



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



In the matter of:)
)
) ADP Case No. 08-09241
)
)
Applicant for Public Trust Position)

Appearances

For Government: Ray T. Blank, Jr., Esquire, Department Counsel
For Applicant: David Lamar Boulware, II, Personal Representative

January 26, 2010

Decision

CREAN, THOMAS M., Administrative Judge:

Applicant submitted a Questionnaire for Public Trust Position (SF 85P), on August 16, 2007, as part of her employment with a defense contractor. On July 27, 2009, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns for financial considerations 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 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 acknowledged receipt of the SOR on August 3, 2009.

Applicant answered the SOR in writing in an undated response received at DOHA on August 25, 2009. She admitted the 28 allegations under Guideline F. She requested a hearing before an administrative judge. Department Counsel was prepared to proceed on September 21, 2009, and the case was assigned to me on September 25, 2009. DOHA issued a Notice of Hearing on October 8, 2009, for a hearing on October 20, 2009. Applicant received the Notice of Hearing on October 12, 2009. I

convened the hearing as scheduled. The government offered seven exhibits, marked Government Exhibits (Gov. Ex.) 1 through 7, which were admitted without objection. Applicant submitted ten exhibits, marked Applicant Exhibits (App. Ex.) A through J, which were admitted without objection. Applicant called one witness and testified on her own behalf. DOHA received the transcript (Tr.) of the hearing on November 3, 2009. Based on a review of the case file, pleadings, exhibits, and testimony, eligibility for access to sensitive information is denied.

Procedural Issues

Applicant received the Notice of Hearing on October 12, 2009. Applicant is entitled to 15 days advance notice of the hearing (Directive ¶ E3.1.8). Applicant discussed with Department Counsel the hearing date of October 20, 2009, prior to the Notice of Hearing being mailed so actual notice was given more than 15 days prior to the hearing. However, Applicant signed for the Notice of Hearing only eight days prior to the hearing. At the hearing, Applicant waived the 15 days notice requirement (Tr. 5-6).

Findings of Fact

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact. Applicant admitted all of the 28 allegations in response to the SOR. Her admissions are included in my findings of fact.

Applicant is 36 years old, and has been a claims associate for a defense contractor for about two years. She married in 1999. She is still legally married, but separated from her husband in 2003. She lives with another person and shares living expenses. She has no children. Her monthly income is approximately \$1,259. Her monthly expenses are approximately \$900, leaving her approximately \$300 in monthly disposable income. She is able to meet her current expenses and make small payments on past due debts (Tr. 78-80, 86; Gov. Ex. 1, Questionnaire for Public Trust Position, dated August 16, 2007).

Applicant has been an excellent worker for her employer. Her average ratings are in the "sometimes exceeds expectation" category (App. Ex. A, Letter, dated October 12, 2009). She has also completed a number of training courses provided by her employer (App. Ex. F, Certificates, various dates). She has been commended for outstanding service on a number of occasions (App. Ex. G, Award certificates, various dates).

Friends and former employers attest to her reputation for reliability and trustworthiness. A friend noted that she has known Applicant for over 20 years and considers her trustworthy, reliable, and dependable. (App. Ex. B, Letter, dated October 20, 2009). Her former employer noted that Applicant was a valued and trusted employee who was promoted to assistant manager at one of his stores. Applicant managed the employees schedules, inventory, receipt of merchandise, store opening and closing, money, and bank deposits. There was never an issue concerning her reliability and trustworthiness (App. Ex. C, Letter, dated October 19, 2009). A fellow

worker at her present job stated that she has known Applicant for two years and considers her a reliable and dependable worker who is an asset for the employer (App. Ex. D, Letter, dated October 19, 2009). Applicant's pastor testified that he has known her for about two years. He believes she is absolutely trustworthy, and was put into a difficult circumstance by her husband. She struggled and is struggling to pay her bills (Tr. 89-91),

Credit reports (Gov. Ex. 4, dated June 17, 2009; Gov. Ex. 5, dated April 14, 2009; Gov. Ex. 6, dated October 2, 2008; and Gov. Ex. 7, dated September 12, 2007) listed 28 delinquent debts totaling approximately \$49,113 owed by Applicant. The debts include 23 collection accounts, two judgments, and three charged-off accounts. The delinquent debts consist of medical debts in collection for \$31 (SOR 1.a), \$54 (SOR 1.b), \$168 (SOR 1.c), \$50 (SOR 1.d), \$74 (SOR 1.e), \$676 (SOR 1.f), and \$108 (SOR 1.g). There are two judgments for medical accounts for \$748 (SOR 1.h), and \$908 (SOR 1.i). There are delinquent debts in collection on credit cards or to department stores for \$823 (SOR 1.j), \$3,703 (SOR 1.k), \$910 (SOR 1.l), \$7,130 (SOR 1.m), \$2,232 (SOR 1.n), \$1,448 (SOR 1.o), \$4,494 (SOR 1.p), \$445 (SOR 1.r), \$4,836 (SOR 1.t), \$887 (SOR 1.u), \$3,338 (SOR 1.w), \$2,691 (SOR 1.x), \$861 (SOR 1.y), \$401 (SOR 1.z), \$7,902 (SOR 1.aa), and \$106 (SOR 1.bb). There are three charged-off accounts to a mail-order account for \$45 (SOR 1.q), to a bank for \$825 (SOR 1.s), and to a department store for \$764 (SOR 1.v).

Applicant was current paying her debts until her husband started using drugs and alcohol in 2003. He stole Applicant's property and spent their funds to meet his addiction for drugs and alcohol. He stopped working because of his drug and alcohol abuse. Applicant also lost her job in March 2003 when the business where she worked closed. Applicant finally left her husband in April 2003. She found new employment in May 2003 at a store where she became a trusted employee. She was hired at another store where she was again became a trusted employee. She moved up and was an assistant manager for over four years. She was at this position until starting work for her present employer. By that time she left her husband, her finances had deteriorated, and she was unable to pay her delinquent debts. She was using credit cards and loans to meet her living expenses for food, clothes, and other items. She lacked funds to pay for her divorce and she was unable to start the divorce process until March 2008 (Tr. 28-32).

Applicant's personal information on her e-QIP was compromised when the e-QIP was lost in transmission to the investigative agency. Applicant could not easily access her credit information, and could not get information through the internet. The credit information had to be verified, sent by mail, and was delayed. This process hindered her ability to manage her delinquent debt payments (Tr. 36-38; App. Ex. E, OPM Letter, dated July 9, 2008).

The delinquent debts from SOR 1.a through SOR 1.g are for medical debts in collection. Applicant had medical problems starting with an operation in 2002 and incurred medical expenses. She is unsure of the origin of these debts and does not know the original or follow-on creditors. She paid some medical expenses but is unsure

if the payments relate to any of the medical debts listed in the SOR. She has not contacted any creditors or made any payments on the debts (Tr. 48-52). She knows the medical judgments at SOR 1.h and 1.i are from the local hospital. She contacted the hospital at the time the judgments were entered against her in 2003. She was unable to pay the debts. She has not contacted the hospital since then and has not paid the debts (Tr. 53-54).

The delinquent debts at SOR 1.j through 1.bb are to various creditors or collection agencies for debts on credit card, for department stores, and for loans. Applicant acknowledges that she owes all of these debts. She has not been in contact with most of these creditors and has not made payments on most of the debts. She does not have a plan to pay the debts. She made some payments on some medical and other debts, but is unable to connect the payments to any specific debt except for some payments made on the debt at SOR 1.y (Tr. 54-72; App. Ex. I, Checks, Various dates; App. Ex. J Receipt, dated July 22, 2009).

In her answer to interrogatories in December 2008, Applicant indicated she was in contact with a credit counseling service to create a debt management plan. She received a reply from them which provided her a long process for managing her delinquent debts. She was still trying to gather her credit information for the credit counseling agency, but is hindered because her personal information was compromised. She states she is doing what she can to pay her debts. Her plan is to pay her debts as best she can while still paying her current debts, such as utilities and rent. She says she is "doing the best she can." She does not have a written budget, but knows financially what she can and cannot do. (Tr. 34-38, 74-75 App. Ex. H, Letter, dated April 8, 2009).

Policies

Positions designated as ADP I and ADP II are classified as "sensitive positions." 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." Trustworthiness adjudications will apply to cases forwarded to DOHA by the Defense Security Service and Office of Personnel Management (See, The Deputy Under Secretary of Defense (Counterintelligence and Security) Memorandum, dated November 19, 2004). 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 or a sensitive 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. 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 (AG ¶ 2(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, an 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 for 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.

Analysis

Guideline F, 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 sensitive information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds (AG ¶ 18). Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligation to protect sensitive information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person’s relationship with her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a public trust position. An applicant is not required to be debt-free, but is required to manage her finances in such a way as to meet her financial obligations. Applicant’s delinquent debts, as established by credit reports and Applicant’s statements and testimony, are a security concern raising Financial

Consideration Disqualifying Conditions (FC DC) ¶19(a) (inability or unwillingness to satisfy debts), and FC DC ¶ 19(c) (a history of not meeting financial obligations). Applicant has 28 delinquent debts consisting of medical bills, credit cards, telephone service debts, and loans that have been delinquent for some time, indicating a history of not meeting financial obligations, as well as an inability or unwillingness to satisfy her debts.

I considered Financial Considerations Mitigating Conditions (FC MC) ¶ 20(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), and FC MC ¶ 20(b) (the conditions that resulted in the financial problems 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). These mitigating conditions do not apply. The debts became delinquent as early as 2003, are still unpaid, and are thus current debt. Applicant has not paid in full any of the debts. Her ability to pay her debts on her present income is minimal. While she is current with her present bills, the likelihood of continued financial problems are great. Applicant incurred the debts when her husband started using drugs and alcohol in 2003. She has made only minimal payments or inquiries concerning the debts since then. Many of the debts are for small amounts and could be resolved with small payments. She has been gainfully employed since 2003 so she could have made some payments on some debts. While her husband's drug and alcohol abuse led to her financial problems and were largely beyond her control, she has not inquired about the debts or made payments, so she has not acted responsibly. When the debts mounted, she basically ignored them and thus did not act responsibly. There is a strong indication her financial problems are likely to recur because she has only minimal funds to meet her present financial obligations and pay her past-due debts. The debts cast doubt on her reliability, trustworthiness, and good judgment.

I have considered FC MC ¶ 20(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). This mitigating condition partially applies. Applicant received financial counseling starting in December 2008, but she has not been active in working with the credit counselor to help resolve her debt issues.

I considered FC MC ¶ 20(d) (the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts). For FC MC ¶ 20(d) to apply, there must be an "ability" to repay the debts, the "desire" to repay, and "evidence" of a good-faith effort to repay. A systematic method of handling debts is needed. Applicant must establish a "meaningful track record" of debt payment. A "meaningful track record" of debt payment can be established by evidence of actual debt payments. An applicant is not required to establish that she paid off each and every debt listed. The entirety of an applicant's financial situation and her actions can reasonably be considered in evaluating the extent to which that applicant's plan for the reduction of her outstanding indebtedness is credible and realistic. Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a

determination. All that is required is that an applicant demonstrates that she has established a plan to resolve her financial problems and has taken significant actions to implement that plan.

Applicant has not paid and is not making payments on her past due financial obligations. She has not even contacted most of the creditors to verify her debts. She has made some payments on debts, which are minimal and without a plan. Applicant's lack of action to pay her debts is significant and credible information to show that she has not acted reasonably under the circumstances. Applicant has not acted responsibly towards her debts and finances under the circumstances. Applicant has not presented sufficient information to mitigate security concerns for financial considerations because she did not establish that the reasons for her debts were beyond her control and that she took reasonable and responsible efforts to manage her finances. Her finances indicate a public trust concern.

Whole-Person Concept

Under the whole person concept, an 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.

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 considered that Applicant is a good employee and is well regarded by her employer. Her co-workers, supervisor, friends, and pastor believe she is a reliable and trustworthy person. I considered that Applicant's husband's drug abuse was a major cause of her financial problems

Applicant has not established a meaningful track record of paying her delinquent debts, since she has not made payments on them. Applicant paid two debts but was unable to specifically determine which debt was paid, nor did she provide documentation to verify payment to a specific debt except for a payment made on the debt at SOR 1.y. She has not acted reasonably and responsibly towards her finances which indicates she may not act reasonably and responsibly to protect sensitive

information. In the future, if Applicant is able to establish a meaningful track record of debt payment and reduction, she should be afforded the opportunity to establish eligibility for a position of public trust. 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 trustworthiness concerns arising from her financial situation.

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.bb: 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.

THOMAS M. CREAN
Administrative Judge