



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



In the matter of:

)
)
)
)
)
)

ADP Case No. 12-03437

Appearances

For Government: Robert Kilmartin, Esquire, Department Counsel

For Applicant: *Pro se*

06/18/2014

Decision

DAM, Shari, Administrative Judge:

Since 2007 Applicant accumulated over \$44,000 of delinquent debts. She resolved or paid about \$6,300 of it. The remaining amount is unresolved. When she completed a public trust application, she did not disclose a previous security clearance revocation, which alleged financial problems, and personal conduct issues for failing to disclose a criminal conviction. She failed to rebut or mitigate the trustworthiness concerns raised under Guideline F, Financial Considerations, and Guideline E, Personal Conduct. Her eligibility for a public trust position is denied.

On November 30, 2011, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On December 13, 2013, the Department of Defense (DoD) issued Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns under Guideline F, Financial Considerations and Guideline E, Personal Conduct. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*

(January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

On January 9, 2014, Applicant answered the SOR in writing and elected to have the case decided on the written record in lieu of a hearing. On March 25, 2014, Department Counsel prepared a File of Relevant Material (FORM), containing ten Items, and mailed Applicant a complete copy on April 1, 2014. Applicant received the FORM on April 16, 2014, and had 30 days from its receipt to file objections and submit additional information. Applicant did not submit any additional information. On June 2, 2014, the Defense Office of Hearings and Appeals (DOHA) assigned the case to me.

Findings of Fact

The SOR contains 37 allegations in Paragraph 1, and one allegation in Paragraph 2. In her response to the SOR, Applicant denied all allegations contained in Paragraph 1, except for those in 1.c, 1.d, 1.e, 1.m, 1.s, 1.u, 1.x, 1.y, 1.bb, and 1.dd, which she admitted. She denied the allegations contained in Paragraph 2.a. (Item 3.)

Applicant is 48 years old and was married twice to the same man. She has been divorced since August 2005. She has one child. She is enrolled in a Master's degree program, having completed a Bachelor's degree in July 2011. (Item 4.)

Appellant enlisted in the Marine Corps in March 1997 and earned an honorable discharge in November 2007. (Item 4.) In March 2000 the Department of the Navy issued Applicant a Letter of Intent to Revoke Security Clearance (2000 LOI) based on security concerns raised under the guidelines for Personal Conduct, Financial Considerations, and Criminal Conduct. The 2000 LOI alleged that she owed 11 delinquent debts totaling \$7,171. It further alleged that in March 1998 she was late every month with her rent payments and was counseled twice about her financial problems. It also noted that her Personal Financial Statement disclosed that she had more expenses than income.

The 2000 LOI also alleged that Appellant's failure to disclose delinquent debts on a December 1997 security clearance application raised personal conduct security concerns. In January 1995 she was convicted of Malicious Injury to Real Property and Trespassing. During an interview related to this security clearance application, she denied falsifying the security clearance application by not disclosing the conviction, and argued that she had listed it on an enlistment contract. Those allegations raised security concerns under the guidelines for Criminal and Personal Conduct. On February 27, 2001, the Department of the Navy issued a Final Revocation of Security Clearance. (Items 7, 8.) Appellant failed to disclose this revocation on a November 2011 e-QIP. (Item 3.)

After leaving the Marine Corps, Appellant worked in various positions, such as a computer lab assistant, administrative assistant, and help desk assistant. She was unemployed from December 2009 to January 2010, and December 2010 to February

2011. During those times she attended school fulltime, and received VA benefits and child support. In October 2011 she assumed a position with a large insurance company at its help desk. She attributed her financial problems to the periods of unemployment when her benefits and child support were insufficient to support her and her child. (Item 6.)

On January 17, 2012, and February 1, 2012, a government investigator interviewed Applicant regarding the e-QIP and discussed, amongst other things, her numerous delinquent debts. She accepted responsibility for many debts listed on the credit bureau reports (CBR), disputed some, and indicated she had payment plans for several. She said she would contact other creditors and establish repayment plans. She was unaware of certain delinquent debts. (Item 6.)

On September 13, 2013, Appellant responded to Interrogatories pertaining to 40 delinquent debts, and asserted as follows: 13 debts were disputed and removed from her CBR; 16 debts were paid; two debts were not owed; four debts were unfamiliar; two debts were open; and five debts were not addressed. She provided proof that she paid three debts: 1.g for \$231, 1. ee for \$235, and an unidentified medical debt. Attached to the Interrogatories was a Personal Financial Statement that the government requested she submit. She refused to complete it stating, "I don't wish to release this personal information." (Item 5.)

Based on CBRs dated December 17, 2011, and July 10, 2013, the SOR alleged 37 delinquent debts that totaled \$44,122. They began accumulating in 2007. (Items 9, 10.) A summary of the status of the debts as reflected on Applicant's September 2013 credit report is as follows: 10 debts totaling \$1,338 were paid; 6 debts totaling \$3,996 were disputed and removed from Applicant's CBR; and 21 debts totaling \$38,788 remain unresolved or unpaid.¹ (Items 3, 5.)

Applicant denied that she intentionally failed to disclose her previous security clearance revocation. She asserted that she "was never subjected to having my clearance removed to the best of my knowledge." (Item 3.) She said her service record does not include any entries referencing a security clearance revocation. Without more information regarding her answer to the allegation, her response is not credible.

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

¹ The 10 paid debts are: Paragraphs 1. a, 1. b, 1.g, 1.k, 1.l, 1.n, 1.q, 1. ee, 1. hh, and 1. ll. The 6 disputed debts are: Paragraphs 1.p, 1.t, 1. aa, 1. cc, 1. jj, and 1. kk:

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 the DoD and 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 AGs. 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 AG ¶ 2(a), describing 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 the applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion as to obtaining a favorable trustworthiness decision.

A person who applies for access to sensitive information seeks to enter 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 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.

Section 7 of Executive Order 10865 provides that "Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Guideline F, Financial Considerations

The trustworthiness concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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.

AG ¶ 19 describes two conditions that could raise trustworthiness concerns and may be disqualifying in this case:

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

Since 2007 Applicant has been accumulating delinquent debts that she has been unable or unwilling to satisfy. The evidence raises both security concerns, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate trustworthiness concerns arising from Applicant's financial difficulties:

- (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 delinquent debts began accumulating in 2007, the bulk of which remain unresolved. She did not provide sufficient information to demonstrate that such problems are unlikely to continue or recur, calling into question her reliability and trustworthiness. The evidence does not support the application of AG ¶ 20(a).

Applicant provided some evidence that her financial problems arose because she experienced financial problems related to a period of unemployment. Those may have been circumstances beyond her control. However, she did not provide evidence that she attempted to responsibly address the delinquent debts as they were accumulating, a factor that must be considered in establishing mitigation under AG ¶ 20(b). Thus, this mitigating condition has little application.

Applicant did not provide evidence that she participated in credit or financial counseling. Twenty-one of the 37 SOR-listed delinquent debts, totaling over \$38,788, remain unresolved. Hence, AG ¶ 20(c) has no application, as there are not clear indications that her financial problems are under control. Applicant provided evidence that she made a good-faith effort to resolve ten debts totaling \$1,338, as required under AG ¶ 20(d). Said mitigating condition applies to those ten debts. There is evidence that Applicant successfully disputed six delinquent debts. AG ¶ 20(e) applies to those debts.

Guideline E, Personal Conduct

The trustworthiness concern pertaining to the guideline for personal conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The SOR alleged in ¶ 2.a that Applicant falsified her answer to a question on the e-QIP, because she did not disclose a previous revocation of a security clearance. The Government contended that the omission may raise a security concern and be disqualifying under AG ¶ 16:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant's explanation for omitting information from her public trust application, which states that she did not receive notice of the revocation while in military service, is simply not credible. Based on the evidence, the Government established said disqualification.

AG ¶ 17 includes six conditions that could mitigate trustworthiness concerns arising under this guideline:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress; and

(g) association with persons involved in criminal activity has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

Falsification of information requested in an e-QIP is serious misconduct. Applicant did not provide evidence that would support the application of any mitigating condition listed under AG ¶ 17.

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.

According to AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a trustworthiness determination 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 the facts and circumstances surrounding this case. Applicant is a 38-year-old divorced woman and mother of one child. From March 1997 to November 2007, she served on active duty in the U.S. Marine Corps. She received an honorable discharge.

In February 2001 the Department of the Navy revoked Applicant's clearance based on delinquent debts, failure to disclose those debts on her December 1997 SF 86, and a 1995 criminal conviction. The revocation cited security concerns under the guidelines for financial considerations, personal conduct and criminal conduct. She denied the falsification allegations. In November 2011 she completed an e-QIP and failed to disclose the 2001 security clearance revocation. In January and February 2012, she discussed numerous delinquent debts with an investigator and clearly became aware of the Government's concerns. In December 2013 the DOD issued her an SOR alleging trustworthiness concerns under financial considerations and personal conduct.

The record demonstrates that Applicant has a long history of financial problems, starting before December 1997 when she submitted her first security clearance application. The evidence also denotes a history of intentionally omitting requested information during the clearance process. In addition, she refused to submit a Personal Financial Statement as requested as part of the clearance investigation in September 2013. These issues, pertinent to reliability, judgment, and willingness to comply with rules and regulations, are significant.

Overall, the record evidence leaves me with substantial questions as to Applicant's eligibility and suitability for a public trust position. For these reasons, I

conclude Applicant did not meet her burden to mitigate the trustworthiness concerns arising from her financial problems and personal conduct.

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 and 1.b:	For Applicant
Subparagraphs 1.c through 1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraphs 1.h through 1.j:	Against Applicant
Subparagraphs 1.k and 1.l:	For Applicant
Subparagraphs 1.m:	Against Applicant
Subparagraphs 1.n:	For Applicant
Subparagraph 1.o:	Against Applicant
Subparagraphs 1.p and 1.q:	For Applicant
Subparagraphs 1.r and 1.s:	Against Applicant
Subparagraph 1.t:	For Applicant
Subparagraphs 1.u through 1.z:	Against Applicant
Subparagraph 1.aa:	For Applicant
Subparagraph 1.bb:	Against Applicant
Subparagraph 1.cc:	For Applicant
Subparagraph 1.dd:	Against Applicant
Subparagraph 1.ee:	For Applicant
Subparagraph 1.ff and 1.gg:	Against Applicant
Subparagraphs 1.hh and 1.ii:	For Applicant
Subparagraph 1.jj and 1.kk:	For Applicant
Paragraph 2, Guideline E	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

Conclusion

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

SHARI DAM
Administrative Judge