



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



In the matter of:)
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)
)
Applicant for Public Trust Position)

ADP Case No. 12-01023

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro se*

10/23/2013

Decision

O'BRIEN, Rita C., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, I conclude that Applicant failed to mitigate security concerns raised under the guideline for financial considerations. Her request for access to sensitive information is denied.

Statement of the Case

On April 5, 2011, Applicant completed a Questionnaire for Public Trust Positions, (SF85P). On June 5, 2013, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) citing security concerns under Guideline F (financial considerations) of the Adjudicative Guidelines (AG).¹ In her Answer to the SOR, notarized on April 8, 2013, Applicant admitted the 16 debts listed in the SOR. She requested a hearing before an administrative judge of the Defense Office of Hearings

¹ Adjudication of the case is controlled by Executive Order 10865, as amended; DOD Directive 5220.6 (Directive), as amended; and the Adjudicative Guidelines, which supersede the guidelines listed in Enclosure 2 to the Directive. They apply to all adjudications or public trust position determinations in which an SOR was issued on or after September 1, 2006.

and Appeals (DOHA). On September 9, 2013, DOHA issued a Notice of Hearing, and I convened the hearing on September 23, 2013. I admitted four Government exhibits (GE 1-4), and two Applicant exhibits (AE A-B). DOHA received the transcript on September 30, 2013.

Findings of Fact

Applicant's admissions to the SOR allegations are incorporated as findings of fact. After a thorough review of the record evidence, I make the following additional findings of fact.

Applicant is 26 years old and single. She earned a bachelor's degree in health services management in 2009. She financed her education through student loans, which became due upon graduation. Applicant worked part-time intermittently during college. After graduation, she was unemployed for four months. From September 2009 to 2011, she worked as a senior data entry specialist for a drug store. In April 2011, she accepted a position as a clerical specialist for her current employer, a federal contractor. This is her first application for a public trust position. (GE 1; Tr. 16-20, 24)

Of the 16 debts listed in the SOR, 15 are student loans and one is a medical debt. The student loans total \$168,800. The student loan debts appear in her credit reports dated April 2011 and March 2013.² (GE 3, 4)

Applicant testified that, after she graduated from college in 2009, she had an arrangement with the student loan creditors under which she paid whatever she could afford toward her loans. However, during her August 2011 security interview, she stated that her original payment plan required \$900 per month. She made several payments, but no more than \$1,500 in 2009, because she did not have the funds to meet the payments. At her security interview, she also stated that in December 2009 she negotiated a lower payment of \$400 per month, and made timely payments until December 2010. She said she made half of her payments on time between January and August 2011. She believed that her loans were not delinquent as of August 2011. At that time, she planned on contacting the creditor and setting up a new payment plan, if she was in fact delinquent. Later in the interview, she stated that she gave the

² When asked in her 2011 public trust application whether she had any debts that were more than 180 days delinquent, including loans owed to the federal government, Applicant did not list her student loan debts. At the hearing, she stated she should have answered "Yes." At her 2011 security interview, although she was asked about her finances and debts, she did not disclose her delinquent student loans until confronted with them by the interviewer. Falsification is not alleged in the SOR. (GE 1; Tr. 31-33) In accordance with the Appeal Board's holdings on unalleged conduct, I will consider this fact only for the following limited purposes: (a) to assess Applicant's credibility; (b) to evaluate Applicant's evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether Applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines applies; or (e) to provide evidence for whole-person analysis under Directive § 6.3. See, ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003); ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006); ISCR Case No. 08-09232 at 3 (App. Bd. Sept. 9, 2010).

wrong answer on her public trust application, and thought some of her loans may have been more than 180 days past due. Her 2011 credit report shows that she was making monthly payments as agreed on three loans to the Department of Education, but 17 loans to the second creditor were in collection status. At the hearing, Applicant testified that she had made no payments since 2009. She was unable to afford further payments because she worked low-paying data entry jobs and could afford to pay only her living expenses. Her 2013 credit report shows that the loans to the Department of Education were 180 or more days past due, and nine loans to the second creditor had been charged off. (GE 2-4; Tr. 23-26, 31-34)

Applicant testified that she and her mother contacted the two student loan creditors in writing in the past to inform them that she was financially unable to make payments on the loans. However, Applicant provided no supporting documentation of these contacts. (Tr. 27)

Two weeks before the hearing, Applicant contacted one of the student loan creditors, who referred her to its servicing company. The company offered her a reduced interest payment program. She set up a payment plan of \$200 per month for five months. At that time, the plan will be reviewed and payments can be increased or decreased. Applicant made her first payment on September 21, 2013, and provided evidence that it was deducted from her bank account on September 24, 2013. (AE A, B; Tr. 21, 26)

Applicant's May 2013 personal financial statement (PFS) shows she earns a net monthly income of \$1,765, or approximately \$21,190 net annually. She listed monthly expenses of \$1,799, leaving her with a negative monthly net remainder (MNR) of \$33. Her PFS did not include payments on any debts, including the \$200 payment she recently arranged for her student loans. She did not list assets such as a home, car, or checking or retirement accounts. Applicant testified that she plans to reduce other expenses, such as the \$100 per month for clothes, so that she can make the \$200 monthly payment toward her student loans. (GE 2; Tr. 28-31)

Applicant admitted the \$200 medical debt listed in the SOR at allegation 1.p. Her 2011 credit report shows a \$184 medical debt in collection status, but her 2013 credit report does not show the debt. The credit report does not show the name of the creditor, and Applicant stated in her Answer that she does not recognize it. I find for the Applicant on this debt. (GE 3, 4)

Policies

Each decision regarding a public trust position must be a fair, commonsense determination based on all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the Adjudicative

Guidelines (AG).³ Decisions must also reflect consideration of the “whole-person” factors listed in ¶ 2(a) of the guidelines. The presence or absence of a disqualifying or mitigating condition does not determine a conclusion for or against an applicant. However, specific applicable guidelines are followed when a case can be measured against them because they represent policy guidance governing the grant or denial of access to sensitive information. In this case, the pleadings and the information presented by the parties require consideration of the adjudicative factors addressed under Guideline F.

A trustworthiness decision is intended only to resolve the questions of whether it is clearly consistent with the national interest⁴ for an applicant to either receive or continue to have access to sensitive information. The Government bears the initial burden of producing admissible information on which it based the decision to deny or revoke access to sensitive information for an applicant. Additionally, the Government must prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the Government’s case. Because no one has a “right” to a sensitive position, an applicant bears a heavy burden of persuasion.⁵ A person who has access to sensitive information enters 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 requisite judgment, reliability, and trustworthiness to protect the national interest as her or his own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government.⁶

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.

³ Directive. 6.3.

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

⁵ See *Egan*, 484 U.S. at 528, 531.

⁶ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

The concern under Guideline F is broader than the possibility that an applicant might knowingly compromise sensitive information in order to obtain money. It encompasses concerns about an individual's reliability, judgment, and other qualities essential to protecting sensitive information. One who is financially irresponsible might also be irresponsible, negligent, or unconcerned in handling and safeguarding sensitive information.⁷

Over the past four years, since Applicant graduated from college, she has failed to establish a record of meeting her financial obligation to repay the student loans that financed her college education. She owes approximately \$168,800. The record supports application of the following disqualifying conditions under AG ¶19:

(a) inability or unwillingness to satisfy debts; and

(c) a history of not meeting financial obligations.

The financial considerations guideline also contains factors that can mitigate security concerns. I have considered the mitigating factors under AG ¶ 20, especially the following:

(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 accrued numerous delinquent student loans during college and they have been delinquent for several years. The delinquencies are recent because they are still unpaid. Applicant's lack of substantial efforts to meet her obligation casts doubt on her trustworthiness and reliability. AG ¶ 20(a) cannot be applied.

⁷ ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

AG ¶ 20(b) applies where an individual experiences events over which she had no control, and which affected her finances. Here, Applicant receives some mitigation because she has held low-paying jobs in the four years since she graduated college, and clearly has little financial resources to make payments. However, for full mitigation, an applicant must act responsibly. She testified that she contacted the creditors about her limited financial resources, but provided no documentation to support her claim. In addition, Applicant could have adjusted her expenses, as she now intends to do, and taken the same steps in the past that she took just before the hearing. However, she failed to do so. She did not act responsibly, and receives only partial mitigation under AG ¶ 20(b).

Applicant receives some mitigation for the payments she did make over the past four years, and for recently establishing a payment plan. However, she has not brought her finances under control. Her current debt load is more than \$168,000. Her recent payment, made three days before the hearing, is insufficient to show a track record of meeting her obligation. Applicant's student loan debts are not under control. Evidence of past failure to meet financial obligations is not mitigated by payment of debts motivated primarily by the pressure of qualifying for a public trust position. AG ¶¶ 20(c) does not apply, and AG ¶ 20(d) applies in part.

Whole-Person Analysis

Under the whole-person concept, an administrative judge must evaluate the Applicant's eligibility for a public trust position by considering the totality of the Applicant's conduct and all the circumstances. An 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) 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.

AG ¶ 2(c) requires that the ultimate determination of whether to grant access to sensitive information must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Under the cited guideline, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

Applicant's history includes positive factors, such as her bachelor's degree and work experience. In addition, she made some efforts in the past and recently to resolve her financial obligations. However, the negative factors are more substantial. Her

efforts in the past were intermittent, and insufficient to bring her debts under control. Her credibility is undermined because she did not disclose her significant student debts on her security clearance application, and did not disclose them during her security interview before being confronted about them. Her recent payment plan is too recent to know if she will be able to follow through. Doubts remain about Applicant's reliability and judgment based on her failure to take substantial steps to meet her financial obligations.

Overall, the evidence fails to satisfy the doubts raised about Applicant's suitability for a public trust position. For all these reasons, I conclude Applicant has not mitigated the security concerns raised by the financial considerations guideline.

Formal Findings

Paragraph 1, Guideline F	AGAINST APPLICANT
Subparagraphs 1.a – 1.o	Against Applicant
Subparagraph 1.p	For 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 allow Applicant access to sensitive information. Applicant's request for a public trust position is denied.

RITA C. O'BRIEN
Administrative Judge