



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



In the matter of:)	
)	
)	ADP Case No. 12-03624
)	
)	
Applicant for Position of Trust)	

Appearances

For Government: Pamela Benson, Esq., Department Counsel
For Applicant: *Pro se*

09/09/2014

Decision

CURRY, Marc E., Administrative Judge:

The majority of Applicant’s delinquent difficulties are related to medical issues rather than irresponsible spending. However, she has failed to take any steps to address them. Applicant’s eligibility to occupy an automatic data processing (ADP) position is denied.

Statement of the Case

On March 13, 2014, the Department of Defense Consolidated Adjudications Facility (DODCAF) issued Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns under Guideline F, financial considerations. 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* (Directive) (January 2, 1992), as amended, and the adjudicative guidelines (AG) implemented on September 1, 2006.

Applicant answered the SOR on March 25, 2014, admitting the allegations and requesting a decision on the written record. On May 30, 2014, Department Counsel prepared a File of Relevant Materials (FORM). Applicant received the FORM on June 2, 2014, and did not submit a reply. The case was assigned to me on August 17, 2014.

Findings of Fact

Applicant is a 29-year-old single mother of two children, ages ten and six. She graduated from high school and has received some vocational training over the years. Since 2005, she has worked for an insurance company that supports a DOD agency. (Item 4 at 10)

As of January 2012, Applicant had incurred approximately \$12,700 of delinquent debt. Nearly all of it constituted medical bills. (Item 5 at 7-10) When asked about this debt during an interview in February 2012, Applicant explained that because she had no health care insurance, she used her community's urgent care facility to treat non-emergency health conditions, and was subsequently unable to afford the medical bills. (Item 5 at 6, 23) She further explained that she could not afford to pay the bills, but promised to pay them when she was able. (Item 5 at 22)

As of March 2014, Applicant had not paid any of her debts. (Item 3) She contends that she has no additional funds available to pay her debts and that the debts do not impact her ability to perform her job. (Item 3 at 5)

Policies

When evaluating an applicant's trustworthiness, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied together with the factors listed in the adjudicative process. 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.

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 determination.

Analysis

Guideline F, Financial Considerations

Under this guideline, “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.” (AG ¶ 18) Over the years, Applicant has incurred more than \$12,000 of delinquent debt, which remains outstanding. AG ¶ 19(a), “inability or unwillingness to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations,” apply.

Applicant’s financial problems did not occur because of her living beyond her means. Instead, they stem primarily from medical bills that she could not afford. Nevertheless, applicants have a responsibility to take concrete steps to address their delinquent debts regardless of how they incurred them. Applicant has not done anything. Consequently, AG ¶ 20(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,” only applies partially, and none of the other mitigating conditions apply.

Whole-Person Concept

Under the whole-person concept, 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.

The circumstances surrounding Applicant’s accrual of delinquent debts are partially mitigating. However, her failure to meet financial obligations raises questions about her judgment and willingness to abide by rules and regulations. So long as these questions are outstanding, I am unable to conclude that she possesses the requisite reliability and trustworthiness to occupy an ADP position.

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.gg:

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 to occupy an ADP position. Applicant's eligibility to occupy an ADP position is denied.

MARC E. CURRY
Administrative Judge