



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



In the matter of:)	
)	
XXXXXXXX, Xxxxxx Xxxxxx)	ADP Case No. 14-01564
)	
Applicant for Public Trust Position)	

Appearances

For Government: Christopher Morin, Esquire, Department Counsel
For Applicant: *Pro se*

11/20/2014

Decision

METZ, John Grattan, Jr., Administrative Judge:

Based on the record in this case,¹ I deny Applicant's eligibility for a public trust position.

On 13 June 2014, the Department of Defense (DoD) sent Applicant a Statement of Reasons (SOR) raising trustworthiness concerns under Guideline F, Financial Considerations.² Applicant timely answered the SOR, requesting a decision without hearing by the Defense Office of Hearings and Appeals (DOHA). The record in this case

¹Consisting of the File of Relevant Material (FORM), Items 1-7 and Applicant's Response to the FORM (Response).

²DoD conducts trustworthiness determinations for contractor personnel employed in Information Systems Positions defined in DoD Regulation 5200.2-R, *Personnel Security Program* (Regulation), dated January 1987 pursuant to DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive) and the adjudicative guidelines (AG) effective within the DoD for SORs issued after September 1, 2006.

closed 14 October 2014, the day Department Counsel indicated no objection to Applicant's Response to the FORM. DOHA assigned the case to me 6 November 2014.

Findings of Fact

Applicant admitted SOR financial allegations 1.a-1.d, 1.j, and 1.k. She claimed, without corroboration, to be disputing allegations 1.e-1.i and 1.l. She is a 42-year-old service advocate employed by a defense contractor since April 2005. However, she has been continuously employed since at least September 2003. She reported being investigated by the Government in September 2000, but does not recall the level of access granted (Item 5). She will have access to sensitive medical data.

The SOR alleges, and Government exhibits substantiate, 12 delinquent debts totaling over \$15,000. Applicant admits six debts for nearly \$15,000. The six disputed debts total \$471.

Applicant attributes her debts to her husband's surgery and subsequent disability. He was approved for long-term disability in June 2014, effective in July 2014. The approval letter does not state the amount of compensation. Applicant's husband appears to be eligible for retirement under the state employee retirement system when he reaches retirement age.

Applicant claimed, without corroboration, to be making monthly payments on SOR debts 1.a-1.d. She reported one delinquent debt on her clearance application (with an account number different than any of the SOR debts), which she claimed to be paying.

Applicant provided no budget or personal financial statement indicating her family's financial situation. She has not documented any credit or financial counseling. She provided no work or character references.

Policies

The adjudicative guidelines (AG) list factors to evaluate a person's suitability for access to sensitive information. Administrative judges must assess disqualifying and mitigating conditions under each issue fairly raised by the facts and situation presented. Each decision must also show a fair, impartial, and commonsense consideration of the factors listed in AG ¶ 2(a). The applicability of a disqualifying or mitigating condition is not, by itself, conclusive. However, specific guidelines should be followed when a case can be measured against them, as they are policy guidance governing the grant or denial of a clearance. Considering the SOR allegations and the evidence as a whole, the relevant adjudicative guideline is Guideline F (Financial Considerations).

Trustworthiness decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's public trust position. The Government must prove, by substantial evidence, controverted facts alleged in the

SOR. If it does, the burden shifts to applicant to refute, extenuate, or mitigate the Government's case. Because no one has a right to a public trust position, the applicant bears a heavy burden of persuasion.

Persons with access to sensitive information enter into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring each applicant possesses the required judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels deciding any reasonable doubt about an Applicant's suitability for access in favor of the Government.³

Analysis

The Government established a case for disqualification under Guideline F, and Applicant did not mitigate the security concerns. While some of Applicant's financial difficulties may be reasonably attributable to her husband's surgery and subsequent disability, she has not provided a chronology that establishes that claim, and she submitted insufficient information to determine she acted responsibly under the circumstances. She documented little efforts to resolve her debts, and did not provide a proposed plan to address them.⁴

Applicant potentially meets only one of the mitigating factors for financial considerations. Her financial difficulties are both recent and multiple.⁵ While her husband's medical issues are clearly circumstances beyond her control, she has documented very few efforts dealing with the debts alleged in the SOR, or documenting any efforts to resolve them.⁶ In addition, there is no evidence that she has sought credit counseling or otherwise brought the problem under control.⁷ There is little documentary evidence of any good-faith effort to satisfy the debts alleged in the SOR.⁸ Finally, given her unwillingness to seek or use financial counseling, there is nothing in the record to suggest that Applicant will put her financial problems behind her. Moreover, there is insufficient evidence to support a favorable whole person analysis. I conclude Guideline F against Applicant.

³See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁴¶ 19 (a) inability or unwillingness to satisfy debts; (c) a history of not meeting financial obligations.

⁵¶ 20 (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur.

⁶¶ 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.

⁷¶ 20 (c) the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control.

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

Formal Findings

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph a-l: Against Applicant

Conclusion

Under the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue eligibility for a public trust position for Applicant. Eligibility for a public trust position denied.

JOHN GRATTAN METZ, JR
Administrative Judge