



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



In the matter of:)	
)	
)	ADP Case No. 14-02126
)	
)	
Applicant for Position of Trust)	

Appearances

For Government: Richard Stevens, Esq., Department Counsel
For Applicant: *Pro se*

02/26/2015

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant has not mitigated the financial considerations trustworthiness concerns. Eligibility for access to sensitive information is denied.

Statement of the Case

On October 27, 2014, the Department of Defense issued a Statement of Reasons (SOR) detailing trustworthiness concerns under Guideline F, financial considerations.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); 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 December 9, 2014, Applicant submitted an answer to the SOR and requested a hearing before an administrative judge. The case was assigned to me on January 13, 2015. DOHA issued a notice of hearing on January 22, 2015, and the hearing was

¹ The SOR's caption lists this case as an Industrial Security Clearance case. Department Counsel confirmed it is an application for a position of trust.

convened as scheduled on February 9, 2015. Government Exhibits (GE) 1 and 2 were admitted into evidence without objection. Applicant testified and submitted Applicant Exhibits (AE) A and B, which were admitted without objection. DOHA received the hearing transcript (Tr.) on February 19, 2015.

Findings of Fact

Applicant admitted all of the allegations in the SOR, some with explanations. Her admissions were incorporated into the findings of fact. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 35 years old. She earned a bachelor's degree in 2001. She furthered her education from 2011 to 2013, earning an associate's degree in March 2013. She has also participated in online education. She married in 2005 and separated from her husband in 2012. They have two daughters, ages ten and six.²

From 2006 to 2013, Applicant worked as a teacher's assistant for a school district. In 2013, she was hired in her current job. She was unemployed from the fall of 2005 to the spring of 2006.³

Applicant admitted the 19 delinquent debts alleged in the SOR totaling more than \$31,000. The delinquent debts were verified through her credit report.⁴ The debt in SOR ¶ 1.a (\$2,159) is a judgment. The debt was for the purchase of pots and pans. Applicant testified that this judgment was included in her husband's bankruptcy and was discharged. It appears the judgment was entered against both her and her husband in 2008, and her husband filed for bankruptcy in 2009. She testified she disputed this debt by telephone with the credit bureau. The debt is unresolved.⁵

The debt in SOR ¶ 1.b (\$16,563) is a private student loan account opened by Applicant in June 2011. She received her associate's degree from an institution in March 2013. She did not make any payments toward the loan. After receiving the SOR, she stated she contacted the financial office of the institution to work on resolving the debt. It is unresolved.⁶

The debt in SOR ¶ 1.c (\$563) appears to be a government unsecured guaranteed loan and the amount alleged is past due. The balance of the loan is \$12,103. The repayment terms for the loan are \$188 payments for 147 months. Applicant stated she is unfamiliar with this debt, and she telephonically contacted the

² Tr. 23-25, 33.

³ Tr. 25.

⁴ GE 2.

⁵ Tr. 17-19, 31-32, 54-56; Answer to SOR. A debt discharged in Applicant's husband's bankruptcy does not affect her obligation to pay the debt.

⁶ Tr. 32-35.

credit bureau to dispute the debt. She did not contact the creditor. She did not provide documents to support her actions. It is unresolved.⁷

The debt in SOR ¶ 1.d (\$3,089) is a car loan for a vehicle Applicant purchased in approximately 2004 or 2005. The original loan was approximately \$12,000. The vehicle was repossessed in 2008 or 2009. In her answer to the SOR, she stated she was working on a payment plan. She testified she contacted the creditor. She did not provide additional information to confirm she has taken any action to resolve this debt. The debt is not paid or resolved.⁸

Applicant stated she did not recognize the debts in SOR ¶¶ 1.e (\$523) and 1.f (\$85). They appear to be for credit cards. Applicant stated she never received notice that the credit cards were being canceled. She indicated in her answer to the SOR that she was disputing these debts. She did not provide any documents to show what actions she has taken to dispute the debts. They are unresolved.⁹

The debt in SOR ¶ 1.g (\$5,677) is a timeshare that Applicant and her husband purchased in 2005 or 2006. They defaulted on the agreement. Applicant stated her husband included this debt in his bankruptcy. She did not provide documents to prove the debt is resolved.¹⁰

The debt in SOR ¶ 1.h (\$610) is owed to a cable company. She does not know what this debt is about as she currently has service with the company. She did not provide evidence of her actions to dispute or resolve the debt.¹¹

The debts in SOR ¶¶ 1.j through 1.m, and 1.o through 1.s (\$377, \$255, \$247, \$209, \$150, \$150, \$149, \$110 and \$54 respectively) are medical debts. Applicant does not recognize some of the collection companies who now own the debts. In her answer to the SOR, she indicated she believed these were old medical bills, and she would be arranging payment plans with the creditors. She did not contact any of the creditors and has not arranged to pay any of the debts.¹²

The debt in SOR ¶ 1.n (\$156) appears to be an electric bill. Applicant stated she never had an electric bill from this company in her name. She testified that this debt could be from an apartment complex where she and her husband lived at one time, but she did not know. In her answer to the SOR, she stated her intention was to dispute the

⁷ Tr. 26-39, 54-56; GE 2 at page 8.

⁸ Tr. 19-21, 40-41, 51-52.

⁹ Tr. 41.

¹⁰ Tr. 42-43.

¹¹ Tr. 43-44.

¹² Tr. 18, 44-45, 51.

debt. She indicated she telephonically contacted the credit bureau to dispute this debt. She did not provide documentary proof of actions to dispute or resolve the debt.¹³

Applicant believes she also owes approximately \$105,000 for student loans on an account opened in 2006, which are in a deferred status due to financial hardship.¹⁴ Except for some small payments after these loans initially became due, she has not made any other payments. Applicant attributes her inability to pay the student loans and other debts due to periods of unemployment and underemployment. She earned approximately \$19,000 while employed as a teacher's assistant, and she currently earns about \$36,000. When she was living with her husband, he earned about \$32,000. She acknowledges she lives paycheck to paycheck. She intends to either file for bankruptcy or consolidate her debts to resolve her financial issues. She made appointments with a bankruptcy law firm and a debt consolidation company to help her start addressing her delinquent debts.¹⁵

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, 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.

¹³ Tr. 44-46, 54-57.

¹⁴ GE 2. These debts are not considered for disqualifying purposes, but are considered when analyzing the whole person and the applicability of the mitigating conditions. The \$105,000 student loan debt does not include the private loan alleged in SOR ¶ 1.b.

¹⁵ Tr. 19, 26, 46-50, 53.

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 concerns for financial considerations are 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. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant accumulated 19 delinquent debts totaling approximately \$31,000. Some of the debts have been delinquent for more than six years. Applicant is unable or unwilling to pay or resolve her delinquent debts. 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 believes the judgment in SOR ¶ 1.a was resolved through her husband's bankruptcy discharge. The documents she provided do not show the debt was discharged. She is still obligated to pay the judgment. The numerous debts in the SOR are still owed and unresolved. Based on Applicant's past and current financial history, I cannot find that future financial problems are unlikely to recur. Her financial situation casts doubt on her current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

Applicant has been underemployed and unemployed for extended periods of time. She is separated from her husband. These conditions were beyond her control. For the full application of AG ¶ 20(b), Applicant must provide proof that she acted responsibly under the circumstances. Despite indicating in her answer that she was arranging a payment plan with medical creditors, she failed to contact them. She has not made an attempt to pay even the smallest debt. Although she was underemployed and unemployed she and her husband purchased a timeshare in 2005 or 2006 and then defaulted on the property. AG ¶ 20(b) only partially applies.

Applicant indicated she had intended to file for bankruptcy or seek a debt consolidation plan, but had not done anything before her hearing. There is no evidence she participated in financial counseling or made good-faith payments to pay creditors. There are not clear indications that her financial problems are being resolved or under control. To the contrary, in addition to her delinquent debts, Applicant owes approximately \$105,000 in student loan debt that is in a deferred status due to economic hardship. AG ¶¶ 20(c) and 20(d) do not apply.

Applicant disputes many of the debts alleged, but did not do anything to determine their validity. She has not provided documented proof to substantiate her disputes or evidence that she is actively attempting to resolve the issue. I find AG ¶ 20(e) does not apply.

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 facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant has not made sufficient attempts to resolve her numerous delinquent debts. In addition to the delinquent debts alleged in the SOR, she has an overwhelming amount of student loan debt that is deferred. Overall, the record evidence leaves me with serious questions and doubts about Applicant's eligibility and suitability for a public trust position. For all these reasons, I conclude Applicant has not mitigated 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.s:	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 a public trust position. Eligibility for access to sensitive information is denied.

Carol G. Ricciardello
Administrative Judge