



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



In the matter of:)
)
 REDACTED) ADP Case No. 11-13434
)
 Applicant for Position of Trust)

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: *Pro se*

07/09/2013

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant mitigated the concerns arising from her financial problems that were due to years of domestic abuse, followed by loss of employment and underemployment. She responsibly handled her financial situation by decreasing her monthly expenses and paying her debts. She has taken control of her finances and is firmly on the road to financial stability. Eligibility to occupy a position of trust is granted.

Statement of the Case

On February 21, 2013, 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 DoD 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

On May 9, 2013, I was assigned Applicant's case. After coordinating with the parties, I scheduled the hearing for June 6, 2013. At hearing, Government Exhibits (Gx.) 1 – 5 and Applicant's Exhibits (Ax.) A and B were admitted into evidence without objection. Applicant testified and requested additional time to submit documents post-hearing. She timely submitted Ax. C – Ax. F, which were admitted without objection. DOHA received the hearing transcript (Tr.) on June 14, 2013, and the record closed on June 28, 2013.

Findings of Fact

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

Applicant, 36, is divorced and has twin daughters who are 10 years old. Her financial trouble started in about 2005, when she was forced to seek an order of protection to stop her husband who was physically abusing her. After being removed from the home, Applicant's former spouse refused to financially support their children for approximately 18 months. A court determined that he owed Applicant over \$10,000 in back child support. (Tr. at 28-30, 45, 49-51, 100-101; Gx. 1)

After her former husband was removed from the home, Applicant discovered that he had stopped paying the mortgage on their home. Applicant had purchased the home on her own in 2001, and she had paid the monthly mortgage payments and other household expenses on a timely basis without issue. Shortly after their marriage in 2004, Applicant's former spouse convinced her to turn over their finances to him. He squandered their money and did not pay the mortgage and other household bills. As he worked at night, he hid all the collection notices sent to their home. By the time Applicant uncovered her former husband's betrayal, they had defaulted on the mortgage and amassed a significant amount of debt. Applicant depleted her 401(k) retirement account and other savings in an attempt to save her home and pay her other debts, but it was to no avail and her home was foreclosed. She left her home and moved to an affordable apartment. (Tr. at 28-30, 45-49, 97-100; Gx. 3)

In 2007, Applicant's divorce was finalized. Before Applicant could stabilize her finances and resolve the debts she had accumulated during the marriage, she suffered a further financial setback. Applicant's former employer began outsourcing the work in her division and she was forced to accept a buyout. Applicant had worked for her former employer for over seven years and planned to remain there until she was forced to leave. Applicant was hopeful that she would quickly find another job based on the skills she had gained at her former job. Unfortunately, Applicant entered the workforce during the recession and was unemployed for a year. The small severance she had received and other steps she had taken to reduce her household expenses were insufficient, and she was forced to move in with her mother. (Tr. at 29-30, 33, 42, 46, 52, 58-59; Gx. 1)

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.

Applicant testified quite emotionally how, at times, during this period of financial despair, she would sit up at night trying to decide which household necessities she could afford for her family. Applicant's main concern was to make sure that her children never went to bed hungry at night – a “luxury” she could not afford for herself quite often. (Tr. at 32-33)

Applicant was able to secure employment in December 2008, making far less than she made at her previous job. She went from earning approximately \$60,000 a year to less than \$25,000, but the job provided health insurance and other benefits that she desperately needed for her children. In less than a year's time, she again found herself unemployed. She was unemployed from September 2010 until April 2011, when she was able to secure full-time employment with her current employer. Her current annual salary is approximately \$47,000. (Tr. at 31-34, 52-53, 57-58; Gx. 1)

Applicant works on a DoD contract, handling and safeguarding sensitive information. Her performance evaluations reflect that she “exceeds expectations.” She was recently promoted to a supervisory position and received a \$6,000 increase in salary. (Tr. at 35-42; Ax. C – D, Ax. F)

Applicant's SOR lists 12 debts totaling about \$25,000. Department Counsel withdrew the \$630 debt alleged in ¶ 1.k, because it is a duplicative of another SOR debt. (Tr. at 79-80, 92) Applicant credibly testified and submitted some documentation that two of the largest SOR debts, totaling \$20,878, were resolved in her favor. (Tr. at 62-70, 78-79; Ax. F) She submitted proof that she satisfied the debts in ¶¶ 1.c and 1.i. (Tr. at 87-91; Ax. A; Ax. B). She has a viable plan to resolve her remaining past-due debts, submitted disputes with the credit reporting agencies for those debts she denies, and is paying her remaining debts. (Tr. at 70-78, 80-86; Answer; Gx. 3 – 5; Ax. D – F)

Applicant provided her monthly budget, which shows that she has approximately \$1,000 in disposable income each month to pay her debts and meet any unanticipated expenses. She has received financial counseling through her employer's employee assistance program, and she is once again in firm control of her finances. (Tr. at 96-97; Ax. E)

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.²

² 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.

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).³ 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. 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. Furthermore, an applicant has the ultimate burden of persuasion to establish his or her eligibility for a public trust position.⁴ In resolving the ultimate question regarding an applicant's eligibility, an administrative judge must resolve any doubt in favor of national security.⁵

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 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 \$25,000 in delinquent debt 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. Accordingly, Applicant may mitigate the concern by establishing one or more of the following conditions listed under AG ¶ 20:

³ 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.

⁴ Directive, Enclosure 3, ¶ E3.1.14 – E3.1.15.

⁵ Directive, Enclosure 2, ¶ 2(b).

(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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's financial problems were due to the domestic abuse she suffered at her former husband's hands and a lengthy period of unemployment and underemployment. While unemployed, she attempted to ameliorate her situation by decreasing her household expenses, including moving in with her mother. Since regaining full-time employment, Applicant has handled her finances in a responsible fashion. She has established a viable plan to pay those past-due debts she owes and has disputed others that she does not recognize. She has received financial counseling and has taken control of her finances. AG ¶¶ 20(a) through 20(d) apply.

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).⁶ I hereby incorporate my comments under Guideline F, and highlight some additional whole-person factors.

Although this is Applicant's first application for a position of trust, she has properly handled and safeguarded sensitive information since being hired by her current employer over two years ago. Her duty performance has been excellent and she has already been promoted to a supervisory position. She has gone through a tremendous amount of personal turmoil over the past several years and did not turn to crime or engage in other questionable conduct to alleviate her financial problems.

⁶ 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.

Trustworthiness adjudications entail a certain degree of predictive judgment, where an applicant's past history is the best indicator of future conduct. Applicant established that he has a history of properly handling and safeguarding sensitive information and there is no reason to doubt her ability to do so going forward. Her past history indicates that she is reliable, trustworthy, and possesses good judgment – character traits that are essential for those granted access to sensitive information.

Additionally, Applicant's integrity, which is also vital matter to be considered in assessing an individual's suitability for a position of trust, is unassailable. She has been candid about her financial issues from the start of her background investigation. Moreover, I had an opportunity to observe her demeanor while she testified and found her credible.

Consequently, I find that these favorable whole-person factors, in conjunction with the mitigating conditions noted above, mitigate the concerns at issue. Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility for a public trust position.

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.l: **Against Applicant**

Conclusion

In light of the record evidence and for the foregoing reasons, it is clearly consistent with the national interest to grant Applicant eligibility for access to sensitive information. Applicant's request for a public trust position is granted.

Francisco Mendez
Administrative Judge