



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



In the matter of:)
)
) ADP Case No. 15-01606
)
Applicant for Public Trust Position)

Appearances

For Government: Braden M. Murphy, Esq., Department Counsel
For Applicant: *Pro se*

06/27/2016

Decision

CREAN, THOMAS M., Administrative Judge:

Based on a review of the pleadings, eligibility for a public trust position is denied. Applicant did not present sufficient information to mitigate financial trustworthiness concerns.

On October 15, 2012, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) to obtain eligibility for a public trust position with a defense contractor. Applicant was interviewed by a security investigator from the Office of Personnel Management (OPM) on January 5, 2013. (Item 6) After reviewing the results of the OPM investigation, the Department of Defense (DOD) could not make the preliminary affirmative findings required to grant Applicant access to sensitive information. On September 11, 2015, DOD issued Applicant a Statement of Reasons (SOR) for financial trustworthiness concerns under Guideline F. (Item 1) The action was taken under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended; Department of Defense Regulation 5200.2-R, *Personnel Security Program*, dated Jan. 1987, as amended (Regulation); and the adjudicative guidelines (AG) effective in the DOD on September 1, 2006.

Applicant answered the SOR in writing on October 17, 2015. She did not directly admit the 44 financial allegations. Her explanations in her answer concerning the actions she has taken on her debts is a clear indication and admission that the debts are delinquent and are her debts. Her answer is considered an admission of her debts. Applicant requested a decision on the record. Department Counsel submitted the Government's written case on December 15, 2015. Applicant received a complete file of relevant material (FORM) on December 17, 2015, and was provided the opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant did not submit any information in response to the FORM. I was assigned the case on May 5, 2016.

Procedural Issues

Applicant was advised in the FORM that the summary of the Personal Subject Interview with an OPM investigator (Item 3) was not authenticated and could not be considered over her objection. She was further advised that she could make any corrections, additions, or deletions to the summary to make it clear and accurate, and could object to the admission of the summary as not authenticated by a Government witness. She was additionally advised that if no objection was raised to the summary, the Administrative Judge could determine that she waived any objection to the admissibility of the Personnel Subject Interview summary. Applicant, in her response to the FORM, did not raise any objection to consideration of the Personal Subject Interview. Since there is no objection by Applicant, I will consider information in the Personal Subject Interview in my decision.

Findings of Fact

After a thorough review of the pleadings, I make the following findings of fact.

Applicant is 34-years-old. She has an associate's degree from a technical school awarded in 2012. She also attended college and another technical school but did not receive a degree from either school. She has been employed as a health data systems computer operator for a defense contractor since 2012. She has never married, but she has a teenage child who lives with her. Applicant held various retail and office jobs over a number of years. She also had periods of unemployment from January 2009 until September 2009; from March 2010 until July 2010; and from April 2012 until September 2012. (Item 4, e-QIP, dated October 15, 2012; Item 6, Personal Subject Interview, dated January 3, 2013)

The SOR alleges, and credit reports (Item 5, Credit Report, dated November 20, 2012; Item 7, Credit Report, dated February 9, 2012; Item 8, Credit Report, dated August 10, 2015) confirm that Applicant has 44 delinquent debts from medical bills, student loans, past due rent, and a vehicle repossession. The total amount of delinquent debt is approximately \$52,240.

Applicant listed some delinquent debts on her e-QIP. She attributes most of her overall debt to her daughter's serious medical condition. Most of the medical debts were

incurred for her daughter's medical care. Some of the medical debts were incurred for Applicant's medical care. Applicant did not present any information to establish how the daughter's illness affected her ability to resolve the debts.

Applicant states that the debt at SOR 1.a is for the rent of an apartment. Applicant co-signed the lease with her brother. Her brother lost his job and was unable to make the rent payments and had to abandon the apartment and the lease. He provided Applicant with a letter claiming responsibility for the amount due on the lease. Applicant is responsible for the debt as the co-signer of the lease. Neither Applicant nor her brother presented any evidence of payments on the debt or any attempts to resolve the rental dispute with the landlord.

In her response to the SOR, Applicant made margin notes indicating that some debts had been paid or were being paid, and that other debts were being disputed. She presented no documents to verify the claims of payment or information about any dispute of a debt. Applicant declared that her student loans were not past due but were in deferment. She presented no documentation to verify the status of her student loans. In other words, Applicant presented no documentation to verify the status of her delinquent debts listed in the SOR.

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 common sense 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.

Analysis

Financial Considerations

There is a trustworthiness concern for a failure or inability to live within one’s means, satisfy debts, and meet financial obligations indicating 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 ¶ 18). Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligation to protect 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 her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a public trust position. An applicant is not required to be debt free, but is required to manage her finances in such a way as to meet her financial obligations.

Adverse information in credit reports can normally meet the substantial evidence standard to establish financial delinquency. Applicant has significant delinquent debts that she has not resolved. Applicant’s delinquent medical bills, student loans, rent payments, and charges from repossession are established by credit reports and

Applicant's admissions. These debts pose a trustworthiness concern raising Financial Consideration Disqualifying Conditions AG ¶ 19(a) (inability or unwillingness to satisfy debts), and AG ¶ 19(c) (a history of not meeting financial obligations).

I considered the following Financial Considerations Mitigating Conditions under 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;
- (b) the conditions that resulted in the financial problems were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce, or separations) 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; and
- (d) the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts.

These mitigating conditions apply only in part. Applicant incurred delinquent debt because of her daughter's medical expenses, and her own periods of low-paying jobs or unemployment. Some of these conditions may have been beyond Applicant's control. However, she failed to establish the second requirement of the mitigating conditions. She has not established that she acted reasonably and responsibly under the circumstances. She presented no information on payment of any debts, attempts to contact creditors, or any plans to resolve the debts. AG¶¶ 20(a) and 20(b) do not apply.

Applicant presented no information that she received financial counseling. There is no indication that her financial problems are being resolved and are under control. AG ¶ 20(c) does not apply.

Applicant did not establish a good-faith effort to pay her debts. For a good-faith effort, there must be an ability to repay the debts, the desire to repay, and evidence of a good-faith effort to repay. Good faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty and obligation. A systematic method of handling debts is needed. Applicant must establish a meaningful track record of debt payment. A meaningful track record of debt payment can be established by evidence of actual debt payments or reduction of debt through payment of debts. A promise to pay delinquent debts is not a substitute for a track record of paying debts in a timely manner and acting in a financially responsible manner. Applicant must establish that she has a

reasonable plan to resolve financial problems and has taken significant action to implement that plan.

Applicant did not present a plan to resolve her financial issues. She did not show a meaningful track record of debt payments, Applicant's failure to pay her debts shows that she has not acted reasonably and honestly with regard to her financial duties and obligations. She is not managing her personal financial obligations responsibly. Based on all of the financial information, I conclude that Applicant has not mitigated trustworthiness concerns based on financial considerations.

Whole-Person Analysis

Under the whole-person concept, the administrative judge must evaluate an applicant's trustworthiness eligibility by considering the totality of the applicant's conduct and all relevant circumstances. An 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 a trustworthiness clearance 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. Applicant is required to show that she has a plan to resolve her financial problems and that she has taken significant action to implement that plan.

Applicant has not taken any action to resolve even the smallest of her debts. Applicant has not presented sufficient information to establish that she acted reasonably and responsibly within her limited finances, and that she will continue to responsibly manage her financial obligations. Overall, the record evidence leaves me with questions and doubts as to Applicant's judgment, reliability, trustworthiness, and eligibility and suitability for a trustworthiness clearance. For all these reasons, I conclude that Applicant has not mitigated trustworthiness concerns arising under the financial considerations guideline. Eligibility for a trustworthiness position is denied.

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
Subparagraphs 1.a – 1.rr	Against Applicant

Conclusion

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

THOMAS M. CREAN
Administrative Judge