



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



In the matter of:)
)
) ADP Case No. 08-03459
)
)
Applicant for Public Trust Position)

Appearances

For Government: Richard A. Stevens, Department Counsel
For Applicant: Pro Se

May 26, 2009

Decision

HEINY, Claude R., Administrative Judge:

Applicant has 21 past due, charged off, or collection accounts totaling in excess of \$46,000. There is no evidence of any payment on the obligations. Applicant has failed to rebut or mitigate the government’s trustworthiness concerns under financial consideration. Eligibility for access to sensitive information is denied.

Statement of the Case

Applicant contests the Defense Department’s intent to deny or revoke her eligibility for a public trust position. Acting under the relevant Executive Order and DoD Directive,¹ the Defense Office of Hearings and Appeals (DOHA) issued a Statement of

¹ 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.

Reasons (SOR) on July 24, 2008, detailing the trustworthiness concerns under financial consideration.

On July 24, 2008, Applicant's answer to the SOR was received. Applicant elected to have the matter decided without a hearing. Department Counsel submitted the government's case in a File of Relevant Material (FORM), dated February 25, 2009. The FORM contained 10 attachments. On March 4, 2009, Applicant received a copy of the FORM, along with notice of her opportunity to file objections and submit material to refute, extenuate, or mitigate the potentially disqualifying conditions.

Responses to the FORM are due 30 days after receipt of the FORM. Applicant's response was due on April 3, 2009. As of April 23, 2009, no response had been received. On April 23, 2009, I was assigned the case.

Findings of Fact

In her Answer to the SOR, Applicant admitted the factual allegations in the SOR. Applicant's admissions to the SOR allegations are incorporated herein. After a thorough review of the record, pleadings, and exhibits, I make the following findings of fact:

Applicant is a 31-year-old training specialist who has worked for a defense contractor since January 2006, and is seeking to occupy a position of trust. At age 21, Applicant overextended her credit. (Item 7) She had 9 to 11 credit cards, most of which were opened when Applicant was between 18 and 21 years old.

In July 2003, Applicant purchased a vehicle with \$410 per month payments. (Item 10) Applicant made her payments for a year and a half before the car developed mechanical problems, which would have cost \$3,000 to \$4,000 to repair. (Item 5, 6, 7) She tried to trade the car but could not do so because a co-signer was required. Applicant had also changed jobs which resulted in a \$4,000 a year pay cut. (Item 5) Applicant asked the finance company to come and get the car. Applicant owes \$10,900 on the repossessed vehicle.

In September 2006, Applicant purchased a 2006 Chevrolet, which was repossessed in May 2007. Applicant stated the vehicle broke down and required approximately \$3,000 to repair. She allowed the vehicle to be repossessed. (Item 7) Applicant owes \$8,320 on this vehicle.

Applicant's March 2006 Credit Bureau Report (CBR) lists 16 student loan accounts totaling \$68,000 which are listed as being in good standing with Applicant paying as agreed. (Items 8) Applicant's April 2008 and February 2009 CBRs list the student loans as being deferred.

In January 2006, when she completed her Questionnaire for Public Trust Positions, she stated she was struggling to make ends meet, was paying her current bills, but could not afford to take action on her delinquent debt. (Item 5)

Applicant's CBRs lists 21 accounts as being charged off or placed for collection. The accounts include the two vehicle repossessions totaling \$19,000 and 19 other accounts between \$128 and \$5,000 each. The record contains no evidence that any of the obligations listed in the SOR have been paid.

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

Revised Adjudicative (AG) ¶ 18 articulates the security concerns relating to financial problems:

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.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage her finances so as to meet her financial obligations.

The record evidence supports a conclusion Applicant has a history of financial problems. Applicant owes in excess of \$46,000 on accounts which have been past due, charged off, or accounts placed for collection. Applicant's history of delinquent debt is documented in her credit reports, her personal subject interview by an Office of Personnel Management (OPM) investigator, her SOR response, and her responses to interrogatories. Throughout this process, she had admitted responsibility for the

delinquent debts. She has provided insufficient documentation to show significant progress in resolving her debts. Disqualifying Conditions AG ¶ 19(a), “inability or unwillingness to satisfy debts” and AG ¶19(c), “a history of not meeting financial obligations,” apply.

Five Financial Considerations Mitigating Conditions under AG ¶¶ 20(a) – (e) are potentially applicable:

- (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;
- (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;
- (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;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;
- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Under AG ¶ 20(a), Applicant’s debts were incurred years ago, but they remain unpaid. The debts included two repossessed vehicles and past due credit card obligations. There is nothing unique about these kinds of debts. These are type of debts likely to recur. AG ¶ 20(a) does not apply.

Under AG ¶ 20(b), there is no evidence of circumstances beyond Applicant’s control that led to her financial problems other than her statements that at some point in her life she had to take a different job which paid \$4,000 a year less than her prior job and the two cars which experienced mechanical problems she could not afford to repair. AG ¶ 20(b) does not apply.

Under AG ¶ 20(c) and ¶ 20(d), there is no evidence Applicant has received financial counseling or that her finances are under control. There is no evidence of a good-faith effort to repay her past due obligations. AG ¶ 20(c) and ¶ 20(d) do not apply. AG ¶ 20(e) does not apply because there is no evidence Applicant disputes the

legitimacy of the past-due debts or has provided documented proof to substantiate a dispute.

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 relevant 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) the 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 commonsense 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. The debts incurred appear to be for routine living expenses. The past due obligations were for credit card accounts and vehicle repossession. Because Applicant chose to have this matter handled administratively, I am unable to evaluate her demeanor, appearance, or form a positive determination as to her truthfulness. From the record, I am unable to find Applicant was sincere, open, and honest. Even if I found for her in these matters, there is no evidence of payment on the delinquent debts.

Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from her 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, Financial Consideration: **AGAINST APPLICANT**

Subparagraphs 1.a through 1.u: **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 for a public trust position. Eligibility for access to sensitive information is denied.

CLAUDE R. HEINY II
Administrative Judge