



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



In the matter of:)
)
) ADP Case No. 14-00721
)
)
Applicant for Public Trust Position)

Appearances

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

09/10/2014

Decision

COACHER, Robert E., Administrative Judge:

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

Statement of the Case

On April 17, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns under Guideline F, financial considerations. DOHA 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*, dated January 1987, as amended (Regulation); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

Applicant answered the SOR on May 19, 2014, and requested a hearing before an administrative judge. The case was assigned to me on June 25, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on July 9, 2014, and the hearing was convened as scheduled on July 23, 2014. The Government offered

exhibits (GE) 1 through 3, which were admitted into evidence without objection. Department Counsel's discovery letter to Applicant and the exhibit index were marked as hearing exhibits (HE) I and II. Applicant testified, but did not offer any exhibits at the hearing. The record was held open for Applicant to submit additional information. She submitted Applicant exhibits (AE) A through J, which were admitted into the record without objection. Department Counsel's transmittal letter was marked as HE III. DOHA received the hearing transcript (Tr.) on August 4, 2014.

Findings of Fact

In her answer to the SOR, Applicant admitted all the SOR allegations, although she stated that several of the debts were paid (SOR ¶¶ 1.b, 1.f and 1.g). She also stated that SOR ¶¶ 1.l and 1.m were duplicate debts. The admissions are incorporated as findings of fact. After a review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is a 40-year-old employee of a government contractor. She works as a physician's advocate and has held that position since September 2012. She has a high school diploma and has taken some college courses. She is married and has four children from earlier marriages. She has no military background.¹

The SOR alleges 13 delinquent debts for a total of about \$232,779. The debts were listed in a credit report from September 2013. She also admitted and discussed the listed delinquent debts in her trustworthiness determination interview with an investigator in October 2013.²

Applicant testified that her financial difficulties came about initially because of her divorce in 2008. She owned a home at the time and could not make the mortgage payments, which led to foreclosure. Additionally, she was unemployed from August 2010 to January 2011 because she was terminated from her position for poor performance. She claimed her termination was due to a personality conflict with her supervisor. She receives \$200 monthly child support from the father of her oldest child. The father of the two youngest children was making his required \$1,000 monthly child support payments up until sometime in 2013 when he became unemployed. Now he sends "what he can, when he can."³

The debt alleged in ¶ 1.a is a delinquent consumer debt in the amount of \$1,178. The last action on this account was in January 2013. Applicant claims she has contacted the creditor about returning the equipment to reduce the debt amount. No documentation was provided concerning this debt. This debt is unresolved.⁴

¹ Tr. at 5, 23-25; GE 1.

² GE 2-3.

³ Tr. at 26, 38-40; GE 1.

⁴ Tr. at 33; GE 2.

The allegation at SOR ¶ 1.b is a delinquent medical account in the amount of \$103. Applicant presented documentation showing the account was paid in May 2014. This debt is resolved.⁵

The debts alleged in SOR ¶¶ 1.c, 1.d, and 1.i are delinquent telecommunication accounts in the amounts of \$380, \$135, and \$1,368. The last action on ¶ 1.c was in November 2009. The last action on ¶ 1.d was in March 2013. The last action on ¶ 1.i was in August 2013. Applicant testified she is working on payment plans for all these debts. No documentation was offered in support of payment plans for SOR ¶¶ 1.c and 1.d. She did present documentation showing that the creditor for SOR ¶ 1.i offered her a settlement payment plan, but there was no evidence of payment under the plan. These accounts are unresolved.⁶

The debts alleged in SOR ¶¶ 1.e through 1.g are delinquent medical accounts in the amounts of \$55, \$115, and \$761. Applicant presented documentation showing the debts at SOR ¶¶ 1.e and 1.f were paid in May 2014. Applicant testified that she now disputed the amount of SOR ¶ 1.g. She did not present documentation supporting the dispute. SOR ¶¶ 1.e and 1.f are resolved. SOR ¶ 1.g is unresolved.⁷

The debt alleged in ¶ 1.h is a delinquent consumer debt in the amount of \$556. The last action on this account was in May 2012. Applicant claims she paid this account several years ago. No documentation was provided concerning this debt. This debt is unresolved.⁸

The debt alleged in ¶ 1.j is a delinquent consumer debt in the amount of \$230. The last action on this account was in September 2013. Applicant stated that she is still attempting to contact the creditor. No documentation was provided concerning this debt. This debt is unresolved.⁹

The debt alleged in SOR ¶ 1.k is a past-due mortgage account that resulted in foreclosure. Applicant testified that she tried to reduce her mortgage payments by \$300 monthly in late 2008 or early 2009. No modification happened. She made partial payments for some time before foreclosure, but those payments were rejected by the lender. The house was not put on the market before foreclosure. She did not receive an IRS Form 1099 for cancelling this debt. She also stated that as a result of improper lending practices regarding her mortgage, she received an \$800 settlement. She provided documentation showing that she received \$800 in April 2013, but there is no

⁵ Tr. at 34-35; GE 2; AE E-1.

⁶ Tr. at 36-37; GE 2; AE I.

⁷ Tr. at 34, 36; GE 2; AE E-1, F.

⁸ Tr. at 36; GE 2; AE A.

⁹ GE 2; AE A.

information about the source of this amount. She also failed to produce any documents about the settlement terms. This debt is unresolved.¹⁰

The debts alleged at SOR ¶¶ 1.l and 1.m are medical collection accounts in the amounts of \$250. These are duplicate debts. SOR ¶ 1.l is resolved for Applicant. Applicant is attempting to contact the creditor regarding this debt. SOR ¶ 1.m is not resolved.¹¹

Applicant has not received financial counseling. She testified that she typically has a few hundred dollars left over at the end of the month. Her submitted budget shows disposable income at the end of the month in the amount of \$745.¹²

Applicant offered a character letter from a former employer. She attested to her competence, character and loyalty. Applicant also submitted her 2014 performance appraisal, which reflected an overall rating of “meets expectations.”¹³

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 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.

¹⁰ Tr. at 60, 64-66, 68-70, 74; GE 2; AE H, J.

¹¹ Tr. at 37; GE 3; AE A.

¹² Tr. at 51; AE G.

¹³ AE C-D.

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 as to obtaining 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.

Analysis

Guideline F, Financial Considerations

The trustworthiness concern for financial considerations is set out in AG ¶ 18 as follows:

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. Two are potentially applicable in this case:

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

Applicant has numerous delinquent debts that remain unpaid. The evidence is sufficient to raise the above disqualifying conditions.

Several financial considerations mitigating conditions under AG ¶ 20 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's debts are recent, multiple, and cast doubt on her reliability, trustworthiness, and good judgment. AG ¶ 20(a) is not applicable.

Although Applicant's period of unemployment and her divorce could be considered beyond her control, she has had enough time and resources to address these debts. She has paid several of the smaller-balanced debts, but has not put forth responsible efforts to resolve the issues associated with the remaining debts. AG ¶ 20(b) is partially applicable.

There is no evidence of financial counseling. Additionally, Applicant has not established payment plans for the unresolved debts. AG ¶ 20(c) does not apply, and ¶ 20(d) applies only to the paid debts.

Applicant failed to provide any documentation supporting disputes of any debts. AG ¶ 20(e) does not apply. At this point, Applicant's finances remain a concern despite the presence of some mitigation.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility and suitability for access to sensitive information 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 access to sensitive information 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 relevant 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 by which Applicant's financial situation were affected by her unemployment and her divorce. However, I also considered that despite these factors, most of the debts remain unaddressed. Her troublesome financial history causes me to question her ability to resolve her debts.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for access to sensitive information. For all these reasons, I conclude Applicant has not mitigated the 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
Subparagraph: 1.a:	Against Applicant
Subparagraph: 1.b:	For Applicant
Subparagraphs: 1.c – 1.d:	Against Applicant
Subparagraphs: 1.e – 1.f:	For Applicant
Subparagraphs: 1.g – 1.k:	Against Applicant

Subparagraph: 1.l:	For Applicant
Subparagraph: 1.m:	Against Applicant

Conclusion

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

Robert E. Coacher
Administrative Judge