



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



In the matter of:)	
)	
-----)	ADP Case No. 07-03765
SSN: -----)	
)	
Applicant for Public Trust Position)	

Appearances

For Government: Eric Borgstrom, Esquire, Department Counsel
For Applicant: Charles E. Petrie, Esquire

January 17, 2008

Decision

MASON, Paul J., Administrative Judge:

Applicant submitted her Public Trust Position Application (PTP), on December 22, 2005. On July 31, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under Guideline F (financial considerations) for Applicant. The action was taken pursuant to Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended, Department of Defense Regulation 5200.2-R (Jan. 1987), as amended (Regulation), and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for an SOR issued on or after September 1, 2006.

Applicant acknowledged receipt of the SOR through her attorney on August 27, 2007. She answered the SOR in writing September 4, 2007, and requested a hearing before an Administrative Judge. A Notice of Hearing was mailed to Applicant on November 8, 2007, and a hearing was held on November 26, 2007. The government offered Exhibits (GE) 1 through 8, which were received in evidence. Applicant testified

on her own behalf and submitted Exhibit (AE A). AE B, a character statement signed on August 21, 2007 by the manager of customer service, and customer service, was also admitted in evidence. Two witnesses testified for Applicant. DOHA received the transcript of the hearing (Tr.) on December 4, 2007. Based upon a review of the case file, the pleadings, exhibits, and testimony, eligibility for access to a sensitive position is denied.

Findings of Fact

Applicant, 37 years old, began working for her current employer in November 2005. She has received salary increases and promotions since her hire, and is presently a customer service technical assistant. She is seeking a position of public trust. Applicant has a 17-year-old daughter who lives with her.

The SOR alleges financial considerations (Guideline F) based on 10 delinquent debts totaling approximately \$24,714.00. The debts represent a broken lease, past due credit card accounts, and two overdue personal loans. Applicant admitted all the debts. The debts became delinquent between 2001 and 2005. She filed a Chapter 7 bankruptcy petition in September 2007, including the 10 creditors listed in the SOR. The 10 creditors and nine additional creditors are listed in Schedule F of the petition. The total liability for listed in the petition for secured and unsecured creditors is \$75,781.00. She expects to receive her discharge in January 2008.

Applicant was interviewed in June 2006 (GE 5), and provided several reasons for her financial problems. Living from paycheck to paycheck without having a budget in place led Applicant to exercise poor judgment over the years, and not live within her means. Examples of living beyond her means occurred in 1999 and 2000 when she was paying \$800.00 a month in rent, and driving a sports car with exorbitant insurance premiums.

She explained to the investigator in June 2006 that her plan had been to repay the creditors one at a time while ignoring the others. She announced she would contact the creditors and establish some kind of repayment agreement with them. Though she had no reason why she did not attempt to contact the creditors earlier, she conceded she was afraid to make contact with them.

Though the impact of her unemployment was not addressed in her June 2006 interview, Applicant explained at the hearing that her six months of unemployment in early 2001 contributed dramatically to her financial problems. When she resumed employment in July 2001, she had to forego credit card payments and recover on her overdue car payments while repaying friends she had borrowed money from. Except for her periods of unemployment in 2001 and between August and November 2005, Applicant knew of no major events or serious health conditions that prevented her from paying her debts.

In her June 2006 interview, Applicant stated her net monthly earnings to be \$1,746.00 a month. After paying all her expenses, excluding the debts listed in the SOR, Applicant's net monthly remainder was \$83.00 in June 2006. According to her Chapter 7 bankruptcy petition (GE 8) filed in September 2007, her estimated monthly remainder was \$13.86.

The debts shall be discussed in the order they appear in the SOR.

● 1.a. Applicant owes \$1,555.00 to a collection agency for breaking a lease in August 2005. She vacated the property shortly after she was fired from her job with the communications company for not informing them why she was taking personal leave. She knew she had to inform the company the reason(s) for taking leave. Though she was aware of the penalty for violating the lease, the landlord did not inform her of an intention to impose the two-month penalty. Applicant has made no attempts to settle the matter.

● 1.b. The credit card account (\$3,924.00 as of July 2007) was opened in December 2000. The account became delinquent when Applicant lost her job in late December 2000 or early January 2001. When she resumed working again in July 2001, she concentrated her attention on more pressing expenses such as her car payment and car insurance.

● 1.c. The credit card account (currently \$6,014.00) was opened in 1999 while Applicant was still employed at her relative's rehabilitation facility. She has made no contact or payment on the account.

● 1.d. The credit card account (currently at \$2,819.00) was placed into collection in November 2004.

● 1.e. The past due account (currently at \$1,289.00) was opened by Applicant in 1993 for catalogue purchases. Applicant surmised she stopped making payments on the account in 2003.

● 1.f. A national discount store is the original creditor on this account. The correct amount is \$3,869.00, as indicated in the Schedule F list in her bankruptcy petition (GE 8; AE A).

● 1.g. Applicant opened up this credit card account in October 2003. On April 24, 2007, Applicant was mailed a settlement agreement by the collection agency to settle the account. The agreement was for Applicant to make 14 payments of \$58.60 every two weeks (a total of \$820.40) until all payments have been paid. Then, the collection agency would release her from responsibility. Applicant maintains she made several payments, but only one documented payment (April 23, 2007) appears attached to GE 6. After the account was transferred to another collection agency, Applicant made no additional payments. Subtracting \$58.55 from \$878.06 (the balance quoted on the April 24, 2007 proposed settlement letter) leaves a new balance of approximately \$816.00.

● 1.h. This account (currently at \$982.00) is a credit card that Applicant stated during her interview in June 2006 she may have paid off. The account is listed in her Chapter 7 petition.

● 1.i., 1.j. The two accounts (currently totaling \$6,256.00) represent loans Applicant opened in 2001 and 2002 to repay other debts.

Applicant completed an online, three and a half-hour financial course in November 2007. The course helped her understand how a person sinks into financial problems, and how to balance a budget. She stated that she started utilizing a budget after she filed bankruptcy in September 2007. She monitors/revises the budget every two weeks to make certain she is not overextending herself. She also attended a financial seminar sponsored by her previous employer three years ago to determine whether she should file bankruptcy.

Witness one has known Applicant for 19 years, having lived with her occasionally in that period. Recently, Applicant has been living with him since October 2005, paying him \$400.00 a month in rent. While he knows about Applicant's debts, they do not discuss the subject. She has always talked about a budget, but he has never seen the budget.

Witness two is a businesswoman with two businesses in the local area. She has known Applicant since 1990, and has discussed their respective financial difficulties. Applicant never asked witness two for help in formulating a budget.

According to the character statement from the supervisor and manager of customer services, Applicant has been recognized for her work commitment. Her job performance supports their recommendation that she merits employment in a public trust position.

Policies

By memorandum dated November 19, 2004, the Deputy Under Secretary of Defense for Counterintelligence and Security directed DOHA to resolve all contractor cases submitted for trustworthiness determinations, including ADP I, ADP II, and ADP III, under Directive 5220.6. When evaluating an Applicant's suitability for a public trust position, the Administrative Judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an Applicant's eligibility for employment in a public trust position.

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 primary 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 classified 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 security decision.

Financial Considerations (FC)

The Concern. Failure to live within one’s means, satisfy debts and meet financial obligations may indicate a lack of self-control, poor judgment, or unwillingness to abide by rules and regulations.

Analysis

The financial considerations guideline contains several disqualifying conditions (DC) that could raise security concerns. The three DCs that are applicable here are FC DC 19.a. “inability or unwillingness to satisfy debts,” 19.c. “a history of not meeting financial obligations,” and 19.e. “consistent spending beyond one’s means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis.” FC DC 19.a. and 19.c. apply because Applicant accumulated more than \$24,700.00 in delinquent debts over a seven-year period, and has taken almost no action until recently to resolve any of the debts. FC 19.e. applies based on Applicant’s recognition that there were times in her life she was living beyond her means.

All the mitigating conditions (MC) under the FC guideline have been considered. FC MC 20.b. “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” is inapplicable. Applicant’s indebtedness began at the end of December 2000 when she abruptly lost her job and was unemployed, until she landed a job in July 2001 at the telephone company. Though she was employed for the next four years, Applicant continued to open new credit accounts that later became delinquent when she could not meet the monthly payments.

The recency of her poor judgment in creating new debt without addressing the old debt renders FC MC 20.a. inapplicable.

FC MC 20.b. applies when “the conditions that resulted in the financial problem were largely beyond the person’s control and the individual has acted responsibly under the circumstances.” As the condition notes, unanticipated unemployment is clearly an economic event beyond a person’s control that entitles the person (after she resumes employment) a reasonable period of time to adjust her financial practices to absorb the disruption associated with a loss of earnings. As time passes however, the amount of mitigation decreases because the person has resumed employment, and is in a more viable position to handle the debts. When Applicant lost her job in late 2000, she was entitled to substantial mitigation. However, she still had an obligation to the remainder of her creditors to at least advise them of her predicament and/or work out some sort of arrangement with them if she could. Instead, Applicant chose not to contact them because she was afraid. She is entitled to only limited credit under FC MC 20.b. Because her unemployment in August 2005 was caused by her own poor judgment, she receives no mitigation under FC MC 20.b.

FC MC 20.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” will recognize a person’s bona fide efforts to understand their financial problems and attempts to regain control over their financial obligations. Applicant’s passing reference to a seminar three years ago does not carry much weight because of the passage of time, and the lack of evidence describing the contents of the seminar. Applicant’s online experience has more probative value because she discussed critical financial issues such as the reasons for debt and balancing a budget. Applicant receives limited mitigation overall under this condition because she has only been utilizing a budget since she filed her Chapter 7 bankruptcy petition in September 2007 and she provided no documented evidence of the budget.

FC MC 20.d. “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts” refers to payment of creditors individually or under some kind of private or court plan. Where the evidence reflects sustained payments over a significant period of time to all listed creditors, then an applicant is entitled to substantial mitigation. However, the focus must turn to “otherwise resolve debts” of the condition since Applicant filed a Chapter 7 bankruptcy petition. Discharging one’s debts under Chapter 7 is a legitimate option to eliminate delinquent debts and allow the debtor a fresh start in managing new financial obligations and responsibilities. Assuming the debts are discharged in January 2008, Applicant’s lengthy period of financial mismanagement requires a sustained period of financial responsibility that has not been established. Applicant’s favorable job performance evidence has been considered. The limited mitigation Applicant receives under FC MC 20.b. MC 20.c., and MC 20.d. is insufficient to overcome the adverse evidence under the financial considerations guideline.

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 Applicant's conduct and the circumstances. The whole person concept consists of nine factors that should be considered along with the specific guidelines. Those factors include: (1) the nature, extent and seriousness of the conduct; (2) the circumstances surrounding the conduct; (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 the participation was 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. Applicant's history of financial problems raises trustworthiness concerns. She was 31 years old when her debts began falling delinquent. Her actions in failing to address her debts were knowledgeable and voluntary. In June 2006, Applicant was put on official notice that her past due debts were a concern to the government, and she indicated she would contact the creditors and address the debts. Yet, the only creditor she contacted and negotiated a settlement with was the 1.g. creditor in April 2007. Unfortunately, she could not maintain the settlement terms after one payment. Considering the evidence as a whole, Applicant's September 2007 bankruptcy filing, her financial counseling in November 2007, and her recent implementation of a budget is insufficient to meet her ultimate burden of persuasion under the financial considerations guideline.

Formal Findings

Formal findings required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1 (Financial Considerations, Guideline F): AGAINST THE APPLICANT.

Subparagraph 1.a.	Against the Applicant.
Subparagraph 1.b.	Against the Applicant.
Subparagraph 1.c.	Against the Applicant.
Subparagraph 1.d.	Against the Applicant.
Subparagraph 1.e.	Against the Applicant.
Subparagraph 1.f.	Against the Applicant.
Subparagraph 1.g.	Against the Applicant.
Subparagraph 1.h.	Against the Applicant.
Subparagraph 1.i.	Against the Applicant.
Subparagraph 1.j.	Against the Applicant.

Conclusion

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

Paul J. Mason
Administrative Judge