



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



In the matter of:)	
)	
[Name Redacted])	
)	
)	ADP Case No. 14-01256
)	
Applicant for Position of Trust)	

Appearances

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

06/29/2015

Decision

HOGAN, Erin C., Administrative Judge:

Applicant mitigated the trustworthiness concerns under financial considerations, drug involvement, and personal conduct. Eligibility for access to sensitive information is granted.

Statement of the Case

On November 6, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing trustworthiness concerns under Guideline F, Financial Considerations, Guideline H, Drug Involvement, and Guideline E, Personal Conduct. The action was taken 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* (January 1987), as amended (Regulation); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.

Applicant answered the SOR on December 10, 2014, and requested that her case be decided on the administrative record. On April 30, 2015, Department Counsel

prepared a File of Relevant Material (FORM). Applicant received the FORM on May 7, 2015. On June 2, 2015, Applicant responded to the FORM and submitted additional matters. Her response to the FORM is marked and admitted as Item 6. In a memorandum dated June 8, 2015, Department Counsel indicated no objection to Applicant's Response to the FORM. (Department Counsel's memorandum is marked as Hearing Exhibit A (HE A)). The file was forwarded to the DOHA Hearing Office on June 10, 2015. The case was assigned to me on June 12, 2015.

Findings of Fact

Applicant is a 30-year-old employee of a defense contractor. She has worked for her current employer since September 2013. The highest degree of education achieved is high school. She has some college credit. She is single, but is in a committed live-in relationship. She has a son. (Item 2)

Financial Considerations

Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) on December 19, 2013, for a position of public trust. (Item 2) A subsequent background investigation revealed that Applicant experienced financial issues in the past. Applicant failed to pay her 2012 federal income tax returns. (SOR ¶ 1.a: Item 3 at 8). Applicant also had six delinquent debts with an approximate total balance of \$3,565. The debts include: a \$772 medical account placed for collection in January 2013 (SOR ¶ 1.b: Item 3 at 7; Item 4 at 1; Item 5 at 4); a \$721 medical account placed for collection in January 2013 (SOR ¶ 1.c: Item 4 at 1; Item 5 at 4); a \$526 account placed for collection in September 2014 (SOR ¶ 1.d: Item 3 at 7; Item 4 at 1; Item 5 at 3); a \$532 account placed for collection in December 2013 (SOR ¶ 1.e: Item 5 at 3); a \$437 account that was charged off in September 2012 (SOR ¶ 1.f: Item 5 at 3); and a \$577 medical account that was 120 days past due as of November 2011 (SOR ¶ 1.g: Item 5 at 3).

In response to the SOR, Applicant admits all of the alleged debts. She states that she lost a job in 2012 and she was struggling financially. She became financially stable when she was hired in her current full-time position. She intends to file her 2012 tax returns. (Item 1 at 7-9) She claims the medical debts alleged in SOR ¶¶ 1.b, 1.c, and 1.g are the same medical debt. (Item 1 at 10-11, 15) The debts alleged in SOR ¶¶ 1.b and 1.c have the same account number. There is strong circumstantial evidence to conclude that the medical debt alleged in SOR ¶ 1.g is also the same debt. Applicant contacted the creditor alleged in SOR ¶¶ 1.d and 1.e, to arrange a payment plan. She agreed to pay \$20 a month beginning on December 31, 2014. (Item 1 at 19) Regarding SOR ¶ 1.f, Applicant claims she paid this debt and provided a copy of credit report, dated December 10, 2014, to show it is no longer on her credit report. (Item 1 at 10-17)

In her response to the FORM, dated June 2, 2015, Applicant admits to having been unable to pay her debts in the past. In 2012, she was employed full-time. She commuted one hour each way to her job. She obtained a part-time job to meet expenses. One month after starting her part-time job, she was laid off from her full-time

job in May 2013. Applicant was hired in a part-time position by her current employer in September 2013. In order to work for her current employer, she moved to an area with a lower cost of living. Her employer offered her a full-time position in May 2014. After transitioning to the full-time position, Applicant is able support herself with one job. (Item 6)

Applicant provided copies of her credit reports, dated June 2, 2014, from all three credit bureaus showing that she has no accounts in collection and she has been making timely payments on her student loan for a year. (Item 6 at 7-19) She also provided records of her 2012 income tax returns filed with the Internal Revenue Service. It is not clear whether she owes the Internal Revenue Service taxes for tax year 2012. (Item 6 at 3-6) She provided a letter from the creditor of the medical account which was alleged in SOR ¶¶ 1.b, 1.c and 1.g, indicating that they requested that their account entry be deleted from her credit report. (Item 6 at 20) She said other accounts were deleted when she disputed them as duplicates with the credit bureaus. Applicant states, "It is a good feeling knowing you are on top of all your finances and you are maintaining them." (Item 6 at 1)

Drug Involvement

On January 16, 2014, Applicant was interviewed by an investigator in conjunction with her background investigation. During the interview, Applicant volunteered that she smoked marijuana on four occasions between 2008 and August 2013. She smoked marijuana with friends while in their homes. She purchased a small amount of marijuana for \$5 on one occasion in 2009. The last time she used marijuana was in August 2013 while attending a parade with friends. Someone passed a marijuana pipe and she took a couple puffs. She never liked how marijuana made her feel. She was never dependent on marijuana. She never sold or distributed it. She does not intend to use marijuana again because it is illegal and she does not want her use to adversely affect any future employment opportunities. (Item 3 at 5-6)

In her answer to the SOR and her response to the FORM, Applicant states she was very ignorant when using and purchasing marijuana. Her use was infrequent. She had no problem stopping her marijuana use. She will never use marijuana again. She removed herself from the people and environment where she used marijuana. She has never used marijuana while employed with the DOD contractor. She would not do anything to jeopardize her employment. She now has a family and an amazing son. She looks forward to being his role model. (Item 1 at 4; Item 6 at 1-2)

Personal Conduct

In her e-QIP application, dated December 19, 2013, Applicant answered, "No" in response to the questions in Section 23 – Illegal Use of Drugs or Drug Activity. She did not list her use of marijuana on four occasions between 2008 and 2013 and her single purchase of marijuana in 2009. Applicant told the investigator that she did not list her marijuana use because she misunderstood the question. She believed that marijuana was legal and that the purpose of the question was to list more serious drugs. (Item 3 at

5). Her answers in the SOR and the Response to the FORM are consistent with this explanation. (Item 1 at 5; Item 6 at 2)

In the same e-QIP application, in response to Section 26 – Financial RecordTaxes, Applicant answered “No” in response to the question: “In the past seven (7) years, have you failed to file or pay Federal, state, or other taxes when required by law or ordinance?” She failed to disclose that she had not filed her income taxes for the 2012 tax year. Applicant told the investigator that she misunderstood the question. She thought she could answer, “No” because she intended to file her 2012 federal income taxes with her 2013 federal income taxes. (Item 1 at 8) In her response to the FORM, Applicant states:

There were some questions that I misunderstood on the questionnaire but before being presented with any evidence by the investigator I told him what I misunderstood. I didn’t want him to think I was blatantly lying about anything that occurred in my life. I learn from my mistakes so that I never make them again. (Item 6 at 2)

Applicant provided a letter from her supervisor. Her supervisor states Applicant was hired in September 2013. She joined her team in May 2014. Applicant is described as “organized, efficient, and willing to do whatever is needed to get a particular task finished.” Her supervisor notes that Applicant has always displayed a high degree of integrity and responsibility. She has a cooperative attitude and creates a good rapport with the employees. (Item 6 at 21)

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.

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 concern is broader than the possibility that a person might knowingly compromise sensitive information to obtain money or something else of value. It encompasses concerns about a person’s self-control, judgment, and other important qualities. A person who is financially irresponsible may also be irresponsible, unconcerned, or careless in properly handling and safeguarding sensitive information.

Here the evidence supports a conclusion that the Applicant has a history of financial problems or difficulties. The guideline notes several conditions that could raise trustworthiness concerns under AG ¶ 19. Three are applicable in this case:

AG ¶ 19(a): inability or unwillingness to satisfy debts;

AG ¶ 19(c): a history of not meeting financial obligations; and

AG ¶ 19(g): failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

Applicant accumulated four delinquent debts and was unable or unwilling to pay her financial obligations. (The SOR alleged six delinquent debts, but SOR ¶¶ 1.b, 1.c, and 1.g are the same account.) The debts total approximately \$2,267. She also failed to file her 2012 federal income tax returns. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate financial considerations trustworthiness concerns are provided under AG ¶ 20. The following 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; and

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

Applicant's financial problems were the result of being laid off from her full-time job in May 2013. She was unemployed for two months. Prior to that time, Applicant struggled to make ends meet. She worked part-time jobs in addition to her full-time job. Considering the challenges Applicant faced over the past several years, the total amount of delinquent debt is relatively minor. This indicates that Applicant did not live above her means. She resolved most of her delinquent debts. She filed her 2012 federal income tax returns. AG ¶ 20(a) applies because Applicant's past financial problems do not cast doubt about her current reliability and good judgment.

AG ¶ 20(b) applies because Applicant's financial problems were the result of working low-wage positions and being laid off in May 2013. Although she struggled financially, she kept her delinquent debts to a minimum. She subsequently resolved most of her delinquent accounts. She filed her 2012 federal income tax returns. It is unclear whether she owes any taxes for 2012. However, Applicant is likely to resolve her tax debt based on her track record of resolving her other delinquent debts. Applicant took responsible actions when dealing with her financial situation.

AG ¶ 20(c) partially applies because it appears Applicant's financial problems are being resolved and are under control. This mitigating condition is given less weight because there is no evidence Applicant received financial counseling. Finally, AG ¶ 20(d) applies because Applicant made a good-faith effort to resolve her delinquent debts. She provided copies of her credit reports, dated June 2, 2015. There are no longer any negative entries in her credit report aside from a student loan. However, that entry indicates Applicant is paying her student loans as agreed.

Applicant is in control of her financial situation. The concerns under financial considerations are mitigated.

Guideline H, Drug Involvement

The security concern relating to the guideline for Drug Involvement is set out in AG ¶ 24:

Use of an illegal drug or misuse of a prescription drug can raise questions about an individual's reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person's ability or willingness to comply with laws, rules and regulations.

Drugs are defined as mood and behavior altering substances, and include: (1) Drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended, (E.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens), and (2) inhalants and other similar substances;

Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

The guideline notes several disqualifying conditions that could raise security concerns. I find the following drug involvement disqualifying conditions apply to Applicant's case.

AG ¶ 25(a) (any drug abuse); and

AG ¶ 25(c) (illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia).

Applicant used marijuana on four occasions between 2008 to August 2013. All of the uses occurred when she was socializing with friends. AG ¶ 25(a) applies. AG ¶ 25(c) also applies because Applicant purchased a small amount of marijuana on one occasion.

The Government's substantial evidence and Applicant's own admissions raise security concerns under Guideline H, Drug Involvement. The burden shifted to Applicant

to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (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. Sept. 22, 2005))

Guideline H also includes examples of conditions that could mitigate security concerns arising from drug involvement. The following mitigating conditions potentially apply to the Applicant's case:

AG ¶ 26(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; and

AG ¶ 26(b) a demonstrated intent not to abuse any drugs in the future, such as: (1) disassociation from drug-using associates and contacts; (2) changing or avoiding the environment where drugs were used; (3) an appropriate period of abstinence; and (4) a signed statement of intent with automatic revocation of clearance for any violation.

AG ¶ 26(a) applies because Applicant's drug use was infrequent. She used marijuana on four occasions over a five-year period. Her last use of marijuana was almost two years ago. She never used marijuana while employed with her current employer. She understands the adverse consequences illegal marijuana use will have on her career. She is unlikely to return to marijuana use.

AG ¶ 26(b) applies because Applicant no longer associates with the friends with whom she used marijuana. In fact, she lives a different city. It has been almost two years since her last use of marijuana. While Applicant did not provide a signed statement of intent acknowledging automatic revocation for any violation, she expressed an intent to not use marijuana in the future in her answer to the SOR and in her response to the FORM. Applicant is now employed in a responsible position. She indicated that she now has a family and a son. She is focused on her future. Applicant met her burden to mitigate the security concerns raised under Guideline H, Drug Involvement.

Guideline E – Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in AG ¶15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The following disqualifying condition applies to Applicant's case:

AG ¶ 16(a) (deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities).

Applicant is alleged to have deliberately omitted her illegal marijuana use and purchase of marijuana in response to Section 23 of her e-QIP application dated December 19, 2013. She is also alleged to have deliberately omitted that she failed to file her 2012 federal income tax return in response to Section 26 of the same e-QIP application. Applicant said that she did not give the correct information, because she misunderstood both questions. She immediately volunteered the information to the investigator who interviewed in conjunction with her background investigation. I find Applicant's explanations credible. This was her first time completing the e-QIP application. If a person is not familiar with the trustworthiness process, it can be confusing.

Even if one were to conclude that Applicant deliberately falsified her e-QIP application, the following mitigating conditions would apply: AG ¶ 17(a) (the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts) or AG ¶ 17(c) (the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment). Applicant volunteered her marijuana use and the fact that she failed to file her 2012 federal income tax returns to the investigator during her background interview. Now having completed her first trustworthiness determination, Applicant understands the importance of providing full disclosure to the Government. Applicant's omissions on her e-QIP application no longer raise questions about her reliability, trustworthiness, and good judgment.

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 favorable recommendation of Applicant's supervisor, and Applicant's candor regarding her drug use and financial issues. Like many young adults, Applicant struggled to find suitable employment for several years in her twenties. She worked low-paying jobs and obtained part-time jobs to supplement her income. Her financial situation was aggravated when she lost her full-time job in May 2013. She finally found suitable employment when she was hired by her current company in September 2013 and her position was converted to full-time in May 2014. Applicant developed a plan to resolve her delinquent debts. She filed her 2012 federal income tax returns. Her current credit reports have no negative entries. She steadily worked on resolving her delinquent debts and her financial situation is more stable. She used marijuana sporadically over a five-year period. She no longer uses marijuana and understands the adverse consequences marijuana use would have on her job and her future.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a public trust position. For these reasons, I conclude Applicant's application for a trustworthiness position should be 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.g:	For Applicant
Paragraph 2, Guideline H:	FOR APPLICANT
Subparagraphs 2.a-2.b:	For Applicant
Paragraph 3, Guideline E:	FOR APPLICANT
Subparagraphs 3.a-3.b:	For Applicant

Conclusion

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

Erin C. Hogan
Administrative Judge