



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



In the matter of:)
)
) ADP Case No. 14-02449
)
Applicant for a Public Trust Position)

Appearances

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

01/30/2015

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Defense Department’s intent to deny her eligibility to occupy a public trust position in the defense industry. Although Applicant has a willingness to repay the delinquent debts she accumulated after years of financial mismanagement, she has not articulated a plan to do so. She has also failed to demonstrate a track record of financial rehabilitation or reform. Accordingly, her request for access to sensitive information is denied.

Statement of the Case

On July 25, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing trustworthiness concerns under the financial considerations guideline.¹ DOD adjudicators were unable to find that it is clearly consistent with the national security to grant or continue Applicant’s access to sensitive information and recommended that the case be submitted to an administrative judge for a determination whether to revoke or deny Applicant’s eligibility to occupy a public trust position.

¹ This case is adjudicated under DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). The *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (AG)*, effective within the Defense Department on September 1, 2006, apply to this case. The AG replace the guidelines in Enclosure 2 to the Directive.

Applicant timely answered the SOR and requested a hearing.² At the hearing, convened on November 18, 2014, I admitted Government's Exhibits (GE) 1 through 5, and Applicant's Exhibits (AE) A through D, without objection. After the hearing, Applicant submitted AE E through O, which were also admitted without objection.³ I received the transcript (Tr.) on November 28, 2014.

Findings of Fact

Applicant, 27, has worked as a customer service representative team leader for a federal contractor since February 2013. She is seeking to obtain eligibility to occupy a position of public trust for her job working in a call center. Eligibility is necessary because her job involves access to personally identifiable information (PII). On her February 2013 electronic questionnaire for investigations processing (e-QIP), Applicant disclosed a number of financial issues. The ensuing investigation revealed and the SOR alleges that the Applicant is indebted to 11 creditors for approximately \$21,000; that Applicant failed to file her state and federal income tax returns for 2008, 2010, and 2011; and that Applicant owes at least \$847 in outstanding federal income taxes.⁴

Applicant's financial problems began when she started living on her own at 18 years old. Applicant testified that she did not have the knowledge to manage her finances responsibly. She admits that many of the debts alleged in the SOR as well as her failure to file and pay her federal income taxes were the result of her financial immaturity and irresponsibility. Although Applicant has not sought any financial counseling, she testified that she is trying to repay her delinquent accounts.⁵

Applicant provided receipts and bank statements to establish that she is making payments towards the debts alleged in the SOR. However, the documentation clearly establishes that only six of the alleged SOR debts have been addressed in some fashion. Specifically, Applicant's documents show: that her student loans, SOR ¶¶ 1.c (\$2,144) and 1.d (\$4,041), are in forbearance status until June 2015; that the accounts alleged in SOR ¶¶ 1.h (\$365) and 1.i (\$403) do not belong to Applicant and were erroneously reported to her credit file; that she has paid the debts alleged in SOR ¶ 1.j (\$600) and 1.k (\$131); and that she has made at least one payment of \$120 toward the resolution of SOR ¶ 1.g (\$324). Applicant offered a document purporting to show that the account in SOR ¶ 1.f (\$344), which is for an overdrawn checking account, has been resolved. Upon questioning Applicant admitted that she did not pay the balance, but that the creditor wrote off the account because it is more than seven years old. Based on the

² The Government's discovery letter, dated October 15, 2014, is appended to the record as Hearing Exhibit (HE) I.

³ The e-mails regarding the admissibility of the Applicant's Exhibits are included in the record as HE II.

⁴ GE 1, 4-5.

⁵ Tr. 17-18, 20, 56-57.

record, the accounts alleged in SOR ¶¶ 1.a.-1.b, 1.e-1.g, and 1.l-1.m remain unresolved.⁶

Applicant also claims that she has been making payments toward other debts. Applicant has resolved a non-SOR judgment (\$1,800) and a delinquent debt owed to a cable company (\$900). On the bank statements Applicant provided showing her spending activity from April to November 2014, she highlighted recurring payments to unidentified creditors. However, she did not provide any explanation linking the payments to particular SOR or non-SOR debts, and the creditors are not readily identifiable from the transaction descriptions. Applicant most recent credit report, dated October 2014, shows that she accumulated another \$4,900 in delinquent debt during 2014.⁷

Applicant admits that she did not file her federal or state income taxes for the years 2008, 2010, and 2011. Applicant testified that although she had her outstanding federal and state income tax returns recently prepared by a third party, she did not know if the returns were filed or if she had an outstanding federal or state income tax liability. The day after the hearing, Applicant contacted the IRS and learned that she owes \$4,000 in outstanding taxes for the 2007 and 2013 tax years. Applicant plans to pay the balance in full in January 2015. Applicant also presented evidence that she has an outstanding state tax liability for \$840 for an unspecified tax year, but offered no details on how she plans to resolve the debt. Applicant did not provide any additional information regarding the status of her federal or state income tax filings or liabilities for the years alleged in the SOR.⁸

Policies

Positions designated as ADP I and ADP II are classified as “sensitive positions.”⁹ “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.”¹⁰ 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.¹¹ An administrative judge’s objective is a fair, impartial,

⁶ Tr. 21-27, 31-40; AE A-D, F.

⁷ AE E, I-J, and L.

⁸ Tr. 28, 40-46, 53-54; AE G-H.

⁹ DOD Regulation 5200.2-R, *Personnel Security Program* (January 1987), as amended (Regulation) ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3.

¹⁰ Regulation ¶ C6.1.1.1.

¹¹ See Regulation ¶ C8.2.1.

and commonsense decision that embraces all available, reliable information about the person, past and present, favorable and unfavorable.

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 the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to a public trust position 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

Unresolved delinquent debt is a serious trustworthiness concern because failure to “satisfy debts [or] 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.”¹² Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding sensitive information.

The record establishes that Applicant is indebted to 11 creditors for approximately \$21,000. Applicant’s admissions as well as the credit reports in the record establish the government’s *prima facie* case. Applicant has demonstrated an inability to pay her bills and a history of financial problems resulting in unresolved delinquent debts.¹³ Applicant also admits failing to file her federal and state tax returns for a number of years including 2008, 2010, and 2011 as well owing federal taxes, which is also disqualifying.¹⁴ Applicant did not present sufficient information to mitigate the security concerns raised by her history of financial mismanagement.

Applicant admits that her financial problems were largely of her own making. Although she takes responsibility for her past acts of financial mismanagement and irresponsibility, she has not taken steps to show financial rehabilitation or reform. She

¹² AG ¶ 18.

¹³ AG ¶¶ 19(a) and (c).

¹⁴ AG ¶ 19(g).

has not obtained financial counseling. She is not able to articulate a plan for resolving her delinquent debts. While Applicant's bank statements show that she is making recurring payments on some accounts, this is not enough to mitigate the trustworthiness concerns raised by her history of financial problems. She may well be able to timely pay her car note and insurance for example, but it does not negate or diminish the evidence in the record that she is unable to resolve her delinquent debts.

Also of concern is Applicant's inability to provide information regarding the status of her federal and state income tax obligations. Her initial failure to file raises issues about her ability to following rules and regulations and serves as a basis for an adverse decision on its own. However, her ongoing inability to correct the issue and meet her most basic obligation to the government casts doubts on her suitability to enter into a fiduciary relationship with the government.

Whole Person Concept

Based on the record, I have doubts about Applicant's eligibility to occupy a public trust position. In reaching this conclusion, I have also considered the whole-person factors at AG ¶ 2(a). Ultimately, Applicant did not meet her burdens of production or persuasion to merit a favorable decision in this case. This decision should not be construed as a determination that Applicant cannot or will not attain the type of financial stability necessary to obtain a public trust position in the future. Rather, it is recognition of the fact that financial issues have historically been a motivating factor behind acts of espionage and the poor financial history of those seeking public trust positions cannot be ignored. However, it must also be noted that the award of a public trust position is not a once in a lifetime occurrence, but is based on applying the factors, both disqualifying and mitigating, to the evidence presented. While a favorable decision is not warranted at this time, Applicant may well present persuasive evidence of financial rehabilitation and reform in the future.

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.b, 1.e-1.g, and 1.l-1.m:	Against Applicant
Subparagraphs 1.c-1.d, and 1.h-1.k:	For Applicant

Conclusion

In light of all of the circumstances presented, it is not clearly consistent with the national security to grant Applicant access to sensitive information. Her eligibility to occupy a position of public trust is denied.

Nichole L. Noel
Administrative Judge