



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



In the matter of:)	
)	
-----)	ADP Case No. 11-13005
)	
Applicant for Public Trust Position)	

Appearances

For Government: Greg Cervi, Esq., Department Counsel
For Applicant: *Pro se*

01/02/2013

Decision

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, I conclude that Applicant has not mitigated the trust concerns regarding her finances. Eligibility to hold a public trust position is denied.

Statement of the Case

On July 25, 2012, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing reasons why DOHA could not make the preliminary affirmative determination of eligibility for holding a public trust position, and DOHA recommended referral to an administrative judge to determine whether eligibility to hold a public trust position should be granted, continued, denied, or revoked. This action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended, Department of Defense Regulation 5200.2-R (Regulation), and the Adjudicative Guidelines (AGs) implemented by the Department of Defense on September 1, 2006.

Applicant responded to the SOR on August 28, 2012, and requested a hearing. The case was assigned initially to another judge, and to me on November 26, 2012. The case was scheduled for hearing on December 4, 2012. The hearing was convened on that date. At hearing, the Government's case consisted of six exhibits (GEs 1-6). Applicant relied on one witness (herself) and no exhibits. The transcript (Tr.) was received on December 12, 2012.

Summary of Pleadings

Under Guideline F, Applicant allegedly accumulated one adverse judgment for \$7,611 and seven consumer debts exceeding \$11,000. In her answer to the SOR, Applicant admitted the judgment and the remaining seven debts.

Applicant claimed she is a single mother who was left with numerous debts by her ex-husband. She attributed responsibility for her debts to her ex-husband who ran up her credit cards and consistently refused to help her with paying off the credit cards. Applicant claimed her divorce petition has dragged on for three years (with more legal fees) and left her unable to address her old debts. She claimed she receives no child or spousal support from her ex-husband. And she claimed her ex-husband took all of their savings and tax return money and left her with nothing.

Findings of Fact

Applicant is a 42-year-old logistics specialist and load planner for a defense contractor who seeks eligibility to hold a public trust position. The SOR allegations admitted by Applicant are incorporated and adopted as relevant and material findings. Additional findings follow.

Background

Applicant married her husband in June 2006 and separated from him in September 2009. (GE 1) Her divorce was finalized in November 2012. (Tr. 28-29) Applicant has one child from a previous marriage and one five-year-old son from her most recent marriage. (GEs 1 and 2; Tr. 26) She claims no college schooling or military service. (GEs 1 and 2)

Finances

Following her marriage in 2006, Applicant and her husband purchased a home for \$94,500. (Tr. 40-41) She currently owes \$89,000 on her first mortgage, which she maintains in current status, and has very little equity in the home (estimated to be around \$11,000). (Tr. 27-28, 41)

Records show that an adverse judgment was taken against Applicant in 2003 in the amount of \$7,610. (GEs 2-6) She accumulated additional medical and credit card debts (exceeding \$11,000) between 2006 and 2009 while married to her second

husband. She attributed these debts to her ex-husband. (Tr. 36) In her divorce decree, she accepted responsibility for these debts in return for her husband's relinquishment of his interest in her home. (GE 2; Tr. 20-21, 28, 31)

Before their separation in 2008, Applicant's husband exercised little financial responsibility over their marital affairs. He seized monies in Applicant's savings and checking accounts worth in excess of \$9,000 and cashed her tax refunds at various intervals without her permission. (Tr. 32-35) Most of her ex-husband's misappropriations of her capital accounts and tax refunds occurred in the year prior to their 2008 separation. (Tr. 35-36). Since their separation and divorce, Applicant's ex-husband has declined to pay any child support for their five-year-old son, or any of the listed debts. (Tr. 26) Applicant and her ex-husband have joint custody over their child. (Tr. 26) With her limited income and mortgage to maintain, she has been unable to address any of these debts. (GE 2; Tr. 21) Although she contacted a debt consolidation firm, she has never followed up with either financial counseling or debt consolidation services. (Tr. 23-24)

Following her separation, Applicant's father lived with her for awhile and helped her with her bills. (GE 2) Currently, Applicant is a full-time employee of her defense contractor and makes \$19 an hour. (Tr. 21) She nets around \$1,400 a month and has monthly expenses of \$2,021. This leaves her with a negative monthly balance of \$621 and no financial resources to cover her listed debts. (GE 2)

Effective January 1, 2013, Applicant will lose her full-time employment status, if she does not have approved public trust eligibility. (Tr. 43-44) In part-time status, her hourly rate will be reduced to just \$12 an hour. (Tr. 23-24) Should this employment change transpire, she plans to enroll in a local community college and study dental hygiene. (Tr. 46-47) Anticipating her change to part-time status, she has no plans to address any of her old debts at this time. (Tr. 22, 37-38)

Endorsements

Applicant did not provide any endorsements or performance evaluations. She made no requests to supplement the record.

Policies

The AGs list guidelines to be used by administrative judges in the decision-making process covering DOHA cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information.

Positions designated as ADP 1 and ADP II are classified as "sensitive positions." See Regulation ¶¶ C3. 1.2.1.1.7 and C3.1.21.2.3. "The standard 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) 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.

These guidelines include conditions that could raise a security or trust concern and may be disqualifying (disqualifying conditions), if any, and many of the "[c]onditions that could mitigate security or trust concerns. They must be considered before deciding whether or not a security clearance or public trust eligibility determination should be granted, continued, revoked, or denied. The guidelines do not require administrative judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision. Each of the guidelines is to be evaluated in the context of the whole person in accordance with AG ¶ 2(c)

Administrative judges must also consider the pertinent considerations for assessing extenuation and mitigation set forth in AG ¶ 2(a) of the AGs. AG ¶ 2(a) is intended to assist the judges in reaching a fair and impartial commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period of an applicant’s life to enable predictive judgments to be made about whether the applicant is an acceptable security or trust risk.

When evaluating an applicant’s conduct, the relevant guidelines are to be considered together with the following AG ¶ 2(a) factors:

- (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.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

Financial Considerations

The Concern: “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. 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.”

Adjudicative Guidelines, ¶ 18.

Burden of Proof

By virtue of the principles and policies framed by the AGs, a decision to grant or continue an applicant's access to sensitive information may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a commonsense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility to access sensitive information depends, in large part, on the relevance and materiality of that evidence. See *United States v. Gaudin*, 515 U.S. 506, 509-511 (1995). As with all adversarial proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) it must prove by substantial evidence any controverted facts alleged in the SOR, and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain access to sensitive information. The required materiality showing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused sensitive information before it can deny or revoke eligibility to access sensitive information. Rather, the judge must consider and weigh the cognizable risks that an applicant may deliberately or inadvertently fail to safeguard sensitive information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the evidentiary burden shifts to the applicant for the purpose of establishing his or her trustworthiness through evidence of refutation, extenuation, or mitigation. Based on the requirement of Exec. Or. 10865 that all determinations of access to sensitive information be clearly consistent with the national interest, the applicant has the ultimate burden of demonstrating his or her trustworthiness to access sensitive information eligibility. See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988). And because all assignments to a sensitive position determinations must be clearly consistent with the national interest, the burden of persuasion must remain with the Applicant.

Analysis

Applicant is a logistics specialist and load planner whose credit reports list an unsatisfied judgment that predates her latest marriage and a number of medical and

consumer debts accumulated during this marriage. These accrued debts remain outstanding without any offered plan to pay or otherwise resolve them.

Trust concerns are raised under the financial considerations guideline of the AGs when an individual Applicant is so financially overextended as to indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, which can raise questions about the individual's reliability, trustworthiness, and ability to protect classified and sensitive information, and place the person at risk of having to engage in illegal acts to generate funds. Applicant's accumulation of delinquent debts (based on produced credit reports and Applicant admissions) and her past inability to resolve these debts, either by payment, successful dispute, or a combination thereof, warrant the application of two of the disqualifying conditions (DC) of the Guidelines: ¶ DC 19(a), "inability or unwillingness to satisfy debts," and ¶19(c) "a history of not meeting financial obligations."

Holding a public trust position involves the exercise of important fiducial responsibilities, among which is the expectancy of consistent trust and candor. Financial stability in a person cleared to access sensitive information is required precisely to inspire trust and confidence in the holder of a public trust position. While the principal concern about a person's holding a public trust position without demonstrated financial stability is vulnerability to coercion and influence, judgment and trust concerns are implicit in financial cases.

Extenuating circumstances are associated with most of Applicant's delinquent medical and consumer debts. Applicant and her ex-husband accumulated numerous medical and consumer debts during their brief marriage that her ex-husband has declined to address. Under the terms of their divorce decree, Applicant was assigned primary responsibility for these debts in return for her ex-husband's relinquishing any financial interest in Applicant's home.

Anticipating a reduction of her hours of employment, Applicant cannot foresee any ability to address her old debts in the immediate future. MC ¶ 20(b), "the conditions that resulted in the behavior 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," has limited application to Applicant's situation.

Follow-up measures with her creditors were required of Applicant to satisfy the good-faith and due diligence repayment requirements of MC ¶ 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts," and the counseling/control requirements of MC ¶ 20(c), "the person has received counseling for the problem and/or there are clear indications that the problem is being resolved or is under control." By the proofs presented, Applicant has no established plan in effect to resolve her debts or identified counseling that can assist her in developing a practical budget that can help her to facilitate a workable payment plan for her creditors.

So, under the circumstances of this case, Applicant can take very little advantage of either MC ¶ 20(d) or MC ¶ 20(c). For while an applicant need not have paid or resolved every one of her proven debts or addressed all of his debts simultaneously, she needs a credible plan to resolve her financial problems, accompanied by implementing actions. See ISCR Case No. 07-06488 (App. Bd. May 21, 2008)

Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances beyond her control, she could still be expected to maintain contact with her creditors and attempt to negotiate partial payments to bring her accounts current. See ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 03-13096 (App. Bd. Nov. 29, 2005); ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); and ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999)). By contrast, Applicant has undertaken no substantive measures to address her delinquent debts or develop a plan for resolving them.

Consideration of Applicant's background and circumstances surrounding her debt accumulations, her ex-husband's declination to help her with any of the debts that arose during their marriage, her limited income sources, and her unwillingness to address any of her listed creditor to date, provides too little evidentiary support to credit Applicant with the degree of good judgment, reliability, and trustworthiness necessary to mitigate security concerns about her finances at this time. Applicant's efforts to date to address her debts are insufficient to enable her to meet her evidentiary burden of mitigating the covered debts.

From a whole-person standpoint, the evidence is insufficient to demonstrate that Applicant has mounted sufficient good-faith efforts to resolve her debts. Since she did not provide any endorsements or documentation of her work-related evaluations and civic contributions, whole-person assessment lacks sufficient information to provide any material countervailing considerations to take into account in making an overall trust assessment of Applicant's eligibility to hold a public trust position.

In making a whole-person assessment, careful consideration was given to the respective burdens of proof established in *Egan (supra)*, the Regulation, the AGs, and the facts and circumstances of this case in the context of the whole person. Unfavorable conclusions warrant with respect to the allegations covered by subparagraphs 1.a through 1.h of the SOR.

Formal Findings

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact, conclusions, conditions, and the factors listed above, I make the following formal findings:

GUIDELINE F: (FINANCIAL CONSIDERATIONS): AGAINST APPLICANT

Subparagraphs 1.a through 1.h: Against Applicant

Conclusions

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 Applicant's eligibility to hold a public trust position. Eligibility to hold a public trust position is denied.

Roger C. Wesley
Administrative Judge