



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



In the matter of:)	
)	
)	ADP Case No. 14-01098
)	
)	
Applicant for Public Trust Position)	

Appearances

For Government: Braden M. Murphy, Esquire, Department Counsel
For Applicant: *Pro se*

November 12, 2015

Decision

CEFOLA, Richard A., Administrative Judge:

On April 9, 1993, the Composite Health Care Systems Program Office (CHCSPO), the Defense Office of Hearings and Appeals (DOHA), and the Assistant Secretary of Defense for Command, Control, Communications and Intelligence (ASD C3I) entered into a memorandum of agreement for DOHA to provide trustworthiness determinations for contractor personnel employed in Information Systems Positions as defined in DoD Regulation 5200.2-R, Personnel Security Program (Regulation), dated January of 1987.

Applicant submitted her Questionnaires for Public Trust Position (SF 85P), on May 31, 2013. On April 1, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing the trustworthiness concerns under Guideline F regarding Applicant. 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 after September 1, 2006.

Applicant answered the SOR in writing (Answer) on April 17, 2015. Department Counsel issued a File of Relevant Material (FORM) on June 17, 2015. Applicant responded to the FORM (Response) on August 24, 2015, with a very comprehensive 32 page Response. Department Counsel had no objection, and the documents are entered into evidence. The case was assigned to me on September 3, 2015. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to sensitive information is granted.

Procedural and Evidentiary Rulings

Motion to Amend SOR

Department Counsel moved to amend the SOR “to reflect that Applicant seeks a Determination of Public Trust, not a Security Clearance.” (Form at page 2~3.) Applicant had no objection; and as such, it is so amended.

Findings of Fact

In her Answer to the SOR, Applicant admitted the factual allegations in Paragraphs 1.a.~1.c. of the SOR, with explanations. She denied the factual allegations in Paragraphs 1.d.~1.f. of the SOR.

Guideline F -Financial Considerations

Applicant is a 38-year-old employee of a “Federal Contractor.” (Item 3 at pages 5 and 10.) She attributes her past-due debts “to family illness, deaths and college.” (Item 3 at page 25.) Applicant has engaged the services of a “Financial Consultant” to address the Government’s concerns. (Answer at page 3, and Response at page 1.)

1.a. Applicant admits she was indebted to Creditor A for a past-due debt in the amount of about \$6,304. Through the services of her Financial Consultant, this debt was settled for \$4,950 and paid, as evidenced by documentation in Applicant’s Response. (Response at pages 3~30.)

1.b. Applicant admits she was indebted to Creditor B for a past-due debt in the amount of about \$8,519. Through the services of her Financial Consultant, this debt was settled for \$5,111 and paid, as evidenced by documentation in Applicant’s Response. (Response at pages 3~30.)

1.c. Applicant admits she was indebted to Creditor C for a past-due debt in the amount of about \$2,215. Through the services of her Financial Consultant, this debt was settled for \$664 and paid, as evidenced by documentation in Applicant’s Response. (Response at pages 3~30.)

1.d. Applicant denies she was indebted to Creditor D for a past-due debt in the amount of about \$189. Through the services of her Financial Consultant, this debt was paid, as evidenced by documentation in Applicant’s Answer. (Answer at page 4.)

1.e. and 1.f. Applicant denies she was indebted to Creditor E for two past-due debts totaling about \$212. Through the services of her Financial Consultant, these debts were paid, as evidenced by documentation in Applicant's Answer. (Answer at pages 5~6.)

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 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.

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.

The guideline notes several conditions that could raise trustworthiness concerns. Under AG ¶ 19(a), an “*inability or unwillingness to satisfy debts*” is potentially disqualifying. Similarly under AG ¶ 19(c), “*a history of not meeting financial obligations*” may raise security concerns. Applicant accumulated some delinquent debt and was unable to pay these obligations for a period of time. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

The guideline also includes examples of conditions that could mitigate trustworthiness concerns arising from financial difficulties. Under AG ¶ 20(b), it may be mitigating where “*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.*” In part, Applicant attributes her past financial difficulties to illness and death in her family. She has since acted responsibly; and with the help of a Financial Consultant, has resolved her past-due debts. I find this potentially mitigating condition is a factor for consideration in this case.

Evidence that “*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*” is potentially mitigating under AG ¶ 20(c). Similarly, AG ¶ 20(d) applies where the evidence shows “*the individual initiated a good-faith effort to repay overdue creditors or*

otherwise resolve debts.” Applicant received valuable consultation and has resolved all the delinquent debts, either by payment or settlement and payment. I conclude these potentially mitigating conditions 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 the circumstances. 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 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.

I considered all of the evidence, including the potentially disqualifying and mitigating conditions surrounding this case. Those who know Applicant in the work place speak must highly of her. (Response at pages 31~32.) 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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant

Subparagraph 1.e: For Applicant

Subparagraph 1.f: For Applicant

Conclusion

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

Richard A. Cefola
Administrative Judge