



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



In the matter of:

Applicant for Public Trust Position

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ADP Case No. 14-03906

Appearances

For Government: Phillip J. Katauskas, Esq., Department Counsel
For Applicant: *Pro se*

10/15/2015

Decision

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings and exhibits, I conclude that Applicant did not mitigate trust concerns regarding her finances. Eligibility for holding a public trust position is denied.

History of the Case

On October 2, 2014, the Department of Defense (DOD) Consolidated Adjudication Facility (CAF) issued a Statement of Reasons (SOR) detailing reasons why DOD adjudicators determined it was not clearly consistent with the could not make the preliminary affirmative determination of eligibility for granting eligibility for a public trust position, and recommended referral to an administrative judge to determine whether eligibility to hold a public trust position should be granted, continued, denied, or revoked. 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); and the Adjudicative Guidelines (AGs) implemented by the DOD on September 1, 2006.¹

Applicant responded to the SOR on December 16, 2014, and elected to have her case decided on the basis of the written record. Applicant received the Government's File of Relevant Material (FORM) on June 30, 2015, and responded to the FORM within the time permitted with a letter from a credit repair firm. (Item 5) The case was assigned to me on August 3, 2015.

Summary of Pleadings

Under Guideline F, Applicant allegedly accumulated 45 unresolved debts totaling \$43,607. These debts include a state tax lien in 2010 for \$1,645 and a judgment entered in 2010 for \$2,043.

In her response to the SOR, Appellant admitted several debts: ones covered by subparagraphs 1.b, 1.n, 1.p, 1.s-1.t, and 1.aa. But she denied the remaining allegations. She claimed she paid the debts covered by subparagraphs 1.h, 1.j, 1.ii., 1.kk, and 1.ll.

As to the remaining allegations, Applicant denied any awareness of any outstanding accounts she is responsible for. She claimed she will contact the businesses to explore repayment on any accounts that belong to her.

Findings of Fact

Applicant is a 48-year-old medical staff quality assistant who seeks a public trust position. The allegations covered in the SOR and admitted by Applicant are adopted as relevant and material findings. Additional findings follow.

Background

Applicant married in March 1993 and divorced her spouse in January 1995. (Item 3) She has no children from her marriage, but one child from another relationship. (Item 3) Applicant attended college classes between June 2006 and September 2011 and earned a bachelor's degree in September 2011. (Item 3)

Applicant claimed no military service. Over the past 10 years, she experienced periods of unemployment as follows: between January 2009 and November 2009, between April 2008 and August 2008, and between November 2007 and March 2008. (Item 3)

¹ A memorandum from the Deputy Under Secretary of Defense for Counterintelligence and Security, titled "Adjudication of Trustworthiness Cases," covering the handling of trustworthiness cases under the Directive was issued on November 19, 2004. This memorandum directed DOHA to continue to utilize DoD Directive 5220.6 in ADP contractor cases for trustworthiness determinations (to include those involving ADP I, II, and III positions). (HE 1) Parenthetically, the Directive was designed to implement E.O. 10865.

Finances

Between 2012 and October 2015, Applicant accumulated 45 delinquent debts totaling \$43,607 that have not been resolved. One of the debts is a state tax lien filed in 2010 for \$1,645. Another is an entered judgment in 2010 for \$2,043. Neither of these debts has been addressed. The remaining 43 debts include delinquent medical accounts, student loans and assorted consumer debts. While Applicant claims to have paid several of the listed debts (i.e., creditors 1.h, 1.j, 1.ii, and 1.kk-1.ll), she provided no documentation to corroborate her claims. Applicant also claimed to be making payments to creditors 1.b, 1.p, 1.s, and 1.t, but provided no supporting proof of her payments or her income sources, past and present.

Applicant claims no awareness of any of the remaining listed debts in the SOR and assured she would contact these businesses for verification and arrange payments to those found to be entitled to payment. To assist her in identifying listed creditors with valid debts, she engaged a credit repair firm. (Item 5) To date, she has furnished no updates of her verification efforts. Nor did she provide any evidence of her income sources and financial counseling.

Endorsements

Applicant provided no endorsements or performance evaluations on her behalf. Nor did she provide any proof of community and civic contributions.

Policies

The AGs list guidelines to be used by administrative judges in the decision-making process covering DOHA cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information. These guidelines include "[c]onditions that could raise a security concern [public trust position] and may be disqualifying" (disqualifying conditions), if any, and many of the "[c]onditions that could mitigate [public trust] security concerns."

The AGs must be considered before deciding whether or not eligibility to hold a public trust position should be granted, continued, or denied. The guidelines do not require administrative judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision. Each of the guidelines is to be evaluated in the context of the whole person in accordance with AG ¶ 2(c).

In addition to the relevant AGs, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in AG ¶ 2(a) of the AGs, which are intended to assist the judges in reaching a fair and impartial commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable public trust risk.

When evaluating an applicant's conduct, the relevant guidelines are to be considered together with the following AG ¶ 2(a) factors: (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.

Viewing the issues raised and evidence as a whole, the following individual guideline is pertinent in this case:

Financial Considerations

The 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. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts. AG ¶ 18.

Burden of Proof

By virtue of the principles and policies framed by the AGs, a decision to grant or continue an applicant's eligibility to hold a public trust position may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a commonsense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a public trust position depends, in large part, on the relevance and materiality of that evidence. See *United States, v. Gaudin*, 515 U.S. 506, 509-511 (1995). As with all adversarial proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) it must prove by substantial evidence any controverted facts alleged in the SOR, and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain public trust position eligibility. The required materiality showing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused privacy information before it can deny or revoke eligibility to hold a public trust position. Rather, the judge must consider and weigh the

cognizable risks that an applicant may deliberately or inadvertently fail to protect privacy information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the evidentiary burden shifts to the applicant for the purpose of establishing his or her trustworthiness through evidence of refutation, extenuation, or mitigation. Based on the requirement of Executive Order 10865 that all trustworthiness determinations be clearly consistent with the national interest, the applicant has the ultimate burden of demonstrating his or her trust eligibility. “[S]ecurity-clearance determinations [trust determinations] should err, if they must, on the side of denials.” See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

Analysis

Trustworthiness concerns are raised over Applicant’s accumulation of delinquent debts (inclusive of a state tax lien and judgment) over a period of several years that she failed to address. Applicant’s recurrent problems with managing her finances over a period of years while fully employed reflect lapses of judgment in administering her financial responsibilities.

Applicant’s accumulation of delinquent debts warrant the application of two of the disqualifying conditions (DC) of the Guidelines. DC ¶ 19(a), “inability or unwillingness to satisfy debts;” and DC ¶19(c), “a history of not meeting financial obligation,” apply to Applicant’s situation.

Applicant’s pleading admissions with respect to her accumulated debts covered in the SOR negate the need for any independent proof (see *McCormick on Evidence*, § 262 (6th ed. 2006)). Each of Applicant’s listed delinquent debts (including a state lien and entered judgment) are fully documented in her credit reports. Some judgment problems persist, too, over Applicant’s insufficiently explained delinquent debts once she became aware of the status of her listed accounts and her ensuing failure to demonstrate she acted responsibly in addressing her listed debts. See ISCR Case 03-01059 at 3 (App. Bd. Sep. 24, 2004).

Positions designated as ADP I and ADP II are classified as “sensitive positions.” See DOD Regulation 5200.2-R, *Personnel Security Program*, ¶ ¶ C3, 1.2, 1.1.7, and C3. 1.2..3 (Jan. 1987, as amended) (the Regulation). Holding a public trust position involves the exercise of important fiducial responsibilities, among which is the expectancy of consistent trust and candor.

Financial stability in a person cleared to protect privacy information is required precisely to inspire trust and confidence in the holder of the trust position. While the principal concern of a trust position holder’s demonstrated financial difficulties is vulnerability to coercion and influence, judgment and trust concerns are explicit in cases involving debt delinquencies.

Although ADP I and ADP II positions are not expressly covered by Executive Order 10865 or the Directive, which apply to contractor personnel, historically, the same principles covering these positions have been applied in Regulation 5220.2 governing military and civilian personnel. The definitions used in the Regulation to define ADP I and ADP II positions have equal applicability to contractors covered by the Directive.

Although some extenuating circumstances can be inferred from Applicant's listed periods of unemployment (much of it while she was a full-time student), too little information is documented to credit her with more than partial extenuating circumstances. Based on the developed record, it is unclear how her status as a full-time student, her divorce, or her periods of unemployment between 2007 and 2009 played any role in her financial decision-making. Considering the available documented materials in the FORM, demonstrated extenuating circumstances are limited. Partially available to Applicant is MC ¶ 20(b), "the conditions that resulted in the behavior 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."

Applicant's payment efforts also lack corroborative proof. Her claims of resolving by payment her admitted debts to creditors 1.h, 1.j, 1.ii, and 1.kk-1.ll are not documented. Her claims of starting payment plans with creditors 1.b, 1.p, 1.s, and 1.t also lack corroborative documentary proof. The only debt resolution proof she provided is a letter from a credit repair service she engaged to repair her credit. This service provided no details as to which listed debts should be paid and which can be realistically disputed and removed from her credit reports.

Removal of any of Applicant's listed debts from her credit reports without explanations (e.g., because they are not her debts or because they are aged) cannot alone represent good-faith efforts to resolve an applicant's debts. Little weight can be extended to Applicant's credit repair intentions without more details of the repair service's plans. And without documentation of financial counseling and more specific steps Applicant is taking to address her state lien, judgment, and admitted debts, little mitigation credit is available to Applicant. Based on the documented materials in the FORM, none of the remaining mitigation conditions apply to Applicant's situation.

Whole-person assessment does not enable Applicant to surmount the judgment questions raised by her failure to resolve her delinquent debts. Resolution of her listed delinquent accounts is a critical prerequisite to her regaining control of her finances. Applicant failed to provide more specific explanatory material for consideration. Endorsements and performance evaluations might have been helpful, too, in making a whole-person assessment of her overall clearance eligibility, but were not provided.

Overall, public trust eligibility assessment of Applicant based on the limited amount of information available for consideration in this record does not enable her to establish judgment and trust levels sufficient to overcome trust concerns arising out of

her lapses in judgment associated with her accumulation of a state tax lien, judgment, and other delinquent accounts. Each of these debts remains outstanding with no developed plan for resolving the debts.

Taking into account all of the documented facts and circumstances surrounding Applicant's lack of more specific explanations for her debt accruals and corrective steps, it is still too soon to make safe predictive judgments about her ability to resolve her outstanding debts. Applicant fails to mitigate trust concerns related to her outstanding debt delinquencies and associated judgment lapses. More time is needed to facilitate Applicant's making the necessary progress with her debts to enable conclusions that her finances are sufficiently stabilized to grant her eligibility to hold a public trust position. Unfavorable conclusions warrant with respect to the allegations covered by subparagraphs 1.a through 1.m.

Formal Findings

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact, conclusions, conditions, and the factors listed above, I make the following formal findings:

GUIDELINE F (FINANCIAL CONSIDERATIONS): AGAINST APPLICANT

Subparas. 1.a through 1.m:

Against Applicant

Conclusions

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's eligibility to hold a public trust position. Eligibility to hold a public trust position is denied.

Roger C. Wesley
Administrative Judge

