



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



In the matter of:)	
)	
[Name Redacted])	
)	
)	ADP Case No. 15-03702
)	
Applicant for Position of Trust)	

Appearances

For Government: Gina L. Marine, Esq., Department Counsel
For Applicant: *Pro se*

06/23/2016

Decision

HOGAN, Erin C., Administrative Judge:

Statement of the Case

On November 23, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing trustworthiness concerns under Guideline F, financial considerations. The action was taken under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); DOD Regulation 5200.2-R, *Personnel Security Program* (January 1987), as amended (Regulation); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.

Applicant answered the SOR on December 11, 2015, and requested that her case be decided on the administrative record. On January 27, 2016, Department Counsel prepared a File of Relevant Material (FORM). Applicant received the FORM on February 12, 2016. On March 1, 2016, Applicant responded to the FORM and submitted additional matters. Her response to the FORM is marked and admitted as Item 9. In a memorandum dated March 8, 2016, Department Counsel indicated no objection to Applicant's Response to the FORM. (Item 10). The file was forwarded to the DOHA

Hearing Office on March 28, 2016. The case was assigned to me on March 29, 2016. Applicant mitigated the financial considerations trustworthiness concerns. Eligibility for access to sensitive information is granted.

Ruling on Evidence

Item 4 of the FORM is a portion of the Report of Investigation (ROI) from the background investigation of Applicant. It is a summary of Applicant's Personal Subject Interview completed by the investigator conducting her background investigation on September 18, 2012. It is unsworn and unauthenticated. DODD 5220.6, Enclosure 3, ¶ E3.1.20 states, "An ROI may be received with an authenticating witness provided it is otherwise admissible under the Federal Rules of Evidence." (see ISCR Case No. 11-13999 (App. Bd., February 3, 2014)).

In her response to the FORM, Applicant objects to Item 4 because it is unauthenticated. I sustain her objection. Item 4 is not admitted and will not be considered in this decision.

Findings of Fact

Applicant is a 29-year-old employee of a defense contractor. She has worked for her current employer since August 2011. She is applying for eligibility to hold a public trust position. She is single and has an 8-year-old daughter. She has some college credit. It is not clear whether she has a degree. (Item 3, Item 9)

The SOR alleges 17 delinquent accounts. Eight of the accounts are student loan accounts, a total approximate balance of \$78,345. (SOR ¶¶ 1.a -1.c, 1.f – 1.j: Item 5 at 1; Item 6 at 2-3; Item 7 at 3). Five of the accounts are medical accounts, an approximate total of \$745. (SOR ¶¶ 1.d, 1.e, 1.o – 1.q) Four of the debts are consumer accounts, an approximate total of \$2,550. (SOR ¶¶ 1.k – 1.n: Item 6 at 7, 12; Item 7 at 5, 6, 9)

In her response to the SOR, Applicant admits to all of the debts. Applicant states that her bad debt has no effect on her trustworthiness or her ability to abide by rules and regulations. She has worked for her current employer for over four years. When she was in college, she took out several student loans to pay for her tuition and room and board. She was a single parent with no help working a part-time job. She had hopes of graduating from college and landing a good paying job so that she could pay back her loans and other bills. She is living paycheck to paycheck and is aware of what she owes. She will do her best to pay back what she owes. (Item 2)

Several of Applicant's delinquent debts are medical bills incurred when she did not have medical insurance. The debts alleged in SOR ¶¶ 1.k, 1.l, and 1.m were personal loans that Applicant took out to help a friend. The friend was supposed to repay the debts, but did not pay them, leaving Applicant responsible for the debts. She believes the debt alleged in SOR ¶ 1.n is an old student checking account or credit card. She intends to obtain a copy of her credit report so she can contact the creditors

to make payment arrangements. She asks that her situation be considered and that she be granted a position of trustworthiness. (Item 2)

In response to the FORM, Applicant provided a copy of her monthly budget. Her net monthly income is \$1,600. Her monthly expenses consist of rent \$675, car payment \$325.66, afterschool childcare \$180, car insurance \$115, cell phone \$55, utilities \$120, and gas \$100. She has \$54 left over each month after expenses. Applicant says that these are items she must pay each month to survive. She admits that she has student loan debt. The loans with the Department of Education are deferred. Applicant will pay those as agreed. She has selected the income-driven repayment option. Applicant states that the other loans have been removed from her credit report. She believes that they should not be considered as evidence against her. (Item 9)

The father of her child has a court-ordered child support obligation of \$59 weekly. Applicant says his child support payments are inconsistent so she does not count on the child support payments. She provided a copy of the child support payment history. In the FORM, Department Counsel commented that Applicant took a cruise in May 2011. Applicant states it was a gift. She does not take lavish trips. She has not taken a trip since that time. (Item 9)

Applicant pays her daily living expenses, including car payments, rent, and electric on time. She was not able to make payments towards her private student loans. Private lenders do not offer repayment options and lower payments like the Department of Education. The collection agencies demanded a lump sum payment which she is unable to afford. Applicant states that she is very trustworthy and uses good judgment. She asks that she be granted a position of trustworthiness because she needs her job. (Item 9)

The credit report dated March 24, 2015, indicates Applicant formally disputed the medical accounts alleged in SOR ¶¶ 1.o and 1.q. (Item 5 at 2) The March 2015 and January 2016 credit reports also indicate the debts alleged in SOR ¶¶ 1.k and 1.m are paid. (Item 5 at 3, 4) None of the medical debts alleged in SOR ¶¶ 1.d, 1.e, 1.o, 1.p, and 1.q appear on her most recent credit report. The debt alleged in SOR ¶ 1.l is also not listed on her most recent credit report. (see Item 8) I find for Applicant with regards to these paragraphs.

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 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."

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 to obtain 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 safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of sensitive information.

Analysis

Guideline F, Financial Considerations

The trustworthiness concern for financial considerations is set out in AG ¶ 18:

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.

The guideline notes several conditions that could raise trustworthiness concerns under AG ¶ 19. Two are potentially applicable in this case:

AG ¶ 19(a): inability or unwillingness to satisfy debts; and

AG ¶ 19(c): a history of not meeting financial obligations.

Applicant defaulted on her private student loan accounts, four delinquent medical accounts and four delinquent consumer accounts. In Applicant's situation, she was unable to pay her financial obligations. The evidence is sufficient to raise the above disqualifying conditions. AG ¶¶ 19(a) and 19(c) apply to Applicant's case.

Conditions that could mitigate financial considerations trustworthiness concerns are provided under AG ¶ 20. The following are potentially applicable:

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;

AG ¶ 20(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; and

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

AG ¶ 20(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 has a history of financial problems. She admits that she is unable to pay her student loans. The problem is ongoing. For this reason, AG ¶ 20(a) does not apply.

AG ¶ 20(b) applies. Circumstances beyond Applicant's control adversely affected her ability to pay her debts. She is a single mother, who receives sporadic child support from the father of her child. While Applicant's decision to take out student loans was within her control, the poor economy was a factor beyond her control which prevents her from getting a better paying job. The debts alleged in SOR ¶¶ 1.k – 1.m were debts Applicant incurred for the benefit of a friend. Her friend did not pay the debt, so Applicant was responsible for the debt because it was in her name. All three of these debts have since been paid as indicated on the credit reports dated March 2015 and

January 2016 (Items 5 and 8). Under the circumstances, Applicant has acted responsibly. She lives within her means and pays her monthly obligations.

AG ¶ 20(d) applies with regard to the debts alleged in SOR ¶¶ 1.k and 1.m. The March 2015 and January 2016 credit reports indicate the debts alleged in SOR ¶¶ 1.k and 1.m are paid. The medical accounts are also no longer on Applicant's credit reports. Applicant made a good-faith effort to resolve that debts that was she was able to resolve within her ability.

AG ¶ 20(e) applies. Applicant formally disputed the medical debts alleged in SOR ¶¶ 1.o and 1.q. These debts are no longer on listed on her recent credit reports.

A trustworthiness adjudication is not a debt collection procedure. It is a procedure designed to evaluate an applicant's judgment, reliability, and trustworthiness. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). An applicant is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. An applicant need only establish a plan to resolve the financial problems and take significant actions to implement the plan. There is no requirement that an applicant make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

I find that Applicant made a good-faith effort to pay her debts. She lives within her means. I am confident that when she is able to repay her student loans she will do so.

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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a public trust position 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. I have incorporated my comments

under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

I considered Applicant's stable work history, her candor in admitting her financial problems, and the steps she has taken to remedy those problems. As indicated above, an applicant is not required to establish that she has paid every debt listed in the SOR. Applicant has considerable student loan debt, aside from these debts, which she is unable to pay at this time, Applicant lives within her means while caring for her child and not receiving adequate child support.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a public trust position. For all these reasons, I conclude Applicant mitigated the financial considerations concerns.

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:	For Applicant
Subparagraphs 1.a-1.q:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant Applicant eligibility for a public trust position. Eligibility for access to sensitive information is granted.

Erin C. Hogan
Administrative Judge