



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



In the matter of:)	
)	
)	ADP Case No. 08-11896
SSN:)	
)	
Applicant for Public Trust Position)	

Appearances

For Government: Richard A. Stevens, Esquire, Department Counsel
For Applicant: *Pro Se*

March 30, 2010

Decision

MASON, Paul J., Administrative Judge:

Based on a review of the case file, pleadings, and exhibits, Applicant's eligibility for a public trust position is denied.

Statement of the Case

Applicant submitted her Questionnaire for Public Trust Position (SF 85P, Item 5) on June 25, 2008. On October 9, 2008, Applicant was interviewed by an investigator from the Office of Personnel Management (OPM). The primary issue of the interview was her delinquent debts. On October 9, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under financial considerations (Guideline F). The action was taken pursuant to 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 revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and made effective within the Department of Defense for SORs issued on or after September 1, 2006.

Applicant submitted her answer to the SOR on October 28, 2009. She requested a decision be made on the record in lieu of a hearing. A copy of the Government's File of Relevant Material (FORM, the government's evidence in support of the allegations of the SOR) was sent to Applicant on November 19, 2009. Applicant received the FORM on November 30, 2009. Her response was due on December 30, 2009. No response was received. The case file was assigned to me on February 4, 2010.

Findings of Fact

The SOR alleges 30 delinquent accounts totaling more than \$36,848.00 under the financial considerations guideline. The delinquent debts consist of credit cards, personal loans, medical bills, and telephone accounts. The debts became delinquent between April 2002 and August 2008. Applicant admitted all the debts except for 1.f., 1.k., 1.n., 1.o., 1.v., 1.u., 1.w., and 1.cc., contending she did not recognize the debt or that she had negotiated a settlement with the creditor. See, SOR 1.n. and 1.o.

Applicant is 40 years old and single. She has been employed in a CA III position at a Blue Cross medical insurance facility since 2001 (SF 85P, Item 5).

On October 9, 2008, Applicant was interviewed by an OPM investigator (Item 6). She explained she encountered financial problems after moving from the northeast to her current residential location in 1999. She opened several credit cards and personal loans, but could not maintain the payments. She opened a debt consolidation loan in June 2003 (SOR 1.k.), with her mother as co-signer. Applicant intended to use the funds to pay off other delinquent debts. However, she could not maintain the payments on the loan. Currently, the loan is listed in her mother's Chapter 13 bankruptcy petition (*Id.*).

Item 6 also contains another statement by Applicant, dated March 30, 2009, concerning her financial difficulties. Applicant indicated she made poor choices with her finances while raising two children as a single parent, but she has never done anything illegal. She stated that she loves her job and is dedicated to the mission of her employer. Applicant then indicated that her attempts to resolve her financial situation should be considered (*Id.*).

In additional interrogatory answers dated March 30, 2009 (Item 7), Applicant provided a personal financial statement (PFS) indicating she had a negative monthly remainder of \$587, after payment of her expenses. See *also*, Applicant's admission to SOR 1.ee. Following the PFS, Applicant submitted documentation from the two creditors listed in SOR 1.b. and 1.dd. She wrote on the documentation that she had paid the creditors. However, she supplied no receipts or bank statements showing that the bills had actually been paid.

In a supplemental statement attached to her answer to the SOR, dated October 28, 2009, Applicant stated she has been employed in her position for nine years without an infraction, such as stealing or gambling. She noted that she established "some

payment agreements” with creditors, but presented no additional information. In her answer to the SOR, she indicated she was paying \$79 monthly to the creditor identified in SOR 1.n., and \$79 a month to the same creditor for a second account identified in SOR 1.o. However, Applicant provided no actual documentation of payment to either creditor.

Character Evidence

Applicant provided no character evidence regarding her job performance or her reputation in the community where she lives.

Policies

On April 9, 1993, the Composite Health Care 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 (MOA) which gave DOHA the responsibility to provide trustworthiness determinations for contractor personnel working on unclassified Information Systems Positions as defined in DOD Regulation 5200.2-R, *Personnel Security Program*, dated January 1987.

To be eligible for assignment to sensitive duties, an applicant must meet the security guidelines contained in DoD 5200.2-R. “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.” The Regulation sets forth personnel security guidelines, disqualifying and mitigating conditions under each guideline. In determining whether the applicant qualifies for a sensitive position under the trustworthiness standard, the applicant must be provided the due process procedures contained in DoD Directive 5220.6.

In addition to the disqualifying and mitigating conditions of each security guideline, the general factors of the whole-person concept should be applied in deciding whether it is clearly consistent with the national interest to grant an applicant eligibility for assignment to sensitive duties.

When evaluating an applicant’s suitability for a public trust position, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an applicant’s eligibility for a public trust position. Recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s ultimate adjudicative goal is a fair, impartial and commonsense decision. According to the AG, the entire process is a careful, thorough evaluation 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.

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 security decision.

Analysis

Financial Considerations (FC)

AG ¶ 18 describes the security concerns under the financial considerations guideline:

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 being exploited by disloyal persons. Computer and information security espionage.~~ Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

The financial guideline lists two disqualifying conditions that may be applicable to this case:

AG ¶ 19(a) (*inability or unwillingness to satisfy debts*); and

AG ¶ 19(c) (*a history of failing to meet financial obligations*).

Applicant explained in her interview that she began having financial problems after opening several credit accounts and personal loans, and discovering she could not maintain the payments. Between 2002 and August 2008, Applicant accumulated 30 delinquent debts totaling \$36,848. AG ¶ 19(a) applies to Applicant’s inability to satisfy her debts. AG ¶ 19(c) applies based Applicant’s six-year history of not meeting financial obligations.

Four conditions under AG ¶ 20 could potentially mitigate Applicant’s delinquent indebtedness:

AG ¶ 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);

AG ¶ 20(b) (the conditions that resulted in the financial problem were largely beyond the person's control, and the person acted responsibly under the circumstances);

AG ¶ 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); and

AG ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts).

¶ 20(a) does not apply because of the large number of accounts that became delinquent between 2002 and 2008. The lack of a plan to resolve her delinquent accounts continues to cast doubt on Applicant's reliability, trustworthiness and good judgment.

In order to receive credit under AG ¶ 20(b), an applicant must show that unforeseen events prevented her from paying her debts. The record reflects that Applicant has been employed by her employer for the last nine years. She provided no evidence indicating she suffered an unexpected medical condition or some other problem beyond her control that resulted in the financial problem. AG ¶ 20(b) does not apply.

Applicant has not had financial counseling. Even if there was evidence of counseling, AG ¶ 20(c) still would not apply because Applicant has done nothing to improve her financial situation. In addition, AG ¶ 20(d) must be removed from consideration because there is no evidence showing that any of the debts, even the smaller debts, have been paid or settled. Applicant has failed to show that she is eligible for a public trust position.

Whole-Person Concept

I have examined the evidence with the disqualifying and mitigating conditions in my ultimate finding against Applicant under the financial guideline. I have also weighed the circumstances within the context of nine variables known as the whole-person concept. In evaluating the relevance of an individual's conduct, the administrative judge should consider the following factors:

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 the participation was 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.

Applicant's nine years of uninterrupted employment with her employer since 1991 without incident weighs in her favor. Her dedication to her children, her employer and her colleagues, also weighs in her favor. There is no evidence that she has a criminal record or has ever violated proprietary rules.

Conversely, failing to pay voluntarily incurred debt demonstrates financial irresponsibility. Applicant has a lengthy history of financial problems, with some of her delinquent debt more than six years old. She was informed in October 2008 that her delinquent debts were a concern of the Government. In March 2009, she was advised a second time that the Government was concerned about her delinquent accounts. Without evidence of a plan to deal with her delinquent debts, Applicant has not mitigated the Government's case under the financial considerations guideline.

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 (Financial Considerations, Guideline F): AGAINST APPLICANT

Subparagraph 1.a. through 1 ee.

Against Applicant

Conclusion

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

Paul J. Mason
Administrative Judge