



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



In the matter of:)	
)	
)	ADP Case No. 09-00973
)	
)	
Applicant for Public Trust Position)	

Appearances

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

January 26, 2010

Decision

CREAN, THOMAS M., Administrative Judge:

Applicant submitted her Questionnaire for Public Trust Positions (SF 85P) as part of her employment with a defense contractor on November 6, 2007 (Item 5). On May 5, 2009, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns for financial considerations (Item 1). 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, and effective within the Department of Defense for SORs issued after September 1, 2006. Applicant acknowledged receipt of the SOR on June 30, 2009 (Item 3).

Applicant answered the SOR in writing on July 2, 2009. She admitted 17 and denied five of the 22 allegations under Guideline F. She also denied the public trust concern raised by her financial issues. She elected to have the matter decided on the written record in lieu of a hearing (Item 4). Department counsel submitted the Government's written case on October 5, 2009. Applicant received a complete file of relevant material (FORM) on November 19, 2009, and was provided the opportunity to file objections, and submit material to refute, extenuate, or mitigate the disqualifying

conditions. Applicant timely provided additional information in response to the FORM. The case was assigned to me on January 11, 2010. Based on a review of the case file and pleadings, eligibility for access to sensitive information is denied.

Findings of Fact

In her Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.c, 1.e to 1.l, 1.n to 1.r, and 1.t to 1.v. She denied the debts at SOR ¶ 1.a, 1.b, 1.d, 1.m, and 1.s.

Applicant is 29 years old and has been a claims analyst for a defense contractor for over eight years. She is married with no children (Item 5). There is no information in the case file indicting her monthly income and expenses.

Applicant's answer to the SOR (Item 4), her answers to interrogatories (Items 7 and 8), and credit reports (Items 9 and 10) establish that Applicant has delinquent debts, totaling approximately \$66,701. The documents support the debts for: a state tax lien of \$365 (SOR 1.a); medical debts of \$140 (SOR 1.b), \$182 (SOR 1.c), \$145 (SOR 1.d), \$980 (SOR 1.e), \$537 (SOR 1.f), \$237 (SOR 1.g), \$56 (SOR 1.h), \$175 (SOR 1.i), \$55 (SOR 1.j), \$1,198 (SOR 1.k), \$608 (SOR 1.l), and \$88 (SOR 1.m); a credit card in collection for \$8,858 (SOR 1.n); a charged off debt for \$1,211 (SOR 1.o); a debt of \$8,782 for a repossessed vehicle (SOR 1.p); a cell phone account in collection for \$211 (SOR 1.q); a debt of \$41,237 for a repossessed mobile home (SOR 1.r); a debt in collection for telephone service for \$61 (SOR 1.s); a charged-off debt to a department store for \$1,513 (SOR 1.t); and two debts in collection to the same collection agency for the same utility for \$504 (SOR 1.u), and \$321 (SOR 1.v).

Applicant provided documentation that the debt at SOR 1.s was paid in full (item 4 at 7). She provided documentation of payment of \$168.60 to a creditor for a debt owed to a hospital. It appears this is the debt listed at SOR 1.d and the debt would be paid in full (Item 4 at 8). She provided documentation of payment of \$100 on a medical debt (Item 4 at 6). The original debt on the receipt is for \$1,197, so the payment pertains to a payment on the debt at SOR 1.k. Applicant provided documentation that the debt at SOR 1.a was satisfied by use of her state tax refund (Item 4 at 9, Item 6).

In response to interrogatories, Applicant stated that some of her debts were disputed, but provided no documentation concerning the dispute or any resolution of the disputes. For some debts, she indicated she would make payment arrangements. She presented no documentation concerning any payment arrangements.

When Applicant was interviewed by a security investigator, she stated she co-signed the loans for the repossessed mobile home listed at SOR 1.r and the repossessed car listed at SOR 1.p for the same person. That person was current on the loan payments until she lost her job. Since Applicant had her own mortgage and car payments, she could not afford to pay the two repossession debts. In response to the FORM, Applicant provided a letter from the person for whom she co-signed the loan, verifying that Applicant co-signed the loans and that the loans were current until she lost

her job (Response to FORM, Letter, dated November 19, 2009). Applicant believes one of the delinquent debts may be for a computer she co-signed for. The person she co-signed for indicated in the Response to the FORM that she was current on the debt until "things got hard with money." Later she tried to make payments but the loan had gone to collections and she did not know the new creditor. When she learns the address of the new creditor, she will again make payments (Response to FORM, Letter dated November 19, 2009).

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 common sense 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.

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.

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 access to sensitive information. 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 from credit cards and medical debts, repossessions, and department stores as established by credit reports and Applicant's admissions, are a public trust 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 significant delinquent debts that she has not resolved.

I have considered a number of Financial Considerations Mitigating Conditions (FC MC). 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) does not apply. While the debts may have been incurred in the past, some are still unpaid and thus current. There are a number of different accounts and debts, so the debts were not incurred infrequently. Applicant has not presented any information to establish that the delinquent debts will not recur. Her continued debts and financial situation cast doubt on her current reliability, trustworthiness, and good judgment.

I considered 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 separations) and the individual acted responsibly under the circumstances). Applicant has not presented any information to establish circumstances beyond her control that caused her delinquent debts. She stated that at least three of the largest debts were caused when she co-signed loans for a mobile home, a car, and a computer and the borrower defaulted. Applicant willingly co-signed the loans so her actions were not beyond her control. When a person co-signs a loan, there is a risk the borrower will default. Applicant should have realized she was putting her finances at risk and ensured she could manage the debt if there was a default. She could not handle the debt, so she did not act reasonably and responsibly.

I considered FC MC ¶ 20(a) (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). Applicant presented no information to indicate she received financial counseling. Even if she had received counseling, there is no indication her financial problems are being resolved or under control. She is not making payments on her delinquent debts, and does not have a plan to resolve her delinquent debts.

I considered FC MC ¶ 20(d) (the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts). Applicant presented documentation that three of her delinquent debts have been settled and paid. However, one debt was resolved by the state using a tax refund to pay the debt. This is not a good-faith effort to resolve the debt, but the result of a forced action by the state. However, the debt has been paid. 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, concrete method of handling debts is needed. Good-faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. Evidence of past irresponsibility is not mitigated by payment of debt only under pressure of qualifying for a security clearance. Applicant presented information to show she paid three of the 22 delinquent debts. Applicant did not present a concrete plan to show how she would pay her remaining delinquent debts. Her only statement was that she was currently working to obtain money to settle the remaining debts. She did not provide information about how she was trying to raise funds to pay the debts. A promise to pay debts in the future is not evidence of a good-faith intention to resolve debts. Applicant did not present sufficient information to establish a good-faith effort to pay creditors or resolve debts. Her finances are not under control and she has not acted responsibly towards her finances. She has not mitigated security concerns for financial considerations.

"Whole Person" Analysis

Under the whole person concept, the administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all the 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 a security clearance 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. Applicant has not presented information to show she has taken sufficient action to resolve her financial issues. Applicant must establish that she has a "meaningful track record" of debt payment, including evidence of actual debt reduction through payment of debts. She is not required, as a matter of law, to establish that she paid off each and every debt listed in the SOR. All that is required is that she has a plan to resolve her financial problems and takes significant action to implement that plan. The entirety of her financial situation and her actions can reasonably be considered in evaluating the extent to which his plan to reduce his outstanding indebtedness is credible and realistic. Available, reliable information about the person's behavior, past and present, favorable and unfavorable, should be considered in reaching a determination.

Applicant has not established a "meaningful track record" of debt payment by presenting information to show she is taking sufficient, consistent, reasonable, and responsible action to resolve her financial issues. She did resolve three small delinquent debts. But this is only a small part of her delinquent debts. She did not present a plan to show she intends to resolve and pay her remaining delinquent debts. Applicant has not demonstrated she is responsibly managing her finances under the circumstances. She does not have a consistent record of actions to resolve financial issues. She has not established that she has or will take reasonable steps to address her remaining delinquent debts and resolve her financial problems. The record does show she has been irresponsible towards her financial obligations. The lack of responsible management of finances obligations indicates she will not be concerned or responsible, but will be careless, in regard to sensitive information. Overall, the record evidence leaves me with questions and doubts as to Applicant's judgment, reliability, and trustworthiness. She has not established her suitability for access to sensitive information. For all these reasons, I conclude Applicant has not mitigated the public trust concerns arising from her financial situation. Access to sensitive information is denied.

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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	Against Applicant
Subparagraph 1.n:	Against Applicant
Subparagraph 1.o:	Against Applicant
Subparagraph 1.p:	Against Applicant
Subparagraph 1.q:	Against Applicant
Subparagraph 1.r:	Against Applicant
Subparagraph 1.s:	For Applicant
Subparagraph 1.t:	Against Applicant
Subparagraph 1.u:	Against Applicant
Subparagraph 1.v:	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