



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

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ADP Case No. 09-07254

Applicant for Public Trust Position

Appearances

For Government: Caroline H. Jeffreys, Esquire, Department Counsel

For Applicant: *Pro Se*

July 29, 2011

Decision

WHITE, David M., Administrative Judge:

Applicant incurred more than \$19,000 in delinquent debt over the past seven years. She did not demonstrate either changed circumstances or sufficient income to resolve those debts or remain solvent in the future. Financial security concerns were not mitigated. Based upon a thorough review of the pleadings and exhibits, eligibility for access to ADP I/II/III sensitive information is denied.

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 Sensitive Information Systems Positions (ADP I/II/III), as defined in Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program* (January 1987), as amended (Regulation).

Applicant submitted her Public Trust Position Application (SF 85P), on August 22, 2008.¹ On November 4, 2010, DOHA issued a Statement of Reasons (SOR) to Applicant detailing trustworthiness concerns under Guideline F (Financial Considerations).² 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); the Regulation (*supra*); and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* effective within the Department of Defense on September 1, 2006.

Applicant acknowledged receipt of the SOR on November 22, 2010.³ She answered the SOR in writing on November 23, 2010, and requested that her case be decided by an administrative judge on the written record without a hearing.⁴ Department Counsel submitted the Government's written case on January 10, 2011. A complete copy of the File of Relevant Material (FORM)⁵ was provided to Applicant, and she was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of her receipt of the FORM.

Applicant signed the document acknowledging receipt of her copy of the FORM on February 15, 2011, and returned it to DOHA. She provided no further response to the FORM within the 30-day period, did not request additional time to respond, and expressed no objection to my consideration of the evidence submitted by Department Counsel. I received the case assignment on April 4, 2011.

Findings of Fact

Applicant is a 52-year-old employee of a federal contractor, where she has worked since late 2009 as a shipping and receiving clerk. She is divorced, and has three adult sons.⁶ In her answer, Applicant admitted four of the allegations in the SOR, and denied three of them.⁷ Those admissions and her affidavit provided to an investigator from the Office of Personnel Management (OPM) are incorporated in the following findings.

¹Item 5.

²Item 1.

³Item 3.

⁴Items 2 and 4.

⁵The Government submitted 12 Items in support of the SOR allegations.

⁶Items 5 and 11.

⁷Item 4.

Applicant admitted owing the four delinquent credit card debts alleged in SOR ¶¶ 1.a, 1.c, 1.d, and 1.e, totaling \$18,975. These accounts all became delinquent between April and November 2004.⁸ In her OPM affidavit, she said that after she fell behind on payments she contacted each creditor, but they refused to negotiate lower payments and asked her to pay the full amount owed. She could not afford to pay the full amounts, so she stopped paying them altogether.⁹ She offered no evidence of any payment toward these debts, or of any other attempts to resolve them.

Applicant's home state filed a \$2,255 tax lien against her in September 2008. In her April 2010 OPM affidavit, she said that she had been making monthly payments of \$102 to repay this debt, and would make the final payment the following day. She denied that the debt remained unpaid in her November 2010 answer to the SOR, and said that it had been paid off in March 2010. Her credit bureau report (CBR) dated February 2, 2010, showed this lien reported by all three major credit bureaus.¹⁰ It was no longer reported on her CBR dated January 3, 2011.¹¹ Although Applicant did not offer corroborating documentation that this debt was satisfied, its removal from her most recent CBR supports her contention that she paid it.

Applicant also denied that the \$65 medical debt, alleged in SOR ¶ 1.f, remained unpaid. Her January 2011 CBR reported that, effective December 2010, the debt was paid with a zero balance due.¹² However, it showed the \$395 medical debt, alleged in SOR ¶ 1.g, remained unpaid since March 2007. In her answer to the SOR, Applicant denied owing that debt and said her insurance should have paid it. She provided no evidence of communication with either the creditor or her insurance company to attempt to clarify responsibility for the debt, and the weight of evidence in the case file indicates that she still owes it.¹³

Applicant explained that she was paying her bills on time until 2004, when she lost her job that paid \$41,000 per year. She was unemployed from either July or August 2004 until January 2005, then got another job that paid her \$30,000 per year. She was unemployed again from February 2008 to June 2008, when she obtained her current position.¹⁴ However, both periods of unemployment began when she was fired by her

⁸Items 4, 8, 9, and 10.

⁹Item 6.

¹⁰Item 9.

¹¹Item 7.

¹²Item 7.

¹³Items 4 and 7.

¹⁴Items 4 and 5.

employers over disputes with, and poor service to, customers.¹⁵ Applicant provided no evidence concerning her budget, or her actions to curb spending in response to her brief periods of unemployment and reduced income. Nor did she demonstrate either the ability or willingness to attempt resolution of her admittedly delinquent debts.

Applicant provided no information concerning the quality of her professional performance, the level of responsibility her duties entail, or her track record with respect to handling sensitive information and observation of security procedures. She submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability. I was unable to evaluate her credibility, demeanor, or character in person since she elected to have her case decided without a hearing.

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, 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.” (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. (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.” 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.

¹⁵Items 5 and 6.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, “[t]he applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable [trustworthiness] decision.”

A person who applies for access to sensitive information seeks to enter 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 10865 provides that “Any determination under this order adverse to an applicant shall be a determination 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

AG ¶ 18 expresses the security concern pertaining to 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 classified information. An individual who is financially over-extended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

AG ¶ 19 describes conditions that could raise a security concern and may be disqualifying. Department Counsel argued persuasively that the evidence raised two of these potentially disqualifying conditions: “(a) inability or unwillingness to satisfy debts;” and “(c) a history of not meeting financial obligations.” (Throughout this analysis, the terms “security” and “trustworthiness” are used interchangeably.)

Applicant admitted owing four SOR-listed delinquent credit card debts totaling almost \$19,000. The record shows a seven-year history during which Applicant was regularly unable to satisfy these debts, and a \$395 medical debt that has been delinquent for more than four years. Having evaluated the nature, quantity, and amounts involved in Applicant's debts, I find no evidence of irresponsible or frivolous spending. There were neither allegations nor proof of compulsive, addictive, or problem gambling. Nor was there any evidence of drug abuse, alcoholism, or deceptive financial practices. Accordingly, no other Guideline F disqualifying condition was established. The evidence supporting application of AG ¶¶ 19(a) and 19(c) shifts the burden of proof to Applicant to establish mitigation of the resulting trustworthiness concerns.

AG ¶ 20 provides conditions that could mitigate security concerns arising from a history of unpaid debt, and a present unwillingness or inability to meet financial obligations:

- (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's delinquencies arose and continued over the past seven years and most of them remain unpaid at present. She did not demonstrate that any of the circumstances giving rise to those debts is unlikely to recur, or that her reliability, trustworthiness, and judgment are not implicated by the ongoing situation. Accordingly, she did not establish mitigation under AG ¶ 20(a).

I find minimal, if any, mitigation under AG ¶ 20(b). Applicant's two periods of unemployment were not lengthy, compared to the time she has been employed, and both resulted from her being fired for cause. Two of her debts were for medical

expenses, but they were not shown to have resulted from unexpected emergencies. Applicant has not incurred substantial new delinquent debt since 2004, and made minimal payments toward a few debts, but did not demonstrate that her financial circumstances have a foreseeable probability of changing for the better.

Applicant gave no indication that she received any financial counseling, or that she had either a plan or the means to address over \$19,000 in delinquent debt. She did not demonstrate solvency going forward, or otherwise indicate that her financial situation is under control. Given the record evidence, repayment or other resolution of her substantial delinquent debt is unlikely. Financial trustworthiness concerns are therefor not mitigated under AG ¶¶ 20(c) or (d).

Applicant's claim that her insurance should have paid the debt alleged in SOR ¶ 1.g could fall under AG ¶ 20(e), but she provided no documented proof to substantiate the basis of the dispute or evidence of actions to resolve the issue. Accordingly, mitigation under that provision was not established.

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 relevant facts and circumstances surrounding this case. Applicant's conduct of concern involves the substantial amount of delinquent debt that remained unpaid over the past seven years. The concerns are exacerbated by the absence of evidence that the circumstances leading to her inability or unwillingness to repay these debts have changed, or will change, for the better. She has not sought financial counseling, and there is no evidence suggesting any reduction in the potential for pressure, coercion, exploitation, or duress that could tempt Applicant to abuse her public trust position.

On balance, Applicant presented insufficient evidence to mitigate the reliability and trustworthiness concerns arising from her financial considerations, including her failure to pay substantial delinquent debts over the past seven years and her apparent inability to do so going forward. Overall, the record evidence leaves significant doubt as to Applicant's present eligibility and suitability for a public trust position.

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:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant eligibility for a public trust position. Eligibility for access to ADP I/II/III sensitive information is denied.

DAVID M. WHITE
Administrative Judge