



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



In the matter of:)	
)	
-----)	ADP Case 08-06284
SSN: -----)	
)	
Applicant for Public Trust Position)	

Appearances

For Government: Tom Coale, Esquire, Department Counsel

For Applicant: *Pro Se*

September 29, 2009

Decision

ROSS, Wilford H., Administrative Judge:

On April 9, 1993, the Composite Health Care Systems Program Office (CHCSPO), the Defense Office of Hearings and Appeals (DOHA), and the Assistant Secretary of Defense for Command, Control, Communications and Intelligence (ASD C3I) entered into a memorandum of agreement for DOHA to provide trustworthiness determinations for contractor personnel employed in Information Systems Positions as defined in DoD Regulation 5200.2-R, Personnel Security Program (Regulation), dated January of 1987.

Applicant submitted her Public Trust Position Application (SF 85P) on January 15, 2008. (Item 4.) On March 2, 2009, DOHA issued a Statement of Reasons (SOR) to the Applicant, which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a determination of trustworthiness, suitability, and eligibility for the Applicant to hold a Sensitive Systems Position (ADP-I/II/III). 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 submitted an Answer to the SOR on April 16, 2009, and requested a decision without a hearing. Department Counsel submitted a File of Relevant Material (FORM) to the Applicant on May 27, 2009. The Applicant received the FORM on June 2, 2009, and was given 30 days to submit any additional information. She did not submit any additional information. The case was assigned to me on August 5, 2009. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to sensitive personal information is denied.

Findings of Fact

The Applicant is 46 and single. She is employed by a defense contractor and is seeking to obtain a determination of trustworthiness in connection with her employment.

Guideline F, Financial Considerations

The Government alleges that the Applicant is ineligible for clearance because she is financially overextended and therefore at risk of having to engage in illegal acts to generate funds. The Applicant admitted allegations 1.a., 1.b., 1.c., 1.e., 1.f., and 1.i., under this paragraph. Those admissions are hereby deemed findings of fact. She denied allegations 1.d., 1.g., and 1.h.

The Applicant states that many of these debts became due and owing when she was unemployed. The record shows that she was unemployed from October 2002 to May 2003, and from October 2005 to January 2008. She has been employed by her current employer since then. (Item 4 at question 6.)

1.a. The Applicant admits that she is indebted in the amount of \$551 for a judgment entered against her in 2001 in relation to a lease. (Item 7 at 2.) This debt has not been paid.

1.b. The Applicant admits that she is indebted to a loan company in the amount of \$1,368 for a judgment entered against her in 2001. (Item 7 at 2.) This debt has not been paid.

1.c. The Applicant admits that she is indebted to a credit bureau in the amount of \$2,254 for a judgment entered against her in 2002. (Item 7 at 2.) This debt has not been paid.

1.d. The Applicant denies that she owes a debt to an automobile dealership in the amount of \$5,020. She states in her Answer at page 1, "I am disputing the amount of the balance owed." The automobile that she purchased stopped working after six months and she had the dealer pick it up because she could not afford to fix it.

The most recent credit report in the record, dated October 20, 2008, shows that the Applicant was \$2,918 past due. (Item 6 at 2.) In a set of Interrogatories served on her, the Applicant admits to owing approximately \$3,278 and states, "No action taken. Filing for bankruptcy." (Item 7 at 3.) Based on all of the available evidence, I find that she does owe a debt to this creditor, and the amount is approximately \$3,278. This debt has not been paid.

1.e. The Applicant admits that she is indebted to a collection agency in the amount of \$126 for a cable television bill. (Item 7 at 4.) This debt has not been paid.

1.f. The Applicant admits that she is indebted to a second collection agency in the amount of \$318 for a telephone bill. (Item 7 at 4.) This debt has not been paid.

1.g. The Applicant denies that she is indebted to a third collection agency in the amount of \$3,225 for an account owed to a loan company. She states in her Answer at page 1, "The amount I borrowed was for \$700.00 from [the loan company]. I will be contacting the business and negotiating a settlement on this debt within this year." The record shows that this debt has an account number ending in 50108. (Item 5 at 7.)

1.h. The Applicant denies that she is indebted to the third collection agency in the amount of \$716 for a second account owed to a loan company. She states in her Answer at page 2, "This should be for only one loan, yet there is two accounts that is stated that I owed." The record shows that this account has an account number ending with 50107. (Item 5 at 8.) As stated above, the Applicant does admit owing at least \$700 to this creditor.

Regarding both 1.g. and 1.h., the Applicant was served with Interrogatories last year. She was informed of both of these accounts at that time. In her response, dated September 18, 2008, the Applicant stated with regards to both, "No action taken, will be filing bankruptcy or disputing. (Shows 2 accts, which is wrong.)" (Item 7 at 3.) (Emphasis in original.) There is no evidence that the Applicant disputed either account since September 2008.

The evidence of record is sufficient to show that the Applicant does indeed owe two debts to this creditor. The Applicant has had almost a year to resolve the circumstances of these two debts. She has not done so. Based on the available evidence, I find that she owes two accounts to this creditor, that the amounts are correct, and that she has paid neither one.

1.i. The Applicant admits that she is indebted to a fourth collection agency in the amount of \$932. This debt has not been paid.

Policies

When evaluating an applicant's suitability for a trustworthiness determination, 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, which are useful in evaluating an applicant's eligibility for access to sensitive personal information.

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. In addition, the administrative judge may also rely on his own common sense, as well as his knowledge of the law, human nature, and the ways of the world, in making a reasoned decision.

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 personal 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 such information. Decisions include, by necessity, consideration of the possible risk the Applicant may deliberately or inadvertently fail to protect or safeguard sensitive personal information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of such information.

Analysis

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 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. The Applicant, by her own admission, or as found by me, has over \$12,000 in past due debts, all of which have been due and owing for several years. The evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate trustworthiness concerns arising from financial difficulties. The following conditions have possible applicability in this case:

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 difficulties are of long standing. By her own admission, she has paid none of her delinquent debts, no matter how small. This mitigating condition is not applicable.

AG ¶ 20(b) provides that the disqualifying conditions may be mitigated where "the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, . . .), and the individual acted responsibly under the circumstances." The Applicant argues that many of these debts came from financial hardship. The record shows she was unemployed for a little over two years between October 2005 and January 2008. However, she has been gainfully employed since then. She states several times that she will resolve these debts, but she has not taken any affirmative action. A statement that she intends to resolve the indebtedness in the future is not sufficient evidence that she can or will resolve the debts. I cannot find under these particular facts that the Applicant has acted responsibly under the circumstances.

AG ¶ 20(c) provides that it may be mitigating where, “there are clear indications that the problem is being resolved or is under control.” The Applicant’s credit reports show that, in the main, she is making sufficient payments on her current indebtedness. However, she has done nothing to pay her past due debts. A desire to resolve her substantial past due indebtedness is not enough. This mitigating condition is not applicable.

Based on all of the available evidence, I cannot find that the Applicant has mitigated the allegations under this Guideline. Paragraph 1 is found against the Applicant.

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. 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. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a) in making such a decision:

(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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. The Applicant has a history of not paying her debts. As set forth above, I find that there have not been permanent behavioral changes as required under AG ¶ 2(a)(6). In addition, I find that there is the potential for pressure, coercion, exploitation, or duress (AG ¶2(a)(8)), and that there is a likelihood of recurrence (AG ¶2(a)(9)).

Overall, the record evidence leaves me with questions or doubts as to Applicant’s eligibility and suitability for a trustworthiness determination. For all these reasons, I conclude the Applicant has not mitigated the trustworthiness concerns arising from her financial difficulties.

On balance, it is concluded that the Applicant has not successfully overcome the Government’s case opposing her request for a finding of trustworthiness. Accordingly,

the evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 of the Government's Statement of Reasons.

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 THE APPLICANT

Subparagraphs 1.a. through 1.i.: Against the Applicant

Decision

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 a determination of trustworthiness, suitability, and eligibility for the Applicant to hold a Sensitive Systems Position (ADP-I/II/III).

WILFORD H. ROSS
Administrative Judge