



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



In the matter of:)
)
) ADP Case No. 14-01321
)
Applicant for Public Trust Position)

Appearances

For Government: J. Theodore Hammer, Esq., Department Counsel
For Applicant: *Pro se*

06/30/2015

Decision

RIVERA, Juan J., Administrative Judge:

Applicant failed to submit evidence to show that she has a track record of financial responsibility, that she does not have a financial problem, or that her financial problem is being resolved or is under control. She failed to mitigate the Guideline F trustworthiness concerns. Eligibility to hold a position of trust is denied.

Statement of the Case

Applicant submitted an electronic questionnaire requesting eligibility for a position of trust (Application) on October 31, 2013. On May 14, 2014, the Department of Defense (DoD) Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) listing trustworthiness concerns under Guideline F (financial considerations).¹ Applicant answered the SOR on October 8, 2014, and elected to have her case decided on the written record.

¹ The DoD acted under DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; DoD Regulation 5200.2-R, *Personnel Security Program*, dated January 1987, as amended (Regulation); and the *Adjudicative Guidelines for*

A copy of the Government's file of relevant material (FORM), dated February 10, 2015, was provided to her by transmittal letter dated February 20, 2015. Applicant received the FORM on April 28, 2015. She was allowed 30 days to submit any objections to the FORM and to provide material in extenuation and mitigation. She failed to respond to the FORM and submitted no documentary information. The case was assigned to me on June 17, 2015.

Findings of Fact

In her Answer, Applicant admitted the factual allegations in SOR ¶¶ 1.a, 1.b, 1.d through 1.f, 1.h through 1.k, 1.m through 1.q, 1.s, and 1.u through 1.x. She denied the allegations in SOR ¶¶ 1.c, 1.g, 1.i, 1.r, and 1.t. Her admissions are incorporated as findings of fact. After a thorough review of the record evidence, including her answers to the SOR, her June 17, 2014 statement, the FORM, and her Application, I make the following additional findings of fact:

Applicant is a 56-year-old employee of a federal contractor. She married her first spouse in 1978 and divorced in 1985. She married her second spouse in 1998, and divorced in 2009. She married her current spouse in 2012. She has five adult children.

Applicant was employed from October 1996 to June 2001. She left work in June 2001 due to pregnancy, and stayed at home to take care of her son until September 2005. She was employed from September 2005 to February 2006. She worked as a homemaker from February 2006 to August 2008. She was employed from August 2008 until October 2011, when she was fired.

Applicant explained in her 2013 Application that her husband (then cohabitant) fell from the roof of their home and broke his back, both legs, and one arm. She took leave to take care of him during his surgeries; however, the leave was denied because they were not married at the time. She exceeded the number of absences permitted, and she was fired.

Apparently, her husband was receiving Social Security disability benefits while convalescing. There is no evidence as to whether that was Applicant's household's only income. This is her first application for a position of trust.

In her 2013 Application (Section 26 – Financial Record), Applicant disclosed that she had financial problems, which included a delinquent judgment filed against her by her ex-husband to recover marital property awarded to him during the divorce. She also disclosed that she was \$1,700 delinquent on her child support obligation. Applicant explained that because she was unemployed after her husband's injury (she was his caregiver), she did not have the financial resources to pay her child support obligation.

Determining Eligibility for Access to Classified Information (AG), implemented by the DoD on September 1, 2006.

She claimed that she made partial payments when her husband gave her money from his disability payments. Applicant failed to disclose in her Application any other delinquent or charged-off accounts.

Attached to her Answer to the SOR, Applicant submitted a June 2014 statement explaining her financial problems. She stated that she was a stay-at-home mom. All of the household utilities, services, and medical accounts were in her name. When her ex-husband decided to stop paying the household debts, she did not have the financial means to pay her debts. She stated that she has not had a good-paying job to start paying her debts, and indicated she could use her current job to start paying her debts. Applicant believes that she is honest and trustworthy. She averred that she would never do anything wrong just because of her credit.

The background investigation addressed her financial problems and revealed the 22 delinquent debts alleged in the SOR, totaling approximately \$23,000. All of the alleged accounts are established by the FORM's two credit reports.

Applicant denied five of the SOR allegations, totaling approximately \$4,200, leaving about \$19,000 in unpaid delinquent accounts. Applicant stated no reasons for the denial of the five SOR allegations. However, apparently she denied SOR ¶ 1.c because it is a duplicate allegation of SOR ¶ 1.a. Similarly, SOR ¶ 1.l appears to be a duplicate allegation of SOR ¶ 1.k, and SOR ¶ 1.u appears to be a duplicate allegation of SOR ¶ 1.s.

In addition to her delinquent debts, the FORM credit reports established that Applicant filed for Chapter 7 bankruptcy protection in October 2005, and was discharged of all dischargeable debts in February 2006. She acquired the alleged delinquent accounts between 2006 and May 2014.

Concerning SOR ¶ 1.w (alleging that Applicant was charged with Unlawful Transactions, a felony), Applicant explained that she had her daughter open an auto repair account in Applicant's name. Applicant and her daughter had a disagreement and her daughter filed criminal charges against Applicant to terminate the account and to force Applicant to pay off the account. Applicant was convicted of a misdemeanor offense.

Applicant provided no information about her current earnings and financial position. She provided little information about her and her spouse's monthly income, their monthly expenses, and whether their current income is sufficient to pay their current day-to-day living expenses and debts. There is no information to indicate whether she participated in financial counseling or whether she follows a budget. She presented no evidence of any payments made, efforts to contact creditors, establish payment plans, or efforts to otherwise resolve her financial problems.

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, 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.” Regulation ¶ C6.1.1.1. 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.

The AG list disqualifying and mitigating conditions for evaluating a person’s suitability for a public trust position. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing suitability for a public trust position. Each decision must reflect a fair, impartial, and common-sense consideration of the whole person and the factors listed in AG ¶ 2(a). All available, reliable information about the person, past and present, favorable and unfavorable must be considered.

A public trust position decision resolves whether it is clearly consistent with the national security to grant or continue an applicant’s access to sensitive information. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her access to sensitive information.

Persons with access to sensitive information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national security as their own. The “clearly consistent with the national security” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government. “[Access to sensitive information] determinations should err, if they must, on the side of denials.” AG ¶ 2(b). Eligibility for a public trust position decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing access to sensitive information.

Analysis

Guideline F, Financial Considerations

Under Guideline F, the trustworthiness concern is that 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. (AG ¶ 18)

In 2006, Applicant was relieved of her dischargeable debts after filing for Chapter 7 bankruptcy protection. She acquired the alleged delinquent SOR accounts between 2006 and May 2014. She presented no evidence of any payments made, efforts to contact creditors, establish payment plans, or efforts to otherwise resolve her financial problems. Two of the financial considerations disqualifying conditions apply: AG ¶ 19(a): inability or unwillingness to satisfy debts, and AG ¶ 19(c): a history of not meeting financial obligations.

AG ¶ 20 lists five conditions that could mitigate the financial considerations trustworthiness concerns:

(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;

(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;

(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;

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

(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.

None of the financial considerations mitigating conditions apply. I considered Applicant's periods of unemployment; that she has been her husband's caregiver after his 2011 accident, and that their household income has been limited to his Social Security benefits. I also considered Applicant's allegation that her ex-husband refused to pay the household expenses, presumably leaving her with the responsibility for the debts. Some of these events could establish circumstances beyond her control that may have contributed or aggravated her financial problems. Notwithstanding, Applicant's evidence is insufficient to show she acted responsibly under the circumstances to warrant applicability of AG ¶ 20(b).

Applicant provided little information about her current earnings and financial position. She did not provide any information about her monthly income, monthly expenses, and whether her current income is sufficient to pay her current day-to-day living expenses and debts. There is no information to show that she participated in financial counseling or that she follows a budget. The available information is insufficient to establish clear indications that she does not have a current financial problem, or that her financial problem is being resolved, or is under control. Applicant failed to establish that she has a track record of financial responsibility.

Whole-Person Concept

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. AG ¶ 2(c).

Applicant started working for a federal contractor sometime in 2013, and this is her first trustworthiness application. She failed to submit evidence to show that she has a track record of financial responsibility, that she does not have a financial problem, or that her financial problem is being resolved or is under control. She failed to mitigate the Guideline F trustworthiness concerns.

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.b, 1.d-1.k, 1.m-1.q, 1.s, and 1.u-1.x:	Against Applicant
Subparagraphs 1.c, 1.l, and 1.t:	For Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national security to grant eligibility for a position of trust to Applicant. Eligibility for a position of trust is denied.

JUAN J. RIVERA
Administrative Judge