



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



In the matter of:)
)
) ADP Case No. 11-07237
)
)
Applicant for Position of Trust)

Appearances

For Government: Richard Stevens, Esq., Department Counsel
For Applicant: *Pro se*

12/11/2012

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant has not mitigated personal conduct and financial considerations trustworthiness concerns. Eligibility for access to sensitive information is denied.

Statement of the Case

On June 12, 2012, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing trustworthiness concerns under Guidelines E, personal conduct, and F, financial considerations. The action was taken under Department of Defense 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* (January 1987), as amended (Regulation); and the adjudicative guidelines (AG) implemented by the Department of Defense on September 1, 2006.

On July 17, 2012, Applicant submitted an answer to the SOR and requested a hearing before an administrative judge. The case was assigned to me on October 12, 2012. DOHA issued a notice of hearing on October 24, 2012, and the hearing was convened as scheduled on November 27, 2012. Government Exhibits (GE) 1 through 8

were admitted in evidence without objection. Applicant and one witness testified. She submitted Applicant Exhibits (AE) A through D, which were admitted without objection. DOHA received the hearing transcript (Tr.) on December 5, 2012.

Procedural Issues

Department Counsel moved to amend the SOR by withdrawing ¶¶ 1.b through 1.i, 1.z, 1.bb and 1.cc. Additionally, he moved to modify ¶1.aa by deleting the number 10 and substituting the number 8. There was no objection and his motion was granted.¹

Findings of Fact

Applicant is a 32-year-old employee of a defense contractor. She has worked for her current employer since December 2010. She seeks to obtain eligibility for a public trust position. She graduated from college in 2003 with a bachelor's degree in business administration. She has been employed continually except for a few months in 2007. Applicant has never been married. She has a three-year-old daughter.²

Applicant credibly stated that she kept a checkbook on a closed bank account, in her name, in the trunk of her car. She also kept credit card statements and bank statements in her car trunk. She indicated that this was her filing system. She learned that the checkbook was stolen and checks were written on the closed account in her name. She lived with the father of her child from 2003 to 2007. She later suspected, but had no direct evidence, that he had perpetrated the act. He does not pay child support. She last had contact with him when he visited their daughter last month.³

Applicant learned about many of her delinquent debts when she retrieved a copy of her credit report. She reported that her checkbook was stolen to the police in 2007 and received a police report. She contacted the various creditors where the fraudulent checks were written and provided a copy of the police report to them. Based on the places where the checks were written and the counties where the retail establishments were located she was able to discern which debts were attributed to the fraudulent checks. Based on this information, Department Counsel withdrew the allegations believed to be attributed to the fraudulent checks. However, there are other delinquent debts alleged in the SOR that belong to Applicant. Applicant disputed the delinquent debts on her credit report that she believed were from the stolen checks.⁴

Applicant went to court to resolve the fraudulent checks that were written against her closed account by her daughter's father. Those charges were dismissed by the judge. However, Applicant admitted that she also wrote checks when she had

¹ Tr. 81-87, 138-142; GE 7, 8; AE D-17-26.

² Tr. 23, 33-39.

³ Tr. 39-59.

⁴ Tr. 24-27, 39-59.

insufficient funds in her account. She was found guilty of 10 counts of “fraudulent check or stop payment, \$500 or less.”⁵ She paid restitution to the store where she wrote the checks along with the service fee, and the court costs. There were other insufficient check charges that were withdrawn by the store after she paid restitution.⁶

The delinquent debt in SOR ¶ 1.a (\$612) was for a cable converter box that was not returned to the company. Applicant stated she returned the box but did not receive credit. She did not provide supporting documentation.⁷

The delinquent debts in SOR ¶ 1.m (\$117), 1.n (\$315), 1.s (\$110), 1.w (\$551), and 1.x (\$75) are for medical services. Applicant admitted her daughter received medical care in the past. When she was interviewed by an Office of Personnel Management (OPM) investigator on April 27, 2011, she indicated she was unfamiliar with the debts, but would look into them within the next 30 days and make arrangements to resolve them if they were her accounts. Applicant stated she requested the creditor provide her information about the debts and was advised they were with a collection company. She stated she contacted the creditor in 2010 and again in October 2012. She did not contact the original medical provider regarding the debts. She stated she disputed the debts with the credit bureau. She did not provide any documentation to substantiate any of her actions.⁸

The delinquent debts in SOR ¶¶ 1.o (\$500) and 1.p (\$3,591) were incurred when Applicant terminated her lease before its expiration. She stated there was also some damage to the apartment. The debt was incurred sometime in 2005 or 2006. Applicant indicated she contacted the creditor in 2006 to resolve it. She has not had any further contact, and the debt remains unpaid.⁹

The delinquent debt in SOR ¶ 1.r (\$11,793) is for a vehicle loan. Applicant purchased the vehicle in 2004. In 2006, she had an accident with the vehicle where she was at fault. She did not have collision insurance so she owed the creditor for the total remaining on the loan because the car was a total loss. During her OPM interview she indicated she would contact the creditor to make payment arrangements. The creditor wanted the full amount owed, and Applicant did not have the funds. Applicant stated she thought when the creditor retrieved the vehicle she had no further financial responsibility.¹⁰

⁵ GE 5, 6; AE D pages 17-26.

⁶ Tr. 59-81; GE 5, 6; AE D pages 1-16.

⁷ Tr. 87-88; GE 7, 8.

⁸ Tr. 30-32, 89-91; GE 7, 8.

⁹ Tr. 27-30, 34-35, 38, 91-93; GE 7, 8.

¹⁰ Tr. 93-95; GE 7, 8.

The delinquent debt in SOR ¶ 1.t (\$717) is for bank fees on a checking account. In her OPM interview, Applicant acknowledged the debt and stated it had been delinquent since approximately 2006. She intended to contact the creditor to make payment arrangements. She has not taken action on the delinquent debt.¹¹

The delinquent debts in SOR ¶¶ 1.u (\$48) and 1.v (\$58) are for pizza delivery. Applicant disputes that she owes the debts. She believes these do not belong to her and are for fraudulent checks. She did not provide any documentation to substantiate her dispute.¹²

In 2005, Applicant paid a credit consolidation company \$300 per month to assist her with her delinquent debts. She was able to pay six or seven credit cards, but then could not afford to keep up the monthly payments to the company. Currently Applicant does not have any credit cards. Her mother helps her financially. Applicant stated she does not have a written budget, but writes down her purchases.¹³

Applicant failed to disclose on her public trust application that she had any debts over 180 days delinquent. She stated she did not intentionally fail to disclose her financial delinquencies on her public trust application.¹⁴ She further stated:

[A] lot of information on my credit report I was not familiar with. So at the time I was in the process of researching the information, and there was a lot of checks—a lot of information on there that I was not familiar with. So I was going through, and I was, you know, in the process of trying to validate each of the things that I saw on my credit report. So when I answered the question, it was not necessarily to be deliberate in saying, you know, I know I don't have any debt, I knew some things were valid. I knew some things were not valid. But I needed to, you know, get more information and research before, you know, I was able to distinguish which things were actually mine or not.¹⁵

She stated she was waiting to be contacted by the creditor for the car loan. She knew she terminated her lease early on her apartment and owed money, but did not know it was a debt or how much she owed. She stated she did not know the actual amount of money she owed to different creditors. She knew she had delinquent debts, but she did not list them because she wanted to validate them. I did not find Applicant's explanations credible.¹⁶

¹¹ Tr. 95; GE 7, 8.

¹² Tr. 95-97; GE 7, 8.

¹³ Tr. 102-104.

¹⁴ Tr. 108.

¹⁵ Tr. 24.

¹⁶ Tr. 24-25, 108-115; GE 1.

Applicant's witness testified that she is a certified financial planner and has worked in the investment and money management industry for 30 years. She is a friend of Applicant's mother who asked her to help her daughter. She has been working with Applicant since June 2012 to develop a budget and resolve her financial issues. She believes that there is an attitude among young people, including Applicant, that if they do not receive a bill from a creditor that they do not owe the creditor. She believes that young people have to actually see a paper bill before they will pay a debt. She does not believe this is unusual for young people, including Applicant. She explained that the attitude is if it is not in front of me, then I do not have to deal with it.¹⁷

The witness indicated that since 2008, Applicant has been paying her monthly bills. It has been difficult to resolve Applicant's delinquent debts because they are in collection and have been resold numerous times. She indicated that perhaps Applicant has been slow to resolve her debts because she advised her to contact the credit bureaus to verify her debts. The witness is going to attempt to negotiate settlements for Applicant on her verified debts. Applicant no longer writes checks; she only pays cash. She has been advised that before she makes a purchase, she must decide if the purchase is a "need" or a "want." The financial advisor has met with Applicant numerous times and does not believe she is a future financial risk, or that she will have financial problems in the future. The witness anticipated that in the next 30 days they would begin to make progress on Applicant's finances.¹⁸

Character letters provided by Applicant indicate that she is a hard worker and a "people" person. She is considered an asset to the team and has been recognized for her dedication. She is willing to assist others and is considered a loyal and devoted worker. She is an optimistic person and an outstanding person. She consistently meets her employer's goals and was recognized for her achievement.¹⁹

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.)

¹⁷ Tr. 102, 116-137.

¹⁸ Tr. 116-138.

¹⁹ AE A, B, C.

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 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."

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 to obtain 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 safeguard sensitive 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

The security concern for financial considerations is 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.

The guideline notes several conditions that could raise security 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 accumulated numerous delinquent debts and was unable or unwilling to pay her financial obligations. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate financial considerations security concerns are provided under AG ¶ 20. The following 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.

I have credited Applicant with returning her cable converter box and mitigating SOR ¶ 1.a. Applicant has numerous delinquent debts that remain unresolved. There was evidence that some of her delinquent debts were the result of fraudulent actions. Those issues were resolved by the judge who dismissed the charges for those checks and the corresponding SOR allegations were subsequently withdrawn. However, regarding the other debts there is insufficient evidence to conclude that Applicant's delinquent debts were due to unique circumstances or resulted from conditions beyond her control. I find AG ¶¶ 20 (a) and 20(b) do not apply.

Applicant has engaged a financial advisor who is assisting her in establishing a budget and eventually addressing her delinquent debts. Applicant did not provide proof that she has made payments towards her delinquent debts or has established payment plans. Through her financial advisor she apparently plans to begin to address these debts in the future. I find AG ¶ 20(c) partially applies.

Applicant did not provide proof that she is making good-faith payments to pay overdue creditors or otherwise resolve her debts. I find AG ¶ 20(d) does not apply.

Applicant was aware that she had delinquent debts. During her OPM interview she indicated her intent to address the debts. She stated she is verifying certain debts and also disputing certain debts. She has not provided a reasonable basis for the legitimacy of her disputes. She has not provided documented proof to substantiate her disputes or evidence that she is actively resolving her debts. I find AG ¶ 20(e) does not apply.

GUIDELINE E, PERSONAL CONDUCT

AG ¶ 15 expresses the security concern pertaining to 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 security concern and may be disqualifying. One is potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Appellant was aware that she had some delinquent debts when she completed her public trust application. She knew she terminated her lease on her apartment and owed money to the creditor for the lease and for damages, and that she had not paid the debt. She was aware that she owed money on her car loan and other debts, but stated she was attempting to verify the amount owed. I did not find her testimony credible. I find her omissions and concealment were deliberate and intentional. The above disqualifying conditions apply.

I have considered all of the personal conduct mitigating conditions under AG ¶ 17. Three are potentially applicable:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is

unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

Appellant did not make a prompt good-faith effort to disclose the omission before being confronted with the facts. Her concealment of her debts is not minor and did not happen under unique circumstances. She did not fully and credibly acknowledge her behavior or provide evidence of positive steps that it is unlikely to recur. Applicant did not offer a credible explanation for her failure to disclose her delinquent debts on her public trust application. Her actions cast doubt on her reliability, trustworthiness, and good judgment. I find none of the above mitigating conditions 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 relevant 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines E and F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

I considered Applicant's favorable character evidence and work record. I considered that she is a single mother who is not receiving child support. Applicant is a college graduate. She was unfortunate to have her checkbook stolen and numerous checks were fraudulently written on her account. She has not been held responsible for them. She wrote checks on her account that had insufficient funds and was found guilty on ten charges relating to them. She was aware that she had delinquent debts and did

not disclose them on her public trust application. After her OPM interview, she was aware that her delinquent debts were a trustworthiness concern. Although she recently sought the advice of a financial advisor, which is some mitigation, she has not taken sufficient action to resolve her delinquent debts. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a public trust position. For all these reasons, I conclude Applicant has not mitigated financial considerations or personal conduct trustworthiness concerns.

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:	Against Applicant
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b-1.l:	Withdrawn
Subparagraphs 1.m-1.y:	Against Applicant
Subparagraph 1.z:	Withdrawn
Subparagraphs 1.aa:	Against Applicant
Subparagraph 1.bb-1.cc:	Withdrawn
Paragraph 2, Guideline E:	Against Applicant
Subparagraph 1.a:	Against Applicant

Conclusion

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

Carol G. Ricciardello
Administrative Judge