



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



In the matter of:)
)
 [Redacted]) ADP Case No. 14-01150
)
 Applicant for Public Trust Position)

Appearances

For Government: Robert J. Kilmartin, Esq., Department Counsel
For Applicant: *Pro se*

02/11/2015

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves trustworthiness concerns raised under Guideline F (Financial Considerations). Eligibility for assignment to a public trust position is denied.

Statement of the Case

Applicant submitted an application for a public trust position on October 10, 2013. On April 8, 2014, the Department of Defense (DOD) sent her a Statement of Reasons (SOR), alleging trustworthiness concerns under Guideline F. The DOD acted under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); DOD Regulation 5200.2-R, *Personnel Security Program* (January 1987), as amended (Regulation); and the adjudicative guidelines (AG) implemented by DOD on September 1, 2006.

Applicant answered the SOR on September 9, 2014, and requested a decision on the record without a hearing. Department Counsel submitted the Government's written case on November 3, 2014. On November 17, 2014, a complete copy of the file of relevant material (FORM) was sent to Applicant, who was given an opportunity to file

objections and submit material to refute, extenuate, or mitigate the Government's evidence. She received the FORM on December 10, 2014, and did not respond. The case was assigned to me on February 5, 2015.

Findings of Fact

Applicant is a 36-year-old customer relations clerk employed by a federal contractor since October 2013. She has never held a security clearance or eligibility for a public trust position.

Applicant graduated from high school in June 1997, and she received an associate's degree from a community college in May 2002. She worked for a law firm as a legal assistant from January 2003 to March 2005, when she was terminated for unsatisfactory performance. She was unemployed from March to November 2005. She worked as a legal secretary and legal assistant from November 2005 to January 2009, when she was terminated. In her application for a public trust position, she stated that she did not know why she was terminated and that it occurred while she was on sick leave. She was unemployed from January to November 2009. She worked as a quality control analyst for a banking institution from November 2009 to April 2013, when she was laid off. She was unemployed until she began her current position.

Applicant married in October 2004 and divorced in June 2006. No children were born during this marriage. However, she gave birth to a daughter in November 2012, who lives with her.¹

Applicant admitted the 25 delinquent debts alleged in the SOR, and her admissions are corroborated by her October 2013 credit bureau report (CBR). She provided no explanations for her delinquent debts in her answer to the SOR. She did not respond to the FORM. Eleven of the debts alleged in the SOR are medical debts. The other debts include credit card debts, commercial storage fees, cable service, a cell phone account, and a delinquent insurance premium.

Applicant's November 2014 CBR reflects the delinquent debts alleged in SOR ¶¶ 1.c, 1.e, 1.p, 1.q, 1.r, and the medical debts alleged in SOR ¶¶ 1.f, 1.h, 1.i, 1.j, 1.u, and 1.v. It also reflects a charged-off auto loan that corresponds to the debt in SOR ¶ 1.a, but in a slightly higher amount. The record does not reflect the reason that some of the debts in her October 2013 CBR are not reported in her November 2013 CBR.

There is no evidence in the record that Applicant has sought or received financial counseling. There is no evidence of her monthly income, expenses, and monthly remainder. There is no evidence that she has contacted any of her creditors, made any payments, sought or made payment agreements, or disputed any debts.

¹ Applicant's biographical information is extracted from her application for a public trust position. The record also contains additional personal information in the summary of a personal subject interview conducted in December 2013. However, I have not considered the personal subject interview summary because it does not comply with the authentication requirements of Directive ¶ E3.1.10.

Policies

Positions designated as ADP I and ADP II are classified as “sensitive positions.” 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 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.” Regulation ¶ C6.1.1.1. DOD contractor personnel are entitled to the procedural protections in the Directive before any final unfavorable access determination may be made. Regulation ¶ C8.2.1.

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. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard sensitive information.

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 an evaluation of the whole person. The administrative judge’s overarching adjudicative goal is a fair, impartial and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The protection of the national security is the paramount consideration. Under AG ¶ 2(b), “[a]ny doubt concerning personnel being considered for access to [sensitive] information will be resolved in favor of national security.” The Government must present substantial evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). An applicant has the ultimate burden of demonstrating that it is clearly consistent with national security to grant or continue eligibility for access to sensitive information.

Analysis

Guideline F, Financial Considerations

The concern under this guideline 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.

This concern is broader than the possibility that an individual might knowingly compromise sensitive information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting sensitive information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding sensitive information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's admissions, corroborated by her CBR, establish two disqualifying conditions under this guideline: AG ¶ 19(a) ("inability or unwillingness to satisfy debts") and AG ¶ 19(c) ("a history of not meeting financial obligations").

The following mitigating conditions are potentially applicable:

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(d): the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(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 has not carried her burden of establishing any of the above mitigating conditions. Her delinquent debts are numerous, recent, and were not incurred under circumstances making them unlikely to recur. She has not sought or received counseling. She has not disputed any of the debts. The medical debts may have been incurred due to conditions largely beyond her control if they were incurred during her periods of unemployment, when she had no medical insurance, or during her

pregnancy. However, she volunteered no information in her answer to the SOR and she did not respond to the FORM.

Whole-Person Concept

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. In applying the whole-person concept, an 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. An 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.

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.

Applicant has provided virtually no information about her financial situation and the circumstances in which her debts were incurred. Because she requested a determination on the record without a hearing, I have had no opportunity to evaluate her credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003).

After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the trustworthiness concerns raised by her financial situation. Accordingly, I conclude she has not carried her burden of showing that it is clearly consistent with national security to grant her eligibility for a public trust position.

Formal Findings

Paragraph 1, Guideline F (Financial Considerations): **AGAINST APPLICANT**

Subparagraphs 1.a-1.y:

Against Applicant

Conclusion

I conclude that it is not clearly consistent with national security to grant Applicant eligibility for a public trust position. Eligibility for a public trust position is denied.

LeRoy F. Foreman
Administrative Judge