



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



In the matter of:)
)
) ADP Case No. 14-01384
)
)
Applicant for Public Trust Position)

Appearances

For Government: Ray T. Blank, Jr., Esq., Department Counsel
For Applicant: *Pro se*

04/14/2015

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the personal conduct trustworthiness concerns, but failed to mitigate financial considerations trustworthiness concerns. Eligibility for access to sensitive information is denied.

Statement of the Case

On July 23, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) detailing trustworthiness concerns under Guideline F, financial considerations and Guideline E, personal conduct. The action was taken under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); Department of Defense Regulation 5200.2-R, *Personnel Security Program* (January 1987), as amended (Regulation); and the adjudicative guidelines (AG) implemented by the Department of Defense on September 1, 2006.

On August 24, 2014, Applicant submitted an answer to the SOR, and she elected to have her case decided on the written record. On January 28, 2015,¹ Department Counsel submitted the Government's file of relevant material (FORM). The FORM was mailed to Applicant on February 10, 2015, and it was received on February 26, 2015. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant submitted additional information that was marked as Item 12. There were no objections to any of the documents offered and the Government and Applicant's exhibits are admitted.² The case was assigned to me on April 3, 2015.

Findings of Fact

Applicant admitted the allegations in SOR ¶¶ 1.a-1.c, 1.e-1.m, 1.o, 1.s, 1.t, 1.v, and 1.w, with explanations She denied the allegations in SOR ¶¶ 1.d, 1.u, 1.x and 2.a. She failed to admit or deny the allegations in SOR ¶¶ 1.n, 1.p-1.r, 1.y-1.ee and 2.b. Her admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact.

Applicant is 54 years old. She has been married three times. She has been separated from her third husband since 2008. She has three adult children. She has worked for a federal contractor since February 2012. She attended college and received a diploma.³

Applicant's employment history is as follows: From March 2003 to December 2006, she worked as a customer service representative and held a public trust position. From January 2007 to April 2010, she worked for a credit card company. She was unemployed from April 2010 to January 2012. She listed in her security clearance application (SCA) that she was employed at a nongovernment job from February 2012 to February 2013. Presumably this was a second job she held while working in her current position.

In 1987, Applicant was arrested and charged with perjury, fraudulently obtaining aid, and aiding fraud. In 1989, she was arrested and charged with unlawful food stamps and fraud. The disposition of these charges is unknown. In her answer to the SOR, Applicant stated her husband at the time was trying to gain custody of their children and his mother contacted the police to implicate her in criminal offenses. She stated the charges were dismissed.⁴

In 1994 and 1995, Applicant was arrested and charged with multiple counts of simple worthless check. In her answer to the SOR, she indicated that she did not

¹ The date on the FORM states 2014, but it is an obvious typographical error and should be 2015.

² Hearing Exhibit I is Department Counsel's memorandum.

³ Item 4. It does not appear Applicant was awarded a degree, but she disclosed receiving a diploma.

⁴ Items 2, 9, 10, 12.

commit the crime of simple worthless checks, but rather her boyfriend at the time took her checks and wrote them without her knowledge. She indicated the boyfriend admitted his conduct in court and she was released. Documents indicated she was found guilty of the charges, fined, and ordered to pay restitution.⁵

Applicant filed Chapter 7 bankruptcy in August 2004, which was dismissed in September 2004. She filed Chapter 7 bankruptcy again in August 2005, and her debts were discharged in December 2005. It is unknown the amount of debt that was discharged.

Credit reports from 2013, 2014, and 2015 substantiate all of the debts alleged in the SOR.⁶ Applicant admits the medical debts in SOR ¶¶ 1.c, 1.e, 1.f, 1.g, 1.h, 1.i, 1.j, 1.k, 1.l, 1.m, 1.s, 1.t, 1.v, and 1.w. The debts in SOR ¶¶ 1.y, 1.z, and 1.aa are also medical debts that Applicant denied. The total of these debts is approximately \$12,278. Applicant indicated she is not sure why she would not have paid the debts in SOR ¶¶ 1.y (\$26), 1.z (\$16), and 1.aa (\$6) because of their low amount. She indicated in her answer to the SOR that she would determine the creditor and pay the debts. She did not provide any other information on what action she has done to dispute, resolve, or pay her medical debts.⁷

Applicant attributes her medical debts to a period in 2011 when she was sick and unemployed. Regarding the medical debt in SOR ¶ 1.d (\$1,541), she stated she was never notified she owed the debt. She indicated that she moved and the creditor had all of her information. She indicated that if the debt is legitimate, she would set up a payment plan. She did not provide information regarding action she has taken to resolve this debt. She did not recognize the debt in SOR ¶ 1.n (\$65), but intended to pay it. She did not provide information on what action she has taken to pay it.⁸

The debts in SOR ¶¶ 1.p, 1.q, and 1.r (total balance \$8,213) are for student loans. Her payments were listed as past due in her May 2014 credit report, and in her January 2015 credit report are listed in a forbearance status.⁹

Applicant disputed she owes the debt in SOR ¶ 1.u (\$488) to a cable company. She indicated she was charged for failing to return a cable box, which she stated she returned. She did not provide any information on what action she has taken to dispute or resolve the debt.¹⁰

⁵ Items 2, 9 and 10, 12.

⁶ Item 5, 6, 7, and 8.

⁷ Item 2.

⁸ Item 2.

⁹ Items 2, 7 and 8.

¹⁰ Item 2.

Applicant disputed the debt is SOR ¶ 1.x (\$52), indicating she never did business with this company. She did not provide any information on what actions she has taken to dispute or resolve the debt.¹¹

Applicant disclosed on her SCA that she had medical debts that were delinquent. She disclosed some specific medical bills and other debts that were alleged in the SOR. She did not disclose each debt alleged. She stated in her answer to the SOR that she had difficulty with the computer version of the SCA, and she was unaware of each debt that was listed on her credit report as she had never checked it. Her disclosures put the Government on notice that she had financial problems. Based on the numerous disclosures on her SCA regarding her delinquent debts, I find she did not deliberately fail to disclose her delinquent debts.¹²

Applicant noted that she is not a bad person. She made some poor choices in the men she dated. She has been working for two years for her current employer and has had no problems. She loves her job. The criminal charges happened many years ago. She previously held a public trust position. She has a good work ethic. She indicated that she has more bills than money, and is like many other people. Her medical debts were attributed to being uninsured and unemployed for a period of time. She indicated that she is paying her debts a few at a time. She is trying to better manage her finances. She now has a good job with good health insurance. She cannot change the past, but is trying to do better in the future.¹³

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,

¹¹ Item 2.

¹² Items 2 and 4.

¹³ Items 2 and 12.

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 guideline notes several conditions that could raise trustworthiness concerns under AG ¶ 19. Three are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud,

filing deceptive loan statements, and other intentional financial breaches of trust.

Applicant filed Chapter 7 bankruptcy in 2004 that was dismissed. She filed again in 2005 and had her debts discharged. Applicant has 22 alleged delinquent debts totaling approximately \$14,151. She is unable to pay them. Her student loans were past due for a period. She was found guilty of simple worthless checks in 1994 and 1995. She was charged in 1987 with perjury, fraudulently obtaining aid, and aiding fraud. She was charged in 1989 with unlawful food stamps and fraud. Applicant has a long history of being unable or unwilling to meet her financial obligations, and previously engaged in financial breaches of trust. 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:

(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.

Applicant's criminal arrests and convictions happened under unique circumstances, in which her boyfriend and former husband were involved in the offenses. These charges happened more than twenty years ago and there is no evidence of criminal activity since then. Due to the passage of time and the unusual circumstances in which these offenses occurred, I find AG ¶ 20(a) applies to SOR ¶¶ 1.bb through 1.ee. It does not apply to the other delinquent debts alleged because they remain unpaid and unresolved.

Applicant experienced an extended period of unemployment. She had medical problems, was uninsured, and unable to pay her bills. These conditions were beyond her control. To fully apply AG ¶ 20(b), Applicant must have acted responsibly. Applicant has been employed since February 2012. She was aware her delinquent debts were a security concern, promised to pay some of the smaller debts, but failed to do so. She has not provided any financial plan or budget to address the debts. She disputed some debts, but did not contact any of the creditors to formally dispute the legitimacy of the debt, nor provide documented proof to substantiate the dispute or evidence of actions she has taken to resolve the debts. Applicant's student loans are in forbearance and are resolved in her favor. AG ¶ 20(c) applies to those debts. Applicant has not initiated good-faith efforts to pay or resolve her other delinquent debts. There is no evidence she has received financial counseling or that her financial problems are under control. AG ¶¶ 20(c) and 20(d) do not apply to the remaining debts. AG ¶ 20(e) does not apply.

Guideline E, Personal Conduct

AG ¶ 15 sets out the trustworthiness concern relating to personal conduct:

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.

I have considered the disqualifying conditions under personal conduct AG ¶ 16 and the following is potentially applicable:

(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; and

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not safeguard protected information.

Applicant disclosed numerous delinquent debts on her SCA. She had difficulty with the electronic SCA. She did not disclose each delinquent debt alleged, but did put the Government on notice of her financial problems. I find she did not deliberately fail to disclose delinquent debts. Therefore, none of the above disqualifying conditions apply. I find in her favor for SOR ¶ 2.a.

Applicant was arrested in 1987, 1989, 1994 and 1995 for perjury, fraudulently obtaining aid, fraud, unlawful food stamps, and simple worthless checks. AG ¶ 16(c) applies. Her arrests reflect conduct that shows questionable judgment and unwillingness to comply with rules and regulations.

I have also considered all of the mitigating conditions for personal conduct under AG ¶ 17 and the following are potentially applicable:

(b) 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 indicated that her criminal arrests and convictions happened under unique circumstances, involving her boyfriend and former husband. These charges happened more than twenty years ago, and there is no evidence of criminal activity since then. She no longer associates with these men. Due to the passage of time and the unique circumstances in which these offenses occurred, such conduct is unlikely to recur and does not cast doubt on Applicant's reliability, trustworthiness, or good judgment. AG ¶17(c) applies.

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 Guidelines F and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under these guidelines, but some warrant additional comment.

Applicant is 54 years old. She has a history of financial problems and inability to pay her debts. After having her delinquent debts discharged in bankruptcy in 2005, she again accumulated delinquent debts. Some of her inability to pay her debts was caused by unemployment and not having medical insurance. She has been employed since February 2012, but has not made an effort to pay even the smallest debts alleged. She did not provide a plan for resolving her debts. Her financial problems are not under control. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a public trust position. For all these reasons, I conclude Applicant mitigated the trustworthiness concerns under Guideline E, personal conduct, but failed to mitigate the Guideline F, financial considerations 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.o:	Against Applicant
Subparagraphs 1.p-1.r:	For Applicant
Subparagraphs 1.s-1.aa:	Against Applicant
Subparagraphs 1.bb-1.ee:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs: 2.a-2.b:	For Applicant

Conclusion

In light of all of the circumstances it is not clearly consistent with national security to grant Applicant eligibility for a public trust position. Eligibility for access to sensitive information is denied.

Carol G. Ricciardello
Administrative Judge