



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



In the matter of:)
)
-----) ADP Case No. 08-03474
SSN: -----)
)
Applicant for Public Trust Position)

Appearances

For Government: Alison O’Connell, Esquire, Department Counsel
For Applicant: *Pro Se*

March 31, 2009

Decision

ABLARD, Charles D., Administrative Judge:

Applicant failed to mitigate security concerns regarding Financial Considerations (Guideline F) because of her failure to sufficiently provide evidence of resolution of delinquent debts. Clearance is denied.

Statement of the Case

Applicant submitted her Questionnaires for Public Trust Position (SF 85P) on August 18, 2007. On November 19, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to her detailing the trustworthiness concerns under Guideline F for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended (Directive); Department of Defense (DOD) Regulation 5200.2-R, *Personnel Security Program*, dated January, 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.

The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Regulation that it is clearly consistent with the national interest to grant or continue access to sensitive information for her, and recommended referral to an administrative judge to determine whether such access should be granted, continued, denied, or revoked.

Applicant responded to the SOR allegations in a sworn statement, and elected to have her case decided on the written record in lieu of a hearing. A complete copy of the file of relevant material (FORM), dated January 26, 2009, was provided to her, and she was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days. Applicant provided no additional material but only returned the FORM to DOHA. The case was assigned to me on March 19, 2009.

Findings of Fact

Applicant admitted all of the factual allegations of the SOR in her answer. After a complete and thorough review of the evidence of record, I make the following findings of fact:

Applicant is a 35-year-old employee of a defense contractor who seeks to occupy an Automatic Data Processing Position, designated ADP I/II/III. In her answer to the SOR she admits ten allegations involving delinquent debts that total over \$9,500. The largest was over \$5,000. In her answer to interrogatories (Item 6) concerning 14 debts, she indicates that one debt for \$33 has been paid and another for \$756 is being paid in installments. Neither were alleged in the SOR.

In her responses to interrogatories, she answered each of the remaining allegations in the identical way stating that are caused by health issues relating to her pregnancy in 2005, her husband's unemployment, and ,more recently, separation from her husband. She also states that she will resolve each account on a monthly basis but offers no plan or agreement to do so. She is now a single parent with three daughters.

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 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 *a/so* Executive Order 12968 (Aug. 2, 1995), Section 3.

Analysis

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude that the following Adjudicative Guidelines provide the standard for resolution of the allegations set forth in the SOR.

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 conditions that could raise security concerns. Under AG ¶ 19(a), an "inability or unwillingness to satisfy debts" is potentially disqualifying. Similarly under AG ¶ 19(c), "a history of not meeting financial obligations may raise security concerns."

Applicant did incur substantial delinquent debts that are unresolved, but offered no plan to consolidate them or pay in installments. Thus, the conditions required were established by the government sufficient to raise a security concern.

The guideline also includes examples of mitigating conditions (MC) that could mitigate security concerns arising from financial considerations. Under AG ¶ 20(b), the security concern may be mitigated where 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. Applicant may have had medical expenses, family unemployment, and marital problems that were the proximate cause of her debts, but no supporting documentary evidence was offered to establish facts to prove those assertions, or to establish that responsible action was taken after the debts were incurred. The burden is on Applicant to do so since she has admitted the alleged delinquent debts are hers in her answer.

Under AG ¶ 20(d) the security concern may be mitigated when the individual initiated a good faith effort to repay overdue creditors or otherwise resolve debts. No such evidence was presented, so this mitigating condition is not applicable.

Under AG ¶ 20(e) the security concern may be mitigated when the individual has a reasonable basis to dispute the legitimacy of the past-due debt that 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. She has provided no supporting documentary evidence to dispute the debts, or of actions to resolve the debts. This mitigating condition also is not applicable.

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) 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.

After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole person, I conclude she has not mitigated the security concerns. Although she stated the problems that led to her delinquent debts, she failed to provide sufficient information about future plans to resolve her delinquent debts that would support application of mitigation under the whole person concept.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), a careful consideration of the whole person factors and supporting evidence, application of the pertinent factors under the adjudicative process, and interpretation of my responsibilities under the guidelines. Applicant has not mitigated or overcome the government's case. For the reasons stated, I conclude he is not eligible for access to classified information.

Formal Findings

Formal findings 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

Subparagraphs 1.a.-j.: Against 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 or continue eligibility for a public trust position for Applicant. Eligibility for access to sensitive information is denied.

Charles D. Ablard
Administrative Judge