



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



In the matter of:)	
)	
)	ADP Case No. 12-02044
)	
)	
Applicant for Public Trust Position)	

Appearances

For Government: Ray T. Blank Jr., Esq., Department Counsel
For Applicant: *Pro se*

03/21/2014

Decision

COACHER, Robert E., Administrative Judge:

Applicant has not mitigated the financial considerations trustworthiness concerns. Eligibility for access to sensitive information is denied.

Statement of the Case

On September 13, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns under Guideline F, financial considerations. DOHA acted under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); DOD Regulation 5200.2-R, *Personnel Security Program*, dated January 1987, as amended (Regulation); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

Applicant answered the SOR on October 14, 2013, and requested a hearing before an administrative judge. The case was assigned to me on December 11, 2013. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on December 20, 2013, and the hearing was convened as scheduled on January 30, 2014.

The Government offered exhibits (GE) 1 through 5, which were admitted into evidence without objection. Department Counsel's exhibit index was marked as Hearing Exhibit (HE) I. Applicant testified and offered exhibits (AE) A through D, which were admitted into the record without objection. The record was held open for Applicant to submit additional information. She submitted AE E, which was admitted into the record without objection. DOHA received the hearing transcript (Tr.) on February 7, 2014.

Findings of Fact

In her answer to the SOR, Applicant admitted SOR allegations ¶¶ 1.a - 1.e and 1.g – 1.q. She neither admitted nor denied ¶ 1.f, which will be viewed as a denial. The admissions are incorporated as findings of fact. After a review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is a 30-year-old employee of a government contractor. She works as a health care finder and has held that position since 2011. She has a high school diploma and one year of college. She has one child with her fiancé and he has one child who lives with them. She has no military background.¹

The SOR alleges 16 delinquent debts for a total of about \$60,000, and Applicant's failure to file federal tax returns for the years 2007 through 2012. The debts were listed in credit reports from November 2011, May 2013, and August 2013.²

Applicant testified that her financial difficulties came about initially when her fiancé lost his job in 2008. Additionally, after she contacted the Internal Revenue Service (IRS) in 2012 about filing past-due tax returns, she was informed that someone had filed returns for those years using her Social Security number. She filed an Identity Theft Affidavit form in 2013, but has not changed her Social Security number. The years affected by the identity theft appear to be 2010 and 2011.³

The debt alleged in ¶ 1.a is a delinquent tax debt in the amount of \$4,764. This debt is for Applicant's unpaid 2006 federal taxes. She claims that she has been in contact with the IRS about this debt, but since they are investigating her allegations of identity theft they have not formalized a settlement agreement. This tax obligation is unrelated to the identity theft issue and concerns her claiming a dependent. This debt is unresolved.⁴

The allegation at SOR ¶ 1.b is based upon unfiled federal tax returns for tax years 2007 through 2012. Applicant admitted that she failed to timely file her federal tax returns for those years. The IRS has since filed returns for those years on her behalf.

¹ Tr. at 6, 27, 29; GE 1.

² GE 3-5.

³ Tr. at 27-28, 30-31; GE 2.

⁴ Tr. at 27-28, 33-34; GE 4.

She does not know what she owes for those years because the IRS is unable to process those returns until her identity theft issue is resolved. Thus, no payment plan has been established and she has not made any voluntary payments. This issue is unresolved.⁵

The debt alleged in SOR ¶ 1.c is a past-due mortgage account that Applicant is jointly liable on along with her mother. She is a joint debtor on the promissory note and is a co-owner named on the deed for this property. She lived in the property with her mother from 2006 to 2008. After she moved out of the property, her mother stopped paying the mortgage and filed for bankruptcy. Applicant has not been able to get the mortgage holder to talk with her while the property is subject to her mother's bankruptcy. She has not made any payments on her own. This debt is unresolved.⁶

The debt alleged at SOR ¶ 1.d is a collection account in the amount of \$2,815. Applicant admitted this debt was related to a tax preparation company. This debt is unresolved.⁷

The debt alleged at SOR ¶ 1.e is a collection account in the amount of \$1,040. Applicant admitted this debt. The date of last activity for this account was March 2010. Applicant claimed she was making \$100 monthly payments, but stopped. She offered no proof of payments. This debt is unresolved.⁸

The debts alleged at SOR ¶¶ 1.f and 1.g are charged-off accounts in the amounts of \$881 and \$104, respectively. Applicant provided documentary evidence showing that she paid both debts. These debts are resolved.⁹

The debt alleged at SOR ¶ 1.h is a delinquent cable debt in the amount of \$591. Applicant admitted this debt. The date of last activity on this account was March 2013. Applicant contacted the creditor, but has not made any payments on this debt, nor has she disputed the debt. This debt is unresolved.¹⁰

The debt alleged at SOR ¶ 1.i is a collection account for an early terminated lease in the amount of \$3,828. Applicant admitted this debt. She moved out of a leased apartment early when her fiancé lost his job in 2011. She has not made any payments

⁵ Tr. at 34-35; GE 2.

⁶ Tr. at 37-40; GE 3-5.

⁷ Tr. at 40; GE 5.

⁸ Tr. at 41-42; GE 3.

⁹ Tr. at 43; AE E.

¹⁰ Tr. at 45; GE 4, 5.

on this debt, but intends to use the proceeds from her fiancé's tax refund to pay this debt. This debt is unresolved.¹¹

The debt alleged at SOR ¶ 1.j is a collection account in the amount of \$511. Applicant provided documentary evidence showing that she paid an amount to settle this debt. This debt is resolved.¹²

The debt alleged at SOR ¶ 1.k is a delinquent consumer debt in the amount of \$288. Applicant admitted this debt. The date of last activity on this account was August 2012. Applicant has not made any payments on this debt, nor has she disputed the debt. This debt is unresolved.¹³

The debt alleged at SOR ¶ 1.l is a delinquent consumer debt in the amount of \$31. Applicant does not know about this debt. The date of last activity on this account was September 2008. Applicant has not made any payments on this debt, nor has she disputed the debt. This debt is unresolved.¹⁴

The debts alleged at SOR ¶¶ 1.m and 1.n are medical collection accounts in the amounts of \$204 and \$318, respectively. Applicant provided documentary evidence showing that she paid both debts. These debts are resolved.¹⁵

The debt alleged at SOR ¶ 1.o is charged-off medical collection account in the amount of \$763. Applicant admitted this debt. The date of last activity on this account was October 2009. This debt is unresolved.¹⁶

The debts alleged at SOR ¶¶ 1.p and 1.q are charged-off accounts in the amounts of \$2,441 and \$156, respectively. Applicant provided documentary evidence showing that she paid both debts. These debts are resolved.¹⁷

Applicant has not received financial counseling, but she may seek out such counseling through her church. Her personal financial statement shows that, after expenses, she should have about \$2,715 in disposable income at the end of the month.¹⁸

¹¹ Tr. at 50-52; GE 4, 5.

¹² Tr. at 43; AE E.

¹³ Tr. at 52-53; GE 4.

¹⁴ Tr. at 53-54; GE 4.

¹⁵ Tr. at 55; AE E.

¹⁶ Tr. at 56; GE 4.

¹⁷ Tr. at 57; AE E.

¹⁸ Tr. at 46; GE 2.

Applicant offered character letters from four coworkers. They attested to her dedication, reliability, and work ethic. They supported her effort to gain a favorable trustworthiness determination.¹⁹

Policies

Positions designated as ADP I and ADP II are classified as “sensitive positions.” (See 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.” (See Regulation ¶ C6.1.1.1.) The 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. (See 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 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, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion as to obtaining a favorable trustworthiness decision.

A person who seeks access to sensitive information 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

¹⁹ AE A-D.

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.

Analysis

Guideline F, Financial Considerations

The trustworthiness concern for financial considerations is set out in AG ¶ 18 as follows:

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.

The guideline notes several conditions that could raise trustworthiness concerns under AG ¶ 19. Three are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (g) failure to file annual Federal . . . income tax returns as required or the fraudulent filing of the same.

Applicant has numerous delinquent debts that remain unpaid. She also failed to timely file federal tax returns for the years 2007 through 2012. The evidence is sufficient to raise the above disqualifying conditions.

Several financial considerations mitigating conditions under AG ¶ 20 are potentially applicable:

- (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 debts are recent, multiple, and cast doubt on her reliability, trustworthiness, and good judgment. AG ¶ 20(a) is not applicable.

Although Applicant's fiancé's periods of unemployment several years ago, and having her identity stolen could be considered beyond her control, she has had enough time and resources to address these debts. She has paid several of the smaller-balanced debts, but has not put forth responsible efforts to resolve the issues associated with the remaining debts. AG ¶ 20(b) is partially applicable.

There is no evidence of financial counseling. Additionally, Applicant has not established any type of payment plan for the unresolved debts. AG ¶ 20(c) does not apply, and ¶ 20(d) applies only to the paid debts.

Applicant failed to provide any documentation supporting disputes of any debts. AG ¶ 20(e) does not apply. At this point, Applicant's finances remain a concern despite the presence of some mitigation.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance 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 security clearance 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. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

I considered the circumstances by which Applicant's financial situation were affected by her fiancé's unemployment, her victimization by identity theft, and her personal circumstances. However, I also considered that despite these factors, most of the debts remain unaddressed. Her troublesome financial history causes me to question her ability to resolve her debts.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for access to sensitive information. For all these reasons, I conclude Applicant has not mitigated the financial considerations trustworthiness concerns.

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.e:	Against Applicant
Subparagraphs: 1.f – 1.g:	For Applicant
Subparagraphs: 1.h – 1.i:	Against Applicant
Subparagraph: 1.j:	For Applicant
Subparagraphs: 1.k – 1.l:	Against Applicant
Subparagraphs: 1.m – 1.n:	For Applicant
Subparagraph: 1.o:	Against Applicant
Subparagraphs: 1.p – 1.q:	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 grant Applicant eligibility for a public trust position. Eligibility for access to sensitive information is denied.

Robert E. Coacher
Administrative Judge