



**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. 07-09873

Appearances

For Government: Ray T. Blank, Jr. Esquire, Department Counsel

For Applicant: *Pro Se*

October 10, 2008

Decision

CREAN, THOMAS M., Administrative Judge:

Applicant submitted her Questionnaires for Trust Position (SF 85P), on October 3, 2005. On March 6, 2008, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns for financial considerations (Item 1). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program*, dated Jan. 1987, as amended (Regulation), and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant acknowledged receipt of the SOR on March 11, 2008 (Item 3). She answered the SOR in writing on June 16, 2008. She admitted the 21 allegations under Guideline F. She noted that seven of the medical debts may have been covered by medical insurance. She elected to have the matter decided on the written record in lieu of a hearing. (Item 2) Department counsel submitted the Government's written case on August 12, 2008. Applicant received a complete file of relevant material (FORM) on August 25, 2008, and was provided the opportunity to file objections, and submit

material to refute, extenuate, or mitigate the disqualifying conditions. Applicant dated the receipt for the FORM as August 25, 2007. Since the FORM was not mailed until August 13, 2008, the date is a mistake and it was received by Applicant on August 25, 2008. Applicant provided additional information in response to the FORM on September 25, 2008. The case was assigned to me on October 7, 2008. Based upon a review of the case file and pleadings, eligibility for access to sensitive information is denied.

Findings of Fact

In her Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a, to 1.u. She also noted that allegations 1.i. to 1.o. were medical debts that may fall under her health insurance coverage. In response to the FORM, Applicant provided additional information to support her request for eligibility for a public trust position noting that she filed for Chapter 13 bankruptcy on July 22, 2008. She provided the contact information for her attorney and the Trustee in Bankruptcy but no other information concerning the bankruptcy action (See, Response to FORM, dated September 25, 2008).

Applicant is a 56-year-old customer service representative for a defense contractor. She was married on September 12, 1995, but is now separated from her husband. She has two children but does not receive child support for the children. (Items 5 and 6)

Applicant's answer to the SOR (Item 2), her answers to interrogatories (Items 5 and 6), and credit reports (Items 7, 8, 9) establish that Applicant has delinquent debts, totaling approximately \$25,000. The documents support a debt in collection for propane for \$119 (1.a); a telephone debt in collection for \$190 (1.b) a medical debt in collection for \$120 (1.c); a telephone debt in collection for \$40 (1.d); another telephone bill in collection for \$262 (1.e); a credit card debt charged off as a bad debt for \$1,144 (1.f); another credit card debt to the same creditor in collection for \$1,169 (1.g); a credit account in collection for \$1,143 (1.h); an account in collection for \$262 (1.i); medical accounts in collection for the same medical facility for \$210 (1.j), \$156 (1.k), \$2,299 (1.l), \$168 (1.m), \$140 (1.n), \$140 (1.o), and \$171 (1.p); an account charged off for \$12,343 (1.q); a loan account charged off for \$5,354 (1.r); a car repossession in 2003 (1.s); and a car repossession in 2002 (1.t). Also noted is a Chapter 13 bankruptcy filed in 1992 but dismissed because Applicant could not make the required payments (1.u). Most accounts were opened after 2000 and started being delinquent in 2001 and 2002. The medical debts were accumulated in 2005,

In answers to interrogatories, Applicant noted that the credit card debts in allegations 1.f and 1.g are the same debt (item 5). It is reasonable to believe that they are the same debt. She also believed the credit limit on the card was only \$500. Applicant provided no information on any payments made on the account. She does recall using the card for small purchases. She occasionally receives calls concerning the debt. She stopped making payments on the debt because she could no longer afford to make the monthly payments (Item 6 at 3-4).

Applicant did have telephone service with the telephone company in allegations 1.d and 1.e. She paid about two monthly bills but had to stop paying because she could not afford the high long distance bills (Item 6 at 4). Applicant also stated she made car payments for about two years on two cars, one for her and one for her son. She could not continue the payments so the cars were repossessed (Item 6 at 4).

Applicant stated the medical debts at allegations 1.i to 1.p were for medical procedures she received in 2005. She had health insurance at the time that should have paid part of the medical bills. She should have only paid a co-payment. When the debts became delinquent, she no longer had the health insurance so the claim could not be filed with the insurance company. Applicant presented no information concerning any contact she had with the insurance company. Applicant stated that she established a \$20 per month payment plan for the medical debts in April 2007. She presented no information concerning any payments made according to this plan (Item 6).

Applicant filed for Chapter 13 bankruptcy in 1992 but it was dismissed within a year because she could not make the required payments. At the time of her interview with security investigators, Applicant stated that her monthly income was about \$1,300 with monthly expenses of about \$1,341 leaving a deficit for the month. She usually breaks even each month if she works overtime and at a part-time job. She admits she lives paycheck to paycheck (Item 6 at 5-7).

Applicant noted that she has not had a lien placed against her property or judgment against her for failing to pay taxes or other financial delinquency. The delinquencies are not because of drug or alcohol abuse, or gambling. She does not know of anyone who would question her willingness to pay her debts. She has never received financial counseling. She want to pay all of her delinquent debts, and she is paying what she can afford to pay (Item 6, at 5).

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

Guideline F, Financial Considerations

There is a security 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 classified 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 security clearance. 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. Applicant's delinquent debts from credit cards, medical debts, loans, telephone bills, as established by credit reports and Applicant's admissions, are a security concern raising Financial Consideration Disqualifying Conditions (FC DC) ¶19(a) (inability or unwillingness to satisfy debts), and FC DC ¶ 19(c) (a history of not meeting financial obligations). Applicant has significant delinquent debts that she has not addressed or resolved.

I have considered a number of Financial Considerations Mitigating Conditions (FC MC). FC MC ¶ 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) does not apply. While the debts may have been incurred in the past, they are still unpaid and thus current. There are a number of different accounts and debts, so the debts were not incurred infrequently. Although she is a single mother, she has not established that delinquent debts would not recur. The continued debts and financial situation cast doubt on her current reliability, trustworthiness, and good judgment.

I considered FC MC ¶ 20(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). Applicant has not presented any information to establish circumstances prevented her from changing her situation enabling her to pay debts. She stated that some of the medical debts should have been paid by her health insurance. However, she presented no information to show any inquiry of the insurance company or any attempt to have them pay the debts.

Applicant stated that she has not received financial counseling so FC MC ¶ 20(a) (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) does not apply. Except for her statement that she is paying \$20 monthly towards medical bills and that she recently filed a Chapter 13 bankruptcy, she has not presented any information to show she is making arrangements to pay her creditors. There is no clear indication that the problem is being resolved.

FC MC ¶ 20(d) (the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts) does not apply. Applicant's response to the FORM states that she filed for a Chapter 13 bankruptcy on July 23, 2008. She listed the name of her attorney and the Trustee in Bankruptcy. However, she presented no other information concerning the filing or the status of the planned payments. While bankruptcy is a legal and permissible means of resolving debts, her information is not sufficient to show that she has made a good-faith effort to pay her debts. She stated she is paying \$20 monthly towards her medical debts but presented no information to

establish the payments. Applicant has not presented sufficient information to mitigate security concerns for financial considerations.

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 the 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) 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. Applicant has not presented sufficient information to show she has taken sufficient action to resolve her financial issues. She noted that she recently filed for a Chapter 13 bankruptcy. She did not present any information on the payment plan under the bankruptcy or any payments made according to the plan. When she filed a Chapter 13 bankruptcy in 1992, it was dismissed because she could not make the required payments. With this history, Applicant's promise to pay her debts in the future is not sufficient to mitigate security concerns. She has not presented a consistent record of actions to resolve financial issues. She has not established that she has taken timely and reasonable steps over the years to address her financial problems. The record shows that she has been irresponsible towards her financial obligations indicating she may be unconcerned, irresponsible, or careless concerning sensitive information. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a public trust position. For all these reasons, I conclude Applicant has not mitigated the trustworthiness concerns arising from her financial considerations.

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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant

Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.jf:	Against Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	Against Applicant
Subparagraph 1.n:	Against Applicant
Subparagraph 1.o:	Against Applicant
Subparagraph 1.p:	Against Applicant
Subparagraph 1.q:	Against Applicant
Subparagraph 1.r:	Against Applicant
Subparagraph 1.s:	Against Applicant
Subparagraph 1.t:	Against Applicant
Subparagraph 1.u:	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