



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



In the matter of:)
)
) ADP Case No. 12-02787
)
)
Applicant for Public Trust Position)

Appearances

For Government: Robert Kilmartin, Esq., Department Counsel
For Applicant: *Pro se*

01/07/2014

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated financial considerations trustworthiness concerns. Eligibility for access to sensitive information is granted.

Statement of the Case

On September 17, 2013, the Defense of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) detailing trustworthiness concerns under Guideline F, financial considerations.¹ The action was taken under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); Department of Defense Regulation 5200.2-R, *Personnel Security Program* (January 1987), as amended (Regulation); and the adjudicative guidelines (AG) implemented by the Department of Defense on September 1, 2006.

On September 26, 2013, Applicant submitted an answer to the SOR and requested a hearing before an administrative judge. The case was assigned to me on

¹ The caption on the SOR was corrected to note it is an ADP and not an ISCR case.

December 6, 2013. Defense Office of Hearings and Appeals issued a notice of hearing on January 7, 2014, and the hearing was convened as scheduled on January 15, 2014. Applicant waived her right to have 15 days from the date of the notice to the hearing. Government Exhibits (GE) 1 through 5 were admitted into evidence without objection. Applicant testified and submitted Applicant Exhibits (AE) A through G, which were admitted without objection.

Findings of Fact

Applicant admitted SOR allegations ¶¶ 1.f through 1.i and denied the remaining allegations. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 50 years old. She earned an associate's degree in 2007. She married in 1983 and divorced in 1985. She remarried in 1998. She has a grown son. She has held a public trust clearance since 2010.

Applicant developed serious health issues in 2003 that continued through 2005 until she was properly diagnosed. During this time she had difficulty getting time off from work so she could address her medical problems. This also put a strain on her marriage, and she and her husband separated in 2007. She moved to another state in December 2007 and later reconciled with her husband in August 2008. She was unemployed from August 2008 to January 2009. She began working part-time in January 2009. She gained full-time employment with her current employer in December 2010. She continued to hold her part-time job until March 2011. During her separation and unemployment, Applicant fell behind on some of her debts. Applicant's parents passed away in 2010 and 2011. She was confronted with unexpected funeral expenses of \$2,500 and \$3,500 that impacted her ability to repay her debts.

The debt in SOR ¶ 1.a (\$5,969) is for a student loan. Applicant began making payments on the debt in July 2013 and made a final payment to settle the debt for \$3,506 in January 2014.² The debt in SOR ¶ 1.d (\$6,757) is the same debt as ¶ 1.a. Applicant provided documents to substantiate it is the same debt.³ The debt is resolved.

The debt in SOR ¶ 1.b (\$15,322) was settled and paid in 2008. The creditor did reported the payment to the credit bureaus and their reports were not updated.⁴ The debt is resolved.

The debt in SOR ¶ 1.c (\$319) is an electric bill and it is paid.⁵ The debt in SOR ¶ 1.e (\$5,271) is a student loan debt. It was paid through a settlement (\$2,705) in October 2012.⁶

² Answer to SOR, attachments A-1, A-2, A-3, A-4; AE A.

³ Answer to SOR, attachment A-5.

⁴ Answer to SOR, attachment B.

The debts in SOR ¶¶ 1.f, 1.g, 1.h, and 1.i (\$41,037, \$18,883, \$14,888 and \$6,699) are for student loans for the private college Applicant attended. She made payments on the loans for about 2 years until she was separated from her husband and was unemployed. She was making some payments in 2008. She paid \$2,200 toward the debts in 2011. During this time she was also resolving other debts. In late 2012, she resumed making regular payments of \$250 for all of the loan debts. In 2013, she negotiated a payment plan with the creditor where she will make a payment of \$850 a month. Of that, \$450 will be credited toward one of the loans so resolution will be expedited. The remaining amount will be split to make payments on the other debts so they remain current. Once one loan is satisfied she will use the same plan for the next smallest loan. Applicant has the means to meet these payments. These debts are being resolved.⁷

Applicant could not determine the creditor in SOR ¶ 1.j. She reviewed data from the three credit bureaus. She requested that the government investigator provide identifying information. She made inquiries to several medical billing companies to see if there was a delinquent debt. She was unable to identify the creditor.⁸

Applicant is paying all of her monthly expenses and other debts on time. She maintains a written budget. She and her husband have paid off their vehicle loan. They have paid their income and property taxes. Their personal financial statement shows they are living within their means.⁹

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.

⁵ Answer to SOR, attachment C.

⁶ Answer to SOR, attachment D.

⁷ Answer to SOR, attachment F; AE B.

⁸ AE C.

⁹ AE D, E, F, and G.

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."

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 to obtain 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 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 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

The security concern for financial considerations is set out in 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.

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

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant accumulated a number of delinquent debts and was unable to meet her financial obligations. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

(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 had medical issues and was unemployed for a period of time. She was also separated from her husband and her parents passed away, all of which impacted her finances and were beyond her control. Applicant contacted creditors, resolved some debts, and has payment plans for the others. She began resolving her delinquent debts before she received the SOR. Despite conditions that were beyond her control, she acted responsibly under the circumstances. AG ¶ 20(b) applies.

Applicant initiated good-faith efforts to pay her overdue creditors and resolve her debts. She is living within her means, has a budget, and the ability to make payments on the payment plan to repay her student loans. There are clear indications that Applicant's financial problems are being resolved and under control. AG ¶¶ 20(c) and 20(d) apply.

Applicant made serious efforts to identify the creditor in SOR ¶ 1.j, but was unable to do so. She contacted creditors to determine if the debt belonged to them. It did not. AG ¶ 20(e) applies.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a public trust position 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 public trust position 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 the 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.

Applicant began addressing her delinquent debts before she received the SOR. She has not ignored her debts, but rather has been working hard to pay them. She has one consolidated student loan debt remaining, and she has a payment plan to resolve it. She had medical issues, a period of unemployment, separation from her husband, and her parents' deaths that impacted her finances. She worked two jobs for a period of time to expedite the resolution of her debts. She made a serious effort to determine the validity of one debt that was alleged in the SOR and was unable to resolve it. She lives within her means. It is clear her financial problems are under control. Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility and suitability for a public trust position. For all these reasons, I conclude Applicant has mitigated 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: | For Applicant |
| Subparagraphs 1.a-1.j: | For Applicant |

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant Applicant eligibility for a public trust position. Eligibility for access to sensitive information is granted.

Carol G. Ricciardello
Administrative Judge