



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



In the matter of:)	
)	
)	ADP Case No. 09-01838
)	
)	
Applicant for Public Trust Position)	

Appearances

For Government: Caroline H. Jeffreys, Esquire, Department Counsel
For Applicant: *Pro Se*

February 25, 2010

Decision

CREAN, Thomas M., Administrative Judge:

Applicant submitted a Questionnaire for Public Trust Position (SF 85P), on December 1, 2008, as part of her employment with a defense contractor. On August 31, 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 September 3, 2009.

Applicant answered the SOR in writing on September 22, 2009. She admitted 49 and denied 8 of the 57 allegations under Guideline F. She requested a hearing before an administrative judge. Department Counsel was prepared to proceed on October 28, 2009, and the case was assigned to me on November 17, 2009. DOHA issued a Notice of Hearing on November 20, 2009, for a hearing on December 9, 2009. Applicant received the Notice of Hearing on November 30, 2009. I convened the hearing as

scheduled. The government offered nine exhibits, marked Government Exhibits (Gov. Ex.) 1 through 9, which were admitted without objection. Applicant submitted four exhibits, marked Applicant Exhibits (App. Ex.) A through D, which were admitted without objection. Applicant testified on her behalf. I left the record open for Applicant to submit additional documents. Applicant timely submitted three additional documents, marked App. Ex. E through G, which were received without objection (Gov. Ex. 10. Memorandum, dated December 31, 2009). DOHA received the transcript (Tr.) of the hearing on December 22, 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 November 30, 2009, nine days before the hearing. Applicant is entitled to 15 days advance notice of the hearing (Directive ¶ E3.1.8). Applicant discussed with Department Counsel the hearing date of December 9, 2009, before the Notice of Hearing was mailed, so actual notice was given more than 15 days before 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 49 of the 57 allegations in response to the SOR. Her admissions are included in my findings of fact.

Applicant is 42 years old, and has been a claims associate for a defense contractor for over ten years. She was married, but separated in 2004, and divorced in 2005. She has four children, one at home working and attending college, one away at college, and two grown children working and living on their own. Her monthly pay is approximately \$1,700, and her monthly expenses are about \$1,600. She has little discretionary funds available each month. Her divorce decree did not provide for division of debts or property or payment of child support (Tr. 22-25, 64-68; Gov. Ex. 1, SF 85P, dated December 1, 2008).

Credit reports (Gov. Ex. 5, dated December 4, 2009; Gov. Ex. 6, dated June 9, 2009; Gov. Ex. 7, dated December 3, 2008; and Gov. Ex. 8, dated June 20, 2003) listed 57 delinquent debts totaling approximately \$56,000 owed by Applicant. The debts include approximately 25 medical accounts, 14 credit card or loan accounts, and 18 other accounts for department stores, utilities, telephone service, television service, and repossessions. It is recognized that some of the debts listed in the SOR are duplicates, and other were unknown by Applicant. The duplicates and the unknown accounts affect the total amount of debt owed.

When Applicant was married, she and her husband both worked and the family had two incomes. They used credit cards for purchases but were just barely able to meet the minimum payments and did accumulate delinquent debts while married. When Applicant separated from her husband, she could not pay all of the delinquent debts. In

addition, she and her son became sick and she had medical debts not covered by her medical insurance. The credit card companies demanded full payment of the debts rather than the small monthly payments that Applicant offered the creditors. Even if she was able to establish payment plans, she could not continue to make the payments. She sought financial counseling and is now working with a debt management firm. The debt management firm is attempting to set up payment plans with some of the creditors. Applicant contacted two of the creditors for her medical debts who advised Applicant to start paying the smaller debts first and then work up to the larger debts (Tr. 25-28).

The delinquent debt at SOR 1.a is a telephone debt for phone service used by Applicant, her husband, and her son. She stopped making payments on this debt in November 2005. Applicant contacted the creditor but no agreement was reached. This debt is not paid (Tr. 28-32).

Applicant has no knowledge of the debt for \$666 at SOR 1.b. She has not paid the debt, nor has she made any attempt to contact the creditor (Tr. 31-33).

The delinquent debts at SOR 1.c for \$81, and SOR 1.d for \$65 are medical debts to the same creditor. The debts have been bundled together by the creditor, Applicant agreed to pay \$25 per month towards the debts. She has made one payment. Applicant did not provide a receipt for the one payment (Tr. 33-34, 40-41).

The delinquent debt at SOR 1.e is for television cable service. Applicant has not inquired about this debt or made any payment on the debt (Tr. 35).

The delinquent debts at SOR 1.f and SOR 1.g are also medical debts. Applicant believes they are either to a medical laboratory or to a hospital but she is not sure of the creditor. She has not inquired about the debts nor made any payments on the debts (Tr. 41-43).

The delinquent debts at SOR 1.h for \$437 and SOR 1.i for \$1,837 are credit card debts. The delinquent debt at SOR 1.k for \$1,285 is for a loan. The delinquent debt at SOR 1.r for \$1,512, also listed at SOR 1.uu, is to a department store for credit card purchases. The delinquent debt at SOR 1.bb for \$856 is for a loan. The delinquent debts at SOR 1.mm, also listed at SOR 1.vv, for \$3,762, and SOR 1.nn for \$2,972 are for different credit cards in collection for the same creditor. The delinquent debt at SOR 1.pp for \$1,408 is for a department store account. The delinquent debts at SOR 1.qq for \$1,516, SOR 1.rr for \$856, and SOR 1.ss for \$692 are for credit card debts. These debts are included in Applicant's debt management plan. Applicant made an initial payment to the debt management firm of \$100 shortly before the hearing. She is to pay \$215 monthly under the plan. Applicant did not provide documentation concerning any monthly payments she made to the debt management company or any payments made to creditors according to this plan (Tr. 35-37, 57-61; App. Ex. D and G, Agreement, undated and unsigned; App. Ex. F, Debt schedule, dated, December 27, 2009).

The delinquent debt at SOR 1.j, also listed at SOR 1.l, for \$546 is to a mail order company. Applicant has not contacted the creditor or paid this debt (Tr. 45-46).

The delinquent debts at SOR 1.m to SOR 1.aa (except for SOR 1.r) and SOR 1.ww, SOR 1.xx, and SOR 1.yy are for medical debts in collection for a hospital ranging from \$763 to \$15 and total \$4,428. Applicant's arrangement with the creditor was to pay the smaller debts first before making payments on the larger debts. The first payment was due shortly after the hearing. Applicant stated she made the payments but did not provide documentation of the payments (Tr. 46-50; App. Ex. E, Applicant's notes, dated December 28, 2009).

The delinquent debts at SOR 1.cc for \$120 and SOR 1.dd for \$1,016 are for telephone bills. At the hearing, Applicant stated she has not contacted the creditors or paid the debts. In her post-trial submission, Applicant stated that she made arrangements to pay the debt at SOR 1.cc in January 2010. Applicant has not presented any documentation to establish any payments on either debt (Tr. 51; App. Ex. E, Applicant's notes, dated December 28, 2009).

The delinquent debt at SOR 1.ee for \$457 is for a prepaid cell phone. Applicant disputed this debt since it was for a prepaid phone. She contacted the phone company who advised her that under her contract she was required to pay charges on the phone. Applicant denied the debt and will not pay it (Tr. 51-52).

The delinquent debt at SOR 1.ff for \$245 is for an unknown debt. Applicant believes it may be for a medical debt but is not sure. Applicant has not contacted any creditor or made any payment on this debt (Tr. 52-54).

The delinquent debt at SOR 1.gg for \$215 is for a returned check presented to pay a telephone debt. The delinquent debt at SOR 1.hh for \$494 is for an account with a credit union. Applicant has not contacted the creditors or made any payments on these debts (Tr. 54).

The delinquent debt at SOR 1.ii for \$365 is for a loan. Applicant contacted the creditor prior to the hearing and agreed to start monthly payments of \$35. No payments have been made on this account (Tr. 54-55).

The delinquent debt at SOR 1.jj for \$1,426 is for a loan from a finance company. Applicant has not taken any recent action to contact the creditor. She has not made any agreement to pay the loan or made any payment on the loan (Tr. 55-56).

The delinquent debt at SOR 1.kk is also for a loan from a finance company. Applicant stated the loan was paid. She contacted the creditor and was informed the loan was paid. A computer document from the creditor shows the balance of the loan is zero with payoff in March 2005 (Tr. 56-57; App. Ex. B, e-mail screen, undated).

The delinquent debt at SOR 1.ll, also listed at SOR 1.tt, was for a car repossessed when Applicant was married. She has not taken any action to repay the repossession debt (Tr. 57).

The delinquent debt at SOR 1.00 for \$1,582 is mostly for fees and charges on an overdraft of a checking account. Applicant was offered a settlement agreement from the creditor but could not afford to make the payments (Tr. 58).

The delinquent debt at SOR 1.zz for \$260 is for television service. Applicant acknowledges this debt and tried to make contact with the creditor and collection agency but was unsuccessful. She has not made any payment on this debt (Tr. 61-62).

The delinquent debts at SOR 1.aaa for \$140 and SOR 1.bbb for \$101 are for insurance from two different companies Applicant had when she was married. She has not paid these debts (Tr. 62).

The delinquent debts at SOR 1.ccc for \$38, SOR 1.ddd for \$35, and SOR 1.eee for \$15, are medical debts to the same creditor. She has agreed to make payments to the creditor starting in December 2009 (Tr. 44-45; App. Ex. A, Note, dated December 8, 2009; App. Ex. E, Statement, dated December 28, 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 trustworthiness 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 54 delinquent debts consisting of medical bills, credit card debt, telephone and television service bills, car repossession, and loans that have been delinquent for some time. Some of the debts originated when Applicant was married and she and her husband used credit cards and loans for purchases. These debts indicate 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 2000, are still unpaid, and are thus current debt. Applicant has paid in full only one of the debts. Applicant has not contacted many of the creditors holding the delinquent debts. She has an agreement with a debt management firm to assist her in paying her debt but the agreement is only recent and she has not made any monthly payments under this plan beyond her initial \$100 payment. 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 is great.

Applicant incurred the debts when she and her husband had two incomes and used credit cards and loans to enhance their life style. During their marriage, they had trouble meeting their financial obligations. After her divorce, Applicant could not meet her financial obligations. She also incurred medical debts for her and her son that she could not pay. She has made only minimal payments or inquiries concerning the debts since then. Many of the medical debts are for small amounts and could be resolved with small payments. She has been gainfully employed for over ten years so she could have made some payments on some debts. Her divorce may have hindered her to some extent in making payments, but she does have the ability within her control to make payments on her debts. She has not inquired about the debts or made payments, so she has not acted 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 from the debt management company starting in November 2008. However, this was long after she knew her finances were of security concern.

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 many of her past due financial obligations. She has not even contacted most of the creditors to verify her debts. She has made some minimal payments on some debts. She has entered a debt management plan to assist her in paying some of her largest debts. But that plan was only made recently and she has not established that she made any monthly payments to the debt management company under the plan beyond her initial \$100 payment. Applicant's lack of action to pay her debts is significant and constitutes credible information to show that she has not acted reasonably under the circumstances. Applicant has not presented sufficient information to mitigate security concerns for financial considerations. Her finances establish a public trust concern.

I considered FC MC AG ¶ 20(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 documentation to substantiate the basis of the dispute or provides evidence of actions taken to resolve the issue). Applicant disputes the telephone service bill at SOR 1.00 since she claims it was a prepaid service. She did not present information to establish the charge was inappropriate or that she disputed it with the creditor. Applicant has not presented a reasonable basis for her dispute with the telephone debt.

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 has worked for her employer for over ten years and is considered a good employee. I considered that she and her son had medical issues that required medical care, and generated some medical debts.

Applicant must establish 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 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 her actions to reduce her outstanding indebtedness are credible and realistic. Available, reliable information about the person's behavior, past and present, favorable and unfavorable, should be considered in reaching a determination. There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan and concomitant conduct may provide for the payment of such debts one at a time.

Applicant has not established a meaningful track record of payment of her delinquent debts. The debts incurred are the type indicating poor self-control, lack of judgment, or unwillingness to abide by rules and regulations. Applicant has not made payments on most of her debts. She has a debt management plan for some of her debt, but it is only a recent plan and no payments under the plan have been established by Applicant. She has only shown payment of the debt at SOR 1.kk. The issue is not simply whether all of Applicant's debts are paid. It is whether her financial circumstances raise concerns about her fitness for eligibility to hold a position of public trust. Applicant 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. Applicant has not established a meaningful track record of paying her delinquent debts. 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 - 1k:	Against Applicant
Subparagraph 1.l:	For Applicant
Subparagraphs 1.m - 1.jj;	Against Applicant
Subparagraph 1.kk:	For Applicant
Subparagraphs 1.ll -1.ss:	Against Applicant
Subparagraphs 1.tt - 1.vv:	For Applicant
Subparagraphs 1.xx - 1.eee:	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