



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



In the matter of:)
)
) ADP Case No. 11-04343
)
Applicant for Public Trust Position)

Appearances

For Government: Fahryn Hoffman, Esquire, Department Counsel
For Applicant: *Pro se*

05/31/2012

Decision

HEINY, Claude R., Administrative Judge:

Applicant had 23¹ charged-off, placed-for-collection, or delinquent accounts, which totaled approximately \$61,000. Applicant failed to rebut or mitigate the financial considerations trustworthiness concerns. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to sensitive information and eligibility for a public trust position is denied.

Statement of the Case

On August 26, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing trustworthiness concerns 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); Department of Defense Regulation 5200.2-R, *Personnel Security Program*, dated Jan. 1987, as

¹ The debts listed in SOR 1.d and SOR 1.f are the same obligation.

amended (Regulation), and the adjudicative guidelines (AG) effective within the DoD on September 1, 2006.

On December 8, 2011, Applicant answered the SOR and elected to have the matter decided without a hearing. Department Counsel submitted the Government's case in a File of Relevant Material (FORM), dated February 28, 2012. The FORM contained seven attachments. On April 26, 2012, Applicant received a copy of the FORM, along with notice of her opportunity to file objections and submit material to refute, extenuate, or mitigate the potentially disqualifying conditions.

Responses to the FORM are due 30 days after receipt of the FORM. Applicant's response was due on April 26, 2012. As of May 24, 2012, no response had been received. On May 29, 2012, I was assigned the case.

Findings of Fact

In Applicant's Answer to the SOR, she denied five of the SOR debts and admitted the remainder. Applicant's admissions to the SOR allegations are incorporated herein. After a thorough review of the record, pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is a 31-year-old customer service representative who has worked for a defense contractor since October 2009, and is seeking to maintain a public trust position. She was unemployed as follows: May 2003 through May 2004, August 2005 through August 2006, January 2007 through April 2007, and May 2008 through August 2009. (Item 4) Since 2007, Applicant has periodically been sick. (Item 5) In January 2007, she had to have surgery to remove her appendix. In May 2008, she was forced to leave her job due to medical problems related to her blood sugar levels and bad kidneys. (Item 5) Her medical bills became delinquent. Eight of the SOR debts are medical debts totaling \$49,672. The other 14 delinquent accounts total \$11,155.

Applicant denied owing five debts, indicating that she was disputing SOR 1.k and had settled four SOR debts: SOR 1.a. (\$416), SOR 1.p (\$700), SOR 1.q (\$509), and SOR 1.r. (\$535) Her May 2011 credit bureau report (CBR) reflects two accounts were paid for less than the full balance, and another debt was listed as being disputed by the consumer. (Item 7)

Applicant listed a number of debts and accounts on her October 2009, Questionnaire for Public Trust Position, Standard Form (SF) 85P. (Item 4) She did not list all of her accounts because she did not remember the names of some of the accounts at the time. In April 2010, she underwent a personal subject interview that focused on her delinquent debts. (Item 5) In June 2011, she answered written interrogatories concerning her debts. Since that date, she has provided no documentation showing additional payment on any of her delinquent obligations.

Policies

Positions designated as ADP I and ADP II are classified as “sensitive positions.” (See 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.” (See 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. (See 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 sensitive information 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, the 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 as to 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 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 (EO) 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.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

Adjudicative Guideline (AG) ¶ 18 articulates the trustworthiness concerns relating to financial problems:

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.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding 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 upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a public trust position. An applicant is not required to be debt free, but is required to manage her finances so as to meet her financial obligations.

The evidence supports a conclusion Applicant has a history of financial problems. Applicant has 22 delinquent accounts that totaled approximately \$61,000. Disqualifying Conditions AG ¶ 19(a), “inability or unwillingness to satisfy debts” and AG ¶19(c), “a history of not meeting financial obligations,” apply.

Five Financial Considerations Mitigating Conditions under AG ¶¶ 20(a) – (e) 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 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.

Since 2003, Applicant has been unemployed for more than three-and-a-half years. Additionally, since 2007, she has experienced medical problems. Her delinquent medical bills total approximately \$50,000. AG ¶ 20(a) does not apply. Although the majority of her debts are for medical bills and she has been unemployed, which are events beyond her control, these events could recur. Additionally, she has been employed since October 2009, and the majority of her debts remain unpaid. The nonpayment casts doubt on Applicant's current reliability, trustworthiness, and judgment.

AG ¶ 20(b) partially applies. Applicant experienced periods of unemployment and unexpected medical problems, which are factors beyond her control. There is nothing in the record to indicate Applicant's monthly income, expenses, or the amount of her discretionary income, if any. The factors were beyond her control, but she has been employed for approximately two-and-a-half years in her current job and the delinquent debts remain unpaid. She has been aware of the government's concern over her finances since her April 2010 interview. Since her June 2010 answer to the written interrogatories, she has not provided any documentation showing additional debts have been paid. Applicant has not acted reasonably under the circumstances.

Under AG ¶ 20(c) does not apply. There is no evidence Applicant has received counseling. Nor are there are clear indications that the problem is being resolved or is under control.

AG ¶ 20(d) applies to the four debts that have been settled. Her CBR reflects two of the accounts were settled for less than the full amount owed. The payment of these debts represents a good-faith effort to repay overdue creditors or otherwise resolve her

debts. However, these four debts only represent approximately six percent of the amount that is delinquent.

Applicant disputes the debt listed in SOR 1.k (\$1,417). For AG ¶ 20(e) to apply there must be a reasonable basis to dispute the debt and the basis of the dispute must be documented. No documentation was received and she did not explain the nature or basis of the dispute. AG ¶ 20(e) does not apply.

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 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.

Because Applicant chose to have this matter handled administratively, I was unable to evaluate her demeanor, appearance, or form a positive determination as to her truthfulness. From the record, I am unable to find Applicant was sincere, open, and honest. Even if I found for her in these matters, there is no evidence of payment on the majority of her delinquent debts. In April 2010, approximately two years ago, she was questioned about her delinquent obligations. In June 2011, approximately one year ago, she answered written interrogatories indicating four debts had been settled. Since that date, no additional documentation was received showing she made any payment on the remaining delinquent accounts. In the two-and-a-half years since she obtained her current job she has not paid enough to give assurance that her financial difficulties are no longer a concern.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of true reform and rehabilitation necessary to justify the award of a public trust position. The awarding of eligibility for a public trust position is not a once in a lifetime occurrence, but is based on applying the factors, both disqualifying and mitigating, to the evidence presented. Under the Applicant's current circumstances a clearance is not clearly consistent with national security, but should the Applicant be

afforded an opportunity to reapply for a public trust position in the future, having paid the delinquent obligations, established compliance with a repayment plan, or otherwise addressed the obligations, she may well demonstrate persuasive evidence of her eligibility for a public trust position.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a public trust position. For all these reasons, I conclude Applicant did not mitigate the trustworthiness concerns arising from her financial considerations.

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, financial considerations: **AGAINST APPLICANT**

Subparagraph 1.a:	For Applicant
Subparagraphs 1.b – 1.g:	Against Applicant
Subparagraph 1.f:	SOR 1.d and 1.f are duplicates
Subparagraphs 1.g – 1.o:	Against Applicant
Subparagraphs 1.p – 1.r :	For Applicant
Subparagraphs 1.s – 1.w:	Against Applicant

Conclusion

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

CLAUDE R. HEINY II
Administrative Judge