



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS and APPEALS**



In the matter of:)	
)	
)	ADP Case No. 14-02467
)	
Applicant for Public Trust Position)	

Appearances

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

03/24/2015

Decision

HEINY, Claude R., Administrative Judge:

Applicant contests the Department of Defense’s (DoD) intent to deny her eligibility for a public trust position to work in the defense industry. Applicant mitigated the trustworthiness concerns arising from her financial considerations. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to sensitive information is granted.

History of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on August 1, 2014, the DoD issued an SOR detailing trustworthiness concerns. DoD adjudicators could not find that it is clearly consistent with the national interest to grant or continue Applicant a public trust position.

¹ Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; 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 on September 1, 2006.

On August 1, 2014, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the trustworthiness concerns under financial considerations. On August 30, 2014, Applicant answered the SOR and requested a hearing. On January 28, 2015, I was assigned the case. On January 28, 2015, the DOHA issued a Notice of Hearing for the hearing convened on February 13, 2015. I admitted Government's Exhibits (Ex) 1 through 7 and Applicant's Exhibits A through E, without objection. Applicant testified at the hearing as did her father, her sister, and her supervisor. On February 24, 2015, DOHA received the hearing transcript (Tr.).

Findings of Fact

In Applicant's Answer to the SOR, she admitted all of the factual allegations in the SOR, and her admissions are incorporated herein. After a thorough review of the pleadings and exhibits, I make the following findings of fact.

Applicant is a 45-year-old healthcare finder who has worked for a healthcare service since March 2012. (Tr. 45) She works overtime when offered to supplement her income. She says she is "no stranger to working longer hours to support my family." (SOR Response) As of her April 2012 Personal Subject Interview (PSI), her full-time and part-time monthly take-home income was \$2,300. (Ex.2) At that time, her monthly expenses and debt payment, including her Chapter 13 payment and student loan payment, was \$1,800. (Ex.2) Her monthly expenses were high because her three² children and grandchild lived with her. (Ex.2) Her current annual salary is \$26,000, and she also has a part-time job. (Tr. 22) She uses the income from one of her part-time jobs to pay her grandson's tuition and her student loans. (Tr. 21)

Applicant's sister states Applicant is an excellent worker, who is "not beneath working as many jobs as she can or doing what she needs to do." (Tr. 44) Applicant and her sister work together on Applicant's part-time job. Applicant's supervisor on her full-time job states, Applicant is honest and up front, dependable, reliable, and a very productive worker. (Tr. 48) Applicant is always available for overtime work and is an "excellent contributor" to the company. (Tr. 50)

The SOR indicates Applicant had delinquent debts of approximately \$48,000. Of that amount \$24,000 was for two student loans and \$21,000 was for past-due mortgage payments. Her student loans and mortgage represents \$45,000 of the \$48,000 of questionable debt. (Tr.18)

In August 2000, Applicant and her husband jointly filed for Chapter 13, Wage Earner's Plan bankruptcy protection. (Ex. 2) At the time, her husband was a sales manager at a hotel with an annual salary of \$45,000, and her salary was \$18,000. (Tr. 30, 31) During the five-year duration of the plan, monthly payments of \$565 were made. (Tr. 25) The bankruptcy was discharged in October 2005. (SOR Answer)

² Applicant now has two children and her grandson living with her. Her daughter obtained a job in October 2014 working 25 hours per week, and now helps with the bills. (Tr. 37, 55)

Applicant married in August 1987. She has three children who are currently ages 18, 23, and 27. (Ex. 1) Her daughter has epilepsy and suffers from grand mal seizures. Applicant and her husband separated in 2011. Following their separation, Applicant was not receiving child support.³ Her three children and a grandchild lived with her. She was working full time and had an additional part-time job. (SOR Response, Tr. 29) She worked at customer service making \$9 per hour and also at another customer service call center making \$10.25 per hour. (Tr. 29)

Applicant worked 40 hours per week at one job and 20 hours per week at the other. (Tr. 30) At that time, Applicant worked one job from 7 a.m. until 3:30 p.m. before going home to be with the children and cook dinner. She went to her second job at 8 p.m. and worked until 2 a.m. (Tr. 31) She would then sleep for a few hours before it started again. It was during this period, in 2013, she contracted shingles. (Ex. B, Tr. 32, 54)

In 2007, a \$1,208 judgment (SOR 1.e) was entered against Applicant. The original debt was with a telephone service provider. (Ex.2) Some payments were made on this debt. It was included and discharged in her bankruptcy initiated in 2012 under Chapter 13 and finalized in 2014 under Chapter 7. (Tr. 26) It no longer appears on her credit report.

In July 2010, Applicant and her husband again jointly filed for Chapter 13 protection in order to save their home from foreclosure. (Ex. 2) At that time, her husband was handling the household's finances and she was unaware the bills were not being paid. (SOR Response, Tr. 24) In August 2011, Applicant and her husband separated. She filed for divorce in March 2012, which became final in January 2013 (Ex.2, Tr. 20) Her divorce cost her \$3,000. (Tr. 30) Being unable to make the required monthly payments to the bankruptcy plan, the Chapter 13 was dismissed in August 2011.

Applicant was having trouble meeting her financial obligations. In March 2012, two months after her divorce was final, she filed for Chapter 13 bankruptcy protection solely in her name. (Ex. 2, 3, 4, Tr. 25) Even with her two jobs she was having trouble meeting the monthly payment to the Trustee. She filed for bankruptcy protection because of medical bills, periods of unemployment, her separation, and divorce. (Ex.2) Following her attorney's advice, in June 2014, the Chapter 13 was converted to a Chapter 7 bankruptcy. (SOR Answer)

Applicant had two student loans in the amount of \$12,604 (SOR 1.f) and \$11,408 (SOR 1.g). She had attended college, at various times, from 1988 through 1998. (Tr. 56) She had earlier attempted to arrange a repayment agreement, but was told the lender could not speak to her because she was in bankruptcy. Now that the bankruptcy is completed, she has entered into a repayment arrangement with the holder of the loans. (Tr. 22)

³ At the hearing, Applicant said she was receiving \$500 monthly child support through garnishment. The child support will end in June 2015, when her son graduates from high school. (Ex. E, Tr. 37) She did not receive any support for two or three years. (Tr. 38)

Applicant's daughter's epilepsy resulted in numerous medical debts: SOR 1.h, \$165; SOR 1.i, \$197; SOR 1.j, \$70; SOR 1.k, \$52; and SOR 1.l, \$359. Her daughter's medical issues started when she was 13. She is now 27 and does not drive. (Tr. 23) These medical debts were included in her Chapter 7 bankruptcy and were discharged in June 2014. (Tr. 22)

Applicant has asked the creditor of the \$541 collection account (SOR 1.m) to provide her proof that the debt is hers. It does not appear on her recent credit report. If it is hers, she intends to pay it. (SOR Response) She contacted the creditor of the \$666 department super-store charged-off account (SOR 1.n) about the debt that no longer appears on her credit report. She was informed the creditor was unable to locate any obligation she owed them. (SOR Response)

At one time, Applicant became \$21,057 past-due on her mortgage (SOR 1.o) resulting in the start of foreclosure procedures. Her monthly payments were \$900 when the home was purchased in 1992. (Ex.2, Tr. 20) In November 2014, she was able to qualify for a mortgage under the Federal Housing Administration's Home Affordable Modification Program which reduced her monthly payments to \$432. (Ex. A, Ex. C, Tr. 19) The modification program resulted in \$38,000 in principal, interest, and taxes being forgiven. (Ex. A) She is now in good standing on her mortgage. (Tr. 19, SOR Response) The fair market value on the house is \$98,000 on which she has a \$26,000 mortgage. (Ex. A, Tr. 19)

Applicant attended a financial workshop at her church. In April 2014, as required in her bankruptcy, she completed a course on personal financial management. (Ex.2) The loan on her 1992 Jeep is fully satisfied. (Tr. 22)

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 over-arching 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.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 as to obtaining 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 protect or safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of sensitive information.

Section 7 of Executive Order (EO) 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *a/so* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

Adjudicative Guideline (AG) ¶ 18 articulates the trustworthiness concerns relating to financial problems:

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.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding sensitive information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts as agreed. Absent substantial evidence of extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a public trust position. An applicant is not required to be debt free, but is required to manage his finances to meet his financial obligations.

Applicant has a history of financial problems. Applicant has had to resort to bankruptcy protection three times. Her mortgage account was \$21,000 past due and she had two student loans totaling \$24,000 in collection. Disqualifying Conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts" and AG ¶ 19(c), "a history of not meeting financial obligations," apply.

Five Financial Considerations Mitigating Conditions under AG ¶ 20 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.

Under AG ¶ 20(a), Applicant's financial problems were aggravated by her separation, divorce, and being a single mother raising three children and a grandchild. She was behind on her monthly mortgage payments, but is now current after obtaining a loan modification. Her monthly mortgage payments dropped from \$900 monthly to \$432. She has made repayment arrangements on her student loans. The balance of her

SOR delinquent accounts of approximately \$3,000 was discharged in bankruptcy. She currently works two jobs in order to provide for herself and her family. AG ¶ 20(a) applies.

Under AG ¶ 20(b), Applicant experienced both separation and divorce along with the financial burden associated with each. The medical accounts were due to her daughter's epilepsy. These are events beyond her control and she acted reasonably by obtaining numerous jobs to help pay her bills. At one time, she had three jobs. AG ¶ 20(b) applies.

Under AG ¶ 20 (c) and ¶ 20 (d), Applicant has modified her mortgage agreement and is current on her mortgage. She now owes \$26,000 on her home that has a fair market price of \$98,000. She has reached a repayment arrangement with the holders of her student loans. She has initiated a good-faith effort to repay overdue creditors. It appears her finances are under control. She has received financial counseling. AG ¶ 20(c) and ¶ 20(d) 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 the facts and circumstances surrounding this case. The debts incurred were not the type that indicates poor self-control, lack of judgment, or unwillingness to abide by rules and regulations. Money was not spent frivolously. The debts set forth in the SOR were not incurred on luxuries, but were for medical treatment, mortgage payments, and student loans.

In 2000, Applicant and her husband jointly filed for Chapter 13 bankruptcy protection. They made their \$565 monthly payments for five years, at which time their debts were discharged. She had to file for bankruptcy protection again following her divorce. The bankruptcy discharged \$3,000 of the SOR debt, but had no effect on her

student loans or mortgage. She is now current on her mortgage and arranged repayment of her student loans. Applicant has a part-time job. Maintaining a part-time job while having a full-time job shows a strong desire by Applicant's to address her debts.

The issue is not simply whether all Applicant's debts are paid—it is whether her financial circumstances raise concerns about eligibility and suitability for a public trust position. (See AG ¶ 2 (a)(1).) Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a public trust position. For all these reasons, I conclude Applicant mitigated the trustworthiness concerns arising from her financial considerations.

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, Financial Considerations: FOR APPLICANT

Subparagraphs 1.a – 1.o: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a public trust position. Eligibility for access to sensitive information is granted.

CLAUDE R. HEINY II
Administrative Judge