



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



In the matter of:)	
)	
)	ADP Case No. 11-12363
)	
)	
Applicant for Public Trust Position)	

Appearances

For Government: Braden M. Murphy, Esquire, Department Counsel
For Applicant: *Pro Se*

06/28/2013

Decision

WHITE, David M., Administrative Judge:

Applicant incurred about \$13,000 in delinquent debt over the past four years. She did not demonstrate either changed circumstances or sufficient income to resolve those debts or remain solvent in the future. Financial security concerns were not mitigated. Based upon a thorough review of the pleadings and exhibits, eligibility for access to ADP I/II/III sensitive information is denied.

Statement of the Case

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 (ASD C3I), 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 Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program* (January 1987), as amended (Regulation).

Applicant submitted her electronic Questionnaire for Public Trust Positions (SF 85P), on May 16, 2011.¹ On January 15, 2013, the Department of Defense issued a Statement of Reasons (SOR) to Applicant detailing trustworthiness concerns under Guideline F (Financial Considerations).² 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); the Regulation (*supra*); and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG) effective within the Department of Defense on September 1, 2006.

Applicant acknowledged receipt of the SOR on January 23, 2013.³ She answered the SOR in writing on February 21, 2013, but did not indicate whether she wanted her case to be decided by an administrative judge on the written record, or requested a hearing.⁴ Department Counsel received no response from Applicant after leaving her several telephonic messages, so he wrote her an email on March 28, 2013, asking her to clarify her desires. In the email, he informed her that if she did not respond her case would be decided on the written record.⁵ After Applicant failed to respond to the email, Department Counsel submitted the Government's written case on April 9, 2013. A complete copy of the File of Relevant Material (FORM)⁶ was provided to Applicant, and she was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of her receipt of the FORM.

Applicant signed the document acknowledging receipt of her copy of the FORM on April 18, 2013, and returned it to DOHA. She provided no further response to the FORM within the 30-day period, did not request additional time to respond, and expressed no objection to my consideration of the evidence submitted by Department Counsel. I received the case assignment on June 24, 2013.

Findings of Fact

Applicant is a 45-year-old employee of a federal contractor, where she has worked since March 2011 as an administrative assistant. She is divorced, with four adult children. She is a high school graduate, and has taken some business school and

¹Item 5.

²Items 1 and 2.

³Item 2.

⁴Item 3.

⁵Item 4. Department Counsel properly cites Directive ¶ E3.1.4 for this proposition. (FORM at 2.) Applicant did not respond to the email, but made no objection to the procedure after receiving the FORM.

⁶The Government submitted eight Items in support of the SOR allegations.

online college classes.⁷ In her answer, Applicant admitted owing two delinquent student loan debts (SOR ¶¶ 1.g, 1.h), and denied the remaining allegations in the SOR without further comment or explanation.⁸ Those admissions and her sworn responses to DOHA interrogatories⁹ are incorporated in the following findings.

Applicant's 12 SOR-listed delinquent debts, totaling \$12,912, are all reported in the two record credit bureau reports.¹⁰ When interviewed by an investigator from the Office of Personnel Management (OPM) on August 25, 2011, she said that she did not dispute any of the delinquent debts they discussed, was very concerned about them, and was going to be proactive in meeting her fiscal responsibilities now that she had gainful employment with the defense contractor. In her November 15, 2012 response to DOHA interrogatories, she admitted the debts alleged in SOR ¶¶ 1.c, 1.d, 1.f, and 1.j, but said that she had sent letters requesting that the creditors "validate" the debts or was waiting to receive a new credit report before she paid them. She also admitted the two student loan debts alleged in SOR ¶¶ 1.g and 1.h, and supplied a copy of part of a written agreement to rehabilitate them from default status by making monthly payments of \$60 beginning in November 2012. She provided no proof that she made any payments under the agreement. She said that she planned to dispute the debts alleged in SOR ¶¶ 1.b, 1.e, 1.i, 1.k, and 1.l, either because she was unfamiliar with them or disagreed with the balance due. She also disputed the debt alleged in SOR ¶ 1.a, claiming that she thought she had paid it, had requested "validation," and did not agree with the balance. She provided no documentation of payments toward any SOR-listed debt, or to substantiate a basis to dispute any of these debts.¹¹

Applicant provided a personal financial statement as of November 15, 2012, showing a net monthly income of \$1,094 (\$13,132 per year) and monthly expenses of \$1,275, for a net monthly deficit of \$181. The statement reflected no car expenses, no insurance payments, no medical expenses, no debt payments, and no assets. She told the OPM investigator that she had not had gainful full-time employment since losing a previous job in January 2009. There is no evidence that Applicant has sought or obtained any financial counseling.

Applicant provided no information concerning the quality of her professional performance, the level of responsibility her duties entail, or her track record with respect to handling sensitive information and observation of security procedures. She submitted no character references or other evidence tending to establish good judgment,

⁷Item 5; Item 8.

⁸Item 3.

⁹Item 8.

¹⁰Items 6 and 7.

¹¹Item 8.

trustworthiness, or reliability. I was unable to evaluate her credibility, demeanor, or character in person since she elected to have her case decided without a hearing.

Policies

Positions designated as ADP I and ADP II are classified as “sensitive positions.” (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.” (Regulation ¶ C6.1.1.1.) A 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. (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 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 AG ¶ 2(a) 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.

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.

Under 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

AG ¶ 18 expresses the security concern pertaining to financial considerations:

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 over-extended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

AG ¶ 19 describes conditions that could raise a security concern and may be disqualifying. Department Counsel argued persuasively that the evidence raised two of these potentially disqualifying conditions: “(a) inability or unwillingness to satisfy debts;” and “(c) a history of not meeting financial obligations.” (Throughout this analysis, the terms “security” and “trustworthiness” are used interchangeably.)

The evidence establishes Applicant's responsibility for 12 SOR-listed delinquent debts totaling almost \$13,000. The record shows an almost-four-year history during which Applicant has been regularly unable or unwilling to satisfy these debts. Having evaluated the nature, quantity, and amounts involved in Applicant's debts, I find insufficient evidence to establish irresponsible or frivolous spending. There were neither allegations nor proof of compulsive, addictive, or problem gambling. Nor was there any evidence of drug abuse, alcoholism, or deceptive financial practices. Accordingly, no other Guideline F disqualifying condition was established. The evidence supporting application of AG ¶¶ 19(a) and 19(c) shifts the burden of proof to Applicant to establish mitigation of the resulting trustworthiness concerns.

AG ¶ 20 provides conditions that could mitigate security concerns arising from a history of unpaid debt, and a present unwillingness or inability to meet financial obligations:

- (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's delinquencies arose over the past four years, and remain unpaid at present. She did not demonstrate that any of the circumstances giving rise to those debts is unlikely to recur, or that her reliability, trustworthiness, and judgment are not implicated by the ongoing situation. Accordingly, she did not establish mitigation under AG ¶ 20(a).

I find minimal, if any, mitigation under AG ¶ 20(b). Applicant's period of unemployment may or may not have been beyond her control, as she did not explain the circumstances of her termination in January 2009, or what efforts she made to find other work before beginning her present employment. Applicant did not demonstrate that she took responsible measures to limit expenses, or that her financial circumstances have a foreseeable probability of changing for the better. She has held her present position since May 2011, told the OPM investigator in August 2011 that she intended to be proactive in repaying her delinquent debts, but failed to pay debts as small as \$121 (SOR ¶ 1.c) and \$71 (SOR ¶ 1.d), which she admitted she owed. This does not establish responsible actions under the circumstances.

Applicant gave no indication that she received any effective financial counseling, or that she had either a plan or the means to address about \$13,000 in delinquent debt on her \$13,132 net annual income. She did not demonstrate solvency going forward, or

otherwise indicate that her financial situation is under control. Given the record evidence, repayment or other resolution of her delinquent debt is unlikely. Financial trustworthiness concerns are therefore not mitigated under AG ¶¶ 20(c) or (d).

Concerning several delinquencies documented on her credit reports, Applicant said that she was either unfamiliar with the account, or disagreed with the balance due. However, she provided no evidence to substantiate her basis to dispute any SOR-listed debts, or otherwise resolve them. AG ¶ 20(e) is inapplicable.

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 relevant facts and circumstances surrounding this case. Applicant's conduct of concern involves the substantial amount of delinquent debt that arose and remained unpaid over the past four years. The concerns are exacerbated by the absence of evidence that the circumstances leading to her inability or unwillingness to repay these debts have changed, or will change, for the better. Even acknowledged delinquent debts as small as \$121 and \$71 remain unpaid, and her personal financial statement reflected that her monthly living expenses are 116% of her monthly net income without any allowance for debt repayment.

Applicant has not sought financial counseling, or shown other efforts to achieve permanent behavioral changes. There is no evidence suggesting any reduction in the potential for pressure, coercion, exploitation, or duress that could tempt her to abuse a public trust position. The evidence suggests that her financial problems will continue.

On balance, Applicant presented insufficient evidence to mitigate the reliability and trustworthiness concerns arising from her financial considerations, including her

failure to pay a number of delinquent debts over the past four years and her apparent inability to do so going forward. Overall, the record evidence leaves significant 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 section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F: **AGAINST APPLICANT**

Subparagraphs 1.a through 1.l: **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 ADP I/II/III sensitive information is denied.

DAVID M. WHITE
Administrative Judge