



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



In the matter of:)
)
 1) ADP Case No. 09-03643
)
)
 Applicant for Position of Trust)

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: *Pro se*

09/21/2012

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant has not mitigated financial considerations trustworthiness concerns. Eligibility for access to sensitive information is denied.

Statement of the Case

On March 7, 2012, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing trustworthiness concerns under Guideline F, financial considerations. 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 Regulation 5200.2-R, *Personnel Security Program* (January 1987), as amended (Regulation); and the adjudicative guidelines (AG) implemented by the Department of Defense on September 1, 2006.

Applicant submitted an undated answer to the SOR and requested a hearing before an administrative judge. The case was assigned to me on June 26, 2012. DOHA issued a notice of hearing on July 11, 2012, and the hearing was convened as

¹ The SOR was amended to reflect Applicant's current last name.

scheduled on August 9, 2012. Government Exhibits (GE) 1 through 8 were admitted in evidence without objection. Applicant testified and submitted Applicant Exhibits (AE) A through C, which were admitted without objection. The record was held open for Applicant to submit additional information. She submitted documents that were marked AE D through K and admitted without objection. Correspondence about the additional exhibits is marked Hearing Exhibit (HE) I. DOHA received the hearing transcript (Tr.) on August 17, 2012.

Findings of Fact

Applicant is a 29-year-old employee of a defense contractor. She has worked for her current employer for about three years. She seeks to obtain eligibility for a public trust position. She is attending college. She married in 2009. She and her husband are separated, but they are going through counseling. She has three children, ages 12, 9, and 3.²

Applicant had her first child when she was 17 years old and her second child three years later. She supported herself and her children, but her finances were strained. She was unemployed on several occasions. She receives child support for her two older children. She and her husband separated about a year ago. The costs of maintaining two households also adversely affected her finances. She has primary custody of her youngest child. Her husband pays some expenses, but he does not pay formal child support. Applicant also admitted that she did not always make the best financial decisions. She was unable to pay all her bills and debts became delinquent.³

The SOR alleges 32 delinquent debts and unpaid judgments. In her response to the SOR, Applicant admitted owing the debts alleged in SOR ¶¶ 1.h, 1.n, 1.o, and 1.u. She denied owing the remaining debts or stated that she was unsure if she owed them. Everything except an outright admission will be treated as a denial. Individual debts are discussed below.

SOR ¶ 1.a alleges an unpaid \$3,621 judgment for the deficiency owed on a car loan after the car was repossessed. The judgment was awarded in 2005. Applicant established that the judgment was paid through garnishment in 2007. She also established that she paid the \$3,090 judgment alleged in SOR ¶ 1.b in 2010.⁴

Applicant admitted at the hearing that she owed the \$150 medical debt alleged in SOR ¶ 1.d. She denied owing the medical debts alleged in SOR ¶¶ 1.f, 1.k, 1.l, 1.m, 1.q, 1.bb, and 1.cc.⁵ The limited information in the credit reports does not provide sufficient evidence to overcome Applicant's denials.

² Tr. at 23, 26, 29, 41-44, 75, 81-82; GE 1; AE A, B.

³ Tr. at 23, 26-28, 43; GE 7.

⁴ Tr. at 36-40; GE 3-8; AE D, F, G, I.

⁵ Tr. at 44, 51-52, 55, 68; Applicant's response to SOR; GE 5-8.

SOR ¶ 1.s alleges a delinquent debt of \$3,513 to a collection company on behalf of a real estate company. The debt is listed on two credit reports. Applicant admitted that she had a rent-to-own lease through the real estate company that she terminated early. SOR ¶¶ 1.v and 1.z allege two additional debts of \$1,641 and \$1,146 to the same real estate company.⁶ The evidence suggests that they are duplicate listings of the SOR ¶ 1.s debt.

There are 19 remaining delinquent debts and unpaid judgments totaling approximately \$33,000. These debts and judgments are established by a combination of credit reports, court records, and Applicant's admissions. The accounts include debts for telephone, television, and Internet services (SOR ¶¶ 1.c - \$738; 1.g - \$1,055; 1.n - \$133; 1.p - \$164; 1.w - \$251; 1.x - \$209), car loans (1.h - \$15,744; 1.j - \$2,992), bank overdraft fees (1.o - \$446), library (1.r - \$55), book club (1.dd - \$82), and a judgment to the state for overpaid benefits (1.ee - \$3,520 and \$2,482). Applicant submitted proof that two debts (\$145 and \$96) that were not alleged in the SOR have been paid. She denied owing a number of the debts, but she did not submit documentary proof that any of the 19 delinquent debts and unpaid judgments have been paid or successfully disputed.⁷

Applicant received financial counseling from her church. She stated that she intends to investigate her finances and pay what she legitimately owes, but her income is just enough to pay her current bills. She also indicated that she will be meeting with a bankruptcy attorney to discuss her options.⁸

Applicant submitted a number of letters and documents attesting to her character and her excellent job performance. She is praised for her trustworthiness, integrity, work ethic, and honesty. She also volunteers in her community.⁹

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

⁶ Tr. at 56-59, 67; Applicant's response to SOR; GE 5-8.

⁷ Tr. at 40-41, 44-56, 59-71; Applicant's response to SOR; GE 2, 4-8; AE D, F, H, J, K.

⁸ Tr. at 28, 53, 72-76; GE 7; AE B, D.

⁹ AE C, E.

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 overarching 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."

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 to obtain 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 safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of sensitive information.

Analysis

Guideline F, Financial Considerations

The security concern 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 classified 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 security concerns under AG ¶ 19. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant accumulated a number of delinquent debts and was unable or unwilling to pay her financial obligations. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

- (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;
- (b) the conditions that resulted in the financial problem 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;
- (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;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (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 documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant became a single mother at 17. She raised her two older children on her own until she married about three years ago. She and her husband separated about a year ago. He pays some expenses, but he does not pay formal child support for her youngest child. She had periods of unemployment. These events qualify as conditions that were beyond her control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances.

Applicant also admitted that she did not always make the best financial decisions, and many of her unpaid debts were not for necessities. She established that two judgments were paid. At least one of the judgments was paid by garnishment. She also established that two small debts not alleged in the SOR were paid. AG ¶ 20(d) is

applicable to the judgments. It is not applicable to the remaining debts. I further find AG ¶ 20(e) applicable to the disputed medical debts and the duplicate debts to the real estate company. It is not applicable to any other debts. Applicant did not submit documentary proof that any of the remaining 21 delinquent debts and unpaid judgments have been paid or successfully disputed. The total owed for those debts and judgments exceeds \$36,000. Applicant has received financial counseling, and she may be sincere in her desire to put her financial house in order, but her income barely covers her current expenses. She will be meeting with a bankruptcy attorney to discuss her options. She may be able to resolve her financial difficulties at some point, but that point has yet to be determined.

There is insufficient evidence for a determination that Applicant acted responsibly and made a good-faith effort to repay or otherwise resolve all her delinquent debts. Her financial issues are recent and ongoing. I am unable to determine that they are unlikely to recur. They continue to cast doubt on Applicant's current reliability, trustworthiness, and good judgment. AG ¶ 20(a) is not applicable. AG ¶ 20(b) is partially applicable. The first section of AG ¶ 20(c) is applicable; the second section is not. I find that financial concerns remain despite the presence of some mitigation.

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 relevant 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 have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

I considered Applicant's favorable character evidence and work record. However, she has a history of financial problems without a clear plan as to how to address them.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a public trust position. For all these reasons, I conclude Applicant has not mitigated financial considerations trustworthiness concerns.

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.b:	For Applicant
Subparagraphs 1.c-1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraphs 1.g-1.j:	Against Applicant
Subparagraphs 1.k-1.m:	For Applicant
Subparagraphs 1.n-1.p:	Against Applicant
Subparagraph 1.q:	For Applicant
Subparagraphs 1.r-1.u:	Against Applicant
Subparagraph 1.v:	For Applicant
Subparagraphs 1.w-1.y:	Against Applicant
Subparagraph 1.z:	For Applicant
Subparagraph 1.aa:	Against Applicant
Subparagraphs 1.bb-1.cc:	For Applicant
Subparagraphs 1.dd-1.ff:	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.

Edward W. Loughran
Administrative Judge