



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



In the matter of:

)
)
)
)
)
)
)

ADP Case No. 14-00628

Applicant for Public Trust Position

Appearances

For Government: Fahryn Hoffman, Esquire, Department Counsel

For Applicant: *Pro se*

06/30/2014

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, I conclude that Applicant's eligibility for access to sensitive information is granted.

Applicant completed and signed a Questionnaire for Public Trust Position (SF 85P) on October 31, 2013. The Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing the trustworthiness concerns under Guideline F, financial considerations, on April 3, 2014. 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*, dated January 1987, as amended (Regulation); and the *Adjudicative Guidelines For Determining Eligibility for Access to Classified Information* (AG) implemented on September 1, 2006.

Applicant acknowledged receipt of the SOR on April 15, 2014. She answered the SOR in writing on April 21, 2014, and she requested a hearing before an administrative judge with the Defense Office of Hearings and Appeals (DOHA). Department Counsel was prepared to proceed on May 9, 2014, and I received the case assignment on May 15, 2014. DOHA issued a notice of hearing on June 2, 2014, and I convened the hearing as scheduled on June 11, 2014. The Government offered Exhibits (GE) 1 through 4, which were received, marked, and admitted without objection. Applicant testified. She did not submit any exhibits beyond her attachments to her response to the SOR. I held the record open until June 24, 2014, for Applicant to submit additional matters. Applicant timely submitted AE A - AE C, which were received, marked, and admitted without objection. The record closed on June 24, 2014. DOHA received the transcript of the hearing (Tr.) on June 26, 2014.

Procedural and Evidentiary Rulings

Notice

At the hearing, Applicant received the hearing notice less than 15 days before the hearing. I advised Applicant of her right under ¶ E3.1.8 of the Directive to 15 days notice before the hearing. Applicant affirmatively waived her right to 15 days notice. (Tr. at 8.)

Findings of Fact

In her Answer to the SOR, Applicant admitted the factual allegations in ¶ 1.a of the SOR with explanations. She also provided additional information to support her request for eligibility for a public trust position.

Applicant, who is 48 years old, works as an educational registered nurse in disease management for a DOD contractor. She began her current employment in November 2013. She has worked in the medical profession for more than 18 years. She received an associate's degree in business administration in 1986 and in nursing in 1995.¹

Applicant is divorced. She married her first husband in 1997, and they divorced one year later. She married her second husband in January 2000, and they divorced in August 2006. She married her third husband in January 2010, and they divorced three years later. She has two children, an 18-year-old son and a 13-year-old daughter. Both children live with their fathers. She pays child support for her son. Applicant lives alone.²

¹GE 1; Tr. 15-16, 28-29.

²GE 1; Tr. 15-16, 27-28.

Applicant currently earns about \$70,000 a year. She earns \$5,385 a month in gross income, and she receives \$3,698 a month in net pay after deductions for taxes, insurance, \$320 for child support, and health savings account.³ Applicant's monthly expenses include \$953 for rent, \$110 for utilities, \$150 for cable, \$145 a month for cell phone, \$250 for food and dining out, \$440 for a car loan, \$50 for gasoline, \$78 for car insurance, \$30 for gym fee, \$50 for clothing, \$100 for daughter and \$600 on credit cards for total usual monthly expenses of \$2,976. Her estimated expenses for groceries and gasoline appear low. She has not included a calculation for miscellaneous expenses, which may not occur monthly, such as a haircut, laundry items, household cleaning supplies, and dry cleaning. These costs are calculated at \$150 a month for total monthly expenses of \$3,176. She has a net remainder of approximately \$522 for unexpected expenses. She will incur additional expenses during her daughter's summer visit for food, clothing, and some sort of child care.⁴

In 2000, during her second marriage, Applicant, her husband, and their daughter lived in an apartment. Her husband's former wife died, leaving three young children. Her husband obtained legal custody of his children, who came to live with them. Because the family size increased, Applicant and her second husband needed to move to a larger place. She purchased a mobile home, in her name only, for approximately \$33,000. She made a \$3,325 down payment and financed the remaining \$29,889 balance through a retail installment contract. Under the contract, Applicant had a variable interest rate, with an initial rate of 14%.⁵ Over the life of the contract, she would pay approximately \$70,000 in interest. The contract identified the location to place the mobile home, which was a rented lot in a location with many other mobile homes. The contract terms required Applicant to pay \$372 per month the first year, \$415 per month the second year, and \$421 per month the remaining 18 years, based on the date the contract was signed. The contract notes that these amounts could change if the interest rate changed.⁶

In 2004, Applicant and her husband separated. They moved out of their mobile home, and Applicant tried to sell the mobile home or refinance the loan. Her lender declined to work with her even though she had found a buyer for the mobile home. She rented the mobile home to the family who wanted to purchase the home. The family

³Applicant is paid every two weeks. Two months a year she receives a third pay check. This money is not calculated into her monthly income and expenses. AE C.

⁴AE B; AE C; Tr. 23-24.

⁵Applicant testified that the interest rate dropped to as low as 10% and went as high as 15.85%

⁶Attachment to Response to SOR; Tr. 17-18, 31, 36-37, 49.

lived in the home until March 2011 and paid the retail installment contract every month while they lived in the home.⁷

In 2009, the owner of the land on which Applicant kept her mobile home sold the land to a developer. The sale displaced around 200 families and residents. Applicant learned about the sale from her renters in 2010. The land owner offered some families a home site in another community. Applicant did not receive such an offer. The cost to move this home was \$10,000 or more. Applicant did not have the financial resources to move this home.

After she learned about the sale of the land, Applicant contacted her lender and advised that she could not afford to move the home. The lender said it would only move the mobile home if she voluntarily returned the home to them. They would treat the return as a voluntary repossession. Applicant declined, as she did not want a repossession on her credit report.⁸

In April 2011, Applicant received a notice of violation from the county in which the mobile home was located. The notice stated that her mobile home was an unsafe structure, and that it would be demolished and removed from the closed mobile home park. Applicant signed a release with the new land owner, wherein she agreed to the destruction of her mobile home. By letter dated June 21, 2011, Applicant received notice from the land owner that her mobile home had been demolished and removed from the mobile home park. Applicant notified the lender about this action. She also requested that the insurance policy on this structure be cancelled, and her monthly payment be reduced by this amount, which was done.⁹

After her renters moved, Applicant continued to pay the monthly payment on the mobile home until February 2012, when she notified the lender that she would not be making any further payments on the demolished mobile home. She indicated that she was aware of the “ramifications” of her decision, which she explained at the hearing as she thought she would be sued by the lender. At the hearing, Applicant acknowledged owing this debt and stated that she had paid more than \$50,000 on her loan.¹⁰ She indicated that she had stopped her payment because she had unsuccessfully tried to resolve the issues related to this loan with the lender, who declined to accept her

⁷Response to SOR and attachment; GE 2; Tr. 18, 31.

⁸Response to SOR.

⁹Response to SOR; GE 2; Tr. 19-20, 31-32, 34-35.

¹⁰Based on the payment schedule set forth in the note, Applicant paid more than \$58,000 on this debt by February 2012. Attachment to Response to SOR.

purchaser, to refinance her loan, or to assist her in resolving the matter of the mobile home.¹¹

When she completed her SF-85 P, Applicant specifically listed the mobile home debt as a delinquency, then noted that it had been resolved between her and the creditor and that it had a zero balance. The summary of her personal subject interview contains similar information. At the hearing, Applicant indicated that she had reviewed her credit report on a website, which showed this debt with a zero balance and past due 60 days. She indicated that the creditor and she never agreed to a zero balance. The November 14, 2013 credit report shows a debt with the lender, once as current and once as 60 days late with a zero balance. Each listing has a notation that the account is closed and sold. The credit report also lists this debt with a servicing company as in collection with a delinquency date of March 2012.¹²

During her initial meeting with an Office of Personnel Management (OPM) investigator, Applicant voluntarily provided information about other past debts, which are not an issue now. She also told the OPM investigator that she owed approximately \$1,700 in past-due taxes for the tax year 2011. After she filed her 2011 federal tax return, her former employer filed an updated W-2 indicating that she earned an additional \$5,000 or more in the tax year 2011. At the time of her December 2013 interview, the Internal Revenue Service (IRS) was still investigating the matter. A few days after her interview, Applicant again spoke with the OPM investigator. She told the investigator she had received an additional communication from the IRS, which advised that it would need additional time to investigate this matter. In a separate letter, the IRS asked her to complete the paperwork for a payment plan to resolve her debt. Applicant indicated that she agreed to pay \$150 a month and that she made some payments. However, when she filed her 2013 federal income tax return, the IRS took approximately \$1,500 from her \$3,000 refund to resolve her debt. Her tax issue with the IRS has been resolved.¹³

Applicant stated that she regretted buying the mobile home and that she would never buy another mobile home. She also stated that she had been honest with the investigator about her financial issues in the past. At this time, she can pay her debts. The credit reports in the record reflect that she pays her debts on time and that the debt listed in the SOR is her only outstanding debt. Applicant has not received financial counseling nor has she had any contact with or from the creditor about this debt.¹⁴

¹¹Response to SOR and attachments; GE 2; Tr. 20, 33, 41.

¹²GE 1 - GE 4; Tr. 22.

¹³GE 2; Tr. 25-26.

¹⁴GE 3; GE 4; Tr. 26, 30, 44, 46.

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 over-arching 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 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 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 (EO) 10865 provides that decisions shall be “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 concern relating to the guideline 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 [sensitive] information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

AG ¶ 19 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

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

Applicant has not fully paid the loan for a mobile home she purchased twelve years ago. She made her last payment on this loan in February 2012. The debt remains unresolved. These two disqualifying conditions apply.

The Financial Considerations guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 20(a) through ¶ 20(f), and 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; and

(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.

The only debt listed in the SOR remains unresolved. In 2000, Applicant knowingly signed a contract and understood the terms of the contract. She admitted this at the hearing. A trustworthiness concern arises because she has not fulfilled the terms of her contract. This debt resulted from a unique set of circumstances. Applicant purchased a mobile home for her expanding family when she was married to her second husband. She placed it in a mobile home park, where it remained for more than 10 years. When she and her husband separated, they stopped living in the mobile home. She found a buyer for her property, but her lender (the creditor) refused to agree to a sale of the property to the potential buyer, who then began renting the mobile home from Applicant. In 2009, the owner of the land, on which Applicant had placed her mobile home, sold the land to a developer. Eventually, Applicant learned of the sale, but she was unable to arrange to move the mobile home because of the exorbitant cost to move it. Her lender would only move it if she returned the mobile home as a voluntary repossession. After her tenants moved out, she continued to pay the monthly payment for about a year. She tried to work with the lender to resolve the debt, but she was not successful. In the meantime, after obtaining a legal violation notice, the new owner destroyed her mobile home as she had not removed it from the land. Her divorce and the sale of the land are factors beyond her control. When she and her husband separated, Applicant found a buyer for the mobile home and later rented the mobile home to this individual. She acted reasonably at that time. When she learned about the sale of the land, she investigated the cost of moving her mobile home and concluded that she could not afford the cost. She also sought assistance from the lender because of this situation, without success. Her actions were reasonable. While she has not had financial counseling, her finances are under control. She lives within her monthly income and pays her monthly expenses. Her current credit card debt is manageable and being paid. Applicant has no intent to buy another mobile home and regrets this past decision. AG ¶¶ 20(a)-20(c) apply and financial considerations concerns are mitigated.

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 the 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) 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. The decision to grant or deny a trustworthiness determination requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a trustworthiness concern is established and then whether it is mitigated. A determination of an applicant’s eligibility for a public trust position should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate trustworthiness concern.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant’s current finances are sound and well-managed. The only SOR debt relates to her failure to pay her contract obligation for the destroyed mobile home she purchased in 2000. She or her tenant paid the monthly payments required by her retail installment contract for nearly 12 years, which amounted to more than \$50,000 for a loan under \$30,000. When she purchased the mobile home, as part of the purchase price, the manufacturer placed the mobile home on land in a mobile park selected by Applicant. Ten years later, Applicant learned that the land had been sold. She could not afford the \$10,000 moving cost for the mobile home and did not get any offer of assistance with this expense from the old or new owner of the mobile park. She tried to get assistance from the lender with this cost, but was unsuccessful. The lender not only refused to work with her on this debt, but had refused in the past to allow a prospective buyer to take over the mortgage or to purchase the mobile home from her. From her perspective, Applicant believes that she fulfilled her obligations under the contract because she had paid the lender more than enough money for a mobile home which had little resale value and no longer existed. From a trustworthiness perspective, she has not fulfilled her obligation, which raises a concern about her ability to hold a position of public trust. Despite filing her 2011 income tax return timely, she incurred a unpaid tax debt when an employer filed a late W-2, indicating she earned more money in 2011 than originally reported. She worked with the IRS to resolve this matter, agreeing in early 2014 to repay the debt at \$150 a month. She made a few payments under this agreement. However, the IRS took the balance due from her 2013 tax refund to resolve this debt. This action and her regular

monthly payments on her car and credit cards reflect an overall willingness to resolve her debts and show a track record of debt payment and financial responsibility.¹⁵

In weighing all the information in the record including her failure to fully resolve the mobile home debt, her prudent fiscal management, and her candid and honest testimony at the hearing, there is little likelihood that this debt would be a source of improper pressure or duress. She has established the requisite nexus to show that she would exercise good judgment and can be trusted with sensitive matters. Of course, the issue is not simply whether this debt is paid—it is whether her failure to fully resolve the mobile home debt raised concerns about her fitness to hold a position of public trust. While this debt remains unpaid, it is insufficient to raise trustworthiness concerns under the evidence and testimony in this record. (See AG ¶ 2(a)(1).)

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a public trust position. For all these reasons, I conclude Applicant mitigated the trustworthiness concerns arising from her financial considerations.

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

¹⁵In assessing whether an Applicant has established mitigation under Guideline F, the Appeal Board provided the following guidance in ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008):

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts." See, e.g., ISCR Case No. 05-01920 at 5 (App. Bd. Mar. 1, 2007). However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. See, e.g., ISCR Case No. 02-25499 at 2 (App. Bd. Jun. 5, 2006). All that is required is that an applicant demonstrate that he has ". . . established a plan to resolve his financial problems and taken significant actions to implement that plan." See, e.g., ISCR Case No. 04-09684 at 2 (App. Bd. Jul. 6, 2006). The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) ("Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.") There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. See, e.g., ISCR Case No. 06-25584 at 4 (App. Bd. Apr. 4, 2008). Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

Subparagraph 1.a:

For Applicant

Conclusion

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

MARY E. HENRY
Administrative Judge