



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



In the matter of:)	
)	
XxXXXXXX, Xxxx Xxxxx)	ADP Case No. 14-05674
)	
Applicant for Public Trust Position)	

Appearances

For Government: Alison O'Connell, Esquire, Department Counsel
For Applicant: *Pro se*

07/28/2015

Decision

METZ, John Grattan, Jr., Administrative Judge:

Based on the record in this case,¹ I deny Applicant's eligibility for a public trust position.

On 5 December 2014, the Department of Defense (DoD) sent Applicant a Statement of Reasons (SOR) raising trustworthiness concerns under Guideline F, Financial Considerations.² Applicant timely answered the SOR, requesting a decision without hearing by the Defense Office of Hearings and Appeals (DOHA). The record in this case closed 17 April 2015, the day Applicant's response to the FORM was due.

¹Consisting of the File of Relevant Material (FORM), Items 1-5.

²DoD conducts trustworthiness determinations for contractor personnel employed in Information Systems Positions defined in DoD Regulation 5200.2-R, *Personnel Security Program* (Regulation), dated January 1987 pursuant to 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 for SORs issued after September 1, 2006.

Applicant provided no additional documents. DOHA assigned the case to me 17 June 2015.

Findings of Fact

Applicant admitted the SOR financial allegations. She is a 32-year-old administrative aide sponsored for a public trust position by a defense contractor since July 2014.³ Her August 2014 clearance application states that she has been unemployed since June 2014, and Applicant has not indicated whether she has had any other employment since then. She was also unemployed from May 2013 to March 2014 and May 2012 to January 2013. She was employed full time from February 2006 to May 2012. She lost her job in May 2012 when the company closed. Her employments since January 2013 have been full time, but temporary, or part time. She has not previously had a trustworthiness determination.

The SOR alleges, Government exhibits (Items 4-5) substantiate, and Applicant admits six delinquent debts totaling over \$68,000. The debts comprise five consumer credit accounts totaling about \$1,200 and delinquent education loans totaling nearly \$67,000.

Applicant attributes her debts to her intermittent employment after her company closed in May 2012. However, she married in August 2012 and had a child in August 2013, so the record is unclear whether the periods of unemployment were voluntary or involuntary.

Applicant claimed, without corroboration, to be making monthly payments on SOR debts 1.a-1.d. and claimed to have paid SOR debt 1.e (Item 3). She intends to make payment arrangements on her education loan once she obtains employment. Her clearance application claimed she was paying a number of unidentified debts through a debt consolidation program and also claimed she was making sporadic payments on her education loans (Item 4). The education loans related to an undergraduate degree she obtained in May 2006.

Applicant provided no budget or personal financial statement indicating her family's financial situation. She has not documented any credit or financial counseling. She provided no work or character references, or evidence of civic or community involvement.

Policies

The adjudicative guidelines (AG) list factors to evaluate a person's suitability for access to sensitive information. Administrative judges must assess disqualifying and mitigating conditions under each issue fairly raised by the facts and situation presented.

³Applicant's clearance application (Item 4) is a pre-employment application, meaning that her employment is conditioned on her obtaining her clearance.

Each decision must also show a fair, impartial, and commonsense consideration of the factors listed in AG ¶ 2(a). The applicability of a disqualifying or mitigating condition is not, by itself, conclusive. However, specific guidelines should be followed when a case can be measured against them, as they are policy guidance governing the grant or denial of a clearance. Considering the SOR allegations and the evidence as a whole, the relevant adjudicative guideline is Guideline F (Financial Considerations).

Trustworthiness decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's public trust position. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to applicant to refute, extenuate, or mitigate the Government's case. Because no one has a right to a public trust position, the applicant bears a heavy burden of persuasion.

Persons with access to sensitive information enter into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring each applicant possesses the required judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels deciding any reasonable doubt about an Applicant's suitability for access in favor of the Government.⁴

Analysis

The Government established a case for disqualification under Guideline F, and Applicant did not mitigate the security concerns. While some of Applicant's financial difficulties may be reasonably attributable to her periods of unemployment since May 2012, she has not provided a chronology that establishes that claim, and she submitted insufficient information to determine she acted responsibly under the circumstances. She documented little efforts to resolve her debts, and did not provide a proposed plan to address them.⁵ Moreover, the employment that might allow her to address her debts more fully is prospective only. Her December 2014 Answer contains no information of alternative employment she may have held since her clearance application, and she provided no information in response to the FORM to show any possible employments between December 2014 and April 2015.

Applicant potentially meets only one of the mitigating factors for financial considerations. Her financial difficulties are both recent and multiple.⁶ While her periods of unemployment may be circumstances beyond her control, she has documented very few efforts dealing with the debts alleged in the SOR, or documenting any efforts to

⁴See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁵¶ 19 (a) inability or unwillingness to satisfy debts; (c) a history of not meeting financial obligations.

⁶¶ 20 (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur.

resolve them.⁷ In addition, there is no evidence that she has sought credit counseling or otherwise brought the problem under control.⁸ There is little documentary evidence of any good-faith effort to satisfy the debts alleged in the SOR.⁹ Finally, given her unwillingness to seek or use financial counseling, there is nothing in the record to suggest that Applicant will put her financial problems behind her. Moreover, there is insufficient evidence to support a favorable whole person analysis. I conclude Guideline F against Applicant.

Formal Findings

Paragraph 1. Guideline F:

AGAINST APPLICANT

Subparagraph a-f:

Against Applicant

Conclusion

Under the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue eligibility for a public trust position for Applicant. Eligibility for a public trust position denied.

JOHN GRATTAN METZ, JR
Administrative Judge

⁷¶ 20 (b) the conditions that resulted in the financial problem were largely beyond the person's control . . . and the individual acted responsibly under the circumstances.

⁸¶ 20 (c) the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control.

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