



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



In the matter of:)
)
-----) ADP Case No. 08-05171
SSN: -----)
)
Applicant for Public Trust Position)

Appearances

For Government: Pamela C. Benson, Esquire, Department Counsel
For Applicant: *Pro se*

October 27, 2010

Decision

HOWE, Philip S., Administrative Judge:

Applicant submitted her Questionnaires for Public Trust Position (SF 85P) on March 31, 2007. On May 11, 2009, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns under Guideline F (Financial Considerations). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), 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 January 1987, as amended (Regulation); and the adjudicative guidelines (AG) effective within the Department of Defense after September 1, 2006.

Applicant acknowledged receipt of the SOR on June 23, 2009. Applicant sent two incomplete Answers to the SOR. DOHA received the first Answer on August 8, 2009, and the second one on November 20, 2009. Applicant submitted a complete Answer to the SOR in writing on January 4, 2010, and requested a hearing before an administrative judge. DOHA received the request on January 4, 2010. Department Counsel was prepared to proceed on March 4, 2010, and I received the case assignment on March 12, 2010. DOHA issued a Notice of Hearing on April 9, 2010. I

held the hearing as scheduled on May 3, 2010. The government offered Exhibits (Ex.) 1 through 8, which were received without objection. Applicant testified and submitted Exhibits A through Y without objection. Applicant previously submitted similar exhibits pertaining to each allegation with her Answer. DOHA received the transcript of the hearing (Tr.) on May 11, 2010. 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 the factual allegations in ¶¶ 1.b, 1.c, 1.d, 1.f-1.h, and 1.m-1.p of the SOR, with explanations. She denied the factual allegations in ¶¶ 1.a, 1.e, and 1.i -1.l of the SOR. She provided additional information to support her request for eligibility for a public trust position.

Applicant is 57 years old, divorced, and has three children, ages 37, 28, 25, and three grandchildren. She works as a call center representative. (Tr. 85, 86; Exhibits 1, W)

Applicant earns \$2,100 monthly after taxes and deductions. She assists her children financially and has for several years. Her 28-year-old son is now helping her manage her finances. This son was in jail on a felony conviction from age 16 to 22. When the state released him from jail in 2004, Applicant supported him because he had no job or income. Now he works in a variety of jobs. The youngest son, age 25 does not work and lives on welfare payments. Applicant sent him \$600 monthly from March 2005 to June 2008 to assist him and his family. Applicant's 37-year-old daughter is disabled and receives Social Security payments.

Applicant changed shifts at work in May 2008. This change deprived her of the 25% shift differential payments, causing her to lose about \$11,000 income annually compared to her previous schedule. Applicant paid \$1,700 to have her son's 1987 Blazer repaired between 2004 when he was released from jail and the present time. Applicant has also supported him in starting his business. Her monthly expenses total about \$1,650. She also has a monthly truck payment of \$556.71 on her 2006 vehicle. She pays \$463 for auto insurance on three cars - the truck and two cars owned by her oldest son. Applicant has a checking and savings account in which there is almost no money. (Tr. 30-32, 92-94, 109-117, 122, 129, 130; Exhibits 1-3)

The SOR lists the following 16 delinquent debts. The debts date from 2000 to the present time.

SOR Paragraph	Answer	Status	Evidence
1.a Credit Card \$87	Denies	Not paid. Cancelled service in 2003. Refuses to pay. Disputes debt.	Tr. 21, 24; Exhibits 2-8, G
1.b. Fruit club \$94	Admits this 2004 debt.	Not paid. Attempted to cancel because	Tr. 26-29; Exhibits 2-8, H

		of poor fruit quality.	
1.c. Credit card \$1025	Admits. Says same as 1.o and 1.p	Paid \$508 in 12/02. Does not have funds to pay balance yet.	Tr. 32-38; Exhibits 2-8, F, I
1.d. Telephone bill \$517	Incurred by youngest son's girlfriend ordering movies on television.	Not paid. Will pay settlement of \$150.87 when funds available.	Tr. 38, 39; Exhibits 2-8, J
1.e. Loan \$25,684	Denies. Mortgage balance on foreclosed house. Disputes debt.	Not paid. Claims she received an eviction notice only and was told by court she was only rental tenant and did not owe anything on mortgage balance.	Tr. 40-45; Exhibits 2-8, K
1.f. VA debt \$28,672	Admits. Claims injured in 1996, had 13 surgeries over five years and given 50% disability by VA instead of receiving unemployment compensation. She got a disability for a post-traumatic stress syndrome incident in 1970. She filed for disability but it was not granted until 2006. She returned to work in 2003, notified the Veterans Administration (VA), benefits did not stop though she thought they did.	VA retained her disability payments and took her tax returns. She claims she paid over \$30,000 to the VA, but cannot get an accounting from the U.S. Treasury. The fees and interest keep adding to the balance owed. Balance not paid except by deductions from her disability payments.	Tr.47,50-55; Exhibits 2-8, B, L
1.g. Telephone bill for \$94	Admits debt.	Paid \$25 in 2005. Will pay balance when possible.	Tr. 55-59; Exhibits 2-8, A, M
1.h. Telephone bill for \$464.	Admits debt.	This debt is for her son's cell phone.	Tr. 59; Exhibits 2-8, N

		\$100 to be paid as soon as possible on settlement.	
1.i. Department store credit card \$1076	Denies.	Her daughter's credit card. Daughter lives on Social Security disability. Daughter's boyfriend completed card applications and put Applicant's name on them. Applicant seeks copies of applications and proof of her liability. Disputes debt.	Tr. 59-66; Exhibits 2-8, O
1..j. Bank debt \$991	Denies.	Former husband was supposed to pay as part of 1996 divorce decree. It is a line of credit. Decree does not specifically name this account, only that accounts in husband's name are his. Husband is deceased. She will never pay it, she claims. Disputes debt.	Tr. 67-73; Exhibits 2-8, P
1.k. Credit card \$803	Denies	Daughter's other credit card. Not paid. Applicant did repay part of the debt several years ago, but ceased such payments. Disputes debt.	Tr. 73-75; Exhibits 2-8, Q
1.l. Private school for son \$2,006	Denies. He graduated in 2003.	This debt was her former husband's obligation. She will try to pay it in the future. Applicant disputes the debt	Tr. 76, 77; Exhibits 2-8, P, R

		because it was her late former husband's obligation to pay. She will pay it when possible because her son graduated from the school.	
1.m. Television service debt \$315	Admits	It is her son's cable television debt. Applicant disputes who is to pay this debt, her or her son.	Tr. 77-80; Exhibits 2-8, S
1.n. Dental bill \$2,223	Admits	This debt is being paid with \$400 monthly from Applicant's flexible spending account for medical needs. Balance is \$1,276.88.	Tr. 78, 81-83; Exhibits 2-8, C, T
1.o. Credit card judgment \$1,621	Admits. She claims it is a duplicate debt of 1.c. and 1.p.	Not paid. Different account numbers. Debts are different. This debt is unresolved.	Tr. 83-85; Exhibits 2-8, U
1.p. Credit card judgment \$1,230	Admits. She claims it is the same debt as 1.c. and 1.o.	Not paid. Different account numbers. Debts are separate ones. This debt is unresolved.	Tr. 83-85; Exhibits 2-8, V

Applicant owed \$67,000 in delinquent debts in the original listing of the SOR. She paid three of the 16 debts. She is paying her VA obligation through monthly offsets to her disability payments and income tax refunds. After these payments, Applicant continues to owe \$54,000 in delinquent debt. These debts arose 2000, and are not recently incurred financial obligations. She does have one current credit card debt with a \$900 balance. The 1996 divorce decree awarded her \$37,500 of a workers compensation payment for an injury received by her husband during the course of their marriage. That money has been spent long ago. Applicant had not filed her 2009 income tax forms at the time of the hearing, but her taxes were paid by payroll deductions. She expects her federal tax refund will be taken for the VA debt. (Tr. 98, 103, 134; Exhibits 2-8)

Applicant submitted two character statements. A co-worker for the past three years and now her supervisor stated Applicant is "dedicated and honest." She is also

“very loyal and trustworthy.” Another co-worker wrote a favorable letter for Applicant. Her April 2010 evaluation rated her as “average” with several favorable comments. She was hired by her employer in April 2003. Her landlord wrote a letter on her behalf stating she is a good tenant for the past year and he has no problems with her or her family members in the house. (Exhibits D, E, X, Y)

Applicant and her oldest son testified at the hearing. They explained the history of Applicant’s financial problems and her support of all her children, to her financial detriment. Both were credible witnesses.

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 overarching adjudicative goal is a fair, impartial and commonsense 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, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by an applicant or proven by Department Counsel and 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 trustworthiness 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 [sensitive] 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 trustworthiness 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 accumulated significant delinquent debt and has been unable to pay these obligations for years. The evidence is sufficient to raise these potentially disqualifying conditions.

The guideline includes six conditions that could mitigate trustworthiness concerns arising from financial difficulties. Three conditions may be applicable to Applicant.

Under AG ¶ 20(a), the disqualifying condition may be mitigated where “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.” Applicant’s financial worries arose from 2000 forward to the present time. These circumstances have been modified.

Applicant got a job in 2003. At the same time her three children were an increasing financial drain on her resources from 2000 to 2008. Her oldest son was in jail for six years and she took it upon herself to support him upon his release. Her daughter is disabled and took out two credit cards in Applicant's name without her permission. The youngest child has two children and Applicant gave him \$10,000 from her meager earnings for support between 2006 and 2008. Her shift change in May 2008 caused her to lose \$11,000 income annually. Applicant has now ceased supporting two of her children and her third son is managing her money. I find the financial behavior of incurring debt and not repaying it while making support payments to her children occurred under such unusual circumstances that it is unlikely to recur because of her oldest son's control of her finances, and his efforts at self-support, have resulted in a reduction of Applicant's gifts to her children and a more organized attempt to resolve her delinquent debts. These situations do not raise concerns about her current reliability, trustworthiness, or good judgment. The evidence raises this potentially mitigating condition.

Under AG ¶ 20(b), it may be mitigating 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." She divorced from her second husband in 1996. He subsequently died. Applicant had the responsibility of supporting and caring for her three children, who did not work. Her daughter in 1996 was 23 years old, her oldest son was 14, and the youngest child was 11 years old. Only her oldest son is making any current attempt to support himself. Furthermore, Applicant had 13 surgeries during that time period until 2003 to correct an injury from 1996.

Applicant had a divorce, death, imprisonment of her son, unexpected medical emergencies, and two adult children who do not work. While married to her second husband it also appears she did not work regularly. More importantly, between 1996 and 2003 she was unemployed. She acted responsibly in identifying and attempting to resolve some of these debts within the restrictions of her income. I conclude this potentially mitigating condition is a factor for consideration in this case.

Evidence that "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" is potentially mitigating under AG ¶ 20(c). There is no evidence of counseling; hence this mitigating condition does not apply.

Similarly, AG ¶ 20(d) applies where the evidence shows "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." Applicant resolved three of the delinquent debts, either by payment or settlement. This mitigating condition has limited application.

AG ¶ 20 (e) states "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." Applicant disputes in writing six of the delinquent debts for

various reasons. She has a reasonable basis for each dispute. This mitigating condition is applicable.

Finally, AG ¶ 20 (f) provides “the affluence resulted from a legal source of income” has no applicability. Applicant has clearly shown she is not affluent.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an Applicant’s eligibility for a public trust position by considering the totality of the Applicant’s conduct and all relevant 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 public trust position 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. Applicant has a substantial amount of delinquent debt. The two largest debts are owed to the VA for medical bills and a bank on a line of credit her late former husband incurred. She is paying the third largest debt (the dental bill) regularly. Four debts are owed by her daughter and her youngest son. Applicant is an adult and the parent in the family when all this debt was incurred within the past decade. Her ability to repay it was hampered by her parental obligations for support of her adult children and grandchildren. After 2008 Applicant reduced the payments she made to her youngest child. But her monthly expenditures continue to exceed her monthly income, at least on the mathematical calculations of her income and expenses. Applicant attempts to pay the debts she admits she owes and seeks information from the creditors whose claims she disputes. Within the limits of her income, Applicant is doing what she can to resolve her debts and provide for her dependant adult family. It is a difficult situation, but one that does not appear to have any other solution than that now being implemented by Applicant.

Applicant is a trustworthy and honest person. Her frank discussion of her debts and family obligations demonstrates those qualities. The totality of the evidence concerning Applicant applied on a fair and commonsense basis shows Applicant can be trusted with sensitive information, as she has been for the past seven years. Her past performance is an indication of the likelihood of her future performance.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a public trust position. For all these reasons, I conclude Applicant mitigated the trustworthiness 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, Guideline F: FOR APPLICANT

Subparagraph 1.a to 1.p: For Applicant

Conclusion

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

PHILIP S. HOWE
Administrative Judge