



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



In the matter of:)
)
) ADP Case No. 14-00525
)
Applicant for Position of Public Trust)

Appearances

For Government: David F. Hayes, Esq., Department Counsel
For Applicant: *Pro se*

08/24/2015

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Department of Defense’s (DOD) intent to deny her eligibility for a position of public trust. Applicant did not provide any evidence to explain, refute, or mitigate the financial concerns alleged in the Statement of Reasons (SOR). The 20 delinquent accounts, totaling approximately \$29,000, remain unresolved. Her eligibility to occupy a public trust position is denied.

Statement of the Case

On March 21, 2014, the DOD issued a SOR detailing security concerns under the financial considerations guideline.¹ DOD adjudicators were unable to find that it is clearly consistent with national security to grant or continue Applicant’s eligibility to occupy a public trust position.

Applicant answered the SOR and requested a decision without a hearing. The Government submitted its written case on April 9, 2015. A complete copy of the file of

¹ This case is adjudicated under DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). The *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply to this case. The AG replace the guidelines in Enclosure 2 to the Directive.

relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the SOR allegations. Applicant received the FORM and did not respond. The items appended to the Government's brief are admitted as Government's Exhibits (GE) 1 through 4, without objection. The case was assigned to me on July 31, 2015.

Findings of Fact

Applicant, 31, has worked for a federal contractor since July 2011. Her position requires access to personally identifiable information (PII). She is not married and does not have any children. On her August 2014 security clearance application, Applicant disclosed \$40,000 in deferred student loans and 12 other delinquent accounts. The ensuing investigation confirmed that Applicant is indebted to 20 creditors for approximately \$29,000, of which \$25,000 is related to medical expenses. The 20 delinquent accounts are alleged in the SOR and Applicant admits responsibility for them.²

Applicant blames her financial problems on her history of underemployment and unemployment dating back to 2007 when she graduated from college. According to her security clearance application, Applicant has spent the majority of the last eight years working for a staffing agency on temporary assignments or unemployed. It is unknown if Applicant had medical insurance during the times she was employed by the staffing company. The record does not provide any additional information to further explain the origin of Applicant's financial problems.³

Applicant has not provided any evidence showing her efforts to resolve her delinquent accounts. Currently, all of the alleged debts remain unresolved.⁴

Policies

Positions designated as ADP I and ADP II are classified as "sensitive positions."⁵ "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."⁶ Department of Defense contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access

² GE 2 – 4.

³ GE 2.

⁴ GE 1.

⁵ DOD Regulation 5200.2-R, *Personnel Security Program* (January 1987), as amended (Regulation) ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3.

⁶ Regulation ¶ C6.1.1.1.

determination may be made.⁷ An administrative judge's objective is a fair, impartial, and commonsense decision that embraces all available, reliable information about the person, past and present, favorable and unfavorable.

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 to obtain a favorable decision.

A person who seeks access to a public trust position 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

Unresolved delinquent debt is a serious trustworthiness concern because failure to "satisfy debts [or] 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 sensitive information."⁸ Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding sensitive information.

The SOR alleges and Applicant admits that she is indebted to 20 creditors for approximately \$29,000. The debts are substantiated by the record, which supports a finding that Applicant has both a history of not meeting her financial obligations and an inability to do so.⁹ Applicant did not provide any evidence to merit the application any of the financial considerations mitigating conditions. Her financial problems are unresolved and ongoing.

Based on the record, doubts remain about Applicant's eligibility to occupy a position of trust. In reaching this conclusion, I have also considered the whole-person factors at AG ¶ 2(a). Ultimately, Applicant failed to meet her burdens of production and persuasion. The security concerns raised in the SOR remain. Following *Egan*¹⁰ and the

⁷ See Regulation ¶ C8.2.1.

⁸ AG ¶ 18.

⁹ AG ¶ 19 (a) and (c).

¹⁰ *Navy v. Egan*, 484 U.S. 518 (1988).

clearly-consistent standard, I resolve these doubts in favor of protecting national security.

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
Subparagraphs 1.a – 1.t:	Against Applicant

Conclusion

In light of all of the circumstances presented, it is not clearly consistent with the interests of national security to grant Applicant access to sensitive information. Applicant's eligibility to occupy a position of trust is denied.

Nichole L. Noel
Administrative Judge