



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ADP Case No. 11-05440
)
)
Applicant for Public Trust Position)

For Government: James Norman, Esquire, Chief Department Counsel¹
For Applicant: *Pro se*

08/08/2012

Decision

DAM, Shari, Administrative Judge:

Based upon a review of the pleadings, testimony, and exhibits, eligibility for access to sensitive information is denied.

On April 9, 1993, the Composite Health Care Systems Program Office (CHCSPO), the Defense Office of Hearings and Appeals (DOHA), and the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence (ASDC3I), entered into a memorandum of agreement for DOHA to provide trustworthiness determinations for contractor personnel employed in Sensitive Information Systems Positions (ADP I/II/III), as defined in the Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program* (January 1987), as amended (Regulation).

¹Mr. James Norman assumed representation for the Department after Mr. Paul Delaney passed away in early July 2012.

On April 13, 2010, Applicant completed a Public Trust Position Application (SF 85P). On November 17, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security 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 Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing on November 30, 2011, and requested a hearing before an administrative judge. On April 26, 2012, DOHA issued a Notice of Hearing setting the case for May 16, 2012. On May 12, 2012, DOHA re-assigned the case to me due to a medical emergency experienced by the previously assigned administrative judge. The case was heard as scheduled. Department Counsel offered Government Exhibits (GE) 1 through 5 into evidence without objection. Applicant testified. She offered Applicant Exhibits (AE) A and B into evidence without objection. The record remained open until June 15, 2012, to give Applicant an opportunity to submit additional evidence. She timely submitted additional exhibits; however, I did not receive those exhibits until July 18, 2012, due to unforeseen circumstances that were not the fault of either party. I marked those documents AE C through E and admitted them into evidence without objection. DOHA received the hearing transcript (Tr.) on May 23, 2012.

Findings of Fact

In her Answer to the SOR, Applicant admitted the 27 allegations contained in the SOR.

Applicant is 28 years old and engaged. She has four children, ages 11, 10, 7, and 4. Applicant's fiancé is the father of her youngest child. She was not married to any of the fathers of her other three children. None of those fathers provides child support, in spite of court orders. (Tr. 12.) Applicant received a GED in 2008 and has taken college courses in criminal justice. In May 2010 she obtained a part-time position with her current employer. In September 2011 she became a full-time employee. (Tr. 13, 37.) She received an "Achieves Expectations" rating for her first review period as a full-time employee. (AE A.)

Applicant attributed her financial difficulties and delinquent debts to three factors: financial immaturity when she was 17 years old and gave birth to her first child; periods of unemployment, underemployment, and living on public aid; and being a single mother for four children without child support. These circumstances existed from approximately 2000 to September 2011, when she obtained her current full-time position. (Tr. 13-14, 39-43; GE 1.)

In October 2010 Applicant met with a government investigator to discuss her delinquent debts. In response to questions about the status of many unpaid debts, Applicant stated that in the past she had to make choices to take care of her children or pay her bills. She chose to provide for her children. She intended to resolve her debts in the future. She regretted the financial situation. (GE 3.)

Applicant submitted a current budget. She earns \$2,176 per month. She and her fiancé have a combined monthly net income of \$3,747. Their monthly expenses are \$3,207, leaving about \$540 for other expenses or debts. (Ex. C.) She had about \$600 in a savings account. (Tr. 35.) She previously completed a budget in August 2011 that she submitted with a set of Interrogatories. At that time her net monthly income was \$900. (Tr. 23; GE 2.) Prior to filling out that budget form, she had never attempted to establish a budget. (Tr. 38.)

Applicant admitted that she ignored communications from her creditors over the years. (Tr. 17.) She did not make any attempt to contact them because she never had sufficient money to pay the debts. (Tr. 19.) After she began working full-time, she contacted four creditors. Two creditors could not locate her accounts. Two creditors said they would send her information about the debts, but did not. She did not follow-up with those two. (Tr. 30-34.) She has not participated in credit or financial counseling. (Tr. 14.)

Based on credit bureau reports (CBR), dated August 2011, and April 2010, the SOR alleged that Applicant has 27 delinquent debts that total \$14,385. Those debts include utility bills, credit cards, two judgments, overdrafts, and ticket fees owed to the county clerk. She has not paid or resolved any of the debts. Her student loans, totaling \$9,000, are deferred. (Tr. 20-21.)

Applicant testified candidly about her circumstances. For the past three years she has been able to pay, with her fiancé's assistance, her ongoing bills. Until she became a full-time employee, she did not have enough money to address her debts. (Tr. 43.) Although she has knowledge of her debts, she does not have a solid grasp of her finances, salary, or totality of the delinquent debts.

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 Adjudicative Guidelines (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 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

According to Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, "[t]he 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, and has the ultimate burden of persuasion as to obtaining a favorable [trustworthiness] decision."

A person who applies for access to sensitive information seeks to enter 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 10865 provides that "Any determination under this order adverse to an applicant shall be a determination 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

The security concerns for financial considerations are 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 describes two conditions that could raise a security concern and may be disqualifying under the facts of this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant started accumulating delinquent debt in 2000 with the birth of her first child, when she was 17. She had insufficient money to pay her debts until September 2011 when she obtained a full-time position. She offered no evidence that she paid or otherwise resolved any of her delinquent debts since then. The evidence is sufficient to raise these potentially disqualifying conditions.

AG ¶ 20 provides conditions that could mitigate security concerns arising from a history of unpaid debt:

- (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.

Applicant's debts started accumulating in 2000 and they remain unpaid or unresolved. Because the debts are numerous and on-going, there is insufficient evidence to trigger mitigation under AG ¶ 20(a). Applicant attributes her financial problems to being a single mother of four children, experiencing periods of unemployment or underemployment, and financial immaturity. While some of those circumstances may have been unforeseeable and beyond her control, she did not demonstrate that she took steps to responsibly address the problems as they were arising. Hence, AG ¶ 20(b) has limited application.

Applicant has not participated in financial counseling and only recently began establishing a budget. Because none of the debts have been addressed, there are no indications that her problems are coming under control, sufficient to warrant application of AG ¶ 20(c). Nor is there evidence to demonstrate that she made a good-faith effort to pay or resolve any of the 27 debts, which is necessary for the application of AG ¶ 20(d).

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 applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). They include the following:

- (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 include 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 relevant facts and circumstances surrounding this case. Applicant is a 28-year-old woman, who has had a difficult life as a young mother supporting four children without monetary assistance from her children's fathers. Since September 2011, she has been exhibiting success working for a federal contractor in a full-time position. Until obtaining this position, she had never worked at a steady good-paying position. Applicant's conduct of concern involves delinquent debts incurred since 2000 and totaling \$14,385. Applicant accepts responsibility for the debts. She stated both during an October 2010 interview and at the hearing that she would like to pay them. However, she did not present evidence that she paid or resolved even some of the smaller debts of \$113,

\$110, \$37, \$22, or \$9, despite having knowledge of the Government's concerns for more than 18 months.

On balance, Applicant presented insufficient evidence to mitigate reliability and trustworthiness concerns arising from financial considerations, including her failure to pay any of the delinquent financial obligations that she accumulated since 2000. Overall, the record evidence leaves doubt as to Applicant's present eligibility and suitability for a public trust position.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a through 1.aa:	Against Applicant

Conclusion

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

SHARI DAM
Administrative Judge