



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



In the matter of:)
)
) ADP Case No. 12-07005
)
Applicant for Public Trust Position)

Appearances

For Government: Andre M. Gregorian, Esq., Department Counsel
For Applicant: *Pro se*

10/17/2017

Decision

MURPHY, Braden M., Administrative Judge:

Applicant did not provide sufficient evidence to mitigate the trustworthiness concerns under Guideline F, financial considerations, about her tax issues and other delinquent debts. Applicant's eligibility for a public trust position is denied.

Statement of the Case

On November 5, 2016, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations. The action was taken under Executive Order (Exec Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines effective within the DOD for SORs issued after September 1, 2006.

Applicant answered the SOR on December 15, 2016, and elected to have her case decided on the written record, in lieu of a hearing. On January 24, 2017 Department Counsel submitted the Government's file of relevant material (FORM), including

documents identified as Items 1 through 6. Applicant received the FORM on January 30, 2017. She was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant's undated response was received by the Defense Office of Hearings & Appeals (DOHA) on March 2, 2017. It was marked as Applicant Exhibit (AE) A. The single document included was marked as AE B. Both exhibits are admitted without objection. Applicant did not object to the government's evidence. The SOR and the answer (Items 1 and 2) are the pleadings in the case. Items 3 through 6 are admitted into evidence without objection. The case was assigned to me on October 1, 2017.

On December 10, 2016, the Director of National Intelligence (DNI) issued Security Executive Agent Directive 4, National Security Adjudicative Guidelines (AG). The AGs became effective on June 8, 2017, for all adjudicative decisions on or after that date, and they supersede the AGs that Applicant received with the SOR.¹ Any changes resulting from the implementation of the new AGs did not affect my decision in this case.

Findings of Fact

Applicant admitted SOR ¶¶ 1.a, 1.c through 1.m, and 1.p. She denied ¶¶ 1.b and 1.o. She provided a narrative explanation, but no documents. Her admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 58 years old. Her only marriage ended in divorce in 1983. She has six grown children and 11 grandchildren. She has worked in the health care industry since at least 2000. She has worked in her current position, with a defense contractor, since July 2014. Before then, she had stopped working for a year (since July 2013), because she was helping to care for her daughter, who had been seriously injured in an auto accident. In connection with her current employment, she submitted an application for a position of public trust in January 2015.² (Item 2)

The SOR concerns tax issues (SOR ¶¶ 1.a and 1.b), other delinquencies (SOR ¶¶ 1.c through 1.o) and a 2005 bankruptcy (SOR ¶ 1.p). The debts alleged total \$19,988. The debts are proven by Applicant's admissions and by credit reports from February 2015 and August 2015. (Items 5, 6)

SOR ¶¶ 1.c (\$4,561) and 1.d (\$743) are judgments issued against Applicant in 2005 and 2013, respectively.³ SOR ¶¶ 1.e (\$327), 1.f (\$334), 1.i (\$332), 1.m (\$400) and 1.n (\$389) are medical debts in collection. SOR ¶¶ 1.g (\$862) and 1.j (\$362) are debts in

¹ The new AGs are available on the DOHA website at <http://ogc.osd.mil/doha/DIRECTIVE%202017.pdf>.

² Although Applicant submitted her application in 2015, the case number (12-XXXX) suggests it was assigned to DOHA for adjudication in 2012. The reasons for this are unclear, though Applicant may have submitted an earlier application that is not part of the record. It could also simply be a clerical error.

³ Item 4 at 11-14 (court records regarding the judgments).

collection to phone companies. SOR ¶ 1.h (\$2,475) is a past-due debt to a utility company. SOR ¶ 1.i (\$6,425) is a charged-off debt related to an automobile. SOR ¶ 1.o (\$789) is a collection debt to a bank. Applicant did not address in either her answer or her FORM Response what she is doing about resolving these debts. (Item 1; AE A) SOR ¶ 1.k (\$81) is a debt in collection to a nutrition company. The debt has been paid. (AE B).

Applicant also did not address how her debts began, beyond referring to her daughter's medical issues. In her background interview, she indicated that she has struggled financially because she raised six children without financial support. She also continues to provide financial assistance to her children when needed, which has caused her at times to fall behind on her own bills. (Item 3 at 6)

Applicant stated that her daughter was in an accident requiring treatment in intensive care for several weeks, as well as multiple surgeries. She indicated that she that she has begun paying her medical debts through a payment plan. (Item 2; AE A).

Applicant disclosed on her SCA that in tax year 2011, she failed to file a local tax return, as required, and that she had owed about \$700 in local taxes (which she indicated that she paid in 2012, in a payment plan). (Item 2 at 36). In her background interview, she indicated that she was notified in 2011 that she owed local taxes for tax years 2006 and 2007. She indicated that she was not aware that she owed those taxes because she had moved. (Item 3 at 3).

In SOR ¶ 1.a, the government alleged that Applicant failed to file local taxes as required in her home state (State 1) for tax years 2007, 2008, 2010, and 2011. Applicant admitted the allegation in her answer without further comment.

Applicant was charged under State 1 law with "failing to file [an] annual earned income tax return" in the appropriate county or borough in State 1 where she lived for several years. In January 2011, she pleaded guilty in State 1 court to charges of failing to file an annual tax return in April 2008 and April 2009 (for the previous tax years of 2007 and 2008, respectively). She entered a similar plea in September 2015 to charges of failing to file an annual tax return in April 2011 and April 2012 (for the previous tax years of 2010 and 2011, respectively). She paid the taxes owed, which were between \$160 and \$250 each year, plus court costs and penalties. (Item 4 at 1-9)

SOR ¶ 1.b concerns a \$1,908 state tax lien, filed against Applicant in State 1 court in January 2009. Applicant denied the allegation, indicating that the lien had been satisfied (Item 2). However, the debt is listed on the credit reports the Government provided, and the court record provided indicated that, as of July 2016, the lien had not been released. (Item 4 at 10; Items 5, 6)

Applicant provided no more recent information about her taxes, and no tax-related documents, with her FORM Response. She provided no documentation about her current assets, or her monthly income or expenses. She indicated that she will continue to work on her credit as best as she can. (AE A)

Policies

It is well established that no one has a right to a security clearance,⁴ or, as here, a determination of suitability for a position of public trust. As the Supreme Court noted in *Department of the Navy v. Egan*, “the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials.”⁵

The adjudicative guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines 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(a), 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 classified information will be resolved in favor of the 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, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable security 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 financial considerations trustworthiness concern is set out in AG ¶ 18:

⁴ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988) (“it should be obvious that no one has a ‘right’ to a security clearance”).

⁵ 484 U.S. at 531.

Failure 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 or sensitive information. . . .

This concern is broader than the possibility that an individual might knowingly compromise sensitive information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting sensitive information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handing and safeguarding sensitive information.⁶

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

(a) inability to satisfy debts;

(c) a history of not meeting financial obligations, and

(g) failure to file or fraudulently filing annual Federal, state or local income tax returns or failure to pay annual Federal, state or local income tax as required.

Applicant filed bankruptcy in 2005. She later accrued more delinquencies, including a tax lien, several judgments, and other delinquencies. She also failed to file her local tax returns as required, in 2007, 2008, 2010 and 2011. AG ¶¶ 19(a), 19(c) and 19(g) apply.

The guideline also includes conditions that could mitigate trustworthiness concerns arising from financial difficulties. The following 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, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

⁶ See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant admitted, both in State 1 court and in her answer to the SOR, that she failed to timely file her local tax returns for tax years 2007, 2008, 2010, and 2011. She indicated in her background interview this was because she did not receive notice of what she owed because she moved. For each tax year at issue, Applicant owed between \$160 and \$250. She did not provide copies of any of tax returns, though the court documents provided by the Government reflect that the debts were paid (albeit belatedly) during the court process. There is also no indication that she has an ongoing problem filing her local tax returns, as required. SOR ¶ 1.a is therefore resolved by AG ¶ 20(g). However, Applicant did not establish that the \$1,908 tax lien at SOR ¶ 1.b has been paid or otherwise resolved.

Applicant filed for bankruptcy 12 years ago, in 2005. While that is part of her full financial history, that proceeding is also mitigated by the passage of time. Applicant's more recent financial problems are attributable, at least in part, to her understandable efforts to help her children financially – particularly her daughter who was badly injured in an auto accident. These were circumstances beyond Applicant's control. Her own finances were negatively affected, as she fell behind on her own bills. The first prong of AG ¶ 20(b) applies.

For full application of AG ¶ 20(b), however, Applicant must provide evidence that she acted responsibly under the circumstances. Applicant paid one of her debts (SOR ¶ 1.k) and began to pay her medical debts (SOR ¶¶ 1.e, 1.f, 1.i, 1.m, and 1.n). These debts are being resolved.

The DOHA Appeal Board has noted that:

An applicant is not required to be debt-free nor to develop a plan for paying off all debts immediately or simultaneously. All that is required is that an applicant act responsibly given his circumstances and develop a reasonable plan for repayment, accompanied by 'concomitant conduct,' that is, actions which evidence a serious intent to effectuate the plan. ISCR Case No. 07-06842 at 3 (App. Bd. May 21, 2008).⁷

As to her non-medical debts, however, Applicant did not show sufficient evidence that she acted responsibly. Chiefly, this is because, with one exception (¶ 1.k) she did not sufficiently address or document her efforts or her plans to pay, settle, or otherwise resolve any of her nonmedical debts, which remain unresolved. AG ¶ 20(b) does not fully apply. For similar reasons, Applicant did not established that she "initiated and is adhering

⁷ ISCR Case No. 08-06567 at 3 (App. Bd. Oct. 29, 2009); *see also* ISCR Case No. 09-08462 at 3 (May 31, 2011).

to a good-faith effort to repay” her overdue creditors or otherwise resolve her debts, under AG ¶ 20(d).

Applicant provided no documents or specific information concerning her current financial situation, such as her assets or her monthly income or expenses. There is insufficient evidence to conclude that her financial problems are unlikely to recur. Her non-medical debts are significant and remain ongoing. These debts continue to cast doubt on her current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

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 the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(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(a), the ultimate determination of whether to grant eligibility for a position of public trust 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. Because Applicant requested a determination on the written record without a hearing, I had no opportunity to evaluate her credibility based on demeanor.⁸ Applicant has begun to resolve her debts, but she does not have a reliable financial track record at this time. Her finances remain a trustworthiness concern. She did not provide sufficient evidence in mitigation. The record evidence leaves me with questions and doubts as to Applicant’s eligibility and suitability for a position of public trust. For all these reasons, I conclude Applicant failed to mitigate the financial considerations trustworthiness concerns.

⁸ ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003).

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
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b-1.d:	Against Applicant
Subparagraphs 1.e-1.f:	For Applicant
Subparagraphs 1.g-1.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	For Applicant
Subparagraph 1.l:	Against Applicant
Subparagraphs 1.m-1.n:	For Applicant
Subparagraph 1.o:	Against Applicant
Subparagraph 1.p:	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 access to sensitive information. Eligibility for access to sensitive information is denied.

Braden M. Murphy
Administrative Judge