



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



In the matter of:)
)
) ADP Case No. 08-09058
)
)
Applicant for Public Trust Position)

Appearances

For Government: Julie R. Mendez, Esquire, Department Counsel
For Applicant: *Pro Se*

September 30, 2009

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the government’s trustworthiness concerns under Guideline F, Financial Considerations. Applicant’s eligibility for access to sensitive information is denied.

On May 8, 2009, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing the trustworthiness concerns under Guideline F. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), 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 Jan. 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 May 29, 2009, and requested a hearing before an administrative judge. I was assigned the case on July 21, 2009. DOHA issued the Notice of Appearance on July 31, 2009. I convened the hearing as scheduled on

September 3, 2009. The government offered Exhibits (GE) 1 through 5, which were admitted without objection. Applicant testified on her own behalf and offered Exhibits (AE) A through C, which were admitted without objection. The record was held open until September 17, 2009, to allow Applicant an opportunity to submit additional documents, which she did. They were marked as AE D through G, which were admitted without objection.¹ DOHA received the transcript of the hearing (Tr.) on September 14, 2009.

Findings of Fact

In her answer to the SOR Applicant admitted the factual allegations in SOR ¶¶ 1.b, 1.d, 1.e, 1.g, 1.i and 1.j, and denied the remaining allegations. Her admissions are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 23 years old and has worked for a federal contractor as an executive assistant since May 2008. She married in 2006. She has two children, ages 5 and 3. Her husband is unemployed and has not worked since 2005. He does not receive unemployment benefits or any other type of benefits. He does not care for his children during the day. The children attend educational programs that do not require a fee. Applicant earns about \$45,000 annually.²

Applicant admitted owing the loan in SOR ¶ 1.b, but disputed the loan in ¶ 1.a.³ She disputed the debt with the credit bureau, but did not contact the creditor, and she has not received any correspondence from them. She did not provide any documentation at her hearing. However, she provided a document after her hearing that was submitted to the credit bureau on September 16, 2009, disputing a debt. It is unclear if the dispute pertains to SOR ¶ 1.b. because it is not specifically identified.⁴ She stated at her hearing that she took out student loans in either 2007 or 2008. In her post-hearing letter she stated that she is now disputing the debts in both ¶¶ 1.a and 1.b, but failed to provide a basis for the dispute. Both debts are listed on Applicant's credit report. Both loans were opened in 2008. She stated at her hearing that she contacted the creditor and asked about the debt in ¶ 1.b, but did not ask about the debt in ¶ 1.a.⁵

Applicant disputes the debt in SOR ¶ 1.c (\$395) as not hers.⁶ The debt is for a credit card from a retail store. She admits she was an authorized user on an account

¹ AE D is a fax cover sheet and a letter from Applicant; AE E is a copy of a dispute letter to Equifax, but it does not address what debt is in dispute. AE F contains pages 1-4 of a 22-page Equifax Credit Report; AE G is a two-page document of negative accounts from the Equifax credit file.

² Tr. 34-39.

³ GE 2 at 3; GE 3 at 2; GE 4 at 2.

⁴ AE E.

⁵ Tr. 40-50; GE 2 at 3; GE 3 at 2; GE 4 at 2.

⁶ GE 3 at 2.

she held jointly with her mother. She contacted the creditor and was advised the account was in her name, with her date of birth and social security number. There is no other name on the account. She was told she would be provided with documentation and information on how to dispute the debt. She admitted she had this retailer's credit card and made some charges on it, but does not remember when she made the transaction.⁷ She stated she disputed the debt with the credit bureau. No specific documentation was provided.⁸

The debt in SOR ¶ 1.d (\$1,081) is from a checking account Applicant had in 2005. She believed it was an overdrawn account.⁹ She contacted the creditor three weeks ago and they agreed to settle the account for half of the amount. Applicant was required to pay \$153 initially and then \$50 a month. She stated she made the first payment and the next payment was due on September 15, 2009. The record was held open to allow Applicant an opportunity to provide proof of the initial payment and make another payment and provide proof of that payment. She did not provide proof of either payment. Applicant's post-hearing letter stated that this account was removed from her credit report.¹⁰

The debt in SOR ¶ 1.e (\$797) is from a checking account Applicant had in 2006. She believed it was an overdrawn account.¹¹ She contacted the creditor three weeks ago and agreed to settle the account for one-half of the balance. She stated she made an initial payment of \$120 on August 17, 2009, and then was to pay \$75 on September 15, 2009. The record was held open to allow Applicant an opportunity to provide proof of the \$120 payment and to pay the \$75. She did not provide proof of payments. Her post-hearing letter stated that this account was removed from her credit report.¹²

The debt in SOR ¶ 1.f (\$185) is for a cable television account. The account was first reported in her credit report in 2002. Applicant disputes this account. She contacted the creditor and advised them that she was not old enough to have an account when they first reported it as delinquent. She disputed the debt with the credit bureau. No documentation was provided, but it is clear she was not old enough to open an account in 2002. This debt is resolved.¹³

⁷ GE 4 at 3; GE 5 at 4.

⁸ Tr. 50-53.

⁹ GE 2 at 6, GE 4 at 4.

¹⁰ Tr. 53-56; AE D, F, G. The credit report provided is incomplete.

¹¹ GE 2 at 6; GE 4 at 4; GE 5 at 4.

¹² Tr. 56-58; AE D, F, G. The credit report provided is incomplete.

¹³ Tr. 58-60.

The debt in SOR ¶ 1.g (\$320) is a cash advance loan incurred in 2007. Applicant paid some of the loan back, but then the interest escalated.¹⁴ She contacted the creditor and agreed to make monthly payments of \$50. The record was held open to allow her to provide proof that she made a payment. No proof was provided.¹⁵

The debt in SOR ¶ 1.h (\$88) is to a bank where Applicant had an account. It was a checking account that had overdraft fees.¹⁶ She stated she settled the account, paid \$44, and had proof of the payment. She did not provide proof of payment. She stated in her post-hearing letter that the account was removed from her credit report.¹⁷

Applicant graduated from high school in 2003. She attended college for a period of time after high school, but did not earn a degree. She went back to college sometime in 2006. She has earned a total of about 40 college credits. She believed that her mother was paying for her college in 2003, but is not sure if her mother took out a loan in her name for her college expenses. Applicant asked her mother about the account and her mother could not remember the debt. Applicant stated she could not remember it either. She contacted the creditor about the debt in SOR ¶ 1.i and has set up a payment plan to pay \$50 a month toward the debt. She made her first payment in August 2009. Although she thought her mother was paying her tuition, the loan is in Applicant's name.¹⁸ Her 2008 tax refund was applied to student loan debt. She believes \$4,000 was applied. No proof was provided regarding the payment plan or that she has made any payments.¹⁹

The debt in SOR ¶ 1.j (\$305) is for phone services. Applicant stated she paid the account in June 2009, and had documents to show she is current in paying her bill. The record was held open to allow her an opportunity to provide the document. She did not. She stated in her post-hearing letter that the account was removed from her credit report.²⁰

Applicant does not own a car. She does not have any money in her savings account, and has a nominal amount in her checking account. She does not contribute to a retirement plan. She has not had financial counseling. She filed her taxes on time. She has no other debts. She does not have credit cards. She is trying to support her

¹⁴ GE 3 at 2; GE 4 at 5.

¹⁵ Tr. 60-63; AE D, F, G. The credit report provided is incomplete.

¹⁶ GE 2 at 7; GE 4 at 5.

¹⁷ Tr. 63-64; AE D, F, G. The credit report provided is incomplete.

¹⁸ GE 3 at 2; GE 4 at 2.

¹⁹ Tr. 25-33.

²⁰ Tr. 64-65; AE D, F, G. The credit report provided is incomplete.

family and did not address her debts sooner because she did not have the money to do so.²¹

Applicant stated in her post-hearing letter that her husband has a job offer and will start working on September 22, 2009, and she has accepted a part-time job. She is attempting to take control over her financial situation and believes that with the additional income, there will be change.²²

Applicant provided character letters from people who believe she is a trustworthy person, a good role model, intelligent and a spiritual woman.²³ She volunteers in her community and is considered dependable, organized, efficient, and has excellent communication skills.²⁴ She is also considered hard-working and an excellent wife, parent and friend. She is considered a good person who deserves a chance to better herself.²⁵

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 over-arching 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.

²¹ Tr. 67-68.

²² AE D.

²³ AE A.

²⁴ AE B.

²⁵ AE C.

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.

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 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 (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).

Analysis

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 security concerns. I have considered all of them under AG ¶ 19 and especially considered the following:

- (a) inability or unwillingness to satisfy debts; and

(c) a history of not meeting financial obligations.

Applicant has approximately \$13,687 in delinquent debt that remains unresolved or unpaid. She made statements that some of her debts were paid, and others were settled. She was making payments on some debts, and others she disputed. She did not provide documents to support her statements, even though the record was held open for this purpose. I find the above disqualifying conditions have been raised.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and especially considered the following:

(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 individual 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 did not provide proof that she made payments on any of her debts or that she has resolved her debts. She admitted certain debts and then later disputed them, but did not explain why she did not owe the debts. The delinquent debts remain a concern because they have not been resolved. Applicant stated she had made payments on some of the debts and had upcoming payments due to settle the debts. Despite leaving the record open to allow her to provide proof of her past payments and to show consistent good-faith payments, she did not. She stated certain debts had dropped off of her credit report, but she did not provide a complete credit report or explain why they were no longer listed. I find mitigating condition (a) does not apply.

Applicant appears to be a hard worker who is attempting to support her whole family on one income. It appears there were periods of time when she was underemployed and had financial difficulty. Mitigating condition (b) partially applies

because she was underemployed. However, for full application of the mitigating condition, she must show she acted responsibly under the circumstances. Applicant stated she was making payments on certain debts and admitted owing many of the debts. She did not provide proof of her payments. She stated many of the debts were no longer on her credit report, but she failed to provide a complete credit report or explain why they were no longer included. Therefore, I find she did not act responsibly under the circumstances.

There is no evidence Applicant has received financial counseling. She failed to provide documented proof that she has initiated a good-faith effort to resolve her debts. She failed to provide proof that the problems are being resolved or under control. She did not provide a reasonable basis to dispute the legitimacy of her debts. Although she provided a document from the credit bureau that disputes a debt, it does not detail what debt it applies to and she did not provide information as to why she disputed it. I find none of the remaining mitigating conditions apply.

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). They are:

- (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 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. Although Applicant receives high praise from those who provided character letters, she has numerous delinquent debts. She has not taken enough initiative to resolve the debts. She made statements about what she did to settle some debts, but did not provide proof of her actions. She has outstanding student loans, but does not appear to know their status. She stated she had negotiated settlement agreements on some debts and was making payments, but did not provide proof, despite being given additional time. The burden is on Applicant to show proof of her payments. She did not meet this burden. Undoubtedly, Applicant is a hard-working mother who is trying to improve herself. She provided a post-hearing letter stating she was going to start a part-time job and her husband was going to work.

These are steps in the right direction, but until she proves she has resolved some of her debts and has a consistent track record regarding her financial situation, it is too early to conclude her finances are not a concern. Overall, the record evidence leaves me with serious 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 trustworthiness concerns arising from her financial considerations.

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
Subparagraph 1.g-1.j:	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 eligibility for a public trust position. Eligibility for access to sensitive information is denied.

Carol G. Ricciardello
Administrative Judge