



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



In the matter of:)
)
) ADP Case No. 14-01309
)
)
Applicant for Position of Trust)

Appearances

For Government: Chris Morin, Esq., Department Counsel
For Applicant: *Pro se*

11/24/2014

Decision

CURRY, Marc E., Administrative Judge:

Applicant has taken no concrete steps to address her delinquent debts. Under these circumstances, her eligibility to occupy an automated data processing (ADP) position must be denied.

Statement of the Case

On May 22, 2014, the Department of Defense Consolidated Adjudications Facility (DODCAF) issued Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns under Guideline F, financial considerations. 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* (Directive) (January 2, 1992), as amended, and the adjudicative guidelines (AG) implemented on September 1, 2006.

Applicant answered the SOR on June 12, 2014, admitting the allegations and requesting a decision based on the written record. On July 22, 2014, Department

Counsel prepared a File of Relevant Materials (FORM). Applicant received the FORM on August 8, 2014, and submitted a reply on August 25, 2014. The case was assigned to me on September 30, 2014.

Findings of Fact

Applicant is a 30-year-old single woman. She graduated from high school in 2002 and earned a bachelor's degree in 2009. Shortly after graduating from college, Applicant began working at a homeless shelter. (Item 6 at 14) She worked there for two years before resigning in 2011 to pursue better job opportunities. (Item 6 at 14) Subsequently, she was unemployed for the next 15 months before her current employer, a health insurance company that is a federal government contractor, hired her.

Applicant financed her college education without help from her parents. Although she balanced her academics with part-time employment and obtained student loans, she also was overly reliant on credit cards to make ends meet. Some time after quitting her job in 2011, her debts became delinquent. By the time she began working for her current employer in 2013, six debts totalling approximately \$11,600 were delinquent, including an overdrawn checking account totalling \$95 (SOR subparagraph 1.a), a \$619 delinquent phone bill (SOR subparagraph 1.b), three credit cards totalling approximately \$8,000 (SOR subparagraphs 1.c, 1.e, and 1.f), and a student loan totalling \$2,760 (SOR subparagraph 1.d).

A security investigator interviewed Applicant in March 2013. (Item 8) Applicant told the investigator that she intended to arrange payment plans by April 2013. (Item 8 at 3) By June 2014, Applicant had made no progress on any of the delinquent SOR debt. She asserted that she was paying an unlisted student loan account, but provided no documentary evidence. Her plan was to consult a financial counselor to help her consolidate her debts. (Item 5)

In Applicant's August 2014 Response to the FORM, she stated that she had reviewed her credit report and planned on sending letters to her creditors and retaining a financial planner. She anticipates that with the planner's help, she will consolidate her debts and begin making monthly payments.

Policies

When evaluating an applicant's trustworthiness, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied together with the factors listed in the adjudicative process. 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.

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 determination.

Analysis

Guideline F, Financial Considerations

Under this guideline, “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.” (AG ¶ 18) Over the years, Applicant incurred approximately \$11,600 of delinquent debt, which remains outstanding. AG ¶ 19(a), “inability or unwillingness to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations,” apply.

Applicant’s financial problems did not occur because of extravagant spending. Instead, she became overly reliant on credit cards to make ends meet when she was in college. Moreover, she did not lose control of her finances until she experienced a lengthy unemployment. Although her unemployment was not beyond her control, as she voluntarily left her job to pursue other opportunities, she could not have reasonably expected to be unemployed for more than a year.

Nevertheless, applicants have a responsibility to take concrete steps to address their delinquent debts regardless of how they incurred them. Here, Applicant has been promising to address her delinquent debts for more than a year and a half, but has not yet begun to do so. Moreover, she did not submit a budget, and she provided no evidence that she is receiving financial counseling. Consequently, 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,” applies partially, with respect to the unexpected time it took her to gain another job after leaving her job in 2011, but none of the other mitigating conditions apply.

Whole-Person Concept

Under 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) 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.

The circumstances surrounding Applicant's accrual of delinquent debts are partially mitigating. However, her failure to meet financial obligations raises questions about her judgment and willingness to abide by rules and regulations. So long as these questions are outstanding, I am unable to conclude that she possesses the requisite reliability and trustworthiness to occupy an ADP position.

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
Subparagraphs 1.a-1.f:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility to occupy an ADP position. Applicant's eligibility to occupy an ADP position is denied.

MARC E. CURRY
Administrative Judge