



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



In the matter of:

ADP Case No. 14-04270

Applicant for Public Trust Position

Appearances

For Government: Ray T. Blank, Jr., Esquire, Department Counsel

For Applicant: *Pro se*

02/16/2017

Decision

WHITE, David M., Administrative Judge:

Applicant incurred more than \$16,000 in delinquent debts, most of which remain outstanding. She admitted to a 35-year history of regular and frequent marijuana use, which ended only after she failed a pre-employment drug screening test. She did not mitigate resulting trustworthiness concerns. Eligibility to occupy a public trust position is denied.

On February 17, 2013, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP). (Item 4.) On November 30, 2015, the Department of Defense (DoD) issued Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns under Guideline F (Financial Considerations), Guideline H (Drug Involvement), and Guideline E (Personal Conduct). (Item 1.) The action was taken under DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); DoD 5200.2-R, *Personnel Security Program*, dated January 1987, as amended (Regulation); and the adjudicative guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

On December 23, 2015, Applicant answered the SOR in writing and elected to have the case decided on the written record in lieu of a hearing. (Item 2.) On February 11, 2016, Department Counsel prepared a File of Relevant Material (FORM), containing eight Items.¹ The Defense Office of Hearings and Appeals (DOHA) mailed Applicant a complete copy of the FORM on February 17, 2016. Applicant received the FORM on February 25, 2016, and was provided 30 days from its receipt to file objections and submit additional information. She did not submit any information within the time provided, made no objection to consideration of any contents of the FORM, and did not request additional time to respond. On November 1, 2016, DOHA assigned the case to me.

Findings of Fact

Applicant is 55 years old. She has been married since December 1979 and has two adult children, but physically separated from her spouse in March 2012. She is a high school graduate, who has never served in the military, held a civilian position with the Federal Government, or held a security clearance. (Item 4.)

The SOR alleged that Applicant had 15 delinquent debts, totaling \$16,534. Record credit reports indicate these delinquencies have been accumulating since at least 2008. In her response to the SOR, she claimed that these debts were either resolved or being repaid according to agreements she had entered into. She provided no documentation of either payments to, or repayment agreements with, creditors in her answer to the SOR. She also declined to submit evidence of any debt payments in response to the FORM. However, as noted by Department Counsel, her most recent record credit report shows that the \$3,547 judgment debt alleged in SOR ¶ 1.b has been paid in full. In addition, that report shows that the debts alleged in SOR ¶¶ 1.m, and 1.o have been repaid, and the debts alleged in SOR ¶¶ 1.k, 1.l, and 1.n, which formerly totaled \$621, were reduced to a total due of \$244 as of February 2016. This offers some support for Applicant's otherwise unsubstantiated claim that she has enrolled these debts in a debt consolidation agreement. She reported some periods of voluntary unemployment and some medical issues, but provided no evidence linking her financial hardship to circumstances beyond her control. She submitted no evidence of financial counseling, or of budget estimates from which to analyze her current financial situation. (Item 1; Item 2; Item 7.)

Applicant admitted that she regularly smoked marijuana, at least twice weekly, from approximately 1977 until January 2012, when she tested positive on a pre-

¹ Item 8 is the summary of an unsworn interview of Applicant on March 5, 2013, which was included in the Report of Investigation (ROI) prepared by an investigator from the Office of Personnel Management (OPM). It was neither adopted nor authenticated by Applicant, but she did not object to its consideration in response to the FORM when offered the opportunity to do so. Pursuant to Directive E.3.1.20, ROI evidence is inadmissible in the absence of an authenticating witness. However, Applicants may reasonably assume that exculpatory information provided to an OPM investigator will be considered on their behalf. Accordingly, the explanations and justifications ascribed to Applicant by the OPM investigator in Item 8 will be considered on her behalf. No information in Item 8 that is adverse to Applicant will be considered unless it is cumulative with evidence contained elsewhere in the record.

employment drug screening test. She further stated that she stopped using marijuana after failing that drug test, which caused her to decide not to put herself in a similar position again. The record contains no evidence that Applicant underwent any professional diagnostic procedures or treatment with respect to her 35-year period of regular marijuana abuse. (Item 2; Item 4.)

No character references were submitted to describe Applicant's judgment, trustworthiness, integrity, or reliability. I was unable to evaluate her credibility, demeanor, or character in person since she elected to have her case decided without a hearing.

Policies

Positions designated as ADP-I/II/III 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 the DoD and 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 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, and 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.

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 [sensitive] 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.

Applicant accumulated substantial delinquent debt since 2008, which she has been unable or unwilling to repay. This evidence raises trustworthiness concerns under these disqualifying conditions, 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 accumulated more than \$16,000 in delinquent debts that were alleged in the SOR. She did not show through evidence that these debts arose from conditions beyond her control, or that she acted responsibly under the circumstances. She documented no counseling to assist with debt resolution, nor did she demonstrate an ability to avoid recurrence of financial problems. According to the record evidence, the debts alleged in SOR ¶¶ 1.a and 1.c through 1.j remain unresolved, and no documented basis to dispute the legitimacy of any of them was provided. Applicant therefore failed to establish full mitigation of trustworthiness concerns under AG ¶¶ 20(a) through 20(e).

Guideline H, Drug Involvement

AG ¶ 24 expresses the trustworthiness concern pertaining to Drug Involvement:

Use of an illegal drug or misuse of a prescription drug can raise questions about an individual's reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations.

I have considered all of the evidence in this case and the disqualifying conditions under AG ¶ 25. The following are applicable:

(a) any drug abuse; and

(b) testing positive for illegal drug use.

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Applicant admitted that she voluntarily engaged in recreational marijuana use on a regular basis, at least twice weekly, from 1977 to January 2012. She also admitted having tested positive for marijuana use on a pre-employment drug screening test in January 2012. These facts raise trustworthiness concerns under the foregoing disqualifying conditions, and shift the burden to Applicant to extenuate or mitigate those concerns.

I have considered all of the evidence in this case and the mitigating conditions under AG ¶ 26. The following are potentially applicable:

(a) the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment; and

(b) a demonstrated intent not to abuse any drugs in the future, such as: (1) disassociation from drug-using associates and contacts; (2) changing or avoiding the environment where drugs were used; (3) an appropriate period of abstinence; (4) a signed statement of intent with automatic revocation of clearance for any violation.

Applicant claimed that she stopped smoking marijuana, after 35 years of frequent, regular use, when her pre-employment drug screening test results came back positive. She offered no evidence of chemical dependency analysis or treatment, and no evidence of any subsequent drug testing with negative results. I cannot find that future use is unlikely to occur. In this instance, Applicant's long history of illegal drug use continues to cast doubt on her reliability, trustworthiness, and good judgment. The evidence does not support the application of AG ¶ 26(a).

AG ¶ 26(b) provides only limited mitigation. Applicant claimed that she no longer uses marijuana. This is a factor that weighs in Applicant's favor. However, Applicant has a history of illegally using marijuana that began in 1977, while she was in high school. Despite her assurance that she is not a current drug abuser, based on her past conduct and positive drug test there is insufficient basis to conclude that she will abstain from marijuana use in the future. She has not provided sufficient evidence to meet her burden of proof to overcome the concerns raised by her poor judgment in using illegal substances throughout most of her life.

Guideline E, Personal Conduct

The trustworthiness concern for the Personal Conduct guideline 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 [trustworthiness] clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a trustworthiness concern and may be disqualifying. The following disqualifying condition, quoted in pertinent part, is established by the evidence in this case:

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as . . . engaging in activities which, if known, may affect the person's personal, professional, or community standing.

The SOR cited the allegations concerning Applicant's drug involvement as facts that also raised concerns under this guideline. Throughout the lengthy period of time that Applicant admittedly used marijuana, such conduct was illegal and could have adversely affected her personal, professional, and community standing. Her regular drug abuse also demonstrated questionable judgment and unwillingness to comply with rules and regulations. Trustworthiness concerns under AG ¶¶ 15 and 16(e) were established.

AG ¶ 17 provides conditions that could mitigate trustworthiness concerns. The following are potentially applicable to Applicant's personal conduct:

(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; and

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

After considering the mitigating conditions outlined above in AG ¶ 17, it is apparent that none of them were established in this case. Applicant's recently concluded 35-year history of regular illegal drug abuse was neither minor nor undertaken in circumstances that would cause recurrence to be unlikely. Applicant has not shown that similar lapses in judgment are unlikely to occur. There is no evidence that she underwent diagnosis or counselling concerning her sustained drug abuse, or of any steps to reduce vulnerability to duress. She has not provided sufficient evidence to meet her burden of proof concerning her personal conduct.

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 mature individual who is accountable for the decisions and choices that led to her financial difficulties and 35-year history of drug abuse. She failed to demonstrate a basis for finding current good judgment, or permanent behavioral change concerning either her financial irresponsibility or drug abuse. Her ongoing delinquent debts establish continuing potential for pressure, coercion, or duress.

Overall, the record evidence leaves me with questions and doubts as to Applicant's present eligibility and suitability to occupy a public trust position. For these reasons, I conclude Applicant did not meet her burden to mitigate the trustworthiness concerns arising from her financial irresponsibility, her lengthy history of drug abuse, and her personal misconduct.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraphs 1.c through 1.j:	Against Applicant
Subparagraphs 1.k through 1.o:	For Applicant
Paragraph 2, Guideline H:	AGAINST APPLICANT
Subparagraphs 2.a and 2.b:	Against Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraph 3.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 to occupy a public trust position. Eligibility for access to sensitive ADP information is denied.

DAVID M. WHITE
Administrative Judge