



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



In the matter of:)	
)	
)	ADP Case No. 14-01804
)	
Applicant for Position of Public Trust)	

Appearances

For Government: Pamela Benson, Esq., Department Counsel
For Applicant: *Pro se*

08/10/2015

Decision

MASON, Paul J., Administrative Judge:

Applicant has a history of not meeting financial obligations that dates to March 2008. Because she has provided no evidence showing an attempt to resolve these debts or even explain the reason for their existence, Applicant has not dispelled the trustworthiness concerns based on financial considerations. Her deliberate falsification of the security form has not been mitigated either. Eligibility for public trust position is denied.

Statement of the Case

On November 11, 2013, Applicant signed and certified an electronic questionnaires for investigations processing (e-QIP, Item 4). On June 16, 2014, the Department of Defense (DOD) issued the Statement of Reasons (SOR) detailing trustworthiness concerns under financial considerations (Guideline F) and personal conduct (Guideline E). (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 answer to the SOR on June 9, 2014. She chose to have her case decided on the administrative record. 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 December 22, 2014. 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 January 6, 2015. Her response was due by February 5, 2015. No response was received by DOHA. The case was assigned to me on March 10, 2015.

Findings of Fact

The SOR is based on two government credit reports and Applicant's e-QIP. The first paragraph of the SOR lists one judgment and 21 delinquent accounts totaling \$8,219. Seventeen of the 22 accounts represent medical bills. The second paragraph alleges that Applicant falsified Section 13A (employment activities) of her November 13, 2013 e-QIP by indicating that she was terminated from her employment with a medical organization for "personal circumstances" (Item 1 at 14), when she actually was terminated for attendance problems. She admitted all financial allegations under the first paragraph. Though she admitted the personal conduct allegation, she claimed that she did not purposefully falsify her reason for leaving the job where she had worked from January 2007 to March 2013. She noted that the e-QIP did not provide sufficient space for her to particularize the circumstances of her job termination. Her attendance problems at work were caused by an antagonistic divorce. The marital conflict contributed to a mental condition which hampered her ability to perform her demanding job.

Applicant is 36 years old. She has been divorced since April 2013, after being married for 14 years. She has three children, 18, 15, and 12 years old. In July 2006, she received an associate's degree. She has been taking courses at a community college since August 2011. She has been cohabiting since October 2013. She has no criminal record. She has no drug or alcohol issues, and has never had counseling for drug use, alcohol use, or financial problems.

Before her current employment, Applicant was unemployed for eight months after working as an assistant consumer specialist at a medical organization for six years. She also was unemployed from July 2006 to September 2006, and from March 2004 to February 2006. From March 2003 to February 2004, Applicant was employed as a certified nursing assistant. She has also been employed as a doctor's assistant and an employment enrollment staffer.

Financial Considerations

Applicant provided no documentation or explanation for the debts in the SOR. Item 5 (November 2013 credit report) shows that she began accumulating delinquent debt in March 2008 when she received \$170 in medical services, but did not pay the bill. (SOR 1.k) Item 4 (e-QIP) indicates she was married and employed at the time. A judgment was filed against her in September 2008 for nonpayment of a \$983 medical bill. (SOR 1.a) She received a personal loan that became delinquent in May 2010 with a past due balance of \$2,223. (SOR 1.e) Over the next five years, Applicant continued to accrue medical bills. She incurred 11 additional medical bills in 2013. Applicant's unemployment for eight months out of the year was a probable reason for the inordinate number of medical bills in 2013.

Item 6 (December 2014 credit report) reflects that Applicant continued to accumulate new delinquent debts. Though the debts are not listed in the SOR, they are relevant to the overall management of her finances and living within her means. She opened a second cellular account (different account number) with the same provider identified in SOR 1.i. That account is currently delinquent in the amount of \$1,133. Another unlisted cellular account is delinquent in the amount of \$818. Applicant has collected two delinquent medical accounts for \$216 and \$392. The four additional accounts total \$2,559, bringing Applicant delinquent debt total to \$10,778.

Personal Conduct

In response to Section 13A (employment activities) of her November 2013 e-QIP, Applicant indicated in response to her "Reason for Leaving" the medical organization in March 2013, where she had worked since January 2007, was for "Personal circumstances." (SOR 2.a) (Item 4 at 14) She noted in her answer to the SOR that after she submitted the November 2013 e-QIP, she informed an individual that her difficult divorce, which caused mental problems, and the demanding nature of the job, were the reasons for her attendance problems and ultimate termination at work. Based on experience with how a trustworthiness investigation is conducted, I find that the person she identified in her answer to the SOR was an investigator from the Office of Personnel Management (OPM). I find that she talked with the investigator in early 2014. Since Applicant requested that her case be decided administratively without a hearing, I am unable to evaluate her credibility, demeanor, and overall behavior.

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. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified 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 support her 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 pertinent disqualifying conditions that are potentially applicable: AG ¶ 19(a) (*inability or unwillingness to satisfy debts*); and AG ¶ 19(c) (*a history of not meeting financial obligations*). Applicant has collected \$8,219 in delinquent debt to 22 creditors. Though she stated an intention to repay the creditors, she furnished no evidence of satisfying even some of the smaller debts. She added to her history of not

meeting financial obligations by incurring four additional unlisted debts in 2014, totaling \$2,559. 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*).

Applicant's financial delinquencies have been a problem since March 2008. The absence of any evidence showing an attempt to address the listed debts while incurring new delinquent debts continues to raise security concerns about her reliability, 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's periodic unemployment before 2007 and between March and November 2013, provides some mitigation. However, she accumulated a substantial portion of the delinquent debt while she was employed between January 2007 and March 2013. She has been employed since November 2013, but has taken no action on the listed or unlisted debt. She gains mitigation under the first prong of the condition for her periodic unemployment and a difficult divorce, even though she provided no details on why the divorce was so problematic and how it impacted on her payment of bills and raising her children. She receives no mitigation under the second prong of the condition due to her failure to act responsibly to address her financial obligations.

Applicant is entitled to no mitigation under AG ¶¶ 20(c) or 20(d) because there is no evidence of financial counseling and no indication the debts are under control. Similarly, Applicant has made no good-faith effort to satisfy or otherwise resolve the debts.

Personal Conduct

The trustworthiness concern for personal conduct is set forth in AG ¶ 15:

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.

AG ¶ 16 contains one disqualifying condition that is potentially pertinent:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personnel security statement, or similar form to conduct investigations, determine employment qualifications, award benefits and status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

An applicant is expected to provide truthful and candid information during all portions of a public trustworthiness investigation. Trustworthiness concerns are raised by a falsification or omission of information from a government trust questionnaire. However, not every omission under the personal conduct guideline should be interpreted as a deliberate falsification or omission. Falsifications and omissions can result from haste, oversight, or misinterpretation of the questions in the questionnaire. To fall within the scope of AG ¶¶ 16(a) and 16(b), the omission must be a deliberate concealment of relevant facts used to determine whether access to a public trust position should be granted or denied. An applicant's previous employment is relevant if the information could affect an agency decision regarding her suitability for a public trust position. Applicant knew why she had been terminated from her previous employment, but deliberately falsified the reason as "personal circumstances." Though her contested divorce probably had an adverse impact on her mental condition, she could have entered words in her e-QIP like "attendance problems caused by a divorce." The reason she provided was insufficient for the Government to make an informed decision about her qualifications for a public trust position. AG ¶ 16(a) applies.

There are three mitigating conditions under AG ¶ 17 that are potentially pertinent to the circumstances in this case. Those conditions are:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment or falsification before being confronted with the facts;

(c) the offense was 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; and

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate stressors, circumstances, or factors that caused untrustworthy, unreliable or other inappropriate behavior, and such behavior is unlikely to recur.

The record discloses no evidence demonstrating that Applicant came forward to correct her deliberate falsification until she was confronted by the OPM investigator about her employment termination. Even though AG ¶ 17(a) does not apply, I accept her explanation that she provided a complete explanation of the reasons for her falsification when she was prompted by the OPM investigator in 2014.

Falsifying an application for a public trust position is serious. Applicant's deliberate falsification occurred less than two years ago. While the dishonesty occurred only one time, there is insufficient information in the record to predict that it is unlikely to recur. The deliberate falsification continues to cast doubt on Applicant's reliability, trustworthiness and good judgment. Though she admitted the falsification in her answer, she continues to deny she committed the falsification purposefully. The two positions are contradictory because leaving her previous job in March 2013 due to "personal circumstances" does not explain her former employer's reason for terminating her. Her attendance problem was the reason she was terminated, and was the explanation she should have entered under Section 13A of her November 2013 e-QIP. Her divorce and mental condition probably contributed to her attendance problems, but were not the reason she was terminated from her employment. Neither AG ¶¶ 17(c) nor 17(d) apply

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))

The SOR lists 22 debts totaling \$8,219. Applicant's 2014 credit report reflects that four additional debts have fallen delinquent, bringing the total amount of delinquent debt to \$10,778. Because there are 19 medical debts included in the listed and unlisted debt, it is safe to conclude that Applicant has a medical condition that requires treatment. But she has presented no explanation that the medical debts arose for reasons beyond her control. She has incurred new delinquent debt before attempting to address the older listed debt. The public trust concerns based on financial considerations and personal conduct remain unmitigated. 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:

Paragraph 1 (Guideline F):	AGAINST APPLICANT
Subparagraphs 1.a-v:	Against Applicant
Paragraph 2 (Guideline E):	AGAINST APPLICANT
Subparagraph 2.a:	Against 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 eligibility for public trust position. Eligibility for access to public trust position is denied.

Paul J. Mason
Administrative Judge