



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



In the matter of:)
)
) ADP Case No. 14-02391
)
Applicant for Public Trust Position)

Appearances

For Government: Robert J. Kilmartin, Esq., Department Counsel
For Applicant: *Pro se*

10/23/2015

Decision

LOUGHRAN, Edward W., Administrative Judge:

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

Statement of the Case

On March 31, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing trustworthiness concerns under Guideline F, financial considerations. The action was taken under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); DOD Regulation 5200.2-R, *Personnel Security Program* (January 1987), as amended (Regulation); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on April 28, 2015, and requested a hearing before an administrative judge. The case was assigned to me on June 25, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on July 2, 2015, scheduling the hearing for July 23, 2015. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 4 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibit (AE) A, which was

admitted without objection. The record was held open for Applicant to submit additional information. She did not submit any additional material. DOHA received the hearing transcript (Tr.) on July 31, 2015.

Findings of Fact

Applicant is a 36-year-old employee of a defense contractor. She has worked for her current employer since March 2013. She is applying for eligibility to hold a public trust position. She attended college for a period, but she did not earn a degree. She has never married, but she has cohabitated with her boyfriend since 1999. She has three children, ages 20, 14, and 10.¹

Applicant was unemployed from 2008 to April 2012. She had a seasonal job and then was unemployed again from October 2012 until she was hired by her current employer. She was a stay-at-home mother for most of the time she was unemployed. She did not have medical insurance for several years, which resulted in medical debts. She was also unable to pay all her other bills, and other debts became delinquent.²

The SOR alleges 27 delinquent debts totaling about \$17,000. Medical debts totaling about \$3,270 comprise at least 13 SOR allegations. There may be additional medical debts that are unidentified as such. Applicant admitted owing all the debts with the exception of the debts alleged in SOR ¶¶ 1.b (\$35), 1.e (\$557), 1.s (\$3,646), and 1.y (\$613). Each debt is also listed on at least one credit report.

Applicant denied owing the \$35 debt to an elementary school for a returned check (SOR ¶ 1.b). The debt is listed on both credit reports in evidence. Applicant stated the debt was for school pictures that were returned. Several of the debts on the credit reports include the note: "consumer disputes this account." That language is not included for this debt. There is no evidence that Applicant ever disputed this account.³

Applicant denied owing the \$557 debt to a bank that is alleged in SOR ¶ 1.e. The debt is listed on the March 2013 credit report, but not the April 2014 credit report.⁴

Applicant stated that she was charged by a university for a course she did not take. The charged-off student loan (SOR ¶ 1.b - \$3,646) is listed on both credit reports. There is no evidence that Applicant ever disputed this account.⁵

Applicant wrote in her SOR response that she denied owing the \$613 debt alleged in SOR ¶ 1.y because she was unaware of the debt and she wanted to

¹ Tr. at 34, 48; GE 1.

² Tr. at 16-17, 28-30; GE 1, 2.

³ Applicant's response to SOR; GE 2-4.

⁴ Tr. at 44-46; Applicant's response to SOR; GE 2-4.

⁵ Tr. at 31-33; Applicant's response to SOR; GE 2-4.

investigate whether it was a valid debt. The debt is listed on the April 2014 credit report. There is no evidence that Applicant ever disputed this account.⁶

All of the medical debts are listed on the March 2013 credit report, but only four of them are listed on the April 2014 credit report. There are an additional ten debts totaling about \$9,000 that are not identified as medical debts. Two of the debts (SOR ¶ 1.w - \$638 and SOR ¶ 1.x - \$578) are for unpaid traffic citations. Applicant stated that the citations were issued on two occasions in about 2006. The first citation was for driving with a suspended registration; the second citation was for driving on a suspended license.⁷

On July 7, 2015, Applicant entered into a payment contract with the city where she owes her citations to pay \$466 through five monthly payments of \$78 and a final payment of \$76. She stated that the contract was for the driving-on-a-suspended-license citation identified in SOR ¶ 1.x. She stated that she made the first payment, which was due on July 17, 2015. She did not submit any documented proof. It is unclear if the contract is for one of the debts identified in the SOR, both of the debts identified in the SOR, or neither. The contract indicated that failure to pay the fine could result in further action, including suspending her license, issuing a warrant for her arrest, forwarding the account to a collection agency, preventing the re-registration of her vehicle, notifying a credit bureau, and attaching her tax refund. The two debts alleged in the SOR have already been sent to a collection agency and placed on Applicant's credit report.⁸

Applicant listed a number of delinquent debts on her Questionnaire for National Security Positions (SF 86), which she submitted in March 2013. She indicated that her debts were caused by her unemployment, but that she "was starting to make monthly payments again." She discussed her finances during her background interview in May 2013. She indicated that she was on an \$80-per-month payment plan for her traffic citations, and she planned to pay her other debts.⁹

Applicant's boyfriend lost his job in 2013 and did not return to full-time employment until February 2015. Applicant was unable to pay any of her delinquent debts while he was unemployed. She stated that they received loans from family members while he was unemployed, and they have been repaying those loans. Other than the traffic citation addressed above, Applicant has not made any payments toward any of the debts alleged in the SOR. She stated that she has payment arrangements with one of her medical creditors and was about to start \$50 per month payments. She stated that she intends to pay her debts, but it will take time.¹⁰

⁶ Applicant's response to SOR.

⁷ Tr. at 15-16; Applicant's response to SOR; GE 2.

⁸ Tr. at 15-16, 25-27, 40-41; GE 2-4; AE A.

⁹ GE 1, 2.

¹⁰ Tr. at 17-19, 24-30, 39-40, 47, 50-51; Applicant's response to SOR; GE 2.

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.

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 [sensitive] 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. The following are potentially applicable:

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

Applicant accumulated delinquent debts and was unable or unwilling to pay her financial obligations. The above disqualifying conditions are applicable.

Conditions that could mitigate financial considerations 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 and her boyfriend's unemployment were beyond her control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances.

The 13 medical debts alleged in the SOR are mitigated. Those allegations are concluded for Applicant. She denied owing four debts. The \$557 debt alleged in SOR ¶ 1.e is not listed on the April 2014 credit report, which is the most recent credit report in evidence. AG ¶ 20(e) is applicable to that debt. There is no evidence that she disputed the remaining three debts. AG ¶ 20(e) is not applicable to those debts.

Applicant still owes more than \$12,000 in delinquent debts. Her traffic tickets have been owed since about 2006. She has not paid the \$35 debt to an elementary school for a returned check. Her boyfriend has been back to work since February 2015, but she has made almost no progress in addressing her debts.

There is insufficient evidence for a determination that Applicant's financial problems will be resolved within a reasonable period. I am unable to find that she acted responsibly under the circumstances or that she made a good-faith effort to pay her debts. Her financial issues are recent and ongoing. They continue to cast doubt on her current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a), 20(c), and 20(d) are not applicable. AG ¶ 20(b) is partially applicable. I find that financial considerations concerns remain despite the presence of some mitigation.

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 Guideline F in my whole-person analysis.

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 did not mitigate the 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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraphs 1.c-1.m:	For Applicant
Subparagraphs 1.n-1.o:	Against Applicant
Subparagraphs 1.p-1.q:	For Applicant
Subparagraphs 1.r-1.aa:	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.

Edward W. Loughran
Administrative Judge