



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



In the matter of:)
)
) ADP Case No. 14-00700
)
Applicant for Position of Trust)

Appearances

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

07/17/2014

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant has not mitigated financial considerations trustworthiness concerns. Eligibility for access to sensitive information is denied.

Statement of the Case

On April 2, 2014, the Department of Defense (DOD) 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 DOD on September 1, 2006.

Applicant answered the SOR on May 7, 2014, and elected to have the case decided on the written record in lieu of a hearing. The Government's written case was submitted on May 19, 2014. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the trustworthiness concerns. Applicant received the FORM on May 21, 2014. She responded with a memorandum and

documents that have been marked Applicant's exhibits (AE) 1 through 33. The case was assigned to me on July 15, 2014. The Government exhibits included in the FORM (Items 4-7) and AE 1 through 33 are admitted without objection.

Findings of Fact

Applicant is a 39-year-old employee of a defense contractor. She is applying for eligibility to hold a public trust position. She received a bachelor's degree in 1998 and a master's degree in 2002. She has never married and she has no children.¹

The SOR alleges \$148,564 in unpaid student loans (SOR ¶ 1.a); federal tax debts of \$3,272 and \$4,335 (SOR ¶¶ 1.b and 1.c); a \$2,414 state tax debt (SOR ¶ 1.d); failure to file state income tax returns (SOR ¶ 1.e); a \$10,014 defaulted timeshare loan (SOR ¶ 1.f); a \$10,083 defaulted car loan (SOR ¶ 1.g); and ten delinquent debts totaling about \$9,861 (SOR ¶¶ 1.h to 1.q).

Applicant stated that her financial problems started in 2005 when she bought her first home. She stated that the mortgage lender promised her that her monthly payments would be \$830, but she actually had to pay \$955, which was more than she could afford. Her September 2011 and November 2013 credit reports show a mortgage account with a high credit of \$149,957, with a zero balance. The listed terms were \$1,027 per month for 360 months. Applicant stated that she used her credit and payday loans in an attempt to maintain the mortgage payments, but the house was eventually lost to foreclosure. Applicant stated the lender's practices were unreasonable and unfair. She was awarded \$1,900 in damages from two lawsuits against the lender.²

Applicant was employed with a company from 2001 through January 2010. She took time off work to care for family members who had medical problems. She also indicated that she was bullied by her manager. She stated that she left the job because "[m]edical conditions with family members caused stress and work time so I chose to leave to deal with family matters, reassess life goals and then return to the workforce." She was unemployed until she was hired at her current position in February 2011.³

Applicant defaulted on her student loans. Her September 2011 credit report shows \$143,260 owed for two student loan accounts in collection. Applicant stated that she paid about \$3,000 in 2011 to bring the loans out of default. Her November 2013 credit report shows the student loans consolidated into one account with a balance of \$147,565. The student loans are listed as deferred and not past due. The loans are

¹ Item 3.

² Items 3-7; AE 1. Applicant's mortgage foreclosure was not alleged in the SOR. Any financial matters that were not alleged in the SOR will not be used for disqualification purposes. They may be considered when assessing Applicant's overall financial situation, in the application of mitigating conditions, and in analyzing the "whole person."

³ Items 3-5.

currently in forbearance. Applicant stated that she is addressing other debts while her student loans are in forbearance.⁴

Applicant did not pay her federal taxes for tax years 2007, 2008, 2009, 2011, and 2012 when they were due. She entered into an installment agreement with the IRS in December 2013 to pay her back taxes for the above tax years. The taxes for 2007 have been paid. In June 2014, the IRS indicated that with penalties and interest, she owed \$2,569 for tax year 2008; \$4,663 for tax year 2009; \$5,052 for tax year 2011; and \$3,537 for tax year 2012; for a total amount owed of \$15,822.⁵

Applicant did not pay her state income taxes when they were due for multiple years. The state placed tax liens against her in 2008, 2010, 2012, and 2013. The 2008, 2010, and 2012 liens were released when the taxes were paid. In December 2012, the state placed a levy on Applicant's wages of \$3,609 for unpaid taxes, penalties, interest, and costs for tax years 2009 and 2010. She filed her 2012 state income tax return, but she did not pay what was owed by the deadline. In June 2013, the state indicated that she owed \$1,124 with penalties and interest for tax year 2012. In August 2013, the collection company representing the state indicated that she owed \$2,218. On July 2, 2014, Applicant sent a letter to the collection company asking to pay the full amount of \$2,218 through monthly \$40 payments starting in August 2014.⁶

Applicant bought a timeshare in about 2007. She regretted her decision and attempted to rescind the contract, but was unsuccessful. She never stayed in the timeshare and she did not make any payments. In November 2007, the lender sent her a letter stating the amount due was \$733. The timeshare was foreclosed and returned to the lender. Her 2011 and 2013 credit reports show the timeshare as a repossession with a high credit and balance of \$10,124. On July 2, 2014, Applicant sent the lender a letter offering to settle the debt for \$366 through three monthly payments of \$122.⁷

Applicant bought a car in about 2005. Her 2011 and 2013 credit reports show the car loan account was opened in April 2005 with a high credit of \$25,265. The terms of the loan were monthly payments of \$469 for 72 months. The date of last action was November 2007. The car was repossessed. The lender charged off \$10,083, which is also the amount listed as the past-due amount and the balance of the loan. Applicant stated that she voluntarily returned the car when the lender would not work with her and grant a payment extension. On June 26, 2014, Applicant sent a letter to the lender offering to settle the debt for \$5,099 through monthly payments of \$25 until she can increase that amount.⁸

⁴ Items 3, 5-7; AE 1, 22, 23.

⁵ Items 3-7; AE 1, 5.

⁶ Items 3-7; AE 1, 2, 7-10.

⁷ Items 3-7; AE 1, 26, 27.

⁸ Items 3, 5-7; AE 1, 24, 25.

In April 2014, Applicant paid the \$123 medical debt alleged in SOR ¶ 1.q. In May 2014, Applicant and the collection company holding the \$512 debt alleged in SOR ¶ 1.i and the \$428 debt alleged in SOR ¶ 1.j agreed to settle the first debt for \$204, through four monthly payments of \$51, and the second debt for \$214, through four monthly payments of \$53. Applicant established that she made the first monthly payments toward the settlements in June 2014. In May 2014, she settled the \$711 debt alleged in SOR ¶ 1.l for \$249. She settled the \$239 debt alleged in SOR ¶ 1.p for \$119. In June 2014, she paid \$50 toward the \$646 debt alleged in SOR ¶ 1.n.⁹

On June 26, 2014, Applicant sent a letter to the collection company holding the \$693 debt alleged in SOR ¶ 1.m. She offered to settle the debt for \$490 through five monthly payments of \$98 starting in September 2014. On July 2, 2014, she sent a letter to the collection company holding the \$267 debt alleged in SOR ¶ 1.o offering to settle the debt for \$160 through a lump-sum payment.¹⁰

Applicant admitted owing the \$5,000 medical debt alleged in SOR ¶ 1.k. She stated that she would contact the collection company handling the debt. She denied owing the \$1,241 debt to a collection company that is alleged in SOR ¶ 1.h. The debt is listed on the 2013 credit report, but it does not identify the original creditor.¹¹

Applicant completed a 13-week financial counseling course in April 2012. In June 2014, she contracted for additional financial counseling through another counseling service. She stated that she is committed to addressing all her financial issues and attaining financial stability.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.)

⁹ Items 3, 6, 7; AE 1, 3, 4, 11-14, 28-33.

¹⁰ Items 3, 6, 7; AE 1, 17, 18, 20-21.

¹¹ Items 3, 6, 7; AE 1.

¹² Item 3; AE 1, 15, 16.

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, 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. The following are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same

Applicant accumulated a number of delinquent debts and was unable or unwilling to pay her financial obligations. The evidence is sufficient to raise AG ¶¶ 19(a) and 19(c).

It has not been established that Applicant failed to file her 2012 state income tax return. AG ¶ 19(g) is not applicable. SOR ¶ 1.e is concluded for Applicant.

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 stated that her financial problems started in 2005 when she bought her first home, and her monthly mortgage payments were more than she was told they would be. She had sick family members and she lost time at work. She also stated that she was bullied by her supervisor. She was unemployed from January 2010 through February 2011. To the extent that the above events were beyond her control, for the full application of AG ¶ 20(b), Applicant must also have acted responsibly under the circumstances.

Applicant may have struggled to pay her mortgage loan, but that does not explain why she bought a timeshare in about 2007. She lost her house, timeshare, and car to foreclosure or repossession; and she did not pay her state and federal income taxes, student loans, and other debts.

Applicant paid, settled, or made substantial progress in payment plans for the debts alleged SOR ¶¶ 1.i, 1.j, 1.l, 1.p, and 1.q. The \$1,241 debt to a collection company that is alleged in SOR ¶ 1.h is listed on the 2013 credit report, but it does not identify the original creditor. Those debts are mitigated, but she still has a substantial amount of debt to be addressed.

Applicant receives less credit in mitigation for the payments made through garnishment of her wages. See ISCR Case No. 08-06058 at 4 (App. Bd. Aug. 26, 2010). Her recent efforts and payment arrangements also require greater scrutiny. The Appeal Board has held that “intentions to pay off debts in the future are not a substitute for a track record of debt repayment or other responsible approaches.” See ISCR Case No. 11-14570 at 3 (App. Bd. Oct. 23, 2013) (quoting ISCR Case No. 08-08440 at 2 (App. Bd. Sep. 11, 2009)).

Applicant’s student loans are currently in forbearance, but she will have to start paying them at some point. Her track record is not good and her finances remain precarious. She received financial counseling, but I have no confidence that she will attain financial stability.

There is insufficient evidence for a determination that Applicant’s financial problems will be resolved within a reasonable period. I am unable to find that she acted responsibly under the circumstances or that she made a good-faith effort to pay her debts. Her financial issues are recent and ongoing. They continue to cast doubt on her current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a) and 20(d) are not applicable. AG ¶ 20(b) is partially applicable. The first section of AG ¶ 20(c) is applicable; the second section is not. I find that financial considerations concerns remain despite the presence of some mitigation.

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.

I considered the circumstances surrounding Applicant's financial problems. However, Applicant has not convinced me that she will attain financial stability within the foreseeable future.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a public trust position. For all these reasons, I conclude Applicant has not 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:	Against Applicant
Subparagraphs 1.a-1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraphs 1.f-1.g:	Against Applicant
Subparagraphs 1.h-1.j:	For Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	For Applicant
Subparagraphs 1.m-1.o:	Against Applicant
Subparagraphs 1.p-1.q:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a public trust position. Eligibility for access to sensitive information is denied.

Edward W. Loughran
Administrative Judge