



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



In the matter of:)	
)	
)	ADP Case No. 07-07896
SSN:)	
)	
Applicant for Public Trust Position)	

Appearances

For Government: Nichole Noel, Esq., Department Counsel
For Applicant: *Pro Se*

July 3, 2008

Decision

LAZZARO, Henry, Administrative Judge

On October 30, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing to Applicant its trustworthiness concerns.¹ The SOR alleges security concerns under Guideline F (financial considerations) and Guideline E (personal conduct). Applicant submitted a response to the SOR that was received by DOHA on November 26, 2007. She was notified by DOHA that her response was considered incomplete, by letter dated December 5, 2007, and she was being provided an additional ten days to submit a complete response. Applicant submitted a completed response that was received by DOHA on December 14, 2007. Applicant admitted the allegations contained in SOR subparagraphs 1.a, 1.b, 1.d, and 1.g. She denied the remaining allegations and requested a decision based on the written record without a hearing.

¹ This action was taken under Executive Order 10865, DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive), DoD Regulation 5200.2-R, dated January 1987, as amended (Regulation), and the revised adjudicative guidelines which became effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant was provided a copy of a File of Relevant Material (FORM) that had been prepared by Department Counsel. After receiving the FORM, Applicant submitted a written request for a hearing, dated February 4, 2008, that was accepted by DOHA.²

The case was assigned to another administrative judge on February 14, 2008, and reassigned to me on April 21, 2008, to be heard in conjunction with other cases I had scheduled in the same city. A notice of hearing was issued on May 7, 2008, scheduling the hearing for June 3, 2008. The hearing was conducted as scheduled. The government submitted four documentary exhibits that were marked as Government Exhibits (GE) 1-4, and admitted into the record without objection. Applicant testified, called one witness to testify on her behalf, and submitted four documentary exhibits that were marked as Applicant's Exhibits (AE) 1-4, and admitted into the record without objection. The transcript was received on June 18, 2008.

Findings of Fact

Applicant's admissions to the SOR allegations are incorporated herein. In addition, after a thorough review of the pleadings, testimony and exhibits, I make the following findings of fact:

Applicant is 34 years old, She is employed by a staffing agency and assigned under a contract to a defense contractor where she works as a claims associate. She first began working full-time with the defense contractor in September 1998, but was laid off in September 2004. She was recalled by the defense contractor to work part-time (32 hours per week) from October 2004 to March 2005. She was unemployed from March 2005 to December 2005. She worked as a receptionist outside the defense industry from January 2006 to in or about September 2006, when she again began working full-time for the defense contractor.

Applicant is single and has three children, ages 13, 12, and 3. The same man is the father of all three children. She has never sought court-ordered child support for the children from their father, but he works in the construction field and voluntarily provides her with \$180 every two weeks as support and buys the children clothing and other necessities. Applicant's net salary is \$707 every two weeks. During periods of unemployment, she received unemployment compensation in the amount of \$304 per week.

The SOR alleges two judgments, totaling \$1,437, a collection account, owing in the amount of \$55, and the deficits owing after the resale of two automobiles that were repossessed from Applicant, totaling \$21,423. In her response to the SOR, Applicant claimed to have made some payments on these debts, but she did not submit any documentation in support of those claims. Applicant certainly has not made any recent payment on any of these debts nor has she taken any other action to attempt to resolve them. All of these debts were incurred by Applicant while she was employed full-time by the defense contractor and before she was laid off in September 2004.

² Applicant's written request for a hearing was marked as Appellate Exhibit (App. Ex.) I, and made part of the record.

The SOR alleges another account, owing in the amount of \$1,291, that was placed for collection after Applicant was laid off in September 2004. She began making \$161 per month payments to satisfy that account in February 2008, and had made three payments as of the date of the hearing. The remaining balance owing at that time was \$807.50.

Applicant owned a mobile home on which she had an adjustable rate mortgage. She was unable to make the loan payments as the interest rate increased on the mortgage, and she was unsuccessful in an effort to negotiate a fixed interest rate mortgage with the company holding the mortgage. As a result, the mobile home was repossessed in or about July 2001. She has not been contacted by the company since the repossession and is unaware if there was any deficit owing after the mobile home was resold.

Applicant submitted a Questionnaire for Public Trust Position (SF 85P) in September 2006. In response to questions inquiring about judgments having been rendered against her in the preceding seven years and whether she was then over 180 days delinquent on any financial obligation, she answered "No". Both answers were untrue.

Applicant explained she did not report the judgments because she never received any notice from the courts or creditors that a judgment had been entered against her. There is no record evidence to contradict those assertions. Applicant claimed she did not report the other delinquent debts because all but one were many years old and she thought the question was only asking about more current debts, and she didn't realize the more recent account was a student loan on which she had to make monthly payments.

POLICIES

Positions designated as ADP I and ADP II are classified as sensitive positions.³ The standard to 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.⁴ Trustworthiness adjudications apply to cases forwarded to DOHA by the Defense Security Service and Office of Personnel Management.⁵ Department of Defense contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination is made.⁶

An Administrative Judge must consider the disqualifying and mitigating conditions in the Adjudicative Guidelines when evaluating an Applicant's suitability for a public trust position. The Administrative Judge must also consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. The

³ Regulation ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3.

⁴ Regulation ¶ C6.1.1.1.

⁵ Deputy Under Secretary of Defense (Counterintelligence and Security) Memorandum, dated November 19, 2004.

⁶ Regulation ¶ C8.2.1.

entire process is a conscientious scrutiny of a number of variables known as the “whole person concept.” The protection of the national security is the paramount consideration, and any doubt concerning personnel being considered for access to sensitive information will be resolved in favor of national security. Decisions are made in terms of the national interest and are not determinations as to the loyalty of the applicant concerned.⁷

The Government is required to present evidence to establish controverted facts alleged in the SOR.⁸ 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.⁹ The Applicant has the ultimate burden of persuasion as to obtaining a favorable trustworthiness decision.

Analysis

Guideline F, Financial Considerations

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 [sensitive] information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. . . . (Adjudicative Guideline [AG] 18)

Applicant has a number of delinquent accounts, totalling over \$21,000, that were submitted for collection and/or resulted in a judgment being entered against her. Additionally, a mobile home she was purchasing was foreclosed on due to her inability to make the required loan payments. Disqualifying Conditions (DC) 19(a): *inability or unwillingness to satisfy debts*; and DC 19(c): *a history of not meeting financial obligations* apply.

All but one of the accounts listed in the SOR have been delinquent for many years. Applicant was employed full-time before the accounts became delinquent and for at least several years afterwards. She has only recently begun to make payments on the account that was placed for collection in 2006, and has not taken any action to resolve any of the other accounts. Accordingly, I find that Mitigating Conditions (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*; MC 20(b): *the conditions that resulted in the financial problem were largely beyond the person’s control (e.g., loss of employment . . .), and the individual acted responsibly under the circumstances*; and 20(d): *the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts* do not apply in this

⁷ Section 7 of Executive Order (EO) 10865.

⁸ Directive ¶ E3.1.14.

⁹ Directive ¶ E3.1.15.

case. The remaining mitigating conditions have no applicability to the facts in this case. Guideline F is decided against Applicant.

Guideline E, Personal Conduct

Personal conduct is always a concern because conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the (sensitive position eligibility) process or any failure to cooperate with the (sensitive position eligibility) process.

Applicant submitted an SF 85P in September 2006, and in response to questions inquiring about judgments having been rendered against her in the preceding seven years and whether she was then over 180 days delinquent on any financial obligation she answered "No". Both answers were untrue. There is no record evidence to contradict her assertion that she never received notice from the courts or creditors about the judgments and she therefore unaware of them when she submitted the SF 85P. SOR subparagraph 2.a is decided for Applicant.

However, her claims that she did not report most of the delinquent debts because they were too old and she did not report the newer delinquent debt because she didn't realize it was a student loan on which she had to make monthly payments are not credible. In making that determination, I have considered the substance of her testimony, her appearance and demeanor while testifying, and the nature of the debts in question. She is clearly an intelligent woman with the capacity to read and understand the questions at issue and discern the information she was required to furnish. DC 16(a): *deliberate omission, concealment, or falsification of relevant facts from any personal security questionnaire, personal history statement, of similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities* applies. I have considered all mitigating conditions under Guideline E and find none apply. Guideline E is decided against Applicant.

The objective of a trustworthiness determination is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to sensitive information. Indeed, the "whole person" concept recognizes we should view a person by the totality of her acts and omissions. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

Considering all relevant and material facts and circumstances present in this case, the whole person concept, the factors listed in ¶ 6.3.1 through ¶6.3.6 of the Directive, and the applicable disqualifying and mitigating conditions, I find Applicant has failed to mitigate the financial considerations and personal conduct security concerns. She has not overcome the case against her nor satisfied her ultimate burden of persuasion. It is not clearly consistent with the national interest to grant Applicant access to sensitive information. Guidelines F and E are decided against Applicant.

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-g: Against Applicant

Paragraph 2, Guideline E: AGAINST APPLICANT

 Subparagraph 2.a: For Applicant

 Subparagraph 2.b: Against 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 sensitive information is denied.

Henry Lazzaro
Administrative Judge