



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



In the matter of:

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ADP Case No. 10-04564

Applicant for Public Trust Position

Appearances

For Government: Melvin A. Howry, Esq., Department Counsel

For Applicant: *Pro se*

June 30, 2011

Decision

Noel, Nichole L., Administrative Judge:

Applicant contests the Defense Department's intent to deny her eligibility for a public trust position in the defense industry. The evidence shows she has a history of financial problems. Although she has recently taken preliminary steps to resolve her delinquent debts, she has not provided any documentation showing that any payments have been made. Because Applicant did not present sufficient evidence to rebut, explain, extenuate, or mitigate the security concerns stemming from her history of financial problems, this case is decided against Applicant.

Statement of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on November 23, 2010, the Defense Office of Hearings and Appeals (the Agency) issued a statement of reasons (SOR) explaining that it was not clearly consistent with the national interest to grant Applicant eligibility for a public trust position. The SOR detailed the factual basis for the action under the security guideline known as Guideline F for financial considerations.

Applicant answered the SOR and requested a decision without a hearing. Department Counsel submitted the Government's written case on February 17, 2011. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on March 3, 2011. She did not object to the items appended to the Government's brief. These documents are admitted as Government's Exhibits (GE) 1 through 13.

Applicant submitted a response to the FORM to which Department Counsel did not object. These documents are admitted as Applicant's Exhibits (AE) A through F. In addition to these documents, she submitted a copy of the SOR, which is already admitted as part of the Government's FORM.

The case was assigned to me on May 18, 2011.

Findings of Fact

Applicant is a 39-year-old employee of a defense contractor for whom she has worked since January 2008. She completed her application for a public trust position shortly after she began her employment.²

Applicant admits that in November 2004, she filed for Chapter 13 bankruptcy protection. In 2003, Applicant's now-estranged husband caused an accident while driving her car. As a result of the accident, several passengers in the other vehicle were injured and pursued legal action against Applicant as the owner of the vehicle. To avoid judgments stemming from the accident, she sought bankruptcy protection. In March 2006, she converted the bankruptcy to Chapter 7. The petition was successfully discharged in March 2007.³

¹ This case is adjudicated under Executive Order 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended, as well as DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply to this case. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines contained in Enclosure 2 to the Directive.

² GE 4.

³ GE 3; GE 5; GE 10.

After the bankruptcy was discharged, she began to accumulate consumer debt which eventually became delinquent. Unemployed for five months between July 2007 and January 2008, she started to fall behind on her bills. Even after she began working in January 2008, her financial situation continued to deteriorate for reasons unexplained in the record. Eventually, she accumulated seven delinquent debts totaling approximately \$20,147, as alleged in the SOR. Applicant admits that she is responsible for all of the debts in the SOR except ¶ 1.h. Although she provides no explanation for her denial, it is most likely because she believes the debt is a duplicate of ¶ 1.g. While the amounts of the debts alleged in ¶ 1.g. and 1.h. are close, the account numbers are different. Applicant has not provided any documentation supporting the basis of her denial.⁴

Finally, in March 2011, after having taken no prior actions to resolve her delinquent debts, Applicant enrolled in a debt repayment program offered by a law firm. Under the program, the law firm will verify each delinquent debt and attempt to negotiate settlements with each creditor. Starting March 25, 2011, Applicant has agreed to pay \$225 for 49 months to resolve five SOR debts (1.b. - 1.e. and 1.g.). As of March 30, 2011, the law firm sent representation letters to the five creditors included in the program and informed them that the law firm would soon contact them to negotiate settlements on the delinquent accounts. To date, Applicant has not provided any documentation that settlement agreements have been reached or that she has made any payments as required under the debt repayment program.⁵

Separately, she negotiated a settlement agreement for the only debt not included in the program, ¶ 1.f. The creditor agreed to settle the delinquent debt for a fraction of the amount owed. In turn, Applicant agreed to pay the settlement amount in three installments scheduled between March and May 2011. She has not provided any documentation showing these payments have been made.⁶

Policies

Positions designated as ADP I and ADP II are classified as “sensitive positions.”⁷ “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 national interests.”⁸ Department of Defense contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination

⁴ GE 3; GE 4; GE 6; GE 7; GE 11.

⁵ AE A; AE B; AE F.

⁶ AE E.

⁷ Regulation ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3.

⁸ Regulation ¶ C6.1.1.1.

may be made.⁹ An administrative judge's objective is a fair, impartial, and commonsense decision that embraces all available, reliable information about the person, past and present, favorable and unfavorable.

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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to a public trust position 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 classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified 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.

AG ¶ 19 provides two Financial Considerations Disqualifying Conditions that could raise a security concern and may be disqualifying in this case, "(a) inability or unwillingness to satisfy debts," and "(c) a history of not meeting financial obligations." Applicant's financial problems have persisted since at least 2003. After receiving the benefit of Chapter 7 bankruptcy protection in 2007, she continued to accumulate debts that she could not pay. The evidence is sufficient to establish the applicability of the disqualifying conditions cited above.

⁹ See Regulation ¶C8.2.1.

Of the six mitigating conditions potentially available under AG ¶ 20,¹⁰ none apply. Applicant's financial problems are recent and the record does not support a finding that her financial difficulties occurred under unusual circumstances as required by AG ¶ 20(a). Although a brief period of unemployment between July 2007 and January 2008 was beyond her control, AG ¶ 20(b) does not apply because she has not acted responsibly to resolve any of her debts. She did not take any actions to address her delinquent debts until March 2011. Because she provided no evidence that she has reformed her financial habits or that she has received financial counseling, I cannot apply AG ¶ 20(c).

Applicant gets some credit for engaging the services of a law firm to help her craft a debt repayment plan and negotiating, on her own, a settlement agreement with the creditor not included in the program, however these actions alone do not mitigate the concerns raised by her negative financial history. She has not provided any documentation showing that any payments have been made. An applicant is reasonably expected to provide documentation concerning her finances.¹¹ Absent this documentation, I cannot apply AG ¶ 20(d). Mitigating Conditions AG ¶¶ 20(e) and (f) are not raised by facts of this case.

To conclude, the evidence as a whole justifies current doubts about Applicant's judgment, reliability, and trustworthiness. In reaching this conclusion, I have given due consideration to the whole-person concept. Nevertheless, Applicant did not meet her ultimate burden of persuasion to obtain a favorable clearance decision. This case is decided against Applicant.

¹⁰ 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;

20(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;

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;

20(d) The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;

20(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; and

20(f) The affluence resulted from a legal source of income.

¹¹ See ISCR Case No. 00-0104 (App. Bd. Mar. 21, 2001).

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.h: Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a public trust position. Eligibility for a public trust position is denied.

Nichole L. Noel
Administrative Judge