



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



In the matter of:)
)
) ADP Case No. 14-00452
)
Applicant for Public Trust Position)
)

Appearances

For Government: Gina L. Marine, Esquire, Department Counsel
For Applicant: *Pro se*

10/10/2014

Decision

DAM, Shari, Administrative Judge:

Since 2007 Applicant accumulated over \$71,000 of delinquent debts. Despite statements that she paid, is paying, or disputed some of them, she failed to provide documentation verifying those assertions. She failed to rebut or mitigate the trustworthiness concerns raised under Guideline F, Financial Considerations. Her eligibility for a public trust position is denied.

On October 1, 2013, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On March 26, 2014, the Department of Defense (DoD) issued Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns under Guideline F, Financial Considerations. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

On May 5, 2014, Applicant answered the SOR in writing. In a later email to DoD, she indicated that she elected to have the case decided on the written record in lieu of a hearing. (Item 3.) On June 30, 2014, Department Counsel prepared a File of Relevant Material (FORM), containing six Items. She mailed Applicant a complete copy on July 8, 2014. Applicant received the FORM on July 28, 2014, and had 30 days from its receipt to file objections and submit additional information. Applicant did not submit any additional information. On September 12, 2014, the Defense Office of Hearings and Appeals (DOHA) assigned the case to me.

Findings of Fact

The SOR contained 27 allegations related to delinquent debts, which totaled \$86,337. In her response to the SOR, Applicant provided sufficient proof to demonstrate that SOR ¶¶ 1.b and 1.c were not her debts. She admitted all other allegations, except SOR ¶¶ 1.a, 1.j, 1.p, and 1.r, which she disputed. (Item 3.)

Applicant is 40 years old and separated from her husband. She has a 22-year-old son. She graduated from high school in June 1991. From February 2003 to November 2007, she worked as a station manager for a car rental agency. After losing that position, she was unemployed until November 2009, when she obtained another manager's position with a car company. She worked there until November 2012, at which time she became unemployed. She received severance pay and collected unemployment benefits during that period when she was unemployed. In August 2013 she started a position with a defense contractor. From November 2007 to November 2009, she attended college. (Items 4, 6.)

During an interview with a government investigator in November 2013, Applicant said that her financial problems resulted from periods of unemployment and costly student loans for her and her son. She said that when her son lost his college scholarship, she took out personal loans for him. At one point her expenses exceeded her income and she could not manage the bills. (Items 3, 6.)

Based on a credit bureau report (CBR) dated October 12, 2013, the SOR alleged 25 delinquent debts that are Applicant's responsibility and totaled \$71,732. They began accumulating in 2007 and continued into 2013. They consist of medical bills, utility bills, unpaid credit cards, cell phone bills, a motorcycle loan, and retail store bills. Seven student loans for Applicant and her son total \$46,907, and are collection accounts. (Items 3, 5.) The status of the 25 delinquent debts is as follows.

1. Applicant said that she paid nine debts alleged in SOR ¶¶ 1.s through 1.aa, which total \$1,800. She did not submit proof of payment for any of those debts. They remain unresolved.

2. Applicant said that she is paying four debts alleged in SOR ¶¶ 1.i, 1.k, 1.m, and 1.q, which total \$2,992. She did not submit proof of payments for any of these debts. They remain unresolved.

3. Applicant admitted that she was the co-signer for the \$16,547 motorcycle loan alleged in SOR ¶ 1.i. She stated that she was negotiating a resolution for the debt. She did not provide evidence of a negotiation. The debt is unresolved.

4. Applicant acknowledged that the seven student loans alleged in SOR ¶¶ 1.d through 1.h, 1.n, and 1.o are unpaid or unresolved. They total \$46,902.

5. Applicant stated that she disputed the four debts alleged in SOR ¶¶ 1.a, 1.j, 1.p, and 1.r. She did not provide evidence verifying that she had successfully disputed those items.

In November 2013, a government investigator interviewed Applicant about background information and numerous delinquent debts listed on her CBR. She said she would investigate any debts she did not recognize on the CBR, and make payment arrangements if she were responsible. She did not provide information as to what actions she has taken regarding confirming and resolving debts she did not recognize. (Item 6.)

Applicant did not produce evidence of participation in credit or financial counseling. She did not submit a budget or workable plan for resolving her debts.

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 the DoD and 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 AGs. 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 AG ¶ 2(a), describing 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.” 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 the applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion as to obtaining a favorable trustworthiness decision.

A person who applies for access to sensitive information seeks to enter 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 10865 provides that “Any determination under this order adverse to an applicant shall be a determination 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 concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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.

AG ¶ 19 describes two conditions that could raise trustworthiness concerns and may be disqualifying in this case:

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

Since 2007 Applicant has accumulated a significant amount of delinquent debt that she has been unable or unwilling to satisfy. The evidence raises both security concerns, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate trustworthiness concerns arising from Applicant's financial difficulties:

- (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's 25 delinquent debts began accumulating in 2007, and remain unresolved. She did not provide sufficient information to demonstrate that such problems are unlikely to continue or recur, calling into question her reliability and trustworthiness. The evidence does not support the application of AG ¶ 20(a).

Applicant provided some evidence that her financial problems arose as a result of periods of unemployment and after obtaining student loans for both herself and her son. While those periods of unemployment may have been circumstances beyond her control, the assumption of student loans was within her control. However, she did not

provide evidence that she acted responsibly under the circumstances, a factor that must be considered in establishing mitigation under AG ¶ 20(b). Thus, this mitigating condition has little application.

Applicant did not provide evidence that she participated in credit or financial counseling. Although she stated that she paid nine SOR-listed debts and is paying four other debts, she did not provide documentation to verify those statements. Hence, AG ¶ 20(c) has no application because there are not clear indications that her financial problems are under control. Without proof to document payments of her debts, there is insufficient evidence to conclude that she engaged in good-faith efforts to resolve her delinquent debts. Thus, AG ¶ 20(d) does not apply. There is no evidence that Applicant successfully disputed four delinquent debts. AG ¶ 20(e) does not apply.

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.

According to AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a trustworthiness determination 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 the facts and circumstances surrounding this case. Applicant is a 40-year-old woman, who began working for a defense contractor in August 2013. In October 2013 she submitted an e-QIP and disclosed delinquent debts. In November 2013 an investigator spoke to her about those debts. She told the investigator she would review her credit problems and resolve them. In March 2014 the Government issued a SOR informing her that delinquent financial obligations were jeopardizing her request for a public trust position with her employer. The SOR alleged many delinquent debts that she discussed with the investigator. In July 2014 the Government sent her the FORM, arguing that a trustworthiness determination should be denied. It clearly stated that she failed to produce documentation to support statements that she paid, is paying, or disputed certain debts. She had an opportunity to respond to the FORM and submit verification for her assertions, but did not. She has been on notice since November 2013 that

unresolved delinquent debts, totaling \$71,732 could result in an unfavorable trustworthiness determination for her.

Overall, the record evidence leaves me with substantial questions as to Applicant's eligibility and suitability for a public trust position. For these reasons, I conclude Applicant did not meet her burden to mitigate the trustworthiness concerns arising from her financial problems.

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
Subparagraph 1.a:	Against Applicant
Subparagraphs 1.b - 1.c:	For Applicant
Subparagraphs 1.d - 1.aa:	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 ADP information is denied.

SHARI DAM
Administrative Judge