



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



In the matter of:)
)
) ADP Case No. 07-12789
SSN:)
)
Applicant for Public Trust Position)

Appearances

For Government: Caroline H. Jeffreys Esquire, Department Counsel
For Applicant: Pro Se

July 28, 2008

Decision

HOGAN, Erin C., Administrative Judge:

Applicant submitted her Questionnaire for Public Trust Position (SF 85P), on May 10, 2006. On March 7, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the trustworthiness concerns under Guideline F, Financial Considerations, for Applicant. 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 answered the SOR in writing on April 29, 2008, and requested a hearing before an Administrative Judge. Department Counsel was prepared to proceed on May 15, 2008. I received the case assignment on May 20, 2008. DOHA issued a notice of hearing on June 5, 2008, and I convened the hearing as scheduled on June 25, 2008. The

government offered Exhibits (Gov) 1 through 5, which were admitted without objection. Applicant testified on her own behalf, and submitted one document that was admitted as Applicant Exhibit (AE) A without objection. The record was held open until June 16, 2008. Applicant timely submitted a two page document that was admitted as AE B. DOHA received the transcript of the hearing (Tr.) on July 3, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to sensitive information is granted.

Findings of Fact

In her answer to the SOR, Applicant admitted to SOR allegations ¶¶ 1.a and 1.d. She partially admits but denies SOR ¶¶ 1.c and 1.e. She denies SOR allegations ¶ 1.b. In addition, after a thorough and careful review of the pleadings and exhibits, I make the following findings of fact.

Applicant is a 54-year-old employee of a Department of Defense contractor who is seeking a position of public trust. She has worked as a project manager for her current employer since April 2006. She was awarded a masters degree in business administration (MBA) in January 2008. She is divorced and has a daughter, age 34. (Tr at 4-5, 21-22, 47; Gov 1.)

On May 10, 2006, Applicant submitted a questionnaire for public trust position, Standard Form 85P. She listed her delinquent debts on her trustworthiness application. (Gov 1, question 19-20.) Applicant has the following delinquent accounts: a \$7,789 charged off credit card account (SOR ¶ 1.a; Gov 2 at 2; Gov 4 at 1; Gov 5 at 2); a \$3,843 credit card account placed for collection (SOR ¶ 1.b; Gov 2 at 3, 8; Gov 3 at 1; Gov 4 at 1; Gov 5 at 3); a \$9,904 debt related to a timeshare maintenance fee (SOR ¶ 1.c; Gov 4 at 2); a \$6,757 delinquent account related to an automobile repossession (SOR ¶ 1.d; Gov 4 at 2); and a \$14,308 debt related to a timeshare that was foreclosed in April 2004 (SOR ¶ 1.e; Gov 2 at 4, 12). The debts alleged in SOR ¶¶ 1.c and 1.e are related to the same timeshare. The timeshare was foreclosed in 2004. (Gov 2 at 12.)

In the 1990s, Applicant was employed in a sales position. Her base pay was approximately \$60,000 and she received an annual bonus of approximately \$50,000. In late 1999, Applicant was laid off. For eight months in 2000, she was either unemployed or worked low wage jobs. She was unable to pay her bills as a result of unemployment and the reduction in income. (Tr at 32-33, 39-41; Gov 1, question 6.)

From 2002 to present, Applicant gradually worked her way up to better paying positions. She currently earns \$63,000 per year. (Tr at 23, 33-34.) Applicant attended a financial management program for approximately six months when she first moved to Arizona. (Tr at 54-55.)

Of the debts alleged in the SOR, SOR ¶ 1.a is paid. Applicant settled this account for \$3,500. (Tr at 14, 18, 35; Gov 3 at 2.) Since January 2007, Applicant has been making

payments of \$100 per month to the collection agency now handling the debt alleged in SOR paragraph 1.b. (Tr at 15-16, 28; AE A.)

Applicant has consulted an attorney regarding the timeshare foreclosure debts alleged in SOR ¶¶ 1.c and 1.e. She initially consulted an attorney in the state where she currently resides. The attorney advised her to seek legal advice from an attorney licensed to practice in the state where the timeshare is located. Applicant purchased this timeshare in 1997 or 1998. At the time she could afford the timeshare because she was making over \$100,000 a year. She stopped making payments in 2000 after she was laid off and could no longer afford to make payments. (Tr at 18-19, 39.) After the hearing, Applicant submitted a statute pertaining to timeshare foreclosures in the state where the timeshare is located. (AE B.) Applicant is willing to pay the timeshare debt if it is determined it is her debt. (Tr at 43.)

The debt alleged in SOR ¶1.d is related to an automobile repossession. The car was repossessed in 2000. In 2001, Applicant made payments of \$150 per month but was unable to keep up the payments. She has not made a payment since 2001. She has not worked on resolving that debt yet. (Tr at 20, 43-44.)

When Applicant started work with her current employer, she had 12 debts that needed to be resolved. She would save up money and work with the creditors to negotiate settlements and/or payment agreements. She resolved seven of the 12 debts prior to the SOR being issued. (Tr at 20-21, 49.) She is current on all of her other bills not listed in the SOR. (Tr at 45.)

After obtaining her MBA in January 2008, Applicant hopes to move up in the company. She recently interviewed for a position and is waiting for a second interview. If she gets promoted, she will get a 15% increase in pay. (Tr at 50-51.)

Applicant has sufficient income to pay her monthly obligations. (Tr at 25-28; Gov 2 at 5.) She will begin paying back her student loans in July 2008. Her payments will be \$350 per month. She will reduce the \$500 monthly tithe to her church in order to meet her student loan payments. She receives a quarterly bonus which is approximately \$400 to \$600. She uses her bonus to resolve her accounts. She recently began a part-time business which she hopes will bring in extra income. (Tr at 29-31.)

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.

Section 7 of Executive Order (EO) 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out

in AG ¶ 18:

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 classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several disqualifying conditions that could raise security concerns. I find Financial Considerations Disqualifying Condition (FC DC) ¶19(a) (an inability or unwillingness to satisfy debts); and FC DC ¶19(c), (a history of not meeting financial obligations) apply to Applicant's case. Applicant has a history of not meeting financial obligations. She has had difficulty paying her debts since 2000. The SOR alleged five debts, a total approximate balance of \$42,601. The majority of the debt involves a repossessed timeshare and a repossessed automobile.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. Financial Considerations Mitigating Condition (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) is not applicable. Applicant's history of financial irresponsibility is too recent to apply this mitigating condition. Although, she has taken steps to resolve her delinquent accounts, she has several accounts that remain unresolved.

FC MC ¶ 20(b) (the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances) applies based on Applicant's eight-month period of underemployment after she was laid off in 1999. She earned over \$100,000 in annual income at the time she was laid off. It took Applicant some time to find a full-time job that had a good income. She still does not earn close to \$100,000 in annual income. Once she found a job that paid a reasonable income, she took steps to resolve her delinquent accounts.

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) applies. Applicant attended a financial management class for approximately six months. She established a plan to resolve her delinquent accounts. She resolved one account in the SOR and is making payments towards another debt. She resolved several other accounts that were not included in the SOR. The remaining debts relate to an automobile repossession and a timeshare foreclosure. Applicant now earns sufficient income to meet her expenses. Her financial situation is under control.

FC MC ¶20(d) (the individual initiated a good-faith effort to repay overdue creditors

or otherwise resolve debts) applies. Although she has not resolved the debts alleged in SOR ¶¶ 1.c, 1.d and 1.e, she resolved the debt in SOR ¶ 1.a and has been making payments for the past year and half on the debt in SOR ¶ 1.b. Credit is given to the fact that Applicant resolved several delinquent accounts prior to the SOR being issued once she had the income to start making payments towards her delinquent accounts. Her approach was to save her extra income in order to discuss settlement with one or two of her creditors. This is a reasonable approach because Applicant's income was insufficient to resolve the delinquent accounts all at once. Although she has not fully resolved the debts related to the timeshare foreclosure, she has consulted legal counsel about her liability for such debt.

Applicant's systematic efforts towards resolving her delinquent accounts shows a good-faith effort to improve her financial situation. She has mitigated the concerns raised under Guideline F.

Whole Person Concept

Under the whole person concept, the Administrative Judge must evaluate an Applicant's eligibility for a security clearance 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 security clearance must be an overall common sense 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. I considered Applicant's financial problems were the result of being laid off from a highly paid job and, not being able to find employment providing a similar income. I considered Applicant's efforts to obtain her MBA which has the potential to increase her income. She has taken steps to resolve her financial situation. While not all of the delinquent accounts are resolved, she demonstrated a good faith effort to resolve her financial situation. For these reasons, I conclude Applicant mitigated the security concerns arising under 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:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant Applicant eligibility for a public trust position. Eligibility for access to sensitive information is granted.

ERIN C. HOGAN
Administrative Judge