



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



In the matter of:)
)
-----) ADP Case No. 08-07882
SSN: -----)
)
Applicant for Public Trust Position)

Appearances

For Government: Fahryn Hoffman, Esq., Department Counsel
For Applicant: *Pro se*

January 26, 2010

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves trustworthiness concerns raised under Guideline F (Financial Considerations). Eligibility for assignment to a public trust position is denied.

Statement of the Case

Applicant submitted her Questionnaire for Public Trust Position (SF 85P), on April 24, 2008, seeking eligibility for assignment to a sensitive position. It was resubmitted on May 5, 2008, and again on May 15, 2008. On May 8, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its preliminary decision to deny her application, citing trustworthiness concerns under Guideline F. The action was taken under 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 Jan. 1987, as amended (Regulation); and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005.

Applicant acknowledged receipt of the SOR on August 13, 2009, and answered it on September 10, 2009. Department Counsel was ready to proceed on September 28, 2009, and the case was assigned to an administrative judge on October 2, 2009. It was reassigned to me on October 16, 2009, to consolidate the docket. DOHA issued a notice of hearing on October 27, 2009, scheduling the hearing for November 16, 2009. I convened the hearing as scheduled. The government offered Government Exhibits (GX) 1 through 6, which were admitted without objection. Applicant testified and submitted Applicant's Exhibits (AX) A through E, which were admitted without objection. I kept the record open until December 1, 2009, to enable Applicant to submit additional documentary evidence. She timely submitted AX F through N, which were admitted without objection. Department Counsel's comments regarding AX F through N are attached to the record as Hearing Exhibit I. DOHA received the transcript of the hearing (Tr.) on November 24, 2009.

Amendment of SOR

On my own motion, without objection from either party, I amended the SOR to reflect that this case is an automated data processing (ADP) case, and not an industrial security clearance review (ISCR) case (Tr. 4).

I granted Department Counsel's motion to amend the SOR ¶ 1.t, without objection from Applicant, to conform to the evidence by changing the amount of the debt alleged from \$228 to \$218 (Tr. 21). Department Counsel also moved to amend SOR ¶ 1.bb by changing the amount of the debt alleged from \$226 to \$246. Applicant objected, and I denied the motion (Tr. 22).

Findings of Fact

In her answer to the SOR, Applicant admitted the delinquent debts and unsatisfied judgments, totaling about \$13,000, alleged in ¶¶ 1.d, 1.h, 1.i, 1.j, 1.l, 1.p-1.v, 1.x, 1.dd, and 1.ff. Her admissions in her answer and at the hearing are incorporated in my findings of fact.

Applicant is a 39-year-old medical appointment specialist employed by a defense contractor. She has worked in her current position since March 2006. Her SF 85P reflects continuous employment since at least May 1996. She is a high school graduate. She has never held a security clearance or received a favorable trustworthiness determination.

Applicant has never been married, but she has four children, ages 18, 16, 14, and 11, all of whom live with her. Each child has a different father. Although she has obtained several court orders for child support, she receives no support from any of the fathers (Tr. 49-57). Applicant's 18-year-old son has a one-year-old son, who lives with the child's mother. Applicant's son does not pay child support, but Applicant occasionally contributes to the child's expenses (Tr. 158).

Applicant testified she is applying for a home ownership program through her employer. The program would assist her in resolving her delinquent debts. As of the date of the hearing, she was not enrolled in any debt resolution or financial counseling programs (Tr. 42-43). After the hearing, she submitted documentation reflecting her eligibility for the program (AX N).

Applicant testified the judgments alleged in SOR ¶ 1.a, 1.c, 1.e, 1.f were for vandalism of her public housing residence after she moved out (Tr. 63). The judgments alleged in SOR ¶¶ 1.a, and 1.c were entered against her in 1994, the judgment in SOR ¶ 1.e was entered in December 2000, and the judgment in SOR ¶ 1.f was entered in May 2001. All four judgments have been satisfied (GX 6 at 1).

Applicant also satisfied three judgments for furniture purchases alleged in SOR ¶¶ 1.b, 1.g, and 1.m. These judgments were entered in September 1994, January 2005, and August 2008. The judgments in SOR ¶¶ 1.g and 1.m were satisfied in December 2005 and March 2009, before the SOR was issued. The record does not reflect when the judgment in SOR ¶ 1.b was satisfied.

Applicant denied ever having cell phone service with the provider alleged in SOR ¶ 1.n. She has not contacted the provider or filed a dispute with the credit reporting agency (Tr. 116-17).

Applicant denied the medical debts alleged in SOR ¶¶ 1.z-1.cc. She testified the debts were for medical care for her children and should have been paid by Medicaid. She testified she contacted Medicaid but the problem has not been resolved (Tr. 128-32).

In June 2009, after receiving the SOR, Applicant sent a \$5 payment to each of the creditors alleged in SOR ¶¶ 1.d, 1.h, and 1.i. She also sent \$5 payments to the creditors alleged in SOR ¶¶ 1.q and 1.x, but they were rejected and returned to her.

Applicant received settlement offers on the debts alleged in SOR ¶¶ 1.p and 1.t. As of the date of the hearing, she had not accepted the offers or taken any other action to resolve the debts.

Several debts alleged in the SOR appear to be duplicates. The credit card debt in SOR ¶ 1.u duplicates the credit card debt in SOR ¶ 1.k. The car repossession deficiency alleged in SOR ¶ 1.y duplicates the judgment in SOR ¶ 1.j. The delinquent telephone bill in SOR ¶ 1.w duplicates the telephone bill in SOR ¶ 1.t. The creditor for the debt alleged in SOR ¶ 1.ee appears to be a collection agency for the medical debts in SOR ¶¶ 1.z-1.cc.

Applicant's take-home pay is about \$980 every two weeks (Tr. 138). Her pay fluctuates depending on the amount of overtime she works, and it can be as high as \$1,131 for a two-week period (Tr. 137; AX B, C, D). She receives \$230 in food stamps every month (Tr. 140). Her total monthly expenses are about \$2,466, leaving a shortfall

of at least \$466 per month (Tr. 150). She has no savings and no retirement accounts (Tr. 151). She does not have a budget (Tr. 155-56).

The table below summarizes the evidence regarding the delinquent debts alleged in the SOR.

| SOR | Debt | Amount | Status | Evidence |
|------------|-----------------------------|---------------|---|----------------------|
| 1.a | Public Housing (judgment) | \$90 | Satisfied | GX 6 at 1 |
| 1.b | Furniture Store (judgment) | \$455 | Satisfied | AX J; Tr. 72-74 |
| 1.c | Public Housing (judgment) | \$123 | Satisfied | GX 6 at 1 |
| 1.d | Bad check (judgment) | \$150 | Paid \$5; same creditor as ¶¶ 1.h and 1.i | GX 6 at 3 |
| 1.e | Public Housing (judgment) | \$319 | Satisfied | GX 6 at 3 |
| 1.f | Public Housing (judgment) | \$640 | Satisfied | GX 6 at 3 |
| 1.g | Furniture Store (judgment) | \$440 | Satisfied | AX K |
| 1.h | Bad check (judgment) | \$2,774 | Same as ¶ 1.d | GX 6 at 3 |
| 1.i | Bad check (judgment) | \$700 | Same as ¶ 1.d | GX 6 at 3 |
| 1.j | Car repossession (judgment) | \$2,978 | Paid \$5 | GX 6 at 5 |
| 1.k | Credit card (judgment) | \$1,876 | Unsatisfied | Tr. 95-98 |
| 1.l | Payday loan (judgment) | \$115 | Paid \$5 | GX 6 at 4 |
| 1.m | Furniture Store (judgment) | \$265 | Satisfied | AX L |
| 1.n | Cell phone | \$577 | Unresolved | Tr. 116-17 |
| 1.o | Telephone service | \$443 | Unpaid | Tr. 117 |
| 1.p | Telephone service | \$231 | Settlement offer | AX F |
| 1.q | Bank loan | \$361 | \$5 payment rejected | GX 6 at 2; AX A at 1 |
| 1.r | Shoe store | \$98 | Paid \$5 | GX 6 at 5 |
| 1.s | Credit card | \$449 | Paid \$5 | GX 6 at 3 |
| 1.t | Telephone | \$218 | Settlement offer | AX G |
| 1.u | Credit card | \$1,922 | Same as ¶ 1.k | AX E at 4; Tr. 105 |
| 1.v | Telephone | \$180 | Unresolved | Tr. 118-19 |
| 1.w | Telephone | \$250 | Duplicate of ¶ 1.t | Tr. 94, 126 |
| 1.x | Credit union | \$470 | \$5 payment rejected | GX 6 at 4; AX A at 2 |
| 1.y | Car repossession | \$3,244 | Duplicate of ¶ 1.j | Tr. 94, 126 |
| 1.z | Medical | \$302 | Unresolved | Tr. 126-131 |
| 1.aa | Medical | \$226 | Unresolved | Tr. 126-131 |
| 1.bb | Medical | \$226 | Unresolved | Tr. 126-131 |
| 1.cc | Medical | \$50 | Unresolved | Tr. 126-131 |
| 1.dd | Credit card | \$1,417 | Paid \$5 (no receipt) | Tr. 132 |
| 1.ee | Collection agency | \$545 | Duplicate of ¶¶ 1.z-1.cc | Tr. 132-33 |
| 1.ff | Payday loan | \$540 | Unresolved | Tr. 133-335 |

Policies

Positions designated as ADP I and ADP II are classified as “sensitive positions.” 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 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.” Regulation ¶ C6.1.1.1. Department of Defense contractor personnel are entitled to the procedural protections in the Directive before any final unfavorable access determination may be made. Regulation ¶ C8.2.1.

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. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard sensitive information.

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 an evaluation of the whole person. The administrative judge’s overarching adjudicative goal is a fair, impartial and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

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. The government must present substantial evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). An applicant has the ultimate burden of demonstrating that it is clearly consistent with national security to grant or continue eligibility for access to sensitive information.

Analysis

Guideline F, Financial Considerations

The SOR alleges 32 delinquent debts totaling about \$23,000, including 13 unsatisfied judgments and one car repossession. The trustworthiness concern under this guideline 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.

Applicant's financial history is sufficient to raise the disqualifying conditions in AG ¶ 19(a) (inability or unwillingness to satisfy debts) and AG ¶ 19(c) (a history of not meeting financial obligations). Accordingly, she has the burden to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15.

The debts alleged in SOR ¶¶ 1.u, 1.y, 1.w, and 1.ee duplicate the debts alleged in SOR ¶¶ 1.j, 1.k, 1.t, and 1.z-cc. When the same conduct is alleged twice in the SOR under the same guideline, one of the duplicative allegations should be resolved in Applicant's favor. See ISCR Case No. 03-04704 at 3 (App. Bd. Sep. 21, 2005) (same debt alleged twice). Accordingly, I will resolve SOR ¶¶ 1.u, 1.y, 1.w, and 1.ee in Applicant's favor.

Security concerns under this guideline may be mitigated if "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." AG ¶ 20(a). This mitigating condition is not established, because Applicant's debts are numerous, not yet fully resolved, and did not occur under circumstances making them unlikely to recur. Her precarious financial situation makes recurrence likely. Her financial history casts doubt on her current reliability, trustworthiness, and good judgment.

Security concerns also may be mitigated if "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." AG ¶ 20(b). The vandalism of Applicant's apartment was beyond her control, but she did not respond reasonably. Four separate judgments were entered against her, starting in 1994, before she finally resolved the debt.

Security concerns under this guideline also can be mitigated by showing 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." AG ¶ 20(c). This mitigating condition is not established because Applicant has not received financial counseling and her financial problems are not under control.

Security concerns under this guideline also can be mitigated by showing that "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." AG ¶ 20(d). Good faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. ISCR Case No. 99-0201, 1999 WL 1442346 at *4 (App. Bd. Oct. 12, 1999).

An applicant is not required, as a matter of law, to establish resolution of each and every debt alleged in the SOR. See ADP Case No. 06-18900 (App. Bd. Jun. 6, 2008). An applicant need only establish a plan to resolve financial problems and take significant actions to implement the plan. ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). There also is no requirement that an applicant make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in the SOR be paid first. *Id.*

Applicant receives some credit for her efforts to resolve her debts. She satisfied some of the judgments against her before receiving the SOR, and she has tendered small payments to some of her creditors. On the other hand, she has no overall plan to resolve her financial problems and does not appear to have the financial acumen required to develop a plan. She made the \$5 payments only once, which is insufficient to constitute a track record or an established payment plan. She has not responded to the settlement offers from the creditors alleged in SOR ¶¶ 1.p and 1.t. I conclude AG ¶ 20(d) is not fully established.

Security concerns under this guideline also can be mitigated by showing “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.” AG ¶ 20(e). Applicant testified that she does not owe the cell phone debt alleged in SOR ¶ 1.n and the medical debts alleged in SOR ¶¶ 1.z-1.cc, but she did not provide documentation to support her disputes, nor has she contacted the creditors or filed disputes with the credit reporting agencies. This mitigating condition is not fully established.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant’s eligibility for a security clearance by considering the totality of the applicant’s conduct and all the relevant circumstances. An 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 an assignment to a public trust position must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. 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(s), but some warrant additional comment.

Applicant appears to be hard-working and dedicated to her job. She is dedicated to her children. She presented herself as intelligent, articulate, candid, and sincere at the hearing. On the other hand, she is not in control of her financial situation, and she lacks the knowledge and experience to know how to gain control. Unless she increases her income or decreases her expenses, she will remain vulnerable to exploitation and pressure. After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the trustworthiness concerns based on financial considerations. Accordingly, I conclude she has not carried her burden of showing that it is clearly consistent with national security to grant her eligibility for assignment to a public trust position.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): **AGAINST APPLICANT**

| | |
|-------------------------|-------------------|
| Subparagraphs 1.a-1.c: | For Applicant |
| Subparagraph 1.d: | Against Applicant |
| Subparagraphs 1.e-1.g: | For Applicant |
| Subparagraphs 1.h-1.l: | Against Applicant |
| Subparagraph 1.m: | For Applicant |
| Subparagraphs 1.n-1.t: | Against Applicant |
| Subparagraph 1.u: | For Applicant |
| Subparagraph 1.v: | Against Applicant |
| Subparagraph 1.w: | For Applicant |
| Subparagraph 1.x: | Against Applicant |
| Subparagraph 1.y: | For Applicant |
| Subparagraphs 1.z-1.dd: | Against Applicant |
| Subparagraph 1.ee: | For Applicant |
| Subparagraph 1.ff: | Against Applicant |

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant a favorable trustworthiness determination. Eligibility for assignment to a public trust position is denied.

LeRoy F. Foreman
Administrative Judge