



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



In the matter of:)	
)	
[Redacted])	ADP Case No. 14-00436
)	
Applicant for Public Trust Position)	

Appearances

For Government: Gregg A. Cervi, Esq., Department Counsel
For Applicant: *Pro se*

02/11/2015

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves trustworthiness concerns raised under Guideline F (Financial Considerations). Eligibility for assignment to a public trust position is denied.

Statement of the Case

Applicant submitted an application for a public trust position on August 27, 2013. On March 20, 2014, the Department of Defense (DOD) sent her a Statement of Reasons (SOR), citing trustworthiness concerns under Guideline F. DOD acted 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 DOD on September 1, 2006.

Applicant received the SOR on March 31, 2014; answered it on April 17, 2014; and requested a decision on the record without a hearing. Department Counsel submitted the Government's written case on August 27, 2014. On September 3, 2014, a complete copy of the file of relevant material (FORM) was sent to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. She received the FORM on September 16, 2014, and did not respond. The case was assigned to me on February 5, 2015.

Findings of Fact

Applicant is a 30-year-old trainee employed by a federal contractor administering military and veterans' health care programs. She has worked for her current employer since September 2013. She has held 14 jobs since graduating from high school in June 2002. She worked as a medical records clerk in 2005, a billing representative in 2009 and 2011-2012, and a bank teller in 2009-2010. From May 2007 to January 2008, she worked for a federal agency that required a trustworthiness determination. She left federal employment because of a job-related injury. She was unemployed from November 2012 to September 2013 because of her pregnancy and childbirth. She also was unemployed from August 2009 to August 2010 when she left her job to assist in the care of her pregnant half-sister.

Applicant has never married. She has lived with a cohabitant since February 2004, and they have a two-year-old son.¹

Applicant's September 2013 credit bureau report (CBR) reflected 26 delinquent debts totaling about \$13,100. In her answer to the SOR, she admitted all 26 debts. Twenty of the debts alleged in the SOR are medical debts that were referred for collection during her last period of unemployment. She has not disputed any of them. She explained that she paid any bills that she received, but that her frequent moves during the past ten years resulted in past-due bills not reaching her. For each debt, she promised to "do everything within [her] financial power" to resolve it. However, she has presented no evidence that she has contacted creditors, made payments, disputed any debts, offered or negotiated payment agreements, or taken any significant actions to resolve her debts. All 26 debts are unresolved.

Policies

Positions designated as ADP I and ADP 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 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 entitled to the procedural protections in the Directive before any final unfavorable access determination may be made. Regulation ¶ C8.2.1.

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. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard sensitive information.

¹ Applicant's personal information is extracted from her application for a public trust position (FORM Item 5). The record also contained an unauthenticated summary of a personal subject interview conducted in September 2013 (FORM Item 7). Applicant did not respond to a request to authenticate the PSI, nor did she waive the authentication requirement in the Directive ¶ E3.1.20. Thus, I have not considered the PSI summary.

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 an evaluation of the whole person. The administrative judge's overarching adjudicative goal is a fair, impartial and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The protection of the national security is the paramount consideration. Under AG ¶ 2(b), "[a]ny doubt concerning personnel being considered for access to [sensitive] information will be resolved in favor of national security." The Government must present substantial evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). An applicant has the ultimate burden of demonstrating that it is clearly consistent with national security to grant or continue eligibility for access to sensitive information.

Analysis

Guideline F, Financial Considerations

The concern under this guideline 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.

This concern is broader than the possibility that an individual might knowingly compromise sensitive information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting sensitive information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding sensitive information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's admissions, corroborated by her CBR, establish two disqualifying conditions under this guideline: AG ¶ 19(a) ("inability or unwillingness to satisfy debts") and AG ¶ 19(c) ("a history of not meeting financial obligations").

The following mitigating conditions 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;

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

AG ¶ 20(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.

None of the above mitigating conditions are established. Applicant's debts are numerous, recent, and were not incurred under circumstances making them unlikely to recur. She has not sought or received counseling. She has not disputed any of the debts. The medical debts may have been incurred during her pregnancy or her half-sister's pregnancy, making them due to circumstances largely beyond her control, but she has not acted reasonably. In spite of her promises in her response to the SOR, she has presented no evidence that she has contacted creditors, made payments, attempted to negotiate settlements, or taken any other actions to resolve her debts. She had an opportunity to present such evidence when she received the FORM, but she did not avail herself of that opportunity.

Whole-Person Concept

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. In applying the whole-person concept, an 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. An 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.

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.

Because Applicant requested a determination on the record without a hearing, I have no opportunity to evaluate her credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003). She has held positions of trust in the past. She was employed by a federal agency in a sensitive position, and she was responsible for sensitive information when she worked as a bank employee, a medical records clerk, and as a billing representative. However, her lack of action to address her delinquent debts raises doubts about her trustworthiness, reliability, and good judgment.

After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the trustworthiness concerns raised by her financial situation. Accordingly, I conclude she has not carried her burden of showing that it is clearly consistent with national security to grant her eligibility for a public trust position.

Formal Findings

Paragraph 1, Guideline F (Financial Considerations): AGAINST APPLICANT

Subparagraphs 1.a-1.z:

Against Applicant

Conclusion

I conclude that it is not clearly consistent with national security to grant Applicant eligibility for a public trust position. Eligibility for a public trust position is denied.

LeRoy F. Foreman
Administrative Judge