



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



In the matter of:)
)
) ADP Case No. 08-06409
SSN:)
)
Applicant for Public Trust Position)

Appearances

For Government: Paul M. DeLaney, Esquire, Department Counsel

For Applicant: *Pro se*

July 7, 2009

Decision

O'BRIEN, Rita C., Administrative Judge:

Based upon a review of the case file, pleadings, and exhibits, I conclude that Applicant has not mitigated the concerns raised under the guidelines for financial considerations and personal conduct. Accordingly, her request for a position of public trust is denied.

Statement of the Case

Applicant submitted an application for a public trust position (SF 85P),¹ which she signed on August 24, 2007, again on October 19, 2007, and a third time on December 4, 2007. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to

¹ Trustworthiness determinations, including applications for ADP I, II and III positions, are adjudicated under DoD Directive 5220.6 (Directive), as amended, in accordance with the memorandum of the Deputy Under Secretary of Defense (Counterintelligence and Security), dated November 19, 2004.

make a preliminary affirmative finding² that it is clearly consistent with the national interest to grant Applicant's request.

On March 27, 2009, DOHA issued to Applicant a Statement of Reasons (SOR) (Item 1), that specified the basis for its decision: security concerns addressed in the Directive under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of the Revised Adjudicative Guidelines (AG).

Applicant received the SOR on March 31, 2009. She submitted a signed Answer, notarized on April 19, 2009, in which she admitted to all allegations under Guideline F, and noted that she paid the debts listed at allegations 1.c., 1.g., and 1.j. She admitted to the allegation concerning deliberate falsification under Guideline E, but noted that she misunderstood the question. In her Answer, she also requested a decision without a hearing. On May 6, 2009, DOHA Department Counsel submitted a file of relevant materials (FORM)³ in support of the government's preliminary decision. Applicant was given 30 days from the date she received the FORM to file a response. She timely forwarded a response with five attachments. The case was assigned to me on June 25, 2009, for an administrative decision based on the record.

Findings of Fact

Applicant's admissions in response to the SOR are admitted as fact. After a thorough review of the pleadings, Applicant's response to the SOR, and the FORM, I make the following additional findings of fact.

Applicant, 30 years old, is a high school graduate, currently employed in the health care field as a Data Verification Analyst. According to her security clearance application of late 2007, she is unmarried, and has a seven-year-old child. Applicant held positions between 2001 and 2007 as an inspector in a cheese company, a customer's representative, and in assembly. She was unemployed for approximately six months between 2000 and 2001, ten months between 2002 and 2003, and three months in 2006 (Item 5).

Applicant is a single mother and does not receive child support for her daughter (Item 6; Response to FORM). A major portion of her delinquencies relates to medical debts. Applicant indicated her "...child has been sick and has had many doctor's appointments." She did not explain in her Response whether these visits related to typical childhood illness, or involved a major medical event that would affect her ability to meet her debts. Most of the medical debts are relatively small.

² Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.

³ See Directive, Enclosure 3, Section E3.1.7. The FORM included 14 documents (Items 1 - 14) proffered in support of the government's case.

In her Interrogatory answer, Applicant reported a gross monthly income of \$1956 and deductions of \$281, leaving a net monthly income of \$1,675. Appellant's rent, food, and clothing and other monthly expenses total \$1,459, leaving a monthly net remainder of \$215. She did not list payments on any of the SOR debts. She noted in her response to Interrogatories that she is "just making ends meet" and that she has not taken steps to resolve most of her debts (Item 7). There is no indication that Applicant sought any type of financial counseling.

The 30 debts listed in the SOR amount to approximately \$21,000. Applicant's debts became delinquent between 2002 and 2007 (Item 8). In her Response to the FORM, she stated that she satisfied a medical debt of \$100. However, she did not indicate the corresponding SOR debt, nor did she provide evidence of payment. She also stated that she paid the debt alleged at 1.g., but provided no evidence to support her claim. The record evidence is unclear as to whether a document she submitted (Answer document 6) relates to allegation 1.b. She did provide evidence that she paid two debts that were alleged in the SOR:

- 1.c. Judgment by state Department of Workforce Development, \$540; (Response document 4)⁴
- 1.j. Utility bill, \$300; see Response document 2)

Applicant did not disclose her delinquent debts when she answered the following question on her public trust position application: "Are you now over 180 days delinquent on any loan or financial obligation?" She completed her application in August 2007 (Item 5). She re-certified the application in October 2007 and in December 2007, but did not make any changes. At her interview in March 2008, Applicant discussed the status of all of her delinquent debts. She stated that she did not remember if she had listed the debts on her application (Item 6). In her Answer, she admitted that she did not disclose this information, but stated that she "did not understand that all the things listed in collection is what I was answering to." (Item 4).

Applicant noted in her Response to the FORM that when she returns from her job after business hours, it is difficult to contact creditors to "get clarification of the debts I have paid." She submitted a performance evaluation for the period June through December 2008, showing an overall rating of "Exceeds Expectations" (Response document 1). She stated that "...even though I have bad credit it does not affect my job. I know it is important to pay all of these debts, and I hope to do that in the future." (Response to FORM).

Policies

Each trustworthiness decision must be a fair, impartial, and common-sense determination based on examination of all available relevant and material information,

⁴ Although the SOR did not allege it, Applicant failed to disclose this judgment in response to question 22a in her public trust position application (Item 5).

and consideration of the pertinent criteria and adjudication policy in the Revised Adjudicative Guidelines (AG).⁵ Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the Guidelines, commonly referred to as the “whole person” concept.

The presence or absence of a disqualifying or mitigating condition under any guideline does not determine a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them, as they represent policy guidance governing the grant or denial of access to sensitive information.

A trustworthiness decision is intended only to resolve the question of whether it is clearly consistent with the national interest⁶ for an applicant to either receive or continue to have access to sensitive information. The government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke an applicant’s access to sensitive information. Additionally, the government must be able to prove controverted facts alleged in the SOR. If the government meets its burden, it falls to the applicant to refute, extenuate or mitigate the government’s case.

A person who has access to sensitive information enters into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability and trustworthiness to protect the national interests as her or his own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the government.⁷

Analysis

Guideline F, Financial Considerations

AG ¶18 expresses the security concern pertaining to financial considerations:

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 over-extended 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

⁵ Directive. 6.3.

⁶ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁷ See *Egan*; Revised Adjudicative Guidelines, §2(b).

cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

The evidence contained in the FORM shows that Applicant owes debts that started becoming delinquent in approximately 2002. Her seven-year history of failing to meet her financial obligations supports application of disqualifying conditions AG ¶19 (a) (*inability or unwillingness to satisfy debts*) and AG ¶19 (c) (*a history of not meeting financial obligations*).

Under AG ¶ 20, the following conditions that can potentially mitigate security concerns are relevant:

(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.

Although Applicant's failure to meet her financial obligations began approximately seven years ago, it remains a current problem because most of her debts are still unresolved. Given that Applicant has provided only a promise to pay them in the future, and has no documented plan in place, I cannot confidently predict that she will resolve the situation. AG ¶ 20(a) cannot be applied.

AG ¶ 20(b) has some application because Applicant has been unemployed twice since her delinquencies began in 2002. As a result, she has been supporting herself and her child on limited resources, and without child support. However, to be applicable, this mitigating condition requires that the person act responsibly under the circumstances. Although she provided evidence that she paid two of the SOR debts, the record contains no evidence that Applicant acted responsibly by taking steps during the past several years to seek counseling or set up a plan to resolve her many remaining debts. AG ¶20 (b) does not apply.

AG ¶ 20(c) and AG ¶ 20(d) are also unavailable. Applicant has not sought assistance through financial counseling. Although she has paid several debts, a large

number remain unpaid with no indication of a plan to resolve them. None of the mitigating conditions apply, and I find against the Applicant on Guideline F.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16(a) applies (*deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*). When she completed her security clearance application in 2007, Applicant disclosed none of her past due debts (Item 5). Most of her debts became delinquent between 2002 and 2007, before she completed her application. She stated during her subject interview that she did not remember if she listed her debts on her security clearance application. Her statement is not credible, as her interview occurred only three months after she last re-certified her application. It is unlikely that she would have forgotten to disclose her financial situation, which involves a large number of delinquent debts. In her Answer to the SOR, Applicant explained that she did not list her debts because she misunderstood the question on the application, and did not realize she was expected to list debts that were in collection status (Item 4). However, the question is written in straightforward language, and Applicant's educational background is sufficient for her to understand its meaning. I find that Applicant deliberately failed to disclose her delinquencies to the government.

The potentially applicable mitigators are AG ¶ 17(a) (*the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts*) and AG ¶ 17(c) (*the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment*). Neither condition applies. The record contains no evidence that Applicant attempted to inform the government of her financial delinquencies at any point before she was confronted with them at her interview. In addition, Applicant's falsification cannot be considered insignificant under AG ¶ 17(c). The government relies on information provided by applicants, and falsification both undermines the adjudication process, and casts doubt on an applicant's trustworthiness.

Whole Person Concept

Under the whole person concept, an administrative judge must evaluate the applicant's suitability for access to sensitive information by evaluating the totality of the applicant's conduct and all the circumstances. I have evaluated the facts presented and have applied the appropriate adjudicative factors under the cited Guidelines. I have also reviewed the record before me in the context of the whole-person factors listed in 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.

AG ¶ 2(c) requires that the ultimate determination of whether to grant access to sensitive information must be an overall common-sense judgment based upon careful consideration of the guidelines and the whole person concept. Under the appropriate guidelines, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

Applicant is a single parent, and has experienced some periods of unemployment. She has accrued significant debt since 2002, amounting to approximately \$21,000. She has paid two of the debts alleged in the SOR, or about \$840, but has no plan to deal with the approximately \$20,000 of debt that remains. Moreover, Applicant's deliberate failure to disclose her debts on her application indicates a lack of trustworthiness that is incompatible with the standards required of those who hold trustworthiness positions. A fair and common-sense assessment of the available information bearing on Applicant's suitability for a position of public trust shows she has not satisfied the doubts about her ability or willingness to protect the government's interests. Such doubts must be resolved in favor of the government.⁸

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 as follows:

Paragraph 1, Guideline F:	AGAINST Applicant
Subparagraphs 1.a. - 1.b.:	Against Applicant
Subparagraph 1.c.:	For Applicant

⁸ See *Egan*; Revised Adjudicative Guidelines, ¶ 2(b).

Subparagraphs 1.d. – 1.i.:	Against Applicant
Subparagraph 1.j.:	For Applicant
Subparagraphs 1.k. – 1.dd.:	Against Applicant
Paragraph 2, Guideline E:	AGAINST Applicant
Subparagraph 2.a:	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's request to occupy a position of public trust. Applicant's request is denied.

RITA C. O'BRIEN
Administrative Judge