



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



In the matter of:)
)
) ADP Case No. 11-09060
)
)
Applicant for Public Trust Position)

Appearances

For Government: Chris Morin, Esq., Department Counsel
For Applicant: *Pro se*

March 4, 2013

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant is delinquent on 22 accounts in the amount of \$50,620.88. Only one of her delinquent accounts is allegedly being satisfied, and that through an involuntary garnishment of Applicant's pay. Further, she falsified her answers to questions on her Public Trust Position Application (SF 85P). She has not mitigated the Financial Considerations or Personal Conduct trustworthiness concerns. Eligibility for access to sensitive personal information is denied.

Statement of the Case

Applicant submitted her SF 85P on December 22, 2010. (Item 5.) On September 26, 2012, the Department of Defense issued a Statement of Reasons (SOR) to Applicant, which detailed reasons why the Department of Defense could not make the preliminary affirmative finding that it is clearly consistent with the national interest to grant or continue a determination of trustworthiness, suitability, and eligibility for Applicant to hold a Sensitive Systems Position (ADP-I/II/III). 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 (AG) effective within the Department of Defense after September 1, 2006.

Applicant submitted an Answer to the SOR on October 2, 2012. (Item 4.) By email dated November 8, 2012, Applicant requested a decision without a hearing. Department Counsel submitted a File of Relevant Material (FORM) to the Applicant on December 3, 2012. The Applicant received the FORM on December 12, 2012, and was given 30 days to submit any additional information or object to the material submitted by Department Counsel. Applicant expressed no objections, and did not submit any information within the time period of 30 days after receipt of a copy of the FORM. The case was assigned to me on February 22, 2013. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to sensitive personal information is denied.

Findings of Fact

The Applicant is 35 years old. She is employed by a defense contractor and is seeking to obtain a determination of trustworthiness in connection with her employment. She is married and has three minor children. She also supports her mother, who is ill. (Item 5; Item 6.)

Applicant has been fully employed since August 2010. From May 2009 until August 2010, she was unemployed. She also experienced periods of unemployment from August 2008 to November 2008, and August 2004 through November 2004. All of her periods of unemployment were a result of employer initiated reductions in force. (Item 6.)

Guideline F, Financial Considerations

The Government alleges that Applicant is ineligible for trustworthiness determination because she is financially overextended and therefore at risk of having to engage in illegal acts to generate funds. Applicant admitted allegations 1.a through 1.j, 1.l, 1.n, 1.o, 1.p, 1.r through 1.u, and 1.w. under this paragraph. Those admissions are findings of fact. She denied allegations 1.k, 1.m, 1.q, and 1.v.

Applicant is alleged on the SOR to be indebted on 22 accounts in the amount of \$50,620.88. Credit reports dated January 20, 2011, and June 27, 2012, along with states' records of Judgment and Lien Filings, show each of the debts identified on the SOR. In Applicant's answer to interrogatories, she indicated that she was going to resolve her debts by "filing bankruptcy [sic] middle of Sept. 2012." However, she provided no documentation to show she followed through on her stated intent. She also filed a petition for Chapter 7 bankruptcy in October 2000. In January 2001, those debts listed in the October 2000 bankruptcy filing were discharged. (Item 6 through Item 16.) Applicant's interrogatory answer indicated:

I have been working and the position that I accepted originally, did not pay enough for me to make payments on debts I owed, as well as continue to

provide for my family. I recently received a raise at a new position for a different company, but am now being garnished for one of the debts that I owe on a [repossessed] car. I am saving to file bankruptcy Chapter 7, so that I can get a clean slate and a financial beginning. (Item 6.)

Applicant indicated that the debt alleged in 1.k. was being repaid involuntarily through the garnishment, referenced above. She provided no documentation showing any payments made through garnishment, and no explanation for her denial of allegations 1.m, 1.q, or 1.v. Record evidence indicates that all of her delinquent debts remain outstanding. (Item 6.)

Guideline E, Personal Conduct

In SOR ¶¶ 2.a, and 2.b, the Government alleges that Applicant is ineligible for a position of public trust because she failed to provide truthful and candid answers on her SF 85P. Applicant denied allegations 2.a and 2.b.

Applicant's SF 85P dated December 22, 2010, contains negative replies to the questions pertaining to her financial history. Specifically, she was asked: "In the last 7 years, have you, or a company over which you exercised some control, filed for bankruptcy, been declared bankrupt, been subject to a tax lien, or had legal judgment rendered against you for a debt?" (Question 22.a); and "Are you now over 180 days delinquent on any loan or financial obligation? Include loans or obligations funded or guaranteed by the Federal Government." (Question 22.b). (Item 5.)

In her personal subject interview, adopted by Applicant on August 18, 2012, she indicated that she did not know of the judgments against her. However, she provided significant details of efforts by collection agents to collect her delinquent debts that were over 180 days delinquent at the time she completed her SF 85P. For example, she indicated she became delinquent on her car loan (identified in SOR ¶ 1.k) in August 2004. The debt was placed with a collection agency at that time. She periodically received collections notices from the collection agent, but she did not respond to them because, "she did not have any money for any payments." On another account (identified in SOR ¶ 1.e), she indicated that a credit card became delinquent in 2008 when she became unemployed. It was placed with a collection agency in late 2008 or early 2009. She could not afford to settle this debt and she ceased communication with this creditor. (Item 6.)

Policies

When evaluating an applicant's suitability for a trustworthiness determination, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an applicant's eligibility for access to sensitive personal information.

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 AG ¶ 2 describing 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. In addition, the administrative judge may rely on common sense, as well as knowledge of the law, human nature, and the ways of the world, in making a reasoned decision.

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 the 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 personal 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 such information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard sensitive personal information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of such information.

Analysis

Guideline F, Financial Considerations

The trustworthiness 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 trustworthiness 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 22 delinquent accounts, in the amount of \$50,620.88, after discharging debt through a Chapter 7 bankruptcy in 2001. The oldest of the SOR listed debts has been delinquent since 2004. Since that time, Applicant has been unable to make payments on her debts. The evidence is sufficient to raise the above disqualifying conditions.

Five Financial Considerations mitigating conditions under AG ¶ 20 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.

Applicant has the burden of showing that future delinquencies are unlikely to occur and that her financial decisions do not cast doubt on her current reliability, trustworthiness, or good judgment. Applicant still has a significant amount of delinquent debt. She failed to present sufficient evidence that she is addressing her debts in a responsible manner or that she has the means and discipline to resolve them. She indicated that she would file for bankruptcy again, but she failed to present evidence that she did so. Her financial issues are recent and ongoing. AG ¶ 20(a) is not applicable.

AG ¶ 20(b) is not applicable. Applicant's debts are partially attributable to her unemployment and her mother's illness. However, Applicant has been employed since 2010. Since gaining full-time employment, she has done little to address even the smallest of her delinquent debts. Further, to be fully applicable, AG ¶ 20(b) requires that the individual act responsibly under the circumstances. Applicant failed to demonstrate a track record of responsibly addressing her delinquent accounts. She failed to produce any evidence of payments on her debts. She claimed, without corroboration, that one debt is being repaid through an involuntary garnishment. I am unable to make a determination that she acted responsibly under the circumstances.

Applicant presented no evidence that she attended financial counseling. Further, there is no indication that Applicant's delinquent accounts are being resolved or are under control. AG ¶ 20(c) does not apply.

An applicant is not required to establish that she has paid off each debt listed in the SOR. All that is required is that an applicant demonstrate that she has established a plan to resolve her financial problems and has taken significant actions to implement that plan.¹ In this case, Applicant has indicated her plan is to resolve her debts through another bankruptcy. However, Applicant has not documented any steps she has taken to implement her plan. She has not demonstrated a good-faith effort to repay overdue creditors or otherwise resolve debts. AG ¶ 20(d) is not applicable.

Applicant presented no evidence to show that she was in the process of formally disputing any of her debts or that she successfully disputed any of her debts in the past. AG ¶ 20(e) is not applicable.

Guideline E, Personal Conduct

The trustworthiness concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

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 trustworthiness concern and may be disqualifying. The following disqualifying condition 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,

¹ ISCR Case No.07-06482 at 3 (App. Bd. May 21, 2008.)

award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant denied falsifying Questions 22a and 22b on her SF 85P because she was unaware of a judgment against her. Her explanations with respect to these questions are not credible. She admitted in her adopted statement that she had defaulted on a car loan and other debts several years prior to completing her SF 85P. She did not disclose those delinquent accounts to the Government when she completed her SF 85P. Instead, she waited until the Government investigator questioned her on the delinquent accounts to disclose her past-due accounts. The Government has established sufficient concern under AG ¶ 16(a) to disqualify Applicant from possessing a position of trust.

AG ¶ 17 provides conditions that could mitigate a trustworthiness concern. The following are potentially applicable:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- (b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;
- (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;
- (d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and
- (e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Applicant's falsification is unmitigated. The record contains no evidence that she sought to correct the falsification promptly after completing the application. Instead, she waited to disclose the debts until she was confronted by a Government investigator. Therefore AG ¶ 17(a) does not apply. Applicant offered no proof that she falsified her application based upon the bad advice of another. AG ¶ 17(b) does not apply. Falsification of information provided to the Government cannot be considered minor. Her conduct reflects negatively on her trustworthiness and good judgment. AG ¶ 17(c) is inapplicable. Applicant failed to fully acknowledge her falsification and she has taken

no remedial steps to show such behavior is unlikely to recur. Therefore AG ¶ 17(d) does not apply. Similarly, she presented no evidence of positive steps taken to reduce or eliminate vulnerability to exploitation, manipulation, or duress. AG ¶ 17(e) is inapplicable.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a position of trust 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 position of trust 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 relevant facts and circumstances surrounding this case. I have incorporated my comments under Guidelines F and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment. Applicant has a long history of financial indebtedness. She filed Chapter 7 bankruptcy in 2000 and discharged her debts in 2001. However, after the discharge of her debts, she continued to incur additional delinquent accounts. While some of the debts may have been caused by periods of unemployment and her mother's poor health, Applicant did little to address even the smallest of her debts, including debts of only \$37 (SOR ¶ 1.b), \$61 (SOR ¶ 1.m), and \$73 (SOR ¶ 1.a). Further, when asked about her debts over 180 days past due and judgments filed against her on her SF 85P, she intentionally failed to disclose any delinquencies.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a position of trust. For all these reasons, I conclude Applicant has not mitigated Financial Considerations and 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
Subparagraphs 1.a:	Against Applicant
Subparagraphs 1.b:	Against Applicant
Subparagraphs 1.c:	Against Applicant
Subparagraphs 1.d:	Against Applicant
Subparagraphs 1.e:	Against Applicant
Subparagraphs 1.f:	Against Applicant
Subparagraphs 1.g:	Against Applicant
Subparagraphs 1.h:	Against Applicant
Subparagraphs 1.i:	Against Applicant
Subparagraphs 1.j:	Against Applicant
Subparagraphs 1.k:	Against Applicant
Subparagraphs 1.l:	Against Applicant
Subparagraphs 1.m:	Against Applicant
Subparagraphs 1.n:	Against Applicant
Subparagraphs 1.o:	Against Applicant
Subparagraphs 1.p:	Against Applicant
Subparagraphs 1.q:	Against Applicant
Subparagraphs 1.r:	Against Applicant
Subparagraphs 1.s:	Against Applicant
Subparagraphs 1.t:	Against Applicant
Subparagraphs 1.u:	Against Applicant
Subparagraphs 1.v:	Against Applicant
Subparagraphs 1.w:	Against Applicant

Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a:	Against Applicant
Subparagraphs 2.b:	Against Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a determination of trustworthiness, suitability, and eligibility for Applicant to hold a Sensitive Systems Position (ADP-I/II/III). Eligibility for access to sensitive personal information is denied.

Jennifer I. Goldstein
Administrative Judge