



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



In the matter of:

Applicant for Security Clearance

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ADP Case No. 10-08425

Appearances

For Government: Fahryn E. Hoffman, Esq., Department Counsel

For Applicant: *Pro se*

December 30, 2011

Decision

COACHER, Robert E., Administrative Judge:

Applicant mitigated the trustworthiness concerns under Guideline F, Financial Considerations and Guideline E, Personal Conduct. Applicant's eligibility for access to sensitive information is granted.

Statement of the Case

On May 27, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the trustworthiness concerns under Guideline F, Financial Considerations and Guideline E, Personal Conduct. DOHA acted under Executive Order (EO) 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 effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR (Answer) on September 9, 2011. She requested a hearing before an administrative judge. I was assigned to the case on October 18, 2011. A notice of hearing was issued on October 31, 2011, setting the hearing for November 17, 2011. The hearing was convened as scheduled. The Government offered exhibits (GE) 1 through 5, which were admitted into evidence without any objection. Department Counsel's exhibit index was marked as hearing exhibit (HE) I. Applicant testified and offered exhibits (AE) A through K that were admitted into evidence without any objections. The record was left open for submission of additional evidence. Applicant timely submitted AE L through S that were admitted into evidence without objection. Department Counsel's transmittal letter related to the post-hearing submission was marked as HE II. DOHA received the hearing transcript (Tr.) on November 29, 2011.

Findings of Fact

The SOR lists nine delinquent debts totaling about \$190,225. Applicant admitted she owed the delinquent debts listed at SOR ¶¶ 1.a, 1.b, 1.d, 1.e, 1.g, and 1.i, but denied the rest of the listed debts. She also denied deliberately falsifying her financial information in her public trust position application. The admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings, testimony, and exhibits, I make the following findings of fact.

Applicant is 38 years old. She is divorced with no children. She currently works as a compliance officer for a defense contractor. She holds a Juris Doctorate (JD) degree, although at the time of the hearing her license to practice law was suspended for nonpayment of her state bar dues. She has no prior military experience and has not previously held a position of trust.¹

Applicant's conduct raised in the SOR includes: (1) being delinquent on several small consumer debts, various credit card debts, a second mortgage loan of over \$95,000 acquired during her marriage, and a delinquent student loan debt for over \$81,000. (SOR ¶¶ 1.a - 1.i); and (2) making false statements in response to her public trust position application questions in April 2009 concerning her financial record (SOR ¶ 2.a). The debts are reflected in credit reports dated April 17, 2010, and January 3, 2011.²

In 2009, Applicant experienced several events that negatively impacted her financial condition. At that time, she was practicing law for a law firm, specializing in real estate law. She was not a partner, but a senior employee and was making about \$170,000 annually. Because of the general decline in business and the recession, she was laid off by the law firm in August 2009. She was given three months' severance pay. Earlier that year, her mother was diagnosed with cancer and she was one of two

¹ Tr. at 4-5; GE 1; AE L.

² Tr. at 28-29; GE 2.

primary caregivers for her mother. Applicant spent much of her time caring for her mother. Her mother passed away in September 2009. Applicant had to pay for half of her funeral expenses. She was sporadically employed from her layoff until she was hired by her current employer in March 2010.³

Applicant was married in 2003. During the course of their marriage, her husband was responsible for the family finances. Applicant admitted that she knew very little about their financial dealings. In March 2009, Applicant discovered her husband was having an affair. She proceeded with a divorce action. It was only during the divorce action that she discovered the full extent of her financial problems. They had to sell their primary residence through a short sale. The SOR debt listed at ¶ 1.f is a second mortgage on this property that was not released through the short sale. Her divorce was final in March 2010. She received alimony in the amount of \$1,000 per month from her husband, but because of some required payments the net monthly amount she received was about \$650. The alimony payments stopped in April 2011. She also received a split of an investment account from the marital estate of about \$55,000. Because of investment complications, she only recently received this money. She also received about \$80,000 from two retirement fund accounts she had with law firms that she used to help pay expenses during her unemployment. These amounts were subject to IRS early withdrawal penalties that affected the total amount she actually received.⁴

The debts alleged in SOR ¶¶ 1.a through 1.c are consumer debts accrued by Applicant during her separation. They were all paid on December 15, 2011, by cashier's check.⁵

The debts alleged in SOR ¶¶ 1.d and 1.e are credit card debts accrued by Applicant during her marriage. Settlement amounts were paid on December 15, 2011, by cashier's check and a credit card payment.⁶

The debt alleged in SOR ¶ 1.f is the second mortgage owed by Applicant. She entered into a stipulated judgment with the lender. She and her ex-husband are jointly and severally liable on the debt of \$95,996. They also agreed with the lender to a settlement payment whereby Applicant would pay \$200 monthly toward the judgment amount. She has made those payments since September 2010 directly from her bank account. She is current on those payments.⁷

³ GE 4-5.

⁴ Tr. at 49-50, 62, 64; GE 2-3.

⁵ Tr. at 36; AE P.

⁶ Tr. at 36, 38; AE Q-R.

⁷ Tr. at 31-32; GE 2; AE E.

The debt alleged in SOR ¶ 1.g is a credit card accrued by Applicant during her marriage for which she is responsible. She will be reimbursed by her ex-husband once she pays the debt. She is working with the creditor to settle this debt. It is currently unresolved.⁸

The debt alleged in SOR ¶ 1.h is student loan debt owed by Applicant. She is currently in a default status on her student loans, but has been making monthly payments of \$710 since April 2011. At her current payment rate, she will have her loans out of “default” status by December 2011. Once out of this status, she will be able to negotiate new monthly payment amounts.⁹

The debt alleged in SOR ¶ 1.i is a personal loan accrued by Applicant after her divorce for which she is responsible. She is working with the creditor to settle this debt. It is currently unresolved.¹⁰

Applicant testified that she is moving in with her boyfriend to minimize monthly expenses and that she is currently meeting all of her monthly financial obligations in a timely manner. She recently attended a financial counseling course. She was also reinstated in good standing with her state bar association.¹¹

On April 9, 2010, Applicant completed her public trust position application. She answered “yes” to the question asking if she was now 180 days delinquent on any loan. She listed one loan, but did not list the other debts alleged in the SOR. Applicant credibly testified that she relied on a credit report that indicated only one debt delinquent past 180 days at the time she filled out the application. She did not remember the date of that credit report. She also knew that a credit report would be used by the government during her background investigation. She had no intention to deceive the government about her finances. She knew she had debts, but just answered the question asked (debts over 180 days delinquent) based upon the information she had at the time. Her testimony is corroborated by the information contained in GE 4, an April 17, 2010, credit report that does not show any account past due by 180 days except for the account she listed on her application.¹²

Applicant presented character letters in support of her integrity and professional standards. In the forefront were her volunteer efforts for the local search and rescue

⁸ Tr. at 36; AE L.

⁹ Tr. at 33-34; AE C-D.

¹⁰ Tr. at 36.

¹¹ Tr. at 71; AE N, S.

¹² Tr. at 84-85; GE 4.

activities. She was recognized in 2005 as the woman of the year in that area. Members of the local law enforcement community were very supportive of Applicant.¹³

Policies

When evaluating an applicant's suitability for a trustworthiness determination, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

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.

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, and has the ultimate burden of persuasion to obtain a favorable security 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 that an applicant may deliberately or inadvertently fail to safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the

¹³ Tr. at 46; AE A, B, M.

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

The trustworthiness concern for Financial Considerations is set out in AG ¶ 18 as follows:

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 trustworthiness 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 was unable to pay her debts. The evidence is sufficient to raise the above disqualifying conditions.

Several Financial Considerations mitigating conditions under AG ¶ 20 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 individuals 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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's financial difficulties were caused by a confluence of circumstances that included her job layoff, the illness and subsequent death of her mother, and the breakup of her marriage. While the debts are recent, they occurred under circumstances that are unlikely to recur. Additionally, Applicant presented sufficient evidence to establish her current reliability, trustworthiness, and good judgment. AG ¶ 20(a) applies.

All the circumstances referred to above (job layoff, death of mother, divorce), were circumstances beyond Applicant's control. She acted responsibly when she sought employment outside the legal career field and used her retirement funds to begin paying off her accounts. AG ¶ 20(b) applies.

Applicant has either paid or set up payment plans for all but two of the delinquent accounts. Most importantly, the two largest balance accounts have been addressed. The remaining two unresolved accounts are in settlement discussions and she has shown positive efforts towards resolving these as well. She has also recently received financial counseling. Both AG ¶¶ 20(c) and 20(d) apply.

Guideline E, Personal Conduct

AG ¶ 15 expresses the trustworthiness concern for personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a trustworthiness concern and may be disqualifying in this case. The following disqualifying condition is potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire.

Applicant did not deliberately provide false information about her financial condition on her public trust position application. At the time Applicant filled out her application, she listed the one debt that the question addressed (debts over 180 days old). Her testimony is supported by the information contained in GE 4, which only shows one debt in excess of 180 days. She listed this debt on her application. The Government did not meet its burden to establish deliberate falsification. AG ¶¶ 16(a) does not apply.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a sensitive 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 position of trust 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 Applicant's outstanding service to her community. I also considered the circumstances by which she fell behind in her finances and the efforts she has made to recover since then. Applicant's evidence is sufficient to mitigate the trustworthiness concerns in this case.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a position of trust. For all these reasons, I conclude Applicant mitigated the trustworthiness concerns arising under Guideline F, Financial Considerations and Guideline E, Personal Conduct,

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.i:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	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.

Robert E. Coacher
Administrative Judge