



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



In the matter of:)
)
) ADP Case No. 14-01137
)
Applicant for a Public Trust Position)

Appearances

For Government: Caroline E. Heintzelman, Esq., Department Counsel
For Applicant: *Pro se*

01/29/2015

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Defense Department’s intent to deny her eligibility for a public trust position to work in the defense industry. Applicant’s financial problems were not caused by irresponsible, reckless, or negligent behavior. She has sought financial counseling and is making a good-faith effort to resolve her delinquent accounts. Her eligibility for access to sensitive information is granted.

Statement of the Case

On July 16, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing trustworthiness 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 access to sensitive information and recommended that the case be submitted to an administrative judge for a determination whether to revoke or deny Applicant’s eligibility to occupy a public trust position.

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.

Applicant timely answered the SOR and requested a hearing.² At the hearing, convened on November 19, 2014, I admitted Government's Exhibits (GE) 1 through 6, and Applicant's Exhibits (AE) A through E, without objection. After the hearing, Applicant submitted AE F, which was also admitted without objection.³ I received the transcript (Tr.) on December 2, 2014.

Findings of Fact

Applicant, 29, has worked as a customer service representative for a federal contractor since November 2013. She is seeking to obtain eligibility to occupy a position of public trust for her job working in a call center. Eligibility is necessary because her job involves access personally identifiable information (PII). On her electronic questionnaire for investigations processing (e-QIP), dated November 2013, Applicant disclosed a number of delinquent accounts and her plans to seek Chapter 7 bankruptcy protection. The ensuing investigation revealed that the Applicant is indebted to 11 creditors for approximately \$20,100, which are alleged in the SOR.⁴

Applicant's financial problems began in 2008 when she transitioned to part-time employment to attend school on a full-time basis. After deciding to abandon her course of study after one term, Applicant tried, but was unable to return to full-time employment. Between January 2009 and March 2013, Applicant worked part-time at a national retail chain. Eventually, she was able to work 40 hours per week, but this did not give her full-time status and she was not entitled to receive benefits from her employer. Her financial problems became acute in 2010 after the birth of her first child. Applicant took three months' unpaid maternity leave. Applicant had her second child in 2011; however, she only could only afford six weeks' unpaid leave. While on maternity leave, Applicant received some financial help from her daughter's paternal grandparents to supplement her public-assistance benefits. During this time, Applicant began to use credit cards to help meet her financial obligations. She soon became overwhelmed and allowed some of her accounts to become delinquent. In May 2013, the creditor alleged in SOR ¶1.a began garnishing her wages, taking 25 percent of her taxable income each pay period to resolve an outstanding judgment. At the time, Applicant earned \$17,000 annually. In March 2013, Applicant was promoted to a full-time managerial position with benefits.⁵

In October 2013, Applicant sought help with her finances through the retailer's employee-assistance program (EAP). She received a referral to a lawyer and who advised her to file for Chapter 7 bankruptcy. The bankruptcy petition includes all but two of the debts alleged in the SOR, the debt being paid through wage garnishment (SOR ¶1.a) and a small consumer debt for \$361 (SOR ¶ 1.f). According to the petition, the

² The Government's discovery letter, dated October 15, 2014, is appended to the record as Hearing Exhibit (HE) I.

³ The e-mails regarding the admissibility of the applicant's exhibits are included in the record as HE II.

⁴ Tr. 15-16; GE 1, 3-4.

⁵ Tr. 16, 20-21, 26-32, 36-37.

debts Applicant accumulated were related to living or medical expenses. Between October 2013 and March 2014, Applicant saved and paid her attorney's \$1,700 retainer fee. For the next nine months, she worked with her attorney to prepare the petition. She is now saving money to pay the \$335 court filing fee.⁶

Currently, Applicant earns a \$27,000 annual salary. The creditor alleged in SOR ¶ 1.a continues to garnish 25 percent of her taxable income each pay period. As of November 7, 2014, Applicant has paid \$1,500 toward the \$2,773 balance. Applicant's available earnings statements show that between September 2014 and November 2014, her monthly net income ranges between \$700 and \$1,000 each month. She continues to receive help with childcare from her daughter's grandparents, but does not receive any child support their father.⁷

Applicant believes that bankruptcy protection is her only viable method of resolving her delinquent debt. On her current salary, she is able to stay current on her recurring bills, but does not have the ability to repay her delinquent debt.⁸

Policies

Positions designated as ADP I and ADP II are classified as "sensitive positions."⁹ "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."¹⁰ 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.¹¹ 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.

⁶ Tr. 33-36; AE E-F.

⁷ Tr. 18, 22; AE B.

⁸ Tr. 34.

⁹ 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.

¹⁰ Regulation ¶ C6.1.1.1.

¹¹ See Regulation ¶ C8.2.1.

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

Guideline F, Financial Considerations

Unresolved delinquent debt is a serious 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.”¹² Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding sensitive information.

Applicant admits that she is indebted to 11 creditors for approximately \$20,100. Applicant’s admissions as well as the credit reports in the record establish the government’s *prima facie* case. Applicant has demonstrated an inability to pay her bills and a history of financial problems resulting in unresolved delinquent debts.¹³ However, Applicant has submitted sufficient information to mitigate the trustworthiness concerns raised by her finances.

Applicant’s financial problems did not occur under circumstances that raise doubts about her trustworthiness, but from years of underemployment. Earning less than \$30,000 annually, she is responsible for a family of three without the benefit of child support. Applicant has acted responsibly in light of her circumstances and is making a good-faith effort to resolve her delinquent debt. Before obtaining employment with a federal contractor, Applicant sought financial counseling through her company’s EAP program. She decided to follow the advice of her attorney. Applicant’s ability to save the \$1,700 retainer fee reinforces her commitment and seriousness to resolve her delinquent accounts.¹⁴

After reviewing the record, I have no doubts about her suitability for access to sensitive information. In reaching this conclusion, I have also considered the whole-person factors at AG ¶ 2(a). The Appeal Board has held that, “an applicant is not required to be debt-free or to develop a plan for paying off all debts immediately or simultaneously. All that is required is that an applicant act responsibly given her

¹² AG ¶ 18.

¹³ AG ¶¶ 19(a) and (c).

¹⁴ AG ¶¶ 20 (a) – (d).

circumstances and develop a reasonable plan for repayment, accompanied by concomitant conduct,” that is, actions which evidence a serious intent to effectuate the plan.¹⁵ Applicant has done so. Accordingly, her request for access to sensitive information is granted.

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

Subparagraphs 1.a – 1.k: For Applicant

Conclusion

In light of all of the circumstances presented, it is 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 granted.

Nichole L. Noel
Administrative Judge

¹⁵ See, e.g., ISCR Case No. 08-06567 at 3 (App. Bd. Oct 29, 2009).