



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



In the matter of:

SSN:

Applicant for Public Trust Position

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ADP Case No. 07-04923

Appearances

For Government: Jennifer I. Goldstein, Esquire, Department Counsel
For Applicant: Pro Se

January 23, 2008

Decision

CREAN, THOMAS M., Administrative Judge:

Applicant submitted her Questionnaires for Trust Position (SF 85P), on February 27, 2006. On August 31, 2007, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns for financial considerations. (Gov X 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 September 7, 2007. (Gov X 2) She answered the SOR in writing on September 25, 2007. She admitted 17 allegations and denied five allegations under Guideline F. She elected to have the matter decided on the written record in lieu of a hearing. (Gov X 3) Department counsel submitted the Government's written case on October 25, 2007. Applicant received a complete file of relevant material (FORM) on November 5, 2007, and was provided the opportunity to

file objections, and submit material to refute, extenuate, or mitigate the disqualifying conditions. She responded on November 20, 2007, providing additional information on her finances. On December 20, 2007, Department Counsel noted that there was no objection to consideration of the additional information provided by Applicant. The case was assigned to me on January 15, 2008. Based upon a review of the case file, pleadings, and exhibits, 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, 1.c to 1. h, 1.j to 1.o, 1.r to 1.t, and 1.v. She denied allegation 1.b, 1.i, 1.p, 1.q, and 1.u., She also provided additional information to support her request for eligibility for a public trust position.

Applicant is a 37-year-old customer service representative for a defense contractor. She is a single mother with four children. She does not receive child support for the children. (Gov X 4; Gov X 5)

Applicant's answer to the SOR (Gov X 3), her answers to interrogatories (Gov X 11), and credit reports (Gov Xs 6-10) establish that Applicant has delinquent debts, totaling approximately \$13,258. The documents support a debt placed for collection in September 2001 for a check cashing service for \$536 (1.a); a medical debt placed in collection in October 2001 for \$188 (1.c); a credit card debt charged off in December 2001 for \$1,649 (1.d); a credit card debt charged off as a bad debt and placed for collection in June 2002 for \$1,036 (1.e); a credit card debt charged off as a bad debt in April 2002 for \$1,300 (1.f); a credit card debt placed in collection in April 2002 for \$2,919 (1.g); a credit account placed for collection in December 2002 for \$312 (1.j); a telephone account placed for collection in April 2003 for \$663 (1.k); three unpaid traffic tickets placed for collection in April and July 2003 each for \$120 (1.l, 1.n, 1.o); a department store account placed for collection in July 2003 for \$348 (1.m); a credit account placed for collection in June 2006 for \$278 (1.r); a credit account placed for collection in November 2006 for \$642 (1.s); a credit account placed for collection in November 2006 for \$192 (1.t); and a medical account placed for collection in April 2007 for \$443 (1.v).

Applicant denies that she owes a delinquent medical debt placed for collection in October 2001 for \$188 (1.b). She states that she has disputed the debt. She did not present any information on the dispute. Applicant denies she owes a debt placed for collection in May 2002 for \$935 (1.i). She presented no information to support her denial. She denies a delinquent debt for a fourth traffic ticket in July 2003 for another \$120 (1.p). She presented no information to support her denial. She denies a medical account placed in collection in May 2005 for \$52 (1.q). She presented no information to support her denial. She denies a delinquent account placed for collection in March 2007 for \$326. (1.u) Applicant claims this is a duplicate account but presented no information to establish the duplication. There is another delinquent debt to the same creditor (1.a), but the account numbers and the amount of the debts are different.

Applicant noted she has not contacted a credit counseling service. (Gov X 5 at 2) She also noted and presented her payroll records to show that her wages were garnished. However, she did not establish the account or accounts that the garnishment was applied. (Gov X 5, at 4-7)

In her response to the FORM, Applicant states she has an appointment with an attorney to discuss bankruptcy. She presents no information concerning the discussions or documents prepared for a bankruptcy. She noted she will have funds to pay the attorney when she receives a tax refund in February 2008.

Applicant presented a letter in response to the FORM from a fellow employee that she is dedicated to her job and her family, and is honest and trustworthy. She can be counted on to be a good team player and proactive in finding solutions to problems. Applicant presented a letter from another co-worker and friend, in response to both the SOR and the FORM. It was noted that she is organized, efficient, extremely competent, and has good rapport with customers. She has demonstrated she is honest and trustworthy with high personal and professional integrity. Applicant also presented in her response to the FORM, a letter of commendation from her employer attesting to her good work performance. She presented her latest performance evaluation showing good duty performance.

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 appellant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An appellant is not required to be debt free, but is required to manage her finances in such a way as to meet her financial obligation. Appellant’s delinquent debts from credit cards, medical debts, and credit accounts, as established by credit reports and Appellant’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). Appellant has delinquent debts from as early as 2001 that she has not addressed or resolved. Her debts allegedly accumulated because she is a single mother raising four children without child support.

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 from 2001 to 2007, 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). While Applicant stated she is a single mother raising four children without child support, she has not presented any information to establish how this circumstance prevented her from paying debts. She 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. She has not presented any information to show she is making arrangements to pay her creditors, so FC MC ¶ 20(d) (the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts) does not apply. Appellant 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 taken any action

to resolve her financial issues. Her 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. While she is a single mother with four children, she has not established that she has taken timely and reasonable steps under the circumstances to address her financial problems over the years. 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

Subparagraphs 1.a to 1.v: 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