



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ADP Case No. 08-07568
)
)
Applicant for Public Trust Position)

For Government: Braden M. Murphy, Esquire, Department Counsel
For Applicant: *Pro se*

May 28, 2010

Decision

DAM, Shari, Administrative Judge:

Based upon a review of the record evidence as a whole, eligibility for access to ADP I/II/III sensitive information is granted.

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 (ASDC3I), entered into a memorandum of agreement for DOHA to provide trustworthiness determinations for contractor personnel employed in Sensitive Information Systems Positions (ADP I/II/III), as defined in the Department of Defense (DoD) Regulation 5200.2-r, *Personnel Security Program* (January 1987), as amended (Regulation).

On April 28, 2008, Applicant completed her Public Trust Position Application (SF 85P). On July 7, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (Financial Considerations). 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 Adjudicative Guidelines effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on September 15, 2009, and waived her right to a hearing before an administrative judge. However, on October 15, 2010, she withdrew her waiver and requested a hearing. (Tr. 8.) On November 2, 2009, DOHA assigned the case to me. On February 25, 2010, DOHA issued a Notice of Hearing setting the case for March 30, 2010. The case was heard as scheduled. Department Counsel offered Government Exhibits (GE) 1 through 9 into evidence without objection. Applicant testified and called one witness. She offered Applicant Exhibits (AE) A through E into evidence without objection. The record remained open until April 16, 2010, to give Applicant an opportunity to submit additional information. Applicant timely submitted 17 pages of documents that I marked as AE F, H, and I, and admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on April 12, 2010.

Findings of Fact

In her Answer to the SOR, Applicant admitted the 38 allegations contained in SOR ¶ 1, and provided information in support of her answer. Those admissions are incorporated in the following findings.

Applicant is 29-years-old and married. She and her husband have two children, ages three and nine months. She has an eleven-year-old from a former relationship. All three children reside with them. She seldom receives child support for her oldest child. After graduating from high school, she attended college for a year and a half.

From 1998 until 2000, Applicant worked for an insurance company. She then worked for a bank for two years. In 2002, she bought a house. Subsequently, she quit her bank position to find a job closer to the new home, but remained unemployed for six months. During those six months, she and her husband were unable to consistently pay the mortgage. By early 2003, their debts started to become delinquent and they moved to another state where her husband obtained a position that they anticipated would be more lucrative. They remained there for a couple months and then returned to their home state. She began working at temporary agencies and her husband resumed working in his own construction business. They made periodic payments on their mortgage, but it went into foreclosure in 2004. From January 2006 until March 2008, she worked for various employers with periods of unemployment and underemployment. Since March 2008, Applicant has worked as a medical claims processor for a federal contractor. Her husband works for a manufacturing company.

Based on credit bureau reports (CBR) dated May 2008, January 2009, and June 2009, the SOR, filed on July 10, 2009, alleged that Applicant accumulated 38 delinquent

debts totaling \$116,770, including a delinquent mortgage of \$92,203. The remaining debts totaled about \$25,000 and consisted of monies owed to credit card companies, utility companies, department stores, an insurance company, loan companies, a bank, and for an automobile repossession. Fourteen debts are owed for Applicant's medical treatment and total around \$2,600. On July 14, 2009, Applicant filed a Voluntary Petition for Chapter 7 Bankruptcy. On October 22, 2009, the court entered an order, which discharged all of the SOR-listed debts and other debt.¹ (GE 6 at 24-38.)

In the fall of 2009, Applicant and her husband met with a financial counselor. (Tr. 55.) With his assistance, they established a working budget and financial plan. They met with him four times. (Tr. 56.) The counselor submitted a letter dated March 18, 2010. He stated, "They are both motivated to achieve financial wellness once again and I look forward to working along side with them to achieve their goals." (AE E.) They also completed three hours of mandatory debtor education courses required by the bankruptcy court. (Tr. 57; GE 7.)

Applicant submitted her household budget. She and her husband have a monthly net income of \$4,072 and expenses of \$3,631, leaving about \$440 remaining. (AE H.) They are saving money and hoping to purchase another home in the future. They are not accumulating new debt. Their combined income for 2009 was \$79,000 and for 2008 it was \$60,000. They are financially more solvent now than in the early and mid-2000s.

Applicant's husband testified. He primarily manages the household finances and budget. (Tr. 78.) He reiterated that they were financially solvent until Applicant left her job sometime in 2002 and became unemployed for several months. He subsequently experienced financial problems in his business, further exacerbating the situation and affecting their ability to pay the mortgage. At one point, he and Applicant were both unemployed. (Tr. 72.) Since working with the financial counselor and establishing a budget, they no longer live paycheck to paycheck and have more money available than anticipated. (Tr. 76.) He is making monthly payments on a federal tax liability he owed for unpaid employer's withholding taxes for years 2002 to 2006. The original liability was \$8,500. (GE 6 at 21.) As of March 2010, the balance owed is \$796. (Tr. 80; AE I.) He admitted that they made some poor financial decisions during those earlier years. (Tr. 76.) He is very informed about the status of their financial situation and monitors the budget closely.

Applicant testified candidly and remorsefully. She has matured and learned the importance of financial responsibility as a result of this proceeding and the 2009 bankruptcy. (Tr. 59.) She expressed gratitude for her position and the financial security it provides her. (Tr. 60.) Applicant submitted a copy of her 2009 performance evaluations that documented a "Meets Expectation" rating. (AE F.)

¹According to the Summary of Schedules, contained in the Voluntary Petition, Applicant and her husband sought to release \$151,500 of unsecured debt. In addition to the debts listed in the SOR, another \$22,000 was for medical services related to Applicant's husband's care. (GE 6.)

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 Adjudicative Guidelines (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.

According to Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, “[t]he applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable [trustworthiness] decision.”

A person who applies for access to sensitive information seeks to enter 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 “[a]ny determination under this order adverse to an applicant shall be a determination 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 security concern 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.

AG ¶ 19 describes two conditions that could raise a security concern and may be disqualifying:

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

Applicant admitted owing the 38 SOR-listed delinquent debts totaling \$116,770, which were discharged in 2009 through a Chapter 7 bankruptcy. The record shows a six-year history during which Applicant was frequently unable to satisfy her debts. The evidence is sufficient to raise these potentially disqualifying conditions.

AG ¶ 20 provides conditions that could mitigate security concerns arising from a history of unpaid debt. Since Applicant did not dispute the legitimacy of any SOR-listed debt, the four potentially pertinent conditions are:

- (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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's delinquencies arose in 2003 and continued until very recently. However, she has now secured steady employment, and all prior debt was discharged in the 2009 Chapter 7 bankruptcy proceeding. Her current family income is more than sufficient to cover living expenses, so recurrence of financial problems is unlikely. The financial problems arose largely due to periods of unemployment and underemployment for her and her husband, which causes do not reflect on her current reliability, trustworthiness, or judgment. Accordingly, she established some mitigation under AG ¶ 20(a).

Similarly, AG ¶ 20(b) has some application due to the unforeseen circumstances mentioned above. However, this mitigating condition has limited application because Applicant did not present sufficient documentation to demonstrate that she attempted to manage the debts while they were accumulating and prior to filing bankruptcy.

Applicant is participating in ongoing financial counseling. She also completed debtor education in connection with the bankruptcy, which resolved her previously outstanding debts in a good-faith manner. Her demonstrated solvency going forward, together with the bankruptcy relief from prior debt and adherence to a solid budget, indicate that her financial situation is under control. Remaining security concerns are therefore mitigated under AG ¶¶ 20(c) and (d).

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 applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). They include the following:

(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 include 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 relevant facts and circumstances surrounding this case. Applicant is a 29-year-old woman, who is successfully working for a federal contractor. Applicant's conduct of concern involves delinquent debts incurred over six years during periods of involuntary unemployment and underemployment for her and her husband. She demonstrated maturity and responsibility by acknowledging these debts, taking proper legal action to resolve them through bankruptcy, and initiating a responsible budget to prevent similar problems from recurring. Those previous debts no longer pose a potential risk for duress or coercion. She now has steady employment and sufficient income to meet her living expenses without incurring further delinquencies. She and her husband continue to work with a financial counselor to achieve financial security. Her husband closely monitors their finances and budget, in order to prevent similar problems from recurring. Both Applicant and her husband were impressive witnesses, acknowledging their previous lack of financial maturity and current commitment to a solvent future.

On balance, Applicant presented sufficient evidence to fully mitigate reliability and trustworthiness concerns arising from financial considerations, including her failure to pay her financial obligations over the past six years. Overall, the record evidence leaves no doubt as to Applicant's present eligibility and suitability for a public trust position.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraphs 1.a through 1.ii:	For Applicant

Conclusion

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

SHARI DAM
Administrative Judge