



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



In the matter of:)
)
) ADP Case No. 12-03998
)
)
Applicant for Public Trust Position¹)

Appearances

For Government: Eric Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

05/08/2014

Decision

COACHER, Robert E., Administrative Judge:

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

Statement of the Case

On October 29, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns under Guidelines F, financial considerations, and, E, personal conduct. DOD 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.

¹ The SOR caption in this case was originally styled as "Applicant for Security Clearance." The caption of the SOR is amended to read: "Applicant for Public Trust Position." This amendment conforms the caption to the proper type of case (*i.e.*, a trustworthiness determination).

Applicant answered the SOR on November 25, 2013, and December 30, 2013. She elected to have her case decided on the written record. Department Counsel submitted the Government's File of Relevant Material (FORM) on January 30, 2014. The FORM was mailed to Applicant and she received it on February 19, 2014. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. She submitted additional evidence which I admitted without objection as AE A and B (1-4). The case was assigned to me on April 29, 2014.

Findings of Fact

In her answer to the SOR, Applicant admitted SOR allegations ¶¶ 1.a and 2.a (although she implicitly denied intentionally providing false information). She denied ¶ 1.b. 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 28-year-old employee of a government contractor. She works as an operations coordinator and has held that position since November 2011. She has a high school diploma, attended college from 2004 to 2007, without obtaining a degree, and graduated from a vocational-technical school in January 2010. She is not married and has no children. She has no military background.²

She experienced periods of unemployment from April 2004 to June 2009 while she was attending school. From July 2009 to July 2010, she was employed as a sleep study technician. From August 2010 to November 2011, she was employed as an emergency room clerk on both a full-time and part-time basis.³

The SOR alleges two delinquent student loan debts for a total of about \$98,000 (SOR ¶¶ 1.a and 1.b). The debts were listed in a credit report dated January 26, 2012. The SOR also alleged she deliberately provided false information in her January 2011 security clearance application by failing to disclose her delinquent student loans (SOR ¶1.a).⁴

Applicant received student loans from two sources when she attended college from 2004 to 2007. She stopped attending college in May 2007 and at that time her combined student loan debt was approximately \$88,000. She received a repayment deferment until 2010. At the end of the deferment she was to make monthly payments in the amount of \$400 and \$171 to the student loan creditors. At the time, she was only working part-time and could not afford these payments. She called the student loan creditor that held the SOR ¶ 1.a loan and asked to have her payments reduced. She

² Items 4-5.

³ Items 4-5.

⁴ Item 6.

was told there was nothing the creditor could do. She did not make any payments and several months later this loan went into a collection status. This debt is unresolved.⁵

Applicant claims that beginning in the summer of 2010, she was able to make “a few payments” toward SOR ¶ 1.b (although no documentation was provided). Several months later, she was unable to make these payments and missed four to five months’ worth. She claims this account did not go into a collection status, but she was receiving “daily” phone calls from the creditor about paying the account. When she became employed full-time in March 2011, she claims she started making her payments of SOR ¶ 1.b again and has continued to make those payments. The documentation that she provided only shows payments toward this account for October 2013 (\$123.45), November 2013 (\$161), February 2014 (\$161), and April 2014 (\$161.58). No documentation was provided showing any earlier payments. This debt is unresolved.⁶

Applicant provided no information concerning whether she received any type of financial counselling. Her personal financial statement shows, after expenses, a disposable income in the amount of \$189.35, which does not account for any SOR debt payments.⁷

Applicant explained to the DOD investigator that the reason she did not admit to and identify her defaulted student loans on her trustworthiness application was because she “had difficulty filling out the case papers and answering all the financial questions because she did not have all the requested information.”⁸

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. DOD 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 Item 5.

⁶ Item 5; AE B 1-4.

⁷ Items 4, 6.

⁸ Item 5.

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 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. Two are potentially applicable in this case:

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

Applicant has two delinquent student loan debts that remain unpaid. 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 periods of unemployment could be considered beyond her control, she has not put forth responsible efforts to resolve the issues associated with her debts. AG ¶ 20(b) is partially applicable.

There is no evidence of financial counseling. Recently, Applicant began making payments toward the smaller student loan debt, but has done nothing to resolve the larger debt. AG ¶ 20(c) does not apply, and ¶ 20(d) partially applies.

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.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern for personal conduct:

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.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying in this case. The following disqualifying condition is potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire....

Applicant had over \$98,000 in delinquent student loans at the time she filled out her trustworthiness application. She admitted that these loans had been delinquent since the summer of 2010. She also unsuccessfully tried to negotiate smaller payments with one of the creditors. She attended college for over three years and received vocational training. Based upon this information, I find her explanation for not providing the required information on her application implausible. After evaluating all the evidence, I find Applicant deliberately provided false information concerning her delinquent student loan accounts. AG ¶ 16(a) applies.

The guideline also includes conditions that could mitigate security concerns arising from personal conduct. I have considered all of the mitigating conditions under AG ¶ 17 and considered the following as potentially applicable:

(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.

Falsification of material information on a security clearance application is a serious offense and calls into question Applicant's trustworthiness and good judgment. AG ¶ 17(c) does not apply.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a trustworthiness determination 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 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 all relevant facts and circumstances surrounding this case. I have incorporated my comments under Guidelines F and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

I considered the circumstances by which Applicant's financial situation was affected by her unemployment, and her personal circumstances. However, I also considered that despite these factors, the debts remain unaddressed. Her troublesome financial history and lack of forthrightness on her trustworthiness application causes me to question her ability to resolve her debts, and her overall reliability, trustworthiness, and good judgment.

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 and personal conduct 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.b:	Against 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 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