



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



In the matter of:)	
)	
)	ADP Case No. 09-05936
)	
Applicant for Public Trust Position)	

Appearances

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

March 11, 2011

Decision

CREAN, THOMAS M., Administrative Judge:

Based on a review of the case file, pleadings, exhibits, and testimony, eligibility for access to sensitive information is granted.

On February 20, 2009, Applicant submitted a Questionnaire for Public Trust Position (SF 85P), as part of her employment with a defense contractor. On June 24, 2010, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns for financial considerations (Guideline F). 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); Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program*, dated January 1987, as amended (Regulation); and the adjudicative guidelines (AG) effective in the Department of Defense on September 1, 2006. Applicant acknowledged receipt of the SOR on June 29, 2010.

Applicant answered the SOR on August 9, 2010. She admitted the three allegations under Guideline F, and requested a decision on the record. On November 4,

2010, Applicant changed her request to a hearing before an administrative judge. Department Counsel was prepared to proceed on December 2, 2010, and the case was assigned to me on December 22, 2010. DOHA issued a Notice of Hearing on January 5, 2011, for a hearing on January 20, 2011. I convened the hearing as scheduled. The Government offered six exhibits marked and received without objection as Government Exhibits (Gov. Ex.) 1 through 6. Applicant testified and submitted two exhibits marked and received without objection as Applicant Exhibits (App. Ex.) A and B. DOHA received the transcript (Tr.) of the hearing on February 4, 2011.

Procedural Issues

Applicant did not receive the notice of hearing until January 15, 2011, only five days before the hearing. Applicant is entitled to 15 days advanced notice of hearing. (Directive E3.1.8.) Applicant discussed with Department Counsel the hearing date of January 20, 2011, prior to the Notice of Hearing being mailed on January 5, 2011. Applicant was ready to proceed and had sufficient time to prepare. She waived the 15 days notice requirement. (Tr. 4-5)

Findings of Fact

Applicant admitted the three allegations under Guideline F in the SOR, a bankruptcy discharge in 2003, a mortgage foreclosure, and an unsecured debt to a mortgage company more than 120 days past due . Her admissions are included in my findings of fact. After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact.

Applicant is 39 years old, and has been a benefits examiner for a defense contractor for about two years. She was married from March 1998 until October 2003, and has one 11 year old child from the marriage. (Tr. 10-11; Gov. Ex. 1, SF 85P, dated February 20, 2009) Credit reports show Applicant filed for and her debts were discharged in bankruptcy in 2003. (Gov. Ex. 9, Schedule F, Bankruptcy documents) Also listed are delinquent debts for a mortgage foreclosure of \$490,997, and an unsecured mortgage debt that was past due more than 120 days for approximately \$124,953. (Gov. Ex. 3, Credit report, date March 4, 2009; Gov. Ex. 4, Credit report, dated November 18, 2009: and Gov. Ex. 5, Credit report, dated September 29, 2010) The latest credit report at Gov. Ex. 5 shows that Applicant has only a few credit accounts and they are paid as agreed.

Applicant was living and working in State A with her husband in 2000 when he became involved in illegal drugs. He was arrested and became the subject of criminal proceedings. Applicant was working two jobs to maintain the family finances. However, she was unable to pay all of the debts and her husband continued to use their credit cards to purchase drugs. She filed a Chapter 7 bankruptcy in March 2003 with over \$30,000 in unsecured credit card debt. Her debts were discharged in July 2003. (Tr. 11-12)

In 2004, Applicant was employed at a bank and was engaged to be married. She decided to assist her future mother-in-law as a co-purchaser of a house by signing the mortgage with her with the intent that she, her future husband, and his mother would live in the house after Applicant and her fiancé married. The local housing market was favorable to buyers so Applicant and her co-purchaser, with their combined incomes, qualified for the mortgage. They agreed that the mortgage would be the co-purchaser's responsibility. Applicant never lived in the house after it was purchased. Applicant never married her intended husband and he moved to another state. The co-purchaser was unable to maintain the payments on the mortgage with her income and the house was foreclosed. The debts in SOR 1.b and 1.c pertain to the foreclosure of the first and second mortgage on the house. Applicant and her co-purchaser agreed that Applicant had no financial responsibility for the house and a quit claim deed was executed in an attempt to absolve Applicant of responsibility for the mortgage. In filing this document, the co-purchaser learned that there were significant legal issues in regard to the title, ownership, and mortgage. She alleged fraud on the part of the mortgage company and has filed a legal action against the mortgage company. The outcome of the action and whether it will relieve Applicant of responsibility for the mortgage is unclear. It is also not clear what, if any, debt may be owed for the mortgage after the foreclosure. (Tr. 12-13, 19-20; Gov. Ex. 2, Response to Interrogatories, Report of Investigation, June 29, 2009; App. Ex. B, Affidavit and Notice of Pendency of action, dated October 29, 2010)

Applicant is well regarded by all of her employers. Her previous employer praised her knowledge and work ethic. A senior associate from her present employer stated that she is impressed with Applicant's open and honest way of living and trusts her with everything that is important in her life. She believes Applicant to be a woman of character and integrity. Eleven of Applicant's friends and co-workers wrote that Applicant is honest and hardworking with a strong work ethic. She is reliable and responsible and takes pride in her work. Applicant has been recognized numerous times for outstanding service and positive customer feedback. (App. Ex. B, Letters and certificates, various dates: Response to SOR, Letter, dated July 23, 2008; Letter, dated July 17, 2008; Letter, dated July 21, 2008; training certificates, dated April 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 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

There is a public trust concern for a failure or inability to live within one's means, satisfy debts, and meet financial obligations because such actions 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 his or her 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 security 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 filed a bankruptcy petition after incurring significant credit card debt when her husband used their credit cards to purchase illegal drugs. She purchased a house with another person who was to be responsible to pay the mortgage on the house. Applicant never lived in the house, the person could not make the payments, and the house was foreclosed. The foreclosure and an unpaid second mortgage are listed on her credit report. The bankruptcy and the delinquent debts show a history of not meeting financial obligations because of an inability, and not unwillingness, to satisfy debt.

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 separations and the individual acted responsibly under the circumstances). Both of these mitigating conditions apply to Applicant's financial problems. Applicant had to file bankruptcy to relieve her of debts incurred by her husband's use of credit cards to purchase drugs. This financial problem was caused by conditions beyond her control. She is no longer married, so it is unlikely that the circumstances causing the debt will recur. Applicant also entered an agreement to assist another person with the purchase of a house with the intent to live in the house after marrying the other person's son. The relationship terminated and the other person and Applicant executed a quit claim deed to relieve Applicant of her responsibility for the mortgage. They discovered legal issues with the property and the mortgage and it is not clear if Applicant can be released from the mortgage obligation. The house has been foreclosed and there is no indication of the extent of the debt for the mortgage, if any. While Applicant entered the arrangement to be a partner in the purchase and the mortgage, the default on the mortgage by the other person was a condition beyond her control. The legal issues concerning the property and the mortgage are also conditions beyond her control. Applicant acted responsibly by working with her co-purchaser to execute a legal document to relieve Applicant of responsibility for the property and the mortgage. Applicant has established a pattern of acting responsibly towards her finances. Her present credit report shows her financial management is sound and responsible. It is unlikely that she will have additional or recurring financial problems. Her past-due debts do not cast doubt on her reliability, trustworthiness, and good judgment under these circumstances.

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). Applicant filed a bankruptcy in March 2003. As part of a bankruptcy action, the individual is required to receive financial counseling. Her present credit report shows her financial problems are being resolved or are under control.

I considered FC MC ¶ 20(d) (the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts) and it does apply. 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 reduction of debt through payment of debts. All that is required is that Applicant demonstrate she has established a plan to resolve her financial problems and has taken significant actions to implement that plan.

Applicant filed a Chapter 7 bankruptcy to resolve debts accumulated from her husband's use of credit cards to finance illegal drug activities. Bankruptcy is a legal and permissible means of resolving debt. Applicant also entered an agreement to co-purchase a house with the co-purchaser being responsible for payment of the mortgage. When the person could not pay the mortgage, she and Applicant used a quit claim deed in an attempt to resolve Applicant of responsibility for the debts. They discovered significant legal issues with the property and the mortgage. It is not clear if Applicant still has responsibility for the mortgage or even whether there is still a mortgage. Her credit report shows that her present finances are under control. Applicant has acted responsibly towards her debts and has presented sufficient information to mitigate security concerns for financial considerations. Her finances do not establish a public trust concern.

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 is a trusted and highly regarded employee with a good work record and reputation for honesty, reliability, and trustworthiness. Some of Applicant's debts were incurred by circumstances beyond her control. She acted responsibly by filing a Chapter 7 bankruptcy for debts incurred by her husband's purchase of illegal drugs. She entered an ill advised arrangement to co-purchase a house. When the co-purchaser could not pay the mortgage, she joined in a legal action to relieve herself of responsibility for the mortgage. In filing this document, it was learned that there were significant legal issues with the property and the mortgage. The house was foreclosed and it is not clear what, if any, debt is owed. Her present finances do not show any delinquent debts. Applicant established a history of responsible resolution of her debts. The record evidence leaves me without questions and doubts about Applicant's eligibility and suitability for a public trust position. For all these reasons, I conclude Applicant has 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: FOR APPLICANT

Subparagraphs 1.a - 1.c: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a public trust position. Eligibility for access to sensitive information is granted.

THOMAS M. CREAN
Administrative Judge