



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



In the matter of:)	
)	
REDACTED)	ADP Case No. 11-11972
)	
Applicant for Public Trust Position)	

Appearances

For Government: Eric Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

05/09/2013

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant failed to mitigate the concerns arising from her financial issues. Since 2006, she has accumulated about \$38,000 of delinquent debt and has yet to put her financial house in order. Eligibility for access to sensitive information is denied.

Statement of the Case

On December 10, 2012, the Department of Defense (DoD) issued a Statement of Reasons (SOR) recommending that Applicant's eligibility to occupy an automated data processing (ADP) position, generally referred to as a public trust position, be denied due to concerns arising under Guideline F (Financial Consideration). This action was taken under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive).¹ Applicant timely answered the SOR and requested a hearing to establish her eligibility (Answer).

¹ Pursuant to a Memorandum from the Office of the Deputy Under Secretary of Defense for Counterintelligence and Security, dated November 19, 2004 (Memorandum), the Defense Office of Hearings and Appeals (DOHA) is directed to utilize the provisions of the Directive, to include Enclosure 2, the adjudicative guidelines, to resolve contractor cases forwarded to it for a trustworthiness determination.

On February 11, 2013, I was assigned Applicant's case and the next day a notice of hearing was issued scheduling the hearing for March 7, 2013. At hearing, Government Exhibits (Gx.) 1 through 4 and Applicant's Exhibits (Ax.) A through F were admitted into evidence without objection. Applicant testified, called her cousin as a witness, and was granted additional time to submit documents post-hearing. She did not submit any documents post-hearing. DOHA received the hearing transcript (Tr.) on March 15, 2013, and the record closed on March 21, 2013.

Findings of Fact

After a thorough review of the pleadings, case file, exhibits, and transcript, I make the following findings of fact:

Applicant, 44, is single and has three children, ages 19, 20, and 24. Her two elder children live with her and she financially supports them. She has suffered from a number of medical issues since at least 2010, which have caused her to miss time from work. She was unemployed from May 2009 to May 2010, but has been working full time since May 2010 and has been with her current employer since about December 2010.

Applicant's financial problems date back to 2006, when she purchased a home. She now recognizes that she did not qualify for the mortgage she received to purchase the home. She fell behind on her monthly mortgage payments and other financial obligations. She admits the 18 debts listed in the SOR, totaling approximately \$38,000. At hearing, she claimed two of the debts (SOR 1.n and 1.o, totaling \$335) were duplicates with others alleged in the SOR, but did not submit documentation at hearing or post-hearing to substantiate her claim. (Answer; Gx. 2; Tr. at 34-55, 64-74)

Applicant explained that her financial problems were caused by poor money management. She has not received financial counseling, but has finally started to take steps to manage her finances, though she was late on her utilities and other bills at the time of the hearing. She recently satisfied her overdue federal taxes from 2009, when the IRS intercepted her 2012 tax refund. (Tr. at 56-65, 73-74)

Applicant did not list any of her delinquent debts on her application for public trust position. During her subsequent background interview, she told the investigator that she did not list her delinquent debts because she had written letters to the credit reporting agencies disputing the debts in an attempt to have the debts wiped off her credit report and avoid paying the debts.² (Gx. 1 at 7; Gx 2, Subject Interview at 5). As of the close of the record, the SOR debts remained unresolved.

Applicant's cousin testified that she has known Applicant for a majority of her life and knows her to be a good mother, who is dedicated to her family and church. She

² Applicant's recently paid tax obligation, non-SOR delinquent bills, failure to list her debts on her application, and statement to the investigator were not alleged in the SOR and are only being considered in addressing her case in mitigation and overall credibility.

also stated that Applicant is a good person, who is loyal, dependable, and a hard worker. Applicant's recent performance reports corroborate that she is a good worker.

Policies

Positions designated as ADP I and ADP II are classified as sensitive positions. 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.³

When evaluating an applicant's eligibility for a position of trust, an administrative judge must apply the provisions of the Directive, to include the adjudicative guidelines (AG or guidelines).⁴ In addition to brief introductory explanations, the guidelines list potentially disqualifying and mitigating conditions. The guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies the guidelines in a commonsense manner, considering all available and reliable information, in arriving at a fair and impartial decision.

In addition to the guidelines, the Directive sets forth procedures that must be followed in trustworthiness adjudications. The Government must present evidence to establish controverted facts alleged in the SOR. While an 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. An applicant has the ultimate burden of persuasion to establish his or her eligibility for a public trust position.⁵ In resolving the ultimate question regarding an applicant's eligibility, an administrative judge must resolve any doubt in favor of national security.⁶

Analysis

Guideline F, Financial Considerations

The concern relating to financial problems is articulated at 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

³ Memorandum; Directive, § 3.2. Cf. Department of Defense Regulation 5200.2-R, *Personnel Security Program* (January 1987), as amended, ¶¶ C3.1.2.1.1.7, C3.1.2.1.2.3, C6.1.1.1.

⁴ Directive, Enclosure 2. See also, Memorandum from the Office of the Under Secretary of Defense for Intelligence, dated August 30, 2006, directing that the adjudicative guidelines be applied to all adjudications and other determinations made under the Directive and DoD Regulation 5200.2-R.

⁵ Directive, Enclosure 3, ¶ E3.1.14 – E3.1.15.

⁶ Directive, Enclosure 2, ¶ 2(b).

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.

Applicant's accumulation of approximately \$38,000 in delinquent debt since 2006 raises this concern. It also establishes AG ¶¶ 19(a), inability or unwillingness to satisfy debts, and 19(c), a history of not meeting financial obligations.

An individual's past or current indebtedness is not the end of the analysis, because a trustworthiness adjudication is not a proceeding aimed at collecting an applicant's debts. Rather, it is a proceeding aimed at evaluating an applicant's judgment, reliability, and trustworthiness.⁷ Accordingly, Applicant may mitigate the concern by establishing one or more of the conditions listed under AG ¶ 20:

(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 and provides documented proof to substantiate the basis of the dispute.

None of the mitigating conditions apply. Although Applicant's financial problems are in part due to medical issues and a period of unemployment, her debts are primarily due to her inability to manage her finances. Furthermore, she has not acted responsibly in relation to her delinquent debts since regaining full-time employment in May 2010. As of the close of the record, Applicant's delinquent debts remained unresolved and she did not submit documentation to substantiate her dispute regarding the relatively two minor debts she claimed were duplicates of other SOR debts. Even if I were to give Applicant credit for these two debts, her financial situation is still far from under control,

⁷ ISCR Case No. 07-08049 at 5 (App. Bd. Jul. 22, 2008). See also ISCR Case No. 09-07916 at 3 (App. Bd. May 9, 2011).

as evidenced by her accumulation of additional delinquent debt not alleged in the SOR. Moreover, Applicant's statement during her background interview that she disputed the debts appearing on her credit report as a way to avoid paying them leaves me to question her reliability and trustworthiness. Applicant's finances remain a concern.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility by considering the totality of an applicant's conduct and all the relevant circumstances. An administrative judge should consider the nine factors listed at AG ¶ 2(a).⁸ I have considered and given due weight to all the favorable and extenuating factors in this case, including Applicant's dedication to her family and her good work performance. However, she has yet to take control of her finances and get a handle on the significant amount of delinquent debt that she has accumulated since 2006. In the end, Applicant's financial situation outweighs the favorable whole-person factors and other favorable evidence present in this case. Applicant finances raises doubts about her eligibility for access to sensitive information.

Formal Findings

I make the following formal findings regarding the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): **AGAINST APPLICANT**

Subparagraphs 1.a – 1.r: **Against Applicant**

Conclusion

In light of the record evidence and for the foregoing reasons, it is not clearly consistent with the interests of national security to grant Applicant eligibility for access to sensitive information. Applicant's request for a public trust position is denied.

Francisco Mendez
Administrative Judge

⁸ The non-exhaustive list of adjudicative factors are: (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.