



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



In the matter of:)
)
) ADP Case No. 11-11108
)
Applicant for Public Trust Position)

Appearances

For Government: Pamela Benson, Esquire, Department Counsel
For Applicant: *Pro se*

07/30/2013

Decision

METZ, John Grattan, Jr., Administrative Judge:

Based on the record in this case,¹ I deny Applicant’s trustworthiness determination.

On 17 May 2013, the Department of Defense (DoD) sent Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns under Guideline F, Financial Considerations.² Applicant timely answered the SOR, requesting a decision without

¹Consisting of the File of Relevant Material (FORM), Items 1-10.

²DoD acted under the 9 April 1993 memorandum of agreement between the Composite Health Care System Program Office (CHCSPO), the Defense Office of Hearings and Appeals (DOHA), and the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence (ASD C³I) to conduct trustworthiness determinations for contractor personnel employed in Information Systems Positions defined in DoD Regulation 5200.2-R, *Personnel Security Program* (Regulation), dated January 1987. ADP cases are adjudicated under DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive) and the adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the DoD for SORs issued after September 1, 2006.

hearing by DOHA. The record in this case closed 29 June 2013, the day Applicant's response to the Government's File of Relevant Material (FORM) was due. Applicant submitted no materials for review. DOHA assigned the case to me 19 July 2013.

Findings of Fact

Applicant admitted the SOR financial allegations, except for SOR 1.c, which she denied because the house was in foreclosure. She is a 58-year-old clerk employed by a defense contractor since September 2010. She will have access to sensitive medical data. She has not had a trustworthiness determination previously.

The SOR alleges, and Government exhibits substantiate, five delinquent debts totaling \$75,000. Applicant admits four debts for \$1,300. Three of the debts are medical debts totaling \$1,150.³ She is about \$74,000 delinquent on a \$154,000 mortgage. She claimed, without corroboration, to have completed a short sale of the mortgaged property in December 2012. She has not otherwise paid or arranged payment plans with any of the remaining creditors, despite having previously stated her intent to do so.

Applicant was unemployed from November 2008 to September 2010, during which time she received unemployment benefits but did not have health insurance. At some point, she and her then husband refinanced their house with a 10-year note, which consequently increased their mortgage payment dramatically. In June 2009, her husband left her for another woman. He refused both to pay on the mortgage or to cooperate with Applicant in refinancing the note to a more manageable payment or other resolution short of foreclosure.

Applicant submitted no character or employment records. Applicant's credit reports show a large number of accounts that were delinquent, but which are now current or closed with a zero balance. These accounts were not alleged in the SOR. Her credit reports also show several collection accounts which were paid. However, her May 2013 credit report (Item 9) shows two new delinquent accounts totaling \$740.

Policies

The adjudicative guidelines (AG) list factors to evaluate a person's suitability for access to sensitive information. Administrative judges must assess disqualifying and mitigating conditions under each issue fairly raised by the facts and situation presented. Each decision must also show a fair, impartial, and commonsense consideration of the factors listed in AG ¶ 2(a). The applicability of a disqualifying or mitigating condition is not, by itself, conclusive. However, specific guidelines should be followed when a case can be measured against them, as they are policy guidance governing the grant or

³During her March 2011 interview with a Government investigator, Applicant claimed that she had paid the three medical accounts, but was unable to provide any proof of payment. In her October 2012 response to DOHA interrogatories, she stated her intent to arrange repayment of these accounts.

denial of a clearance. Considering the SOR allegations and the evidence as a whole, the relevant adjudicative guideline is Guideline F (Financial Considerations).

Trustworthiness decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's public trust position. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to applicant to refute, extenuate, or mitigate the Government's case. Because no one has a right to a public trust position, the applicant bears a heavy burden of persuasion.

Persons with access to sensitive information enter into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring each applicant possesses the required judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels deciding any reasonable doubt about an Applicant's suitability for access in favor of the Government.⁴

Analysis

The Government established a case for disqualification under Guideline F, and Applicant did not mitigate the security concerns. Applicant's financial difficulties are reasonably attributable to her two-year's unemployment between November 2008 and September 2010, and her separation, and subsequent divorce, from her husband. She paid off, or brought current, numerous delinquent debts not alleged in the SOR. What she has not done is document her claimed short sale of her house, along with release of her liability by her lender. She has not documented any efforts to resolve the other small debts, or provided a proposed plan to address them.⁵

Applicant potentially meets only one of the mitigating factors for financial considerations. Her financial difficulties are both recent and multiple.⁶ While her unemployment and divorce were clearly circumstances beyond her control, she got a new job in September 2010. While she might reasonably claim to have been responsible in addressing many debts not alleged in the SOR since then, she has not been responsible dealing with the debts alleged in the SOR, or documenting any efforts to resolve them.⁷ In addition, there is no evidence that she has sought credit counseling

⁴See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁵¶ 19 (a) inability or unwillingness to satisfy debts; (c) a history of not meeting financial obligations.

⁶¶ 20 (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur.

⁷¶ 20 (b) the conditions that resulted in the financial problem were largely beyond the person's control . . . and the individual acted responsibly under the circumstances.

