



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



In the matter of:)
)
) ADP Case No. 12-01782
)
Applicant for Public Trust Position)

Appearances

For Government: Caroline E. Heintzelman, Esq., Department Counsel
For Applicant: *Pro se*

01/31/2014

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Defense Department’s intent to deny her eligibility for a public trust position. Applicant owes approximately \$17,000 in unresolved delinquent debt. Her willingness to repay her creditors does not outweigh her current inability to do so. At this time, Applicant’s eligibility to occupy a public trust position is denied.

Statement of the Case

Acting under the relevant Executive Order and Department of Defense (DOD) Directive,¹ on July 18, 2013, DOD issued a Statement of Reasons (SOR) detailing security concerns under the financial considerations guideline. DOD adjudicators

¹ This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended; as well as DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive); DOD Regulation 5200.2-R, *Personnel Security Program* (January 1987), as amended (Regulation);. In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply to this case. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines in Enclosure 2 to the Directive.

recommended that the case be submitted to an administrative judge to determine whether or not Applicant is eligible to occupy a public trust position.

Applicant timely answered the SOR and requested a hearing. The case was assigned to me on September 14, 2013. At the hearing convened on December 3, 2013, I admitted Government's Exhibits (GE) 1 through 4. After the hearing, Applicant submitted Applicant's Exhibit (AE) A, which was admitted without objection.² I received the transcript (Tr.) on December 30, 2013.

Procedural Issues

Applicant received less than 15 days written notice of the time and place of the hearing as required under Directive ¶ E.3.1.8. Applicant waived the notice requirement, electing to proceed with the hearing as scheduled.³

Findings of Fact

Appellant, 32, works as a customer service representative for a federal contractor. She helps military members enroll in health care programs and answers questions about their medical benefits. She has worked in this position since June 2011. Applicant earns \$24,000 annually. Unmarried, she is the mother of two children ages 12 and 7. As of the writing of this decision, the birth of her third child is imminent.⁴

The SOR alleges and Applicant admits that she is indebted to 11 creditors for approximately \$17,000. The largest debts, totaling \$14,791 or 87% of her total delinquent debt, are for the rent due on a broken lease (\$8,121) and the deficiency balance on a voluntary car repossession (\$6,670). All of the debts alleged in the SOR remain unresolved. Applicant does not have any payment plans in place. Although not alleged, Applicant testified that her student loan was also in arrears; however, she has applied for forbearance, the request for which is pending.⁵

Applicant's financial problems are related to unemployment. Between March 2005 and June 2011, she was unemployed a total of 36 months after being laid off from jobs in March 2005 (5 months), January 2006 (10 months), and June 2009 (18 months). She received unemployment compensation. Her last period of unemployment, which lasted from April 2011 to June 2011, occurred after she completed a staffing assignment with a temporary employment agency and before she began her current position. She did not receive unemployment compensation during this three-month lapse in employment. Applicant does not receive child support from the fathers of her two daughters. Currently, she has a child support order in place for her second

² Hearing Exhibit (HE) 1.

³ Tr. 7.

⁴ Tr. 12-13, 30-31; GE 1.

⁵ Tr. 18-21, 28-29; AE A.

daughter, but receives payment support sporadically. The girls' fathers, Applicant testified, have provided some financial support over the last year. She does not have plans to pursue a child support order for her new baby because its father has pledged to provide financial support without court intervention.⁶

Although Applicant has not been able to resolve any of the SOR debts, in 2012 she paid \$1,900 in fines incurred for a traffic violation. During 2013, her wages were garnished for \$770 for an unidentified obligation. Applicant would like to repay her creditors, but is unable to given her limited income. After paying her recurring bills, which are current, Applicant only has \$30 to \$45 in disposable income. She has tried to establish payment plans in the past, but has been unable to maintain them because of her employment history. She believes that filing bankruptcy is the best way to resolve her delinquent debt. She has consulted three attorneys and plans to file for bankruptcy protection once she is able to save enough money for a down payment. Currently, she has reduced income due to being on maternity leave.⁷

Policies

Positions designated as ADP I and ADP II are classified as "sensitive positions."⁸ "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 interests."⁹ 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.¹⁰ An administrative judge's objective is a fair, impartial, and commonsense decision that embraces all available, reliable information about the person, past and present, favorable and unfavorable.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the 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." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to a public trust position enters 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

⁶ Tr. 14-16, 25-27; GE 1.

⁷ Tr. 17, 20, 28, 31; GE 2; AE A.

⁸ Regulation ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3.

⁹ Regulation ¶ C6.1.1.1.

¹⁰ See Regulation ¶ C8.2.1.

grants access to sensitive information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of sensitive information.

Analysis

Guideline F, Financial Considerations

Unresolved delinquent debt is a trustworthiness concern because “an individual who is financially over extended is at risk of having to engage in illegal acts to generate funds.”¹¹ Applicant admits the SOR allegations that she is indebted to 11 creditors for approximately \$17,000 for debts incurred between 2006 and 2013.¹² The debts are also substantiated by Applicant’s credit reports.¹³ The record supports a finding that Applicant has a history of financial problems resulting in unresolved delinquent debts. Based on her current finances, the record also shows that she is still unable to pay her delinquent debts. Accordingly, financial considerations disqualifying conditions 19(a)¹⁴ and (c)¹⁵ apply.

Applicant receives partial mitigation under the financial considerations mitigating condition 20(b)¹⁶ for the circumstances that caused her financial problems. Between March 2005 and June 2011, Applicant experienced 36 months of unemployment as a result of being laid off from three positions. Although Applicant received unemployment compensation during 33 of those 36 months, the amount was not sufficient to cover her family’s living expenses, which are modest and not indicative of lavish spending. However, Applicant’s financial problems are ongoing. And although she is willing, Applicant does not have the means to address her delinquent debts at this time.

The record contains sufficient information to raise doubts about Applicant’s current suitability for a public trust position. I have considered the nine-factor whole-person concept,¹⁷ but the favorable information in the record is not enough to mitigate the security concerns raised by Applicant’s financial issues. An adverse decision in this case is not a finding that Applicant does not possess the good character required of those in public trust positions. Even good people can pose a security risk because of

¹¹ AG ¶ 18.

¹² Answer.

¹³ GE 3 – 4.

¹⁴ Applicant has an “inability or unwillingness to satisfy debts.”

¹⁵ Applicant has “a history of not meeting financial obligations.”

¹⁶ “The conditions that resulted in the financial problems were largely beyond [Applicant’s] control, . . . and the person acted responsibly under the circumstances.”

¹⁷ AG ¶ 2(a).

facts and circumstances not entirely under their control.¹⁸ Nor should this decision be construed as a determination that Applicant cannot or will not attain the type of financial stability necessary to obtain a public trust position in the future. Rather, it is recognition of the fact that financial issues have historically been a motivating factor behind acts of espionage. The award of a public trust position is not a once in a lifetime occurrence, but is based on applying the factors, both disqualifying and mitigating, to the evidence presented. While a favorable decision is not warranted at this time, in the future, she may well present persuasive evidence of financial rehabilitation and reform.

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 – 1.k	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interest of national security to assign Applicant to sensitive duties. Eligibility for a public trust position denied.

Nichole L. Noel
Administrative Judge

¹⁸ ISCR Case No.01-26893 at 8 (App. Bd. Oct. 16, 2002); *See also Department of Navy v. Egan*, 484 U.S. 518, 527-28 (1988).