



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



In the matter of:)
)
) ADP Case No. 07-11090
SSN:)
)
Applicant for Public Trust Position)

Appearances

For Government: Ray T. Blank, Jr., Esq., Department Counsel
For Applicant: *Pro Se*

September 16, 2008

Decision

LAZZARO, Henry, Administrative Judge

On February 20, 2008, 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 an undated response to the SOR. On March 31, 2008, she was notified by DOHA that her response was considered incomplete and she was being provided an additional ten days to submit a complete response. Applicant submitted a second response that was received by DOHA on April 22, 2008. Applicant admitted the allegations contained in SOR subparagraphs 1.a, 1.b, 1.e and 1.f, indicated she could neither admit nor deny the allegations contained in subparagraphs 1.c, 1.d., 1.g, 1.h and 1.I, and denied the allegation contained in subparagraph 2.a. She requested a decision 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.

Department Counsel prepared a File of Relevant Material (FORM) on May 14, 2008, that was mailed to Applicant on May 15, 2008. Applicant was informed she had 30 days from receipt of the FORM to submit her objections to any information contained in the FORM or to submit any additional information she wished to be considered. Applicant acknowledged receipt of the FORM on May 20, 2008, but did not submit a response to the FORM or object to anything contained in the FORM within the time allowed her. The case was assigned to me on July 22, 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 47 years old. She has been employed in the customer support field by a defense contractor since January 2006. She was employed outside the defense industry as an office worker from July 2006 to January 2007, in the customer support field from September 2005 to May 2006, and as an accounts representative from June 1997 to August 2005. She was unemployed from August to September 2005, and again from June to July 2006.

Applicant has been married since April 2006. She has three children, ages 25, 20, and 18. None of the children apparently live with Applicant, as indicated by her address and the addresses of her children as listed in the security clearance application she submitted in January 2007.

Applicant admits she is responsible for four debts alleged in the SOR, totaling \$15,301, that have either been charged off as bad debts or submitted for collection. Each of those debts has been delinquent since late 2006 or early 2007. Applicant submitted proof she paid one of those debts, owing in the amount of \$576, in October 2006. She claims to have paid a second debt, owing in the amount of \$202, but she not submit any proof of payment. No payment has been made on the other two debts since November 2006.

The SOR also alleges a debt that is past due in the amount of \$783, and another debt that has been placed for collection in the amount of \$758. Applicant claims to have no knowledge of the identity of the creditors listed for these accounts. Each of these accounts is listed in her credit reports, dated January 10 and December 10, 2007.

Applicant also claims to have no knowledge of the three medical accounts listed in the SOR, totaling \$1,318, that have been submitted for collection. Again, each of these accounts is listed in the credit reports included in the FORM.

Applicant submitted a Public Trust Position Application (SF 85P) in January 2007. In response to questions inquiring whether she was then over 180 days delinquent on any financial obligation, she answered "No". None of the debts listed in the SOR are alleged to have become past due, submitted for collection, or charged off as bad debts earlier than June 2006.

Department Counsel correctly noted in the FORM that Applicant's credit reports indicates the "date of last activity" for the medical bills that have been submitted for collection was a year before she submitted the SF 85P. However, the credit reports also indicate those debts were not "reported" any earlier than June 2006. There is no other evidence to indicate when these debts were submitted for collection or that Applicant had actual knowledge of the medical debts prior to issuance of the SOR. Additionally, Applicant wrote in her answer to the SOR that she had medical insurance with her former employer, made the required co-pays for health care, and impliedly believed all medical charges were covered by insurance.

Without much elaboration, Applicant attributes her financial delinquency to medical problems that caused her husband to become unemployed from August to sometime before October in an unspecified year. Presuming his unemployment occurred in 2006, when the majority of the debts began to become severely delinquent, Applicant fails to provide any justification for her failure to at least begin to resolve the majority of the debts before now other than some vague references to the economy and the inability of her husband, a self-employed general contractor, to find work.

Applicant also refers to instances of improper and unauthorized activity involving her bank account that caused checks she had written to be returned due to insufficient funds. She also refers to some confusion of her identity with another individual that might have resulted in fraud in connection with her account. However, she also admits that four debts listed in the SOR, totaling about \$15,000 out of the approximately \$18,000 in delinquent debts that are alleged, are her responsibility. Thus, even assuming there was some unauthorized activity that may have effected her credit reports, the majority of the delinquent debt alleged in the SOR is clearly Applicant's responsibility.

POLICIES

Positions designated as ADP I and ADP II are classified as sensitive positions.² 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.³ Trustworthiness adjudications apply to cases forwarded to DOHA by the Defense Security Service and Office of Personnel Management.⁴ Department of Defense contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination is made.⁵

² Regulation ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3.

³ Regulation ¶ C6.1.1.1.

⁴ Deputy Under Secretary of Defense (Counterintelligence and Security) Memorandum, dated November 19, 2004.

⁵ Regulation ¶ C8.2.1.

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 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.⁶

The Government is required to present evidence to establish controverted facts alleged in the SOR.⁷ 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.⁸ 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 about \$18,000, that were past due, submitted for collection, or charged off as bad debts. Disqualifying Conditions (DC) 19(a): *inability or unwillingness to satisfy debts*; and DC 19(c): *a history of not meeting financial obligations* apply.

The accounts listed in the SOR have been delinquent for at least two years. Applicant submitted proof that she has satisfied only one of the listed accounts. She claimed to have paid another account, but did not submit any verification in support of that assertion. She indicated she has no knowledge of other accounts, but only provided evidence that there apparently was unrelated unauthorized activity involving her bank account that does not establish these accounts are not her responsibility.

Applicant primarily attributed her financial problems to her husband's unemployment and his difficulty in finding customers. She submitted letters from a minister and a therapist

⁶ Section 7 of Executive Order (EO) 10865.

⁷ Directive ¶ E3.1.14.

⁸ Directive ¶ E3.1.15.

in support of her claim that this has been the cause of her financial problems and that she has sought their advice in dealing with the issues she has experienced. However, each of those letters strongly indicate Applicant's financial problems are severe and ongoing. On March 19, 2008, the therapist wrote: "They have been facing a high level of financial stress over the past year and are doing their best to maintain good faith with their creditors." (Item 4) On the same day, the minister wrote: "In recent months (Applicant and her husband) have been plagued with financial and medical issues far beyond their control. . . ." (Item 4)

Applicant did not present evidence to what extent the injury suffered by her husband, to whom she has only been married since April 2006, has impacted their ability to pay their bills other than the letters from the therapist and minister, what if any loss of income they have suffered, or what affirmative actions she and her husband have taken to resolve the financial problems they experienced as a result thereof. Most importantly, she failed to present any reason to conclude that her financial problems will be resolved in the near future.

Applicant is entitled to consideration and at least partial application of 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*. However, there is insufficient record evidence to conclude that whatever actions she has taken in attempting to resolve her financial problems have been the responsible course of action under the circumstances.

Further, I have considered all the record evidence and find 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(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*; and 20(d): *the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts* do not apply. 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 January 2007, and in response to a question inquiring whether she was then over 180 days delinquent on any financial obligation she answered "No". The record evidence is insufficient to establish she had knowledge that any accounts were that far delinquent at the time she submitted the SF 85P. Accordingly, the personal conduct concern is decided for 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 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. Guideline F is 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:

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|---------------------------|-------------------|
| Paragraph 1, Guideline F: | AGAINST APPLICANT |
| Subparagraphs 1.a-d: | Against Applicant |
| Subparagraph 1.e: | For Applicant |
| Subparagraphs 1.f-i: | Against Applicant |
| Paragraph 2, Guideline E: | FOR APPLICANT |
| Subparagraph 2.a: | For 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

