



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



In the matter of:)	
)	
SSN:)	ADP Case No. 08-03367
)	
Applicant for Public Trust Position)	

Appearances

For Government: D. Michael Lyles, Esquire, Department Counsel
For Applicant: *Pro se*

April 28, 2009

Decision

CURRY, Marc E., Administrative Judge:

Applicant failed to mitigate the government’s trustworthiness concerns raised under Guideline F, Financial Considerations. Eligibility to occupy an automatic data processing position (ADP) is denied.

On October 17, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing Financial Considerations concerns related to her eligibility to occupy an ADP position. 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), 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 on November 12, 2008, admitting the allegations, and requesting an administrative determination. On December 31, 2008, department

counsel prepared a File of Relevant Materials (FORM). Applicant received it on January 13, 2009. She did not respond. The case was assigned to me on March 24, 2009.

Findings of Fact

Applicant is a 32-year-old single woman with two children, ages 10 and five. She has a high school diploma, and has earned some college credits (Item 4 at 4). For the past five years, she has worked for a health insurance company as a Medicare advantage tester (Item 4 at 5). Her job duties are unknown from the record. She earns approximately \$23,000 per year (Item 5 at 8).

Applicant owes seven creditors approximately \$28,000 of debt in various stages of delinquency (Items 5-7). The debts include two credit cards (SOR ¶¶ 1.a, 1.f) a bank debt, (SOR ¶ 1.b), auto loans (SOR ¶¶ 1.c, 1.d, 1.i), and a check cashing company default (SOR ¶ 1.h). SOR subparagraphs 1.a and 1.e are duplicates (Item 6 at 2).

The SOR alleges an additional delinquency owed to a check cashing company (SOR ¶ 1.g). This debt resulted in litigation between Applicant and the creditor. The court dismissed it (Item 5 at 3). I find in her favor as to SOR ¶ 1.g.

In approximately June 2008, the government propounded interrogatories to Applicant regarding her delinquencies (Item 5). In her response, dated July 2, 2008, she stated that she “really [did not] have the ability to pay off these old debts” (*Id.* at 7). She reiterated her inability to pay these debts in her SOR answer (Item 3). She attributed her financial problems to difficulties raising two children as a single parent. She expressed an interest in working with a financial counselor. She has not retained one, yet.

Policies

When evaluating an applicant’s suitability to have access to sensitive information, 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.

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 overarching 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.”

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.

Analysis

Guideline F, Financial Considerations

Under this guideline, “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, [and] trustworthiness” (AG ¶ 18). Applicant’s delinquencies trigger the application of AG ¶¶ 19(a), “inability or unwillingness to satisfy debts,” and 19(c), “a history of not meeting financial obligations.”

I have considered all of the mitigating conditions and conclude none apply. Applicant has \$28,000 of delinquent debt, has no plans to repay it, and has not sought help. I empathize with her difficulty raising two children on one income. However, she must, at minimum, demonstrate an effort to organize her finances and develop a payment plan. Instead, she has merely reiterated throughout the investigative process her inability to pay her delinquencies. Applicant has not mitigated the Financial Considerations concern related to her eligibility to occupy an ADP position.

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.”

Applicant’s delinquencies exceed her annual salary. Any mitigation generated by her difficulty in making ends meet is outweighed by her failure to seek financial counseling and to organize her finances. Upon considering this case in the context of the Whole Person concept, I conclude that her eligibility to occupy an ADP position must be denied.

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
Subparagraph 1.a - 1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraphs 1.h-1.i	Against Applicant

Conclusion

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

MARC E. CURRY
Administrative Judge