



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



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| In the matter of: |) | |
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| |) | ADP Case No. 14-01462 |
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| |) | |
| Applicant for Public Trust Position |) | |

Appearances

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

08/13/2015

Decision

MASON, Paul J., Administrative Judge:

In January 2005, Applicant’s credit card debts were discharged in a Chapter 7 bankruptcy that she filed in October 2004. Between March 2008 and August 2009, she accumulated five new delinquent card debts. In October 2013, she indicated she was going to contact the creditors and deal with the debt. She provided proof of settling one debt, but the other delinquent debts remain unsatisfied. The guideline for financial considerations is resolved against Applicant. Eligibility for public trust position is denied.

Statement of the Case

On September 17, 2013, Applicant signed and certified an electronic questionnaires for investigations processing (e-QIP, Item 4). On October 18, 2013, she was interviewed by an investigator from the Office of Personnel Management (OPM). (Item 7) On August 21, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing trustworthiness concerns under financial considerations (Guideline F). (Item 1) The action was taken under Department of Defense Directive

5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by DOD on September 1, 2006.

Applicant furnished her notarized answer to the SOR on October 30, 2014. She chose to have her case decided on the record without a hearing. A copy of the Government's File of Relevant Material (FORM), the Government's evidence in support of the allegations of the SOR, was sent to Applicant on March 26, 2015. In an attachment to the FORM, Applicant was advised she could object to the information in the FORM or submit additional information in explanation, mitigation, or extenuation. She received the FORM on April 10, 2015. Her response was due by May 9, 2015. No response was received by DOHA. The case was assigned to me on May 28, 2015.

Findings of Fact

The SOR, which lists five delinquent debts under the guideline for financial considerations, is based on information appearing in Item 2 (Applicant's September 17, 2013 e-QIP), Item 3 (Applicant's October 18, 2013 interview summary), Item 4 (a March 2014 credit report), and Item 5 (a September 2013 credit report). She admitted the first four delinquent accounts, but denied the last collection agency account because she settled that account and provided documentation. (Item 1 at 7) The total amount of listed delinquent debt (SOR 1.b-1.e) is \$18,104.

Applicant is 41 years old. She has been married for 20 years, and has a 16-year-old son. She received a bachelor's degree in nursing in April 2012. She also obtained a degree at a foreign university. Since September 2013, she has been employed as a customer service representative with a defense contractor. From June 2008 to April 2012, she was unemployed while attending school full time. During this period, she was supported by her husband and did not collect unemployment benefits. After she completed her studies in April 2012, she remained unemployed until she was hired by her current employer in September 2013. From March 2007 to May 2008, Applicant was a unit secretary for a health center. She was a routing representative from January 2006 to March 2007. From May 2003 to January 2006, she was employed as a customer service representative. She has no alcohol or drug issues. (Item 2 at 12-20)

In October 2013, Applicant discussed her finances with the OPM investigator. In October 2004, she filed a Chapter 7 bankruptcy petition when she could no longer meet the monthly payments on her credit cards. (SOR 1.a) She had been using the cards to buy furniture, apparel, and to pay bills. The bankruptcy petition was discharged in January 2005. (Item 3 at 3)

Applicant told the investigator that her financial situation was good in October 2013. The combined earnings of Applicant and her husband enabled them to live within their means. Applicant was then asked about the delinquent credit card accounts listed at SOR 1.b, 1.c, 1.d, 1.e, and 1.f, which had become delinquent between March 2008 and August 2009. She stated that she did not recognize the accounts, but she would

contact the creditors and handle the delinquent debts. Items 4 and 5 reflect that she formally disputed the listed debts with the credit agencies between September 2013 and March 2014. The collection agency handling the SOR 1.f account notified Applicant in December 2013 that the account was settled and the credit agencies would be notified to remove the account from Applicant's credit report. Except for the listed delinquent debt, Applicant has incurred no additional delinquent debt since August 2009. She indicated that she did not intend to file bankruptcy in the future. She manages her finances with the help of a budget. (Item 3 at 3; Item 4; Item 5)

Applicant provided no character evidence from individuals at her employment or in her community. Because she decided to have her case decided administratively on the record (FORM), I cannot assess her credibility and demeanor.

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 interest of national security." Regulation ¶ C6.1.1.1. Department of Defense contractor personnel are entitled to the procedural protections in the Directive before any final unfavorable access determination may be made. Regulation ¶ C8.2.1.

When evaluating an applicant's suitability for a public trust position, the administrative judge must consider the adjudicative guidelines (AG) which list potentially disqualifying conditions and mitigating conditions. These guidelines must be considered in the context of the nine general factors known as the whole-person concept to enable the administrative judge to consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the public trust is the paramount consideration. 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 support his case for eligibility to a public trust position.

A person who has access to sensitive information in a public trust position occupies a fiduciary relationship founded on trust and confidence. In this relationship, the Government must be able to repose a high degree of trust and confidence in those individuals it grants access to sensitive information. Decisions under this Directive include consideration of the possible risk an applicant may deliberately, negligently, or inadvertently fail to properly protect sensitive information.

Analysis

Financial Considerations

The trustworthiness concern for financial considerations is set forth 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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

The two disqualifying conditions that are potentially applicable are: AG ¶ 19(a) (*inability or unwillingness to satisfy debts*); and AG ¶ 19(c) (*a history of not meeting financial obligations*). In October 2004, Applicant filed a Chapter 7 bankruptcy petition because she could no longer pay her credit card debt. She was using credit cards instead of cash and she exhausted the available credit. Instead of altering or modifying her credit card use after her bankruptcy discharge in January 2005, she repeated her irresponsible behavior by overusing five other credit cards until all of them became delinquent by August 2009. The total amount of delinquent indebtedness is \$18,104, and the debts have been delinquent for at least five years. AG ¶¶ 19(a) and 19(c) apply.

Four 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 reliability, trustworthiness, and good judgment*); AG ¶ 20(b) (*the conditions that resulted in the financial problem were largely beyond the person's control 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) (*a good-faith effort to repay overdue creditors or otherwise resolve debts*).

The listed accounts became delinquent between March 2008 and August 2009. Applicant still owes four out of five of the accounts and has submitted no evidence that proves she is addressing the delinquencies as she indicated she would in October 2013. She still owes those debts. The listed accounts continue to raise doubt about Applicant's trustworthiness and judgment. AG ¶ 20(a) is inapplicable.

AG ¶ 20(b) applies when the conditions that resulted in the financial problem were beyond the person's control, and the individual "acted responsibly under the circumstances." Applicant was unemployed from May 2008 until September 2013.

However, during most of the period, she was a full-time student being supported by her husband. Her decision to seek additional education was clearly a condition within her control. AG ¶ 20(b) applies to a limited degree because of Applicant's unemployment between April 2012 and September 2013. Her settlement of the SOR 1.f account affords her limited mitigation under the second prong of condition, even though she did not act on the account until after it had been transferred for collection.

Applicant receives no mitigation under AG ¶ 20(c). Though she probably received court-ordered counseling as a condition precedent to filing her bankruptcy petition in 2004, her repeated conduct in misusing credit cards shows that she did not change her methodology in managing her financial obligations. There are no clear indications that her debts are under control. The mitigation she receives under AG ¶ 20(d) is reduced by the fact that she did not settle the SOR 1.f debt until it was transferred to a collection agency.

Whole-Person Concept

I have examined the evidence under the disqualifying and mitigating conditions of the financial considerations guideline. I have also weighed the circumstances within the context of nine variables of the whole-person concept. In evaluating the relevance of an individual's conduct, the administrative judge should consider the following factors listed in 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 the participation was 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 final trustworthiness decision must be an overall commonsense judgment based upon careful consideration of the specific guidelines, each of which is to be evaluated in the context of the whole person. (AG ¶ 2(c))

Applicant is 41 years old, married, and has a 16-year-old son. She has a bachelor's degree in nursing and another degree. She has been working in customer service since September 2013.

After Applicant discovered she could not make the payments on her credit cards, she exercised good judgment by filing a Chapter 7 bankruptcy petition in October 2004. Her debts were discharged in January 2005, giving her a fresh start to manage her affairs in a more responsible manner. However, instead of cutting back on her credit card use so that she would not encounter the same financial problems that forced her into bankruptcy court in October 2004, she repeated her irresponsible conduct with five new credit cards. Though she has settled one out of the five listed accounts, there is insufficient evidence for me to conclude that her financial irresponsibility will not continue or recur. Having weighed all the evidence under the financial considerations

guideline in the context of the whole-person concept, Applicant has not satisfactorily lessened the trustworthiness concerns that still emanate from the financial considerations guideline. See AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

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:

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| Paragraph 1 (Guideline F): | AGAINST APPLICANT |
| Subparagraphs 1.a-1.e: | Against Applicant |
| Subparagraph 1.f: | For Applicant |

Conclusion

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

Paul J. Mason
Administrative Judge