



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



In the matter of:)
)
) ADP Case No. 15-02284
)
Applicant for Public Trust Position)

Appearances

For Government: Tara R. Karoian, 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 November 2, 2012, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) to obtain eligibility for a public trust position required for potential employment with a defense contractor. (Item 3) Applicant was interviewed by a security investigator from the Office of Personnel Management (OPM) on January 12, 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 October 27, 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 November 23, 2015. She admitted the two financial allegations with a detailed explanation. 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 21, 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 6) 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 did not respond to the FORM, so she 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.

The SOR was erroneously labeled as a Request for a Security Clearance. Applicant is seeking a Public Trust Position. Department Counsel moved to amend the SOR to correctly reflect that Applicant is seeking eligibility for a Public Trust Position. The motion is granted and the SOR is amended as requested.

Findings of Fact

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

Applicant is 48-years-old. She has an associate's degree awarded in 2003, and a bachelor's degree awarded in 2012. She is presently employed as a hotel clerk but is seeking a trustworthiness position to be employed as a health care administrator for a defense contractor. Applicant has been married since July 1990 and has two college age children. (Item 3, e-QIP, dated November 2, 2012; Item 6, Personal Subject Interview, dated January 12, 2013)

The SOR alleges, and credit reports (Item 4, Credit Report, dated February 23, 2015; Item 5, Credit Report, dated December 12, 2012) confirm that Applicant has two mortgage debts of \$57,668 with a balance of \$143,500 (SOR 1.a), and a charged off mortgage debt of \$34,880. (SOR 1.b) These two debts are the only delinquent debts listed on Applicant's credit reports and are the result of a foreclosure on the same house.

Applicant and her husband purchased a house using a first and second mortgage in 2006. The purchase was made as the housing financial crises started. The

amount of the mortgages was approximately \$190,000. The family lived in the house until approximately 2008 when they moved to be closer to their daughters' high school. The housing market deteriorated and the value of the house fell to only \$130,000. They were unable to sell the house but rented it for four years. They continued to work with the mortgage holders to attempt to sell the house in the bad housing market. The primary mortgage holder agreed to a short sale, but the second mortgage holder would not agree to a short sale. The mortgage could not be refinanced and the family could not qualify for Government mortgage relief programs because the house was no longer their primary residence. In 2012, Applicant's husband's job was moved to another state. Applicant and her husband tried to make payment arrangements with the two mortgage companies. The holder of the primary mortgage was willing to arrange a payment plan but the holder of the smaller second mortgage was unwilling to cooperate. Applicant and her husband made a decision in 2012 to let the house go to foreclosure.

Applicant noted that her families' financial health is solid. Her husband makes approximately \$125,000 per year, and she makes approximately \$30,000 per year. The couple also has a part-time business that grosses approximately \$20,000 per year. They live within their means and pay all of their bills on time. Their credit scores are in the high 700s and low 800s. The only delinquency in their credit history is the foreclosure on their original house. They made a difficult and conscious decision to walk away from the house and the mortgage. (Item 2, Response to SOR, dated November 23, 2015)

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 mortgage debt on the families' original house that has not been satisfied. Applicant and her husband decided that they would not attempt to satisfy the two mortgages since the value of the house was less than the amount of the mortgage. One of the mortgage companies would not cooperate in arranging more favorable payment terms. Since at least 2012, Applicant has not indicated any effort to contact the mortgage holders to determine the amount and status of the mortgage debts. They have essentially walked away from the debt. Applicant's mortgage debt is established by credit reports and Applicant's admissions. The mortgage 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). The facts raise unwillingness and not inability to satisfy the mortgage debts.

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 do not apply. Applicant incurred delinquent mortgage debt when the mortgage market collapses, and the families' house was worth less than the amount of the mortgage. The delinquent mortgages are a continuous course of debt and thus current. Applicant attempted to work with the creditors to sell the house but was not successful. The conditions that caused the mortgage debts were unusual, beyond her control, and unlikely to recur. When Applicant and her husband moved out of the state for her husband's new job, they were still responsible for the mortgages. She and her husband made a conscious decision to abandon the house and mortgage and let it go to foreclosure by the bank. Since then, Applicant has not made any further inquiries on the house or mortgages. She does not know and cannot provide the current status of the debts. She does not know if the house had been foreclosed and the status

of the mortgage debts. Since she does not know the status of the house or debts, she cannot present any plans to pay the debt.

Applicant has 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. There is no indication that her financial problems associated with the mortgages are being resolved and are under control.

Applicant has not established a good-faith effort to pay her mortgage debts. 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. 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. Since she is not managing her finances reasonably and responsibly, she may not manage and safeguard sensitive information 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 her mortgage debts. She has not presented sufficient information to establish that she acted reasonably and responsibly with regard to the mortgage. Applicant may not have a mortgage debt. Since she has not made any inquires on the debt, the status remains unknown. Her failure to inquire about the mortgage is unreasonable and irresponsible. 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.b:	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