



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



In the matter of:)	
)	
)	ADP Case No. 09-02670
SSN:)	
)	
Applicant for Public Trust Position)	

Appearances

For Government: Jeff Nagel, Esquire, Department Counsel &
Melvin A. Howry, Esquire, Department Counsel
For Applicant: *Pro se*

October 15, 2010

Decision

CEFOLA, Richard A., Administrative Judge:

On April 9, 1993, the Composite Health Care Systems Program Office (CHCSPO), the Defense Office of Hearings and Appeals (DOHA), and the Assistant Secretary of Defense for Command, Control, Communications and Intelligence (ASD C3I) entered into a memorandum of agreement for DOHA to provide trustworthiness determinations for contractor personnel employed in Information Systems Positions as defined in DoD Regulation 5200.2-R, *Personnel Security Program* (Regulation), dated January of 1987.

The Applicant submitted her Questionnaires for Public Trust Position (SF 85P), on December 10, 2007. On August 21, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the trustworthiness concerns under Guideline F regarding the Applicant. The action was taken under 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 adjudicative guidelines (AG) promulgated by the President on

December 29, 2005, and effective within the Department of Defense on September 1, 2006.

The Applicant acknowledged receipt of the SOR on September 4, 2009. She answered the SOR in writing on or about September 23, 2009, and requested a hearing before an Administrative Judge. DOHA received the request on October 9, 2009. I received the case assignment on December 7, 2009. DOHA issued its first notice of hearing on January 22, 2010, setting this case for hearing on February 4, 2010, by Video Teleconference (VTC) in Japan. However, on February 4th the VTC technician in Japan failed to appear. I spoke to his Supervisor in this regard; and as a result, the case was continued until March 11, 2010. (Transcript (TR) Volume 1.) On March 11, 2010, the Applicant's spouse testified; but as the Applicant failed to bring a copy of the SOR, all parties agreed that the VTC should be continued. (TR Volume 2.) As a result, the VTC hearing was continued until May 4, 2010. The Government offered Exhibits (GXs) 1 through 11, which were received without objection. (*Id.*, TR Volume 3.) The Applicant testified on her own behalf, and asked that the record be kept open until June 7, 2010, in order to submit additional matters. The Applicant has submitted nothing. TR Volume 3 was received on May 14, 2010. The record closed on June 7, 2010. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to sensitive information is denied.

Findings of Fact

In her Answer to the SOR the Applicant admitted the factual allegations in ¶¶ 1.a, 1.d~1.g, 1.i~1.k, 1.m~1.r, 1.v~1.y, and 1.aa~1.cc of the SOR, without explanations. She denied the factual allegations in ¶¶ 1.b, 1.c, 1.h, 1.l, 1.s~1.u, 1.z, and 1.dd~1.ii of the SOR. She also provided additional information to support her request for eligibility for a public trust position.

Paragraph 1 (Guideline F - Financial Considerations)

1.a., 1.cc., 1.dd., and 1.ee.~1.hh. In February of 1997, the Applicant, through her then husband, filed for the protection of a Chapter 13 Bankruptcy. (TR Volume 3 at page 48 line 15 to page 50 line 12, and GX 8.) She avers that she did not agree to this filing; and as a result, the petition was dismissed in December of 1997. (*Id.*) However, in June of 2001, the Applicant filed for the protection of a Chapter 7 Bankruptcy. (TR Volume 3 at page 7 line 15 to page 11 line 21, and GX 9.) In October of 2001, her debts were discharged by this Chapter 7 Bankruptcy. (*Id.*) The Applicant avers that the four judgments listed in ¶¶ 1.ee.~1.hh., totaling about \$30,123, were included in this Bankruptcy, but she has offered nothing in support of her averment. (TR Volume 3 at page 7 line 15 to page 11 line 21.) I find that these judgments are still outstanding.

1.b. This is an outstanding judgment in the amount of about \$250. (GX 11 at page 1.) The Applicant avers that she is unaware of this outstanding judgment, but offers nothing further in this regard. (TR Volume 3 at page 11 line 22 to page 13 line 16.) I find that this judgment is still outstanding.

1.c.~1.e., 1.i.,~1.k., 1.m.~1.r., 1.t., 1.v., 1.y., 1.aa., and 1.bb. The Applicant admits that she is indebted to these creditors in an amount totaling about \$18,957. (TR Volume 3 at page 13 line 21 to page 20 line 20, at page 30 line 16 to page 33 line 10, at page 35 line 14 to page 39 line 3, at page 40 line 18 to page 41 line 18, at page 42 line 7 to page 43 line 1, at page 46 line 1 to page 47 line 17, GX 5 at pages 1 and 2, GX 6 at pages 5 and 15, GX 10 at page 2, and GX 11 at page 1.) The Applicant avers that she has an informal payment plan to address each of these debts, but offers nothing further in this regard. (*Id.*) I find that these debts are still outstanding.

1.f. The Applicant disputes a \$139 utility bill. (TR Volume 3 at page 20 line 21 to page 23 line 15, and GX 11 at page 1.) She offers nothing further in this regard; and as such, I find that this debt is still outstanding.

1.g. The Applicant avers that she has paid a \$39 pharmacy bill, but offers nothing further in this regard. (TR Volume 3 at page 23 line 16 to page 25 line 11, and GX 11 at page 2.) I find that this debt is still outstanding.

1.h. The Applicant disputes a \$965 phone bill. (TR Volume 3 at page 25 line 12 to page 26 line 21, and GX 4 at page 2.) She offers nothing further in this regard; and as such, I find that this debt is still outstanding.

1.i. , and 1.x. The Applicant admits to an auto repossession debt in the amount of about \$7,610, but offers nothing further in this regard. (TR Volume 3 at page 33 line 11 to page 35 line 2, and GX 11 at page 2.) I find that this debt is still outstanding.

1.s. The Applicant disputes a \$29 utility bill. (TR Volume 3 at page 39 line 4 to page 40 line 17, and GX 5 at page 2.) She offers nothing further in this regard; and as such, I find that this debt is still outstanding.

1.u. The Applicant disputes a \$50 dentist bill. (TR Volume 3 at page 41 line 19 to page 42 line 6, and GX 5 at page 2.) She offers nothing further in this regard; and as such, I find that this debt is still outstanding.

1.w. The Applicant disputes a \$2,144 home rental debt. (TR Volume 3 at page 43 lines 1~15, and GX 6 at page 5.) She offers nothing further in this regard; and as such, I find that this debt is still outstanding.

1.z. The Applicant disputes a \$4,158 debt. (TR Volume 3 at page 45 lines 8~25.) She offers nothing further in this regard; and as such, I find that this debt is still outstanding.

1.ii. The Applicant avers that she has paid a \$465 check cashing debt, but offers nothing further in this regard. (TR Volume 2 at page 40 line 2 to page 41 line 8.) I find that this debt is still outstanding.

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.

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 trustworthiness concerns. Under AG ¶ 19(a), an “*inability or unwillingness to satisfy debts*” is potentially disqualifying. Similarly under AG ¶ 19(c), “*a history of not meeting financial obligations*” may raise security concerns. The Applicant has a significant amount of past due indebtedness. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

I find no countervailing mitigating condition that I applicable here. AG ¶ 20(d) applies where the evidence shows “*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.*” The Applicant has done nothing, other than her bare averments, to address the alleged past due indebtedness.

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. 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.

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.

I considered all of the evidence, including the potentially disqualifying and mitigating conditions surrounding this case. Overall, the record evidence leaves me with questions or 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
Subparagraph 1.a.~1.ii	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.

Richard A. Cefola
Administrative Judge