



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



In the matter of: )  
 )  
----- ) ADP Case No. 09-05294  
SSN: ----- )  
 )  
Applicant for Public Trust Position )

**Appearances**

For Government: Nichole Noel, Esq., Department Counsel  
For Applicant: *Pro se*

November 22, 2010

**Decision**

FOREMAN, LeRoy F., Administrative Judge:

This case involves trustworthiness concerns raised under Guideline F (Financial Considerations). Eligibility for assignment to a public trust position is denied.

**Statement of the Case**

Applicant submitted her Questionnaire for Public Trust Positions (SF 85P) on October 22, 2008. On January 28, 2010, the Defense Office of Hearings and Appeals (DOHA) sent her a Statement of Reasons (SOR) detailing the basis for its preliminary decision to deny her application, citing trustworthiness concerns under Guideline F. DOHA acted 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 adjudicative guidelines (AG) implemented by the Department of Defense on September 1, 2006.

Applicant received the SOR on February 28, 2010; answered it on March 12, 2010; and requested a determination on the record without a hearing. DOHA received

her response on March 15, 2010. Department Counsel submitted the Government's written case on September 7, 2010. On the same day, a complete copy of the file of relevant material (FORM) was sent to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. She received the FORM on September 15, 2010, and did not submit any additional material. The case was assigned to me on November 8, 2010.

### **Findings of Fact**

In her response to the SOR, Applicant admitted all the allegations in the SOR. Her admissions are incorporated in my findings of fact.

Applicant is a 41-year-old employee of a defense contractor. She has never married, but she has two children, ages 19 and 21. She has been eligible for public trust positions since January 2003. (Item 4 at 6.)

Applicant's net monthly income is about \$1,668. Her total monthly living expenses are \$1,460, including rent of \$450. In addition, she has a monthly car payment of \$329. Even without any unexpected expenses, she has a net monthly shortfall of about \$121.

In late 2007 and early 2008, Applicant and her son both required surgery. She was on unpaid leave for three weeks as a result of her surgery. She incurred numerous medical bills that added to her monthly \$121 shortfall. She did not respond to letters from creditors. She described herself to a security investigator as "financially tapped out." (Item 5 at 5.)

The SOR alleges 28 delinquent debts, of which 22 are medical bills. Of the medical bills, 11 are for less than \$100. There is no evidence that Applicant has sought credit counseling or other professional assistance, and no evidence that she has attempted to negotiate settlements or payment plans on any of the debts.

### **Policies**

Positions designated as ADP I and ADP II are classified as "sensitive positions." 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 "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." Regulation ¶ C6.1.1.1. Department of Defense contractor personnel are entitled to the procedural protections in the Directive before any final unfavorable access determination may be made. Regulation ¶ C8.2.1.

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.

Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard sensitive information.

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 an evaluation of the whole person. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

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. The Government must present substantial evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). An applicant has the ultimate burden of demonstrating that it is clearly consistent with the interests of national security to grant or him or her eligibility for assignment to a sensitive position.

## **Analysis**

### **Guideline F, Financial Considerations**

The trustworthiness concern under this guideline 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.

Applicant's financial history establishes the disqualifying conditions in AG ¶ 19(a) (inability or unwillingness to satisfy debts) and AG ¶ 19(c) (a history of not meeting financial obligations). Thus, the burden shifted to her to rebut, explain, extenuate, or mitigate the facts.

Trustworthiness concerns under this guideline may be mitigated if "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(a). This mitigating condition is not established, because Applicant's debts are numerous, not yet resolved, and there is no evidence that they occurred under circumstances making them unlikely to recur.

Trustworthiness concerns also may be mitigated if "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." AG ¶ 20(b). Applicant's medical expenses were a condition beyond her control, but there is no evidence she acted responsibly. She has not sought counseling or other professional assistance, she has not contacted her creditors, and she has done nothing to pay, compromise, settle, or dispute her debts.

Trustworthiness concerns under this guideline also can be mitigated by showing that "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." AG ¶ 20(c). This mitigating condition is not established because there is no evidence Applicant has sought counseling, and her problems are not under control.

Trustworthiness concerns under this guideline also can be mitigated by showing that "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." AG ¶ 20(d). Good faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. ISCR Case No. 99-0201, 1999 WL 1442346 at \*4 (App. Bd. Oct. 12, 1999). This mitigating condition is not established because there is no evidence of any efforts to resolve the delinquent debts.

Trustworthiness concerns under this guideline also can be mitigated by showing "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." AG ¶ 20(e). This mitigating condition is not established because Applicant has admitted all the debts.

### **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 relevant 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 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 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.

Applicant is a mature adult who has carried the burden of raising two children alone. She has been eligible for public trust positions since January 2003. However, she was living paycheck to paycheck before she incurred unexpected medical bills. She has not taken any steps to deal with her financial crisis responsibly. Applicant did not request a hearing, limiting my ability to assess her sincerity and credibility or to elicit more information from her.

After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the trustworthiness concerns based on financial considerations. Accordingly, I conclude she has not carried her burden of showing that it is clearly consistent with the interests of national security to continue her eligibility for assignment to a public trust position.

### **Formal Findings**

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): **AGAINST APPLICANT**

Subparagraphs 1.a-1.bb: **Against Applicant**

### **Conclusion**

I conclude that it is not clearly consistent with the interests of national security to continue Applicant's eligibility for a public trust position. Eligibility for assignment to a public trust position is denied.

LeRoy F. Foreman  
Administrative Judge