



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



In the matter of:)	
)	
-----)	ADP Case No. 10-09053
)	
Applicant for Public Trust Position)	

Appearances

For Government: Gregg A. Cervi, Esq., Department Counsel
For Applicant: *Pro se*

December 6, 2011

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

On June 20, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) noting security concerns arising under Guideline F (Financial Considerations). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), DOD Regulation 5200.2-R; and the adjudicative guidelines (AG).

In a July 22, 2011, response, Applicant admitted seven of the nine allegations raised under Guideline F. On September 22, 2011, Department Counsel submitted a File of Relevant Material (FORM), which included 10 attached items. On November 7, 2011, Department Counsel noted no objection to Applicant's timely response to the FORM. The case was assigned to me on November 28, 2011. Based on a review of the case file, I find Applicant failed to meet her burden regarding the security concerns raised under Guideline F. Eligibility for a public trust position is denied.

Findings of Fact

Applicant is a 43-year-old file administrator who has worked for the same health care provider since 2003. She completed a Public Trust Questionnaire on February 26, 2010. Applicant is on a roster as a substitute group fitness instructor at a local health facility, but she has not been called to teach in any capacity since October 2010. She finished a two-year post-secondary program in 1996. Applicant is married and has a teenage child.

In about 1999, Applicant's husband started a consulting business after his former employer filed for bankruptcy. As a result of that entity's bankruptcy, her husband, who had previously allowed the company to use his personal credit cards, was left responsible for an unspecified amount of the entity's debt. At some unidentified time after starting his consulting business, her husband was twice hospitalized for bone fractures suffered from congenital bone disease.¹ At the time, he did not have health insurance coverage, and he incurred an unspecified amount of medical debt. After his recuperation, he found it difficult to work. Consequently, Applicant began working for her current employer in 2003. Her salary was not sufficient to both cover their expenses and make progress on her debt. At some unidentified time, Applicant's husband's health improved, he presumably returned to work, and they are now in "a better position to deal with [their] debt."²

Applicant acknowledges that debts have been accrued. Some of those debts were related to loans from family members. Until recently, she and her husband were unable to hire a bookkeeper or accountant to help them with their income and expenses, and did not file and/or pay federal taxes for tax years 2003 and 2004. They now use an accountant and have also solicited the help of a tax consultant to help them with their tax issues. There is no evidence showing that Applicant has received financial counseling.

Currently, Applicant earns a net monthly salary of about \$2,558, while her husband's net monthly income is about \$3,000. Consequently, their total net income is about \$5,558. Subtracted from that sum are monthly expenses amounting to about \$2,490. This includes a \$300 monthly car loan payment to a family member that is also noted as one of three monthly debts, amounting to \$1,600. Minus the \$300 car payment noted as a monthly expense, their total monthly debts amount to \$1,300.³

¹ Applicant's husband was "determined to be completely disabled by [their state] for most of his early adult life but continued to try to find ways he could work and get off SSI." FORM, Item 4 (Response to the SOR, undated, at 1). She noted that he suffers from both the congenital brittle bone disease (Osteogenesis Imperfecta) and acute hearing loss "which often made it difficult to find work." *Id.*

² FORM, Item 6 (Applicant's Response to Interrogatories [Financial], signed Apr. 8, 2011) at 9.

³ *Id.* at 10. On the budget spreadsheet provided, Applicant noted under monthly debts a \$1,300 payment to their mortgagor, entered a duplicate entry of their \$300 monthly car loan payment, and a zero for monthly payments on Applicant's husband's credit cards, which are noted as paid off. This amounts to \$1,600. However, in the column for total monthly payments on those debts, she entered \$2,600. Assuming the

Therefore, they have a monthly net remainder of about \$1,768.⁴ Their budget does not reflect any payments toward the debts at issue in the SOR.

At issue in the SOR are nine allegations, representing approximately \$68,500 in debts. Of those debts, Applicant denies the related allegations at SOR ¶¶ 1.a (\$248) and ¶¶ 1.d (\$20,575). Applicant provided evidence that she paid ¶¶ 1.a.⁵ As for ¶¶ 1.d, Applicant provided evidence that she disputed the amount purported as owed and requested validation of the debt in February 2008 and August 2008.⁶ She stated that she never received any responses to those 2008 requests.⁷ She does not recognize this debt and is unsure of its origin. There is no evidence that she again requested validation from the entity or ever formally disputed the alleged debt with one of the three leading credit reporting bureaus.

With regard to the remaining non-tax-related debts, Applicant stresses that her first priority is to address her tax situation, which is encompassed by SOR allegations ¶¶ 1.g-1.i. She stated that she is currently working with a tax consultant on resolving her tax situation, but provided no evidence of any efforts by her consultant and no correspondence with the Internal Revenue Service (IRS). Applicant does not want to seek bankruptcy protection because she hopes to honor her debts. She stressed that the debt noted at ¶¶ 1.a is the only recent debt noted in the SOR, thus reaffirming that the remainder of the debts at issue relate to her husband's period of financial and medical distress and her early-2000s efforts to independently support her family.⁸

Policies

When evaluating an applicant's suitability for a public trust position, an administrative judge must consider the AG. The AG lists potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's over-arching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An administrative judge must consider all available, reliable

mortgage payment is \$1,300 and not \$2,600, the monthly net remainder would be \$1,768.

⁴ In the FORM, the Government stated that the monthly net remainder was approximately \$1,468. It appears this calculation did not account for the \$300 monthly debt payment having been entered twice, under two different categories (monthly expenses and monthly debts).

⁵ Response to the FORM, attachment (Statement, dated Apr. 7, 2011).

⁶ FORM, Item 4 (Attachments).

⁷ Response to the FORM.

⁸ *Id.*

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.

The United States Government (Government) must present evidence to establish controverted facts alleged in the SOR. It is an applicant’s responsibility to present “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .”⁹ The burden of proof is something less than a preponderance of evidence. The ultimate burden of persuasion is on the applicant.¹⁰

A person seeking access to sensitive information enters into a fiduciary relationship with the Government based on 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 about potential, rather than actual, risk of compromise of sensitive 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 applicant concerned.”¹¹ “The clearly consistent standard indicates that determinations should err, if they must, on the side of denials.”¹² Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.¹³ A denial does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have set forth for maintaining a public trust position.

⁹ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

¹⁰ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

¹¹ See also EO 12968, § 3.1(b) and EO 10865 § 7.

¹² ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

¹³ *Id.*

Analysis

Guideline F – Financial Considerations

In this case, Guideline F is the appropriate guideline for consideration. Under that guideline, “failure or an 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.”¹⁴ Here, Applicant admitted seven of nine enumerated allegations. While she paid one nominal debt (¶ 1.a – \$248) and disputed one large debt (¶ 1.d – \$20,575), there remains about \$48,000 of debt still unaddressed. This includes federal tax obligations. In light of these facts, Financial Considerations Disqualifying Conditions AG ¶ 19(a) (inability or unwillingness to satisfy debts) and AG ¶ 19(c) (a history of not meeting financial obligations) apply. With such conditions raised, it is the Applicant’s burden to mitigate related security concerns.

Unfortunately, the root of most of Applicant’s current financial distress was the result of her husband’s congenital health issues. Applicant noted that his health issues have adversely impacted his ability to work throughout his adult life. Although Applicant failed to note when her husband returned to working full-time after his hospitalizations in the early 2000s, given the congenital nature of his health issues, the prospect of future problems causing similar issues cannot be discounted. Moreover, although Applicant is working full-time, complementing her husband’s income, her budget and their recent financial distress demonstrate that she is not presently capable of generating sufficient income to both support their household and address their delinquent debts. Consequently, Financial Considerations Mitigating Condition AG ¶ 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*) does not apply.

Although Applicant failed to provide more specific information, it appears her husband incurred business-related debt of an unknown amount when his employer filed for bankruptcy around 1999. At some unspecified time in the next couple of years, he underwent two surgeries while lacking health insurance coverage. In order to generate income to support her family, Applicant obtained her present position. To the extent her husband’s professional and medical issues were beyond their control and impacted their family finances, and in light of Applicant’s initiative in finding work, Financial Considerations Mitigating Condition AG ¶ 20(b) (*the conditions that resulted in the behavior 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*) applies with regard to the creation of the delinquent debt at issue.

¹⁴ AG ¶ 18.

Applicant paid one minor debt (\$248). However, although she twice disputed one large debt (\$20,575) in 2008, there is no evidence that she has more recently sought to validate the alleged obligation or formally dispute it through one of the three leading credit reporting bureaus. Moreover, while she noted they now use an accountant and a tax consultant, there is no evidence that she has received financial counseling, nor is there evidence demonstrating any additional efforts with regard to either her other delinquent debts or her tax issues. Therefore, AG ¶ 20(c) (*the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control*) does not apply. Furthermore, there is insufficient evidence available to give rise to AG ¶ 20(d), (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*), despite a significant monthly net remainder.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's suitability for a public trust position by considering the totality of an applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. As noted above, the ultimate burden of persuasion is on the applicant seeking access to sensitive information.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors. In choosing a decision without a hearing, however, many facts are raised without elaboration, hampering a full assessment of Applicant's situation. It is clear, however, that Applicant is a mature, educated woman who was willing to accept a new job to help support her family when her husband's health prohibited him from full and gainful employment. Her income, however, was insufficient to forestall the acquisition of delinquent debt.

Moreover, without professional help and guidance, tax issues were raised. While the couple now generates a sustainable income and has a significant monthly net remainder, there is no documentary evidence of current efforts to address the debt and tax issues presented in the SOR. For example, while it is appreciated that Applicant wants to avoid bankruptcy and make her tax liabilities a priority, she failed to provide any documentary evidence showing what, if any, effort or progress has been made through her tax professional. She also failed to demonstrate any post-2008 efforts to dispute or seek validation of one very large debt. Such documentation is essential in these proceedings. The AG does not demand that an applicant pay off or otherwise satisfy all the debts raised in SOR, only a showing that an applicant has devised a workable strategy for addressing her debts and has implemented that strategy. Here, Applicant failed to make such a showing. Given the facts of record, therefore, I conclude that Applicant failed to meet her burden and that trustworthiness concerns remain unmitigated. Eligibility for a public trust position is denied.

