



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



In the matter of:

ADP¹ Case No. 14-03739

Applicant for Public Trust Position

Appearances

For Government: Julie Mendez, Esquire, Department Counsel

For Applicant: *Pro se*

04/09/2015

Decision

WHITE, David M., Administrative Judge:

Applicant admitted owing 7 delinquent debts totaling \$11,700 and provided no substantiated basis for denying the other 13 SOR-listed delinquencies that total \$45,563 per record credit reports. Applicant did not mitigate resulting trustworthiness concerns. Eligibility for a public trust position is denied.

On September 16, 2013, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP). On September 24, 2014, the Department of Defense (DoD) issued Applicant a Statement of Reasons (SOR) detailing trustworthiness

¹ The SOR and FORM mistakenly identified this as an ISCR security clearance case in the document headings. However, the SOR properly notified Applicant that the DoD CAF reviewed her eligibility to occupy a designated ADP I/II/III position, and was submitting the case to an administrative judge to make such a determination. DOHA Hearing Office administrative personnel and Department Counsel have since confirmed that Applicant is applying for a trustworthiness determination rather than a security clearance. The adjudicative criteria are the same for ISCR and ADP eligibility determinations. Accordingly the heading errors, and Department Counsel's statements in the FORM concerning Applicant's eligibility for a security clearance or access to classified information instead of an ADP I/II/III public trust position, are harmless errors.

concerns under Guideline F, Financial Considerations. (Item 1.) The action was taken under 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); DoD 5200.2-R, *Personnel Security Program*, dated January 1987, as amended (Regulation); and the adjudicative guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

On October 27, 2014, Applicant answered the SOR in writing and elected to have the case decided on the written record in lieu of a hearing. (Item 3.) On December 11, 2014, Department Counsel prepared a File of Relevant Material (FORM), containing seven Items. The Defense Office of Hearings and Appeals (DOHA) mailed Applicant a complete copy of the FORM on December 15, 2014. Applicant received the FORM on January 6, 2015, and was provided 30 days from its receipt to file objections and submit additional information. She submitted no additional material in refutation, extenuation, or mitigation during that time; made no objection to consideration of any contents of the FORM; and did not request additional time to respond. On March 12, 2015, DOHA assigned the case to me.

Findings of Fact

The SOR alleges 20 delinquent debts totaling \$57,263. In her response to the SOR, Applicant admitted the truth of the allegations in SOR ¶¶ 1.a, 1.j, 1.k, 1.o, 1.p, 1.r, and 1.t. She denied the remaining 13 allegations, with some explanations. (Item 3.) Applicant's admissions, including those contained in her response to DoD interrogatories (Item 6), are incorporated in the following findings.

Applicant is 34 years old and divorced. She has a twelve-year-old son, and has cohabited with her son's father since May 2002. She graduated from high school in 1998, and attended college classes from September 2003 to May 2009 without completing a degree. She reported being employed in various part-time jobs from March 2002 to July 2006, and November 2010 to July 2013, with unemployment to be a "Stay at home mom and student" during the intervening period. She obtained her current full-time employment in November 2012. (Item 4; Item 6.)

Applicant's financial delinquencies consist of student loans, medical bills, and other unpaid debts. They arose over the past 12 years, and she offered no evidence that would support a finding of either payments toward or a basis to dispute any of them. (Items 3 through 7.)

Applicant took out numerous student loans from 2003 to 2009 while she was attending college classes. The SOR alleges, and the record evidence confirms, that she owes \$43,752 toward ten delinquent student loan accounts that have been placed for collection. Applicant said that she refuses to pay these debts because she is dissatisfied with the creditor's failure to provide her with sufficient information about the debts. (Items 3 through 7.)

Applicant admitted that she owes the five SOR-listed delinquent medical bills that were placed for collection and total \$4,265. In her answer to the SOR she said, “part of the reason these accounts have continued to remain in collection is due to my current financial state, and an inability to pay rather than unwillingness. My finances are still extremely tight, and are currently tied up in supporting my family and staying on top of current bills and expenses. Attempting to pay them now would cause an undue financial hardship.” (Item 3.)

Applicant also admitted owing \$5,029 in state taxes for which a lien was filed against her in 2010, but gave no indication that she had either the means or intent to pay this debt. She denied owing the remaining four SOR-listed delinquent debts, totaling \$1,811. Three of these date from 2003 and 2004. She claimed not to recognize them, but made no apparent effort to either research or dispute them. The fourth involved overdraft charges from a bank account. (Items 3 through 7.)

The record contains no information concerning Applicant’s current income and regular expenses, from which her ability to avoid incurring additional delinquent debt could be predicted. It also lacks evidence concerning the quality of her professional performance, the level of responsibility her duties entail, or her track record with respect to handling sensitive information and observation of security procedures. No character witnesses described her judgment, trustworthiness, integrity, or reliability. I was unable to evaluate her credibility, demeanor, or character in person since she elected to have her case decided without a hearing.

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 the DoD and DOHA by the Defense Security Service and Office of Personnel Management. DoD 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 AGs. 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 AG ¶ 2(a), describing 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.” 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable [trustworthiness] decision.”

A person who applies for access to sensitive information seeks to enter 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 10865 provides that “Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Guideline F, Financial Considerations

The trustworthiness concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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.

AG ¶ 19 describes two conditions that could raise trustworthiness concerns and may be disqualifying in this case:

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

Applicant accumulated substantial delinquent debt over the past decade or more, much of which she incurred despite the fact that she could not afford to repay it. This evidence raises security concerns under both of these conditions, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate trustworthiness concerns arising from Applicant's financial difficulties:

- (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 debts arose over many years, and more than \$57,000 in delinquencies continue at present without any apparent means of resolution. She did not show that these debts arose from conditions beyond her control or that she acted responsibly under the circumstances, particularly concerning the medical bills. She has received no counseling to assist with debt resolution, nor did she demonstrate an ability to avoid recurrence of financial problems. All of the SOR-alleged debts remain unresolved, on the basis of record evidence, and no documented basis to dispute the legitimacy of any of them was provided. Applicant therefor failed to establish mitigation of trustworthiness concerns under AG ¶¶ 20(a) through 20(e).

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.

According to AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a trustworthiness determination 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 the facts and circumstances surrounding this case. Applicant is a mature individual who is accountable for the decisions and choices that led to her financial difficulties. She has essentially ignored her voluntarily-incurred delinquent debts, and provided no evidence of efforts to resolve them despite her awareness of the resulting trustworthiness concerns. She failed to demonstrate good judgment or permanent behavioral change. Her ongoing delinquent debts establish continuing potential for pressure, coercion, or duress, and make continuation of financial problems likely.

Overall, the record evidence leaves me with serious questions and doubts as to Applicant's present eligibility and suitability to occupy a public trust position. For these reasons, I conclude Applicant did not meet her burden to mitigate the trustworthiness concerns arising from her ongoing financial situation.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a through 1.t:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility to occupy a public trust position. Eligibility for access to sensitive ADP information is denied.

DAVID M. WHITE
Administrative Judge