



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



In the matter of:)
)
-----) ADP Case No. 14-02676
)
Applicant for Public Trust Position)

Appearances

For Government: Tovah Minster, Esquire
For Applicant: *Pro se*

01/28/2016

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Applicant failed to submit sufficient documentary evidence to mitigate Guideline F trustworthiness concerns. Applicant’s eligibility to occupy a position of trust is denied.

Statement of the Case

On March 23, 2015, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing concerns under Guideline F (Financial Considerations) regarding her eligibility to occupy an automated data processing (ADP) position designated ADP-I/II/III. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense 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. Applicant timely responded to the SOR, admitting the sole allegation raised, which concerned her having filed for bankruptcy in 2014. She also requested a determination based on the written record.

On July 23, 2015, the Government issued a File of Relevant Material (FORM) with seven attachments. Applicant did not respond to the FORM within the 30 days provided. The case was assigned to me on December 1, 2015. Based on my review of

the file and submissions, I find Applicant failed to mitigate financial considerations trustworthiness concerns.

Findings of Fact

Applicant is a 48-year-old female who has worked for the same defense contractor since September 2013. She was unemployed from June 2012 until August 2013. Before that, she worked as an office receptionist for nearly two decades, until her facility closed. She attended college, but did not receive a diploma or degree. In her August 2013 security clearance application (SCA), she noted that she had been married since the late 1980s and she was not separated from her spouse. More recent evidence suggests she recently filed for divorce. She has one adult child.

At issue in the SOR is an April 2014 Chapter 13 bankruptcy filing concerning about \$296,831 in liabilities. As of the March 2015 SOR issuance date, the bankruptcy was still active. Applicant initially attributed her need for bankruptcy, in part, to her recent period of unemployment. In her response to the 2015 SOR, she wrote that she “filed for Chapter 13 Bankruptcy due to divorce proceedings.” (FORM, Item 1, Response to the SOR)

The only other references to financial issues come from Applicant’s responses to interrogatories and interviews in 2013. FORM, Item 3. During an interview, she admitted to having defaulted on a loan, been subject to a repossession, and having had an account or credit card suspended or charged off for failure to pay. She did not previously disclose these facts because she was unaware she needed to document them. At the time, Applicant was able to meet her obligations, except for her house payment, which was then close to two months late. She had hoped to use her new job to generate funds to pay off her debts. She wrote that she had contacted multiple creditors concerning her finances, but provided no documentary evidence showing such calls or contacts were made. No documented evidence was introduced providing a direct nexus between the debts at issue in the 2014 bankruptcy and those acquired during her period of unemployment, between 2012 and 2013, or her divorce proceedings, presumably somewhere between 2014 and 2015.

Policies

When evaluating an applicant’s suitability for a position of trust, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant’s eligibility for access to classified information.

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. Under 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and has the ultimate burden of persuasion to obtain a favorable decision.”

A person who seeks 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. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard information. Section 7 of Executive Order 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.”

Analysis

Guideline F, Financial Considerations

Under Guideline F, AG ¶ 18 sets forth the applicable trustworthiness concern: 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.

Here, the Government introduced credible evidence showing Applicant had filed for Chapter 13 bankruptcy with liabilities listed for approximately \$296,831. No evidence was offered as to any progress on her petition, and no comments have been offered toward its current status. Such facts raise financial considerations disqualifying conditions:

AG ¶ 19(a) inability or unwillingness to satisfy debts, and

AG ¶ 19(c) a history of not meeting financial obligations.

Five conditions could mitigate these financial concerns:

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 current reliability, trustworthiness, or good judgment;

AG ¶ 20(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;

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;

AG ¶ 20(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(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.

Multiple delinquent debts remain unpaid. Applicant attributes many, if not all, of her debts to a year of unemployment between 2012 and 2013, and to recent divorce proceedings, which were apparently commenced on some undisclosed date between 2014 and 2015. Little is known of these circumstances, but it can be assumed such conditions did lead to some degree of financial hardship. Therefore, AG ¶ 20(b) could apply as to the acquisition of her delinquent debts. However, no documentary evidence was introduced showing she acted responsibly at the time. Moreover, no mitigating conditions apply with regard to any efforts she may have exerted to address these debts since that time. Furthermore, there is no evidence she has received formal financial counseling that has helped her address her debts. Given the scant information introduced by Applicant, none of the available mitigating conditions apply.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a position of trust 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). Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a position of trust 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 incorporated my comments under the guideline at issue in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is a 48-year-old female who has worked for the same defense contractor since September 2013. She assumed this position after experiencing a

period of unemployment lasting from June 2012 until August 2013. Before that, she worked as an office receptionist for nearly 20 years. She completed some college. Quite recently, she filed for divorce. She has a grown child.

In this case, Applicant requested a decision based on the written record. That record is scant. As noted in the analysis above, Applicant first attributed her 2014 bankruptcy petition, in part, to her 2012-2013 period of unemployment. Recently, in 2015, she blamed her need for bankruptcy protection on a divorce. No documentary evidence was specifically offered linking any of her debts to either event. Similarly, no documentary evidence was offered reflecting her efforts to work with creditors, settle her debts, work out a debt repayment plan, seek financial counseling, or otherwise address her debts. No documentary evidence was offered to show the current status of her bankruptcy petition. Her documentary evidence does not give rise to any of the available financial considerations mitigating conditions.

This process does not require an applicant to address all debts at issue. It does, however, expect that an applicant articulate a workable plan to address their delinquent debts, show that their plan has been successfully implemented, and document that their financial outlook has improved. Here, Applicant provided insufficient documentary evidence to establish that progress is being made on her delinquent debts and her bankruptcy petition. Lacking such proof, the financial considerations concerns remain.

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	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interest of national security to permit Applicant to maintain a public trust position. Eligibility for a public trust position is denied.

Arthur E. Marshall, Jr.
Administrative Judge