



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



In the matter of:)
)
-----) ADP Case No. 08-03381
SSN: -----)
)
Applicant for Public trust Position)

Appearances

For Government: Paul M. Delaney, Esquire, Department Counsel
For Applicant: *Pro Se*

May 12, 2009

Decision

WESLEY, Roger C., Administrative Judge:

History of Case

On November 19, 2008, the Defense Office of Hearings and Appeals (DOHA), pursuant to Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, and Department of Defense (DoD) Regulation 5200.2-R, issued a Statement of Reasons (SOR) to Applicant, which detailed reasons why DOHA could not make the preliminary affirmative determination of Applicant eligibility for occupying a public trust position, and recommended referral to an administrative judge to determine whether a trustworthiness determination should be granted, continued, denied or revoked.

Applicant responded to the SOR on December 30, 2008, and elected to have her case decided on the basis of the written record. Applicant received the File of Relevant Material (FORM) on February 10, 2009, and did not respond with any information. The case was assigned to me on April 15, 2009. Based upon a review of the case file, pleadings and exhibits, eligibility for access to classified information is denied.

Summary of Pleadings

Under Guideline F, Applicant is alleged to have (a) had a judgment taken against her in July 2004 for \$1,995.00 and (b) accumulated six delinquent debts exceeding \$24,000.00. For her response to the SOR, Applicant admitted each of the allegations. She claimed she was prioritizing her bills in order to pay off as much as she could, and that she had made much improvement on her debt. She claimed, too, that she was showing a willingness to satisfy her debts and should not be doubted as a trustworthy person.

Findings of Fact

Applicant is a 25-year-old price authorization contractor for a pharmacy benefit company who seeks a trustworthiness determination. The allegations covered in the SOR and admitted to by Applicant are adopted as relevant and material findings. Additional findings follow.

Applicant recently married (in March 2008) and has three children (see exs. 6 and 7). When she completed her questionnaire for a public trust position in April 2007, she was still unmarried and residing with her fiancé at the time (see exs. 6 and 7).

Applicant accumulated a number of delinquent debts between 2004 and 2006. Six of the listed debts involve consumer accounts in collection status and exceed \$24,000.00 in the aggregate. A seventh debt is a listed judgment for \$1,955.00 that was entered in July 2004. She attributes some of these debts to actions of her ex-boyfriend. She blames this boyfriend for wrecking her car, and causing it to be impounded. She did not have the money to release the car from impound and assumes it was repossessed. This creditor filed suit against her and before her trial date arranged a payment agreement with Applicant. When she could not make the monthly payments with her limited income, she stopped making payments altogether. The delinquency on this repossessed car (creditor 1.d) is \$16,689.00 and remains unpaid (see ex. 7).

Two of Applicant's other listed delinquent accounts involve utility debts that she admits to owing (creditors 1.b and 1.g). When asked about them in her Office of Personnel Management (OPM) interview in August 2007, she indicated she intended to pay both creditors, but had not yet contacted them (see ex. 7). One of the other listed debts involves a consumer charge account (creditors 1.c). Applicant indicated an intention to pay this account, but could provide no time estimate of when the account might be satisfied. Applicant's remaining two accounts (creditors 1.e and 1.f) comprise student loans that she has no immediate plans to satisfy without more detailed information about the accounts and additional funding (see exs. 6 and 7).

Applicant provided no endorsements or performance evaluations in her behalf. Nor did she provide any proofs of community and civic contributions.

Policies

The revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (effective September 2006) list Guidelines to be considered by judges in the decision making process covering DOHA cases. These Guidelines require the judge to consider all of the "Conditions that could raise a security concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating Conditions," if any, before deciding whether or not a security clearance should be granted, continued or denied. The Guidelines do not require the judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in E.2.2 of the Adjudicative Process of Enclosure 2 of the Directive, which are intended to assist the judges in reaching a fair and impartial common sense decision.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

Financial Considerations

The Concern: 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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts. Adjudicative Guidelines (AG), ¶ 18.

Burden of Proof

By virtue of the precepts framed by the revised Adjudicative Guidelines, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted facts alleged in the Statement of Reasons and (2) it must demonstrate that the facts

proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required showing of material bearing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of persuasion shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

Analysis

Applicant is an employee of a pharmacy benefit contractor who accumulated a number of delinquent debts (to include an adverse judgment) during periods of underemployment. All of her listed debts remain unresolved at this time.

Applicant's finances

Security concerns are raised under the financial considerations guideline of the revised Adjudicative Guidelines where the individual applicant is so financially overextended as to indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, which can raise questions about the individual's reliability, trustworthiness and ability to protect classified information, and place the person at risk of having to engage in illegal acts to generate funds. Applicant's accumulation of delinquent debts and his past inability and unwillingness to address these debts warrant the application of two of the disqualifying conditions (DC) of the Guidelines DC ¶ 19(a), inability or unwillingness to satisfy debts, and DC ¶19(c) "a history of not meeting financial obligations."¶ 20(b).

Applicant's debts are attributable in part to her holding low paying jobs and prioritizing with her limited income. Her largest debt (a deficiency resulting from a car repossession) was initially prompted by a former boyfriend's damaging her vehicle and causing it to be impounded. She accepts full responsibility, though, for her inability to cure the charges associated with the impounding and avoid repossession. Applicant accepts responsibility, too, for each of her other listed debts. At this time, however, she lacks the necessary information and income to satisfy these debts with the budgeted resources she has established for herself.

Without any documented payment history or plan to resolve her listed debts, Applicant cannot be credited with any manifest progress to date in regaining control of her finances. Further, she provides no hard assurances of any commitment to resolve her debts in the foreseeable future. Applicant's finances still require a good deal of effort on her part to fully stabilize them.

Based on her evidentiary showing, some extenuating circumstances are associated with Applicant's inability to take care of her past debts. Available to Applicant is MC ¶ 20(b) of the financial considerations guideline, "the conditions that resulted in the behavior 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)." Judgment problems associated with her debts preclude her from fully invoking MC ¶ 20(b) to her benefit.

Mitigation credit is not available to Applicant based on the evidence developed in this administrative record. Not only are her listed debt delinquencies ongoing, but she has failed to address them in any tangible way.

Holding a security clearance involves the exercise of important fiducial responsibilities, among which is the expectancy of consistent trust and candor. Financial stability in a person cleared to access classified information is required precisely to inspire trust and confidence in the holder of the clearance. While the principal concern of a clearance holder's demonstrated financial difficulties is vulnerability to coercion and influence, judgment and trust concerns are implicit in financial cases (as here).

Whole person assessment does not enable Applicant to surmount the judgment questions raised by her accumulation of delinquent debts. To date, she has not shown any manifest effort in addressing any of her covered debts to mitigate her still delinquent accounts. So, even though Applicant has been able to make progress with her other accounts, her efforts do not enable her to establish judgment and trust levels fully compatible with her occupying a trustworthy position at this time.

Taking into account all of the extenuating facts and circumstances surrounding Applicant's debt accumulations, the limited resources she has had to address them with, and the absence of any corrective actions to address her old debts, it is still too soon to make safe predictive judgments about her ability to repay her old debts and restore her finances to stable levels commensurate with her holding a trustworthy position. Unfavorable conclusions warrant with respect to the allegations covered by subparagraphs 1.a through 1.g.

In reaching my decision, I have considered the evidence as a whole, including each of the E2(a) factors enumerated in the Adjudicative Guidelines of the Directive.

Formal Findings

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact, conclusions, conditions, and the factors listed above, I make the following formal findings:

GUIDELINE F (FINANCES):

AGAINST APPLICANT

Sub-paras. 1.a through 1.g:

Against t Applicant

Conclusions

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's eligibility for a public trust position. Eligibility for an ADP I/II/III position is denied.

Roger C. Wesley
Administrative Judge