Department Counsel
For Applicant: *Pro se*

07/17/2014

Decision

RICCIARDELLO, Carol G., Administrative Judge:

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

Statement of the Case

On March 21, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) detailing trustworthiness concerns under Guideline F, financial considerations. 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* (January 1987), as amended (Regulation); and the adjudicative guidelines (AG) implemented by the Department of Defense on September 1, 2006.

On April 4, 2014, Applicant submitted an answer to the SOR and requested a hearing before an administrative judge. The case was assigned to me on May 19, 2014. The Defense Office of Hearings and Appeals issued a notice of hearing on May 29, 2014, and the hearing was convened as scheduled on June 25, 2014. Government

Exhibits (GE) 1 through 3 were admitted into evidence without objection. Applicant testified and submitted Applicant Exhibits (AE) A through I, which were admitted without objection. I left the record open until July 7, 2014, to allow Applicant to submit additional documents. She provided AE J through AE V, which were admitted into evidence without objection. Hearing Exhibit I is Department Counsel's memorandum. The transcript was received on July 3, 2014.

Findings of Fact

Applicant admitted all of the SOR allegations. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 50 years old. She earned an associate's degree in 1991. She married in 1989 and has been separated from her husband since 2006. She has no children.¹

Applicant was employed with the same company for over 11 years. In 2011, she experienced serious health problems and had four surgeries. Due to her medical problems, she only worked about three months in 2011. After she received medical clearance to resume working, her employer laid her off. She presumed it was due to her absences during that year. For the next two and a half years she had difficulty finding steady employment. She worked temporary jobs until the contracts ran out. She has worked with her current employer since July 2013. When she can, she works overtime, but depending on the workload, sometimes she will only work 30 hours a week, which affects her earnings.²

During her medical leave and unemployment, Applicant had difficulty paying her bills. Her health insurance did not cover all of her medical expenses. Three of her surgeries involved in-patient hospitalization. She attempted to pay the medical bills not covered by insurance, but some were sent to collection. She was paying small amounts on the debts, but was advised if she could not make the minimum payments she should stop making any payments. She followed this advice. After she resumed steady work she began addressing her delinquent debts. She started this process before receiving the SOR. Applicant has been working since she was 14 years old and sometimes worked two or three jobs at a time. She does not like being in debt. She has not received financial counseling.³

When Applicant began her job in 2001, she earned approximately \$26,000 gross salary. When she was laid off in 2011, she was earning approximately \$36,000. When she was not working due to her medical problems she received substantially less.⁴

¹ Tr. 74.

² Tr. 24-26, 58-61.

³ Tr. 26-27, 39.

⁴ Tr. 61-66.

The debt in SOR ¶ 1.a (\$7,741) is for a vehicle that Applicant returned to the dealer. She purchased the car new in 2009 and after three days it had mechanical trouble. She had it fixed, and three weeks later it had more mechanical problems. The dealer blamed the problems on Applicant's driving. The car was still under warranty. After repeatedly trying to get the car fixed, the dealer was unresponsive. Applicant contacted the parent company and told them to take the car back. She attempted to retrieve supporting documents from the dealer to show how many times she had to take it in to repair, but they advised her they could not retrieve them. Applicant is aware there is a deficiency on the loan, but the dealer continues to be unresponsive. Applicant believes she bought a "lemon," and the company will no longer deal with her. She was unfamiliar at the time with the "lemon laws" of her state.⁵

The debt in SOR ¶ 1.b (\$3,751) was a credit card debt that was in collection. Applicant received a cancellation of debt IRS tax form 1099C. She paid the required taxes on the debt and release. This debt is resolved.⁶

The debt in SOR ¶ 1.c (\$305) was a credit card debt. She believed she was late in making a payment and was charged interest and late fees. She paid the debt and provided supporting documentation.⁷

The debt in SOR ¶ 1.d (\$11,723) was incurred in 2008 by Applicant when she used her credit to purchase a mobile home for her niece and husband and their three small children. The original debt was approximately \$8,000. Her niece was supposed to pay the loan. She did not, and Applicant made the payments until she lost her job in 2011. She stated her niece and family destroyed the property and then walked away from it. In March 2014, Applicant arranged a payment plan with the creditor and has \$101 withdrawn from her account each month. She is unable to make a lump sum payment at this time. She provided supporting documents.⁸

The debt in SOR ¶ 1.e (\$454) was an electric bill owed from the mobile home that Applicant's niece occupied. The service was in Applicant's name. She provided proof the debt is paid.⁹

The debts in SOR ¶ 1.f (\$447), ¶ 1.g (\$243), and ¶ 1.h (\$150) are medical bills. She provided supporting documents to show the debts are paid. Applicant paid the debt in SOR ¶ 1.i (\$50).¹⁰

⁵ Tr. 28-33.

⁶ Tr. 33-34; AE J, L, M.

⁷ Tr. 34-35; AE A, N.

⁸ Tr. 35-39; AE B, O, P, Q.

⁹ Tr. 39-44; AE C, R.

¹⁰ Tr. 44-51; AE D, S, T, U, V.

Applicant pays her monthly bills on time. She shares living expenses with her roommate. She does not have any credit cards. She understands that one of the reasons she is having financial difficulty is because she tried to help her niece. Applicant provided a copy of her written budget. She is living within her means. She has another large medical bill not included in the SOR that was incurred while she was unemployed and did not have insurance. She is hoping to have the amount reduced or seek payment through a charitable organization because she was uninsured at the time.¹¹

Applicant provided character letters from a coworker/friend and her husband. She is described as an honest person with integrity who is extremely hard-working and dedicated to her family and work.¹²

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,

¹¹ Tr. 79-82; AE K.

¹² AE H, I.

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. Two are potentially applicable in this case:

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

Applicant accumulated a number of delinquent debts and was unable to meet her financial obligations due to medical problems and then being unemployed. 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:

- (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 began having financial problems when she was laid off after she had medical problems. She began addressing her debts shortly after she regained full-time employment. All of her delinquent debts are paid, except for two. One she has a payment plan and the other is a car loan that she disputes. AG ¶ 20(a) does not apply because her financial issues are still relatively recent, and she is still resolving the mobile home debt and car loan.

Applicant had medical issues and was unemployed for a period of time. She tried to help her niece, who then reneged on her promise to pay. All of these things were beyond Applicant's control. She began addressing her debts before she received the SOR. She has paid most of her debts, has a payment plan on one debt, and has a legitimate dispute regarding another. Despite conditions that were beyond her control, she acted responsibly under the circumstances. AG ¶ 20(b) applies.

Applicant initiated good-faith efforts to pay her overdue creditors and resolve most of her debts. She is living within her means, and she is making payments on the payment plan on the mobile home purchase. There are clear indications that Applicant's financial problems are being resolved and under control. AG ¶¶ 20(c) and 20(d) apply.

Applicant purchased a new car and it immediately and repeatedly had problems. She attempted to have it repaired and after a period of time the dealer became uncooperative. She contacted the parent company and returned the vehicle. The dealer has been unresponsive regarding providing her documents she requested to substantiate her claim. Applicant has a legitimate dispute with the creditor and credibly testified of her efforts to resolve the debt. AG ¶ 20(e) applies to this debt.

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.

Applicant began addressing her delinquent debts before she received the SOR. She has not ignored her debts, but rather has been working hard to pay them. Due to her medical problems, she had reduced income and then lost her job. She was unemployed for a significant period of time. Since she has been working, she has been addressing her delinquent debts. She attempted to resolve a debt on a faulty car, and the company has been uncooperative. She lives within her means. It is clear her financial problems are under control. Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility and suitability for a public trust position. For all these reasons, I conclude Applicant has mitigated 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.i: | For Applicant |

Conclusion

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

Carol G. Ricciardello
Administrative Judge