



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



In the matter of:)	
)	
)	ADP Case No. 08-07529
SSN:)	
)	
Applicant for Public Trust Position)	

Appearances

For Government: Jeff A. Nagel, Esq., Department Counsel
For Applicant: *Pro Se*

January 20, 2010

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant has not mitigated the Financial Considerations trustworthiness concerns. Eligibility for access to sensitive information is denied.

Statement of the Case

On June 9, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing trustworthiness concerns under Guideline F, Financial Considerations. The action was taken under Executive Order (EO) 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); 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.

Applicant answered the SOR in writing in an undated response, and requested a hearing before an administrative judge. The case was assigned to me on September 10, 2009. DOHA issued a notice of hearing on September 30, 2009, scheduling the

hearing for November 3, 2009. The hearing was convened as scheduled. The government offered Exhibits (GE) 1 through 7, which were received without objection. A stipulation to the admissibility of GE 1 through 6 was marked Hearing Exhibit (HE) I. Applicant testified on her own behalf and submitted Exhibits (AE) A through D, which were received without objection. I granted Applicant's request to keep the record open to submit additional information. Applicant submitted 14 pages of documents, which were marked AE E through I and admitted without objection. Department Counsel's memo is marked HE II. DOHA received the transcript of the hearing (Tr.) on November 12, 2009.

Findings of Fact

Applicant is a 26-year-old employee of a defense contractor. She has worked for her current employer as a temporary employee since March 2008, and as a permanent employee since August 2008. She has a General Educational Development (GED) high school equivalency diploma, and she attended trade school. She is not married. She has two children, ages six and five.¹

The SOR alleges 20 delinquent debts. The debts are established by credit reports obtained on April 1, 2008 and March 16, 2009. Applicant admitted to owing the debts alleged in SOR ¶¶ 1.a, 1.c, 1.d, 1.e, 1.g, 1.h, 1.n, 1.r, 1.s, and 1.t. She denied owing the remaining ten debts. The total amount owed on the ten debts that Applicant admitted is about \$20,651.²

Applicant stated her financial problems can be traced to when she was younger and financially unsophisticated. She lived with the father of her children for a period, but he was frequently unemployed or incarcerated. He was recently released from prison. He has not paid child support, and she does not anticipate that he will at any point in the foreseeable future. She also had periods of unemployment and low-paying jobs. She lived in transitional housing for a time because she could not afford to live on her own. She currently shares an apartment with her mother. Applicant also admitted to some financial irresponsibility. She stated that she was an "impulse buyer and when [she] was upset [she] would shop."³

The debts that Applicant admitted owing include rent on an apartment (\$1,897), a credit card (\$2,394), a school (\$410), the deficiency owed on a car loan after the car was repossessed (\$13,493), a public library (\$366), two medical accounts (\$310 and \$658), a video store (\$63), and two cellular telephone accounts (\$457 and \$603). Applicant borrowed books from a library and did not return them. She stated she gave the books to a friend who was supposed to return the books to the library, but did not. Applicant paid \$20 to the library on December 28, 2008, bringing the balance on that debt to \$345. She admitted the car loan, but stated that the amount should be less. She

¹ Tr. at 28-30, 49; GE 1.

² Applicant's response to SOR; GE 4, 5.

³ Tr. at 16-21, 29, 31; GE 3.

stated that she received a letter from the creditor stating the car was sold for \$3,000. She was unsure if she still had a copy of the letter. She was requested to provide a copy of the letter in her post-hearing submission. The letter was not submitted.⁴

Applicant denied owing the delinquent debt of \$5,947 owed to a collection company on behalf of an apartment landlord, as alleged in SOR ¶ 1.b. She admitted that she was a tenant in the apartment, she did not pay all the rent owed, and she vacated the apartment about six months into a one-year lease. She stated the landlord obtained a judgment against her while she was still living there for about \$1,300. She has not paid the judgment. She did not submit any documentation to substantiate her dispute of the additional amount owed.⁵

Applicant denied owing the medical debts alleged in SOR ¶¶ 1.f, 1.i through 1.m, and 1.o through 1.q. The total amount of the nine debts is \$2,217. She stated that she had insurance or her medical bills were paid by the state when the debts were allegedly incurred. The names of the health-care providers were not listed on the credit reports in evidence or alleged in the SOR.⁶

Applicant consulted with a financial counseling service in February 2007, and received a budget and action plan. She listed multiple delinquent debts and a judgment on her Public Trust Position Application (SF 85P) submitted in March 2008. She fully discussed her finances and delinquent debts when she was interviewed for her background investigation in May 2008. She told the investigator that she was meeting her current obligations. She planned on saving money to pay her delinquent debts with lump-sum settlements. She responded to DOHA interrogatories in December 2008. She stated that she had a payment plan to pay \$232 per month for three months to the school identified in SOR ¶ 1.d. She stated that she would pay the library \$20 to \$40 per month until paid. She indicated that her plan was to implement monthly payments to three debts at a time until they were paid in full. She would then start paying another three debts. Applicant has not made any payments on the debts listed in the SOR other than the \$20 paid to the library, as discussed above. She received an income tax refund last year of about \$5,800. She paid a debt of about \$300 that was not listed on the SOR, and she purchased a computer for her children. As for the remaining money, she admitted that she “blew it.” She lent some of it to friends who did not repay her.⁷

Applicant stated she is in much better shape financially now than she has been in the past. She received counseling, which has helped her cope with her shopping issues. She has a budget. She is not incurring overdraft fees. She is living within her means and not incurring new delinquent debt. She is in contact with an attorney and intends to file bankruptcy.⁸ She stated in her post-hearing submission:

⁴ Tr. at 43-46, 59-61; Applicant’s response to SOR; GE 2-3.

⁵ Tr. at 35-39; Applicant’s response to SOR; GE 3.

⁶ Tr. at 40-42; Applicant’s response to SOR; GE 3-7.

⁷ Tr. at 22-27, 46; GE 1-3

⁸ Tr. at 20-27, 30-35; GE 3; AE B, F, H.

I have completed a new budget and am sticking to it. When I receive my tax return, I am going to pay off [XXXX] Schools and [YYYY] Library for the funds that I owe them. I am going to put the vast majority of the rest of it into either savings or a CD (I will be talking with a bank advisor on my best options).⁹

Applicant submitted letters from her supervisor and co-workers. The supervisor attested to her excellent job performance, and that she is a “hardworking, honest individual who consistently goes above and beyond for [their] beneficiaries.” The co-workers similarly endorsed her trustworthiness, character, and value to their company. Her performance appraisals reflected that Applicant is a superior employee who exceeded the standard for her position.¹⁰

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.

⁹ AE F.

¹⁰ AE A, C, D, G, I.

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 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 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).

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. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant accumulated a number of delinquent debts and was unable or unwilling to pay her obligations for a period. The evidence is sufficient to raise AG ¶¶ 19(a) and 19(c).

Five Financial Considerations mitigating conditions under AG ¶ 20(a) 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; and

(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.

Applicant has not paid any of the debts alleged in the SOR. Her financial issues are recent and ongoing. AG ¶ 20(a) is not applicable.

Applicant had periods of unemployment and low-paying jobs. When she lived with the father of her children, he was frequently unemployed or incarcerated. He does not pay child support. Those are conditions that were largely beyond her control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances. Applicant admitted she was an "impulse buyer" who bought clothes when she was upset. She borrowed books from a library and did not return them. She received a \$5,800 income tax refund, paid a debt for about \$300, bought a computer for her children, and "blew" the rest. She has not made any payments on the debts alleged in the SOR other than a \$20 payment to the library in December 2008. She has not acted responsibly under the circumstances. AG ¶ 20(b) is partially applicable.

Applicant received counseling. She intends to pay the debts to the school and the library with her income tax refund. She stated that she will put the vast majority of the rest of it into either savings or a CD. She intends to resolve the remaining delinquent debts through bankruptcy. Applicant clearly has matured. She has addressed her shopping issues. She has a budget; she is living within her means; and she is not accruing new delinquent debt. She is on the right track, but there is not sufficient evidence for a determination that her financial problems are being resolved or under control. AG ¶ 20(c) is partially applicable. Her actions do not qualify as a good-faith

effort to repay overdue creditors or otherwise resolve debts.¹¹ AG ¶ 20(d) is not applicable.

Applicant denied owing the debt of \$5,947 owed to an apartment landlord. She admitted that she was a tenant in the apartment, she did not pay all the rent owed, she vacated the apartment before the end of the lease, and the landlord obtained a \$1,300 judgment against her, which she has not paid. She did not submit any documentation to substantiate her dispute. AG ¶ 20(e) is not applicable to the debt alleged in SOR ¶ 1.b.

Applicant admitted owing two medical debts totaling \$968. She denied owing nine medical debts totaling \$2,217. She stated that she had insurance or her medical bills were paid by the state when the debts were allegedly incurred. The names of the health-care providers were not listed on the credit reports in evidence or on the SOR. I find that Applicant has a reasonable basis to dispute the legitimacy of the past-due medical debts. AG ¶ 20(e) is applicable to the medical debts alleged in SOR ¶¶ 1.f, 1.i through 1.m, and 1.o through 1.q.

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 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.

¹¹ The Appeal Board has previously explained what constitutes a "good-faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of Financial Considerations Mitigating Condition 6, an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term 'good-faith.' However, the Board has indicated that the concept of good-faith 'requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.' Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of Financial Considerations Mitigating Condition 6.

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. Jun. 4, 2001)).

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. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment. Applicant is 26 years old. She had periods of unemployment and low-paying jobs, and the father of her children was frequently unemployed or incarcerated. He does not pay child support. She also was irresponsible about her finances and was an “impulse buyer.” In 2008, she told the background investigator and DOHA that she would resolve her debts, but she has done almost nothing about them, despite receiving a large income tax refund last year. Applicant has clearly matured. She is now a valuable and trusted employee. However, there is not enough evidence in the record for me to conclude that her finances are in good order.

Overall, the record evidence leaves me with questions and doubts as to Applicant’s eligibility and suitability for a public trust position. For all these reasons, I conclude Applicant has not mitigated the Financial Considerations trustworthiness concerns.

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 APPLICANT
Subparagraphs 1.a-1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraphs 1.g-1.h:	Against Applicant
Subparagraphs 1.i-1.m:	For Applicant
Subparagraph 1.n:	Against Applicant
Subparagraphs 1.o-1.q:	For Applicant
Subparagraphs 1.r-1.t:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant eligibility for a public trust position. Eligibility for access to sensitive information is denied.

Edward W. Loughran
Administrative Judge