



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



In the matter of:)
)
) ADP Case No. 11-05098
)
Applicant for Public Trust Position)

Appearances

For Government: Ray T. Blank Jr., Esq., Department Counsel
For Applicant: *Pro se*

01/31/2013

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Defense Department’s intent to deny her eligibility for a position of trust in the defense industry. Since returning to full-time employment in November 2010, Applicant has made a good-faith effort to repay the \$47,000 in delinquent debt she accumulated during her previous 22 months of unemployment. Eligibility to occupy a public trust position is granted.

Statement of the Case

Acting under the relevant Executive Order and Department of Defense (DOD) Directive,¹ on March 28, 2012, DOD issued a Statement of Reasons (SOR) detailing concerns under the financial considerations guideline. DOD adjudicators recommended

¹ This case is adjudicated under Executive Order (EO) 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 in Enclosure 2 to the Directive.

that the case be submitted to an administrative judge to determine whether or not Applicant is eligible to occupy a public trust position.

Applicant timely answered the SOR, requesting an administrative determination. On September 11, 2012, she requested a hearing.² The case was assigned to me on November 6, 2012. At the hearing convened on December 11, 2012, I admitted Government's Exhibits (GE) 1 through 4 and Applicant's Exhibits (AE) A through D, without objection. I received the transcript (Tr.) on December 20, 2012.

Findings of Fact

Applicant, 59, is a licensed clinical social worker. She holds undergraduate and graduate degrees in that field. Employed by a federal contractor since November 2010, Applicant works as a health coach clinician, providing counseling to military members and their families on a variety of mental-health issues.³

Her financial problems began in 2009 after being laid off from the job she held for 17 years as the manager of the medical facility and drug testing program for a state agency. Using her severance pay and a withdrawal from her 401(K), Applicant focused on keeping her mortgage current, paying expenses of her household, which consisted of her then 16-year old son, 18-year-old nephew, and her critically ill sister. Applicant was responsible for expenses related to her sister's medical issues in addition to expenses for the treatment of her own serious, chronic medical conditions. Between 2009 and 2010, Applicant paid approximately \$15,000 in out-of-pocket medical expenses. She began looking for a new position immediately after being laid off, but decided to take private clients to supplement her income. However, she was not making enough money to pay her expenses.⁴

After exhausting her severance pay, Applicant began receiving unemployment compensation in June 2009. She continued to have difficulty paying her living expenses on the \$239 she received each week. Applicant tried to cut expenses as her job search continued. She installed solar panels to save on her utility bills. In August 2009, she had her car voluntarily repossessed before the obligation became delinquent, understanding that she would be responsible for any deficiency balance. Unemployed for 22 months, Applicant used credit cards to cover expenses, as necessary. By the time she began her current position, she had incurred delinquent debt to three creditors for approximately \$48,000.⁵

Applicant began contacting her creditors in early 2011 to make payment arrangements for her outstanding debts, but she was unable to afford the terms offered

² Tr. 8; HE 1.

³ Tr. 22-25; Answer.

⁴ Tr. 25-28, 39, 50-51; AE D.

⁵ Tr. 28, 34, 36-37,52.

to her at the time. In 2011, she encountered medical issues that required her immediate attention and she admits that her finances temporarily took a back seat. Although she had medical insurance, Applicant expended over \$3,500 for medical expenses in 2011. She began to address her delinquent debts in February 2012. Initially, she started with small payments and increased them as her salary increased. Currently, she pays \$350 each month towards the three debts alleged in the SOR. To date, she has paid \$2,725 towards her delinquent debts. In addition to the SOR debts, Applicant has repaid the deficiency balance on the 2009 voluntary car repossession and settled two credit card accounts for approximately \$2,000.⁶

Applicant lives within her means and is current on her recurring monthly financial obligations. Since her sister passed in August 2012, her monthly expenses have decreased. Her son, nephew, and brother (who initially moved in with Applicant to help care for their sister as her health declined) contribute to the household expenses. She applies her disposable income to reducing her home-equity line of credit or her one credit card, which has a balance of less than \$500. She has not used credit cards since she returned to work in November 2010. She has not replaced her car, instead walking or relying on public transportation to get to work.⁷

Policies

Positions designated as ADP I and ADP II are classified as “sensitive positions.”⁸ “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.”⁹ 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.¹⁰ 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 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

⁶ Tr. 29, 31, 39-42, 44-45, 52-57, 58, 62-64; GE 2; AE A-C.

⁷ Tr. 33, 45-49, 52-53, 59-60.

⁸ Regulation ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3.

⁹ Regulation ¶ C6.1.1.1.

¹⁰ See Regulation ¶ C8.2.1.

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

Unresolved delinquent debt is a concern because “an individual who is financially over extended is at risk of having to engage in illegal acts to generate funds.”¹¹ Financial difficulties have proven to be a significant motivating factor for espionage or attempted espionage.¹² The Government does not have to prove that an applicant poses a clear and present danger to national security,¹³ or that an applicant poses an imminent threat of engaging in criminal acts. Instead, it is sufficient to show that an applicant has a history of unresolved financial difficulties that may make her more vulnerable to financial pressures.¹⁴

The SOR alleges that Applicant is indebted to three creditors for approximately \$47,000. She admits the debts and they are reported on her credit reports.¹⁵ During 22 months of unemployment, Applicant experienced an inability to repay her debts, resulting in a history of not paying her debts.¹⁶ These concerns are mitigated by the circumstances surrounding Applicant’s financial issues. Applicant’s financial problems occurred after an event beyond her control, being laid off from the job she held for 17 years. She does not have a history of financial problems or instability, nor does she have a history of financial irresponsibility. Applicant acted responsibly given her limited financial resources by actively seeking employment, taking on clients to supplement her income, and reducing her expenses.¹⁷

Since returning to work, Applicant has made a good-faith effort to reduce her indebtedness, paying over \$2,700 towards the delinquent accounts alleged in the SOR in addition to resolving at least three non-SOR accounts.¹⁸ Arguing against mitigation,

¹¹ AG ¶ 18.

¹² ISCR Case No. 96-0454 (App. Bd. Feb. 7, 1997).

¹³ See *Smith v. Schlesinger*, 513 F.2d 463, 476 n. 48 (D.C. Cir. 1975).

¹⁴ See ISCR Case No. 87-1800 (App. Bd. Feb. 14, 1989)

¹⁵ GE 3-4.

¹⁶ AG ¶¶ 19 (a) and (c).

¹⁷ AG ¶ 20(b).

¹⁸ AG ¶ 20(d).

Applicant's efforts to pay her delinquent debt could be considered small given the large amount of delinquent debt. At her current rate of repayment, it may well take Applicant years to satisfy the debts. Nevertheless, the Appeal Board has held that, "an applicant is not required to be debt-free nor to develop a plan for paying off all debts immediately or simultaneously. All that is required is that an applicant act responsibly given her circumstances and develop a reasonable plan for repayment, accompanied by concomitant conduct," that is, actions which evidence a serious intent to effectuate the plan.¹⁹ Applicant has done so. She has established a track record of payment that she can maintain comfortably while rebuilding her savings.

I have no doubts or reservations about Applicant's current reliability, trustworthiness, and ability to protect sensitive information. In reaching this conclusion, I have also considered the whole-person factors at AG ¶ 2(a). Applicant's financial problems and resulting delinquent debt are not the result of irresponsible, reckless, or negligent behavior. The debt is reasonable given the length of her unemployment, the expenses associated with her sister's care, as well as her own recurring medical issues. Applicant has articulated a reasonable plan for dealing with her delinquent debt. Her request to occupy a sensitive position is granted.

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.c:	For Applicant

Conclusion

In light of all of the circumstances, it is clearly consistent with the national interest to assign Applicant to sensitive duties. Eligibility for a public trust position granted.

Nichole L. Noel
Administrative Judge

¹⁹ See, e.g., ISCR Case No. 08-06567 at 3 (App. Bd. Oct 29, 2009).