



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



In the matter of:

Applicant for Position of Trust

ADP Case No. 15-01673

Appearances

For Government: David F. Hayes, Esquire

For Applicant: *Pro se*

02/23/2017

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Statement of the Case

On September 18, 2015, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing concerns under Guideline F (Financial Considerations) regarding her eligibility to occupy an automated data processing (ADP) position designated ADP-I/II/III. The action was taken under 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 DOD on September 1, 2006. Applicant responded to the SOR on December 17, 2015, and requested a determination based on the written record.

On February 25, 2016, the Government issued a File of Relevant Material (FORM) that contained six attachments. Applicant did not respond to the FORM. The case was assigned to me on February 15, 2017. Based on my review of the file, I find Applicant failed to mitigate financial considerations trustworthiness concerns.

Findings of Fact

Applicant is a 31-year-old customer service representative applying for a position of trust. She has been in her present position since 2012. Married in 2010, Applicant and

her spouse have two small children. Applicant has earned a high school diploma, an associate's degree, and professional certification as a pharmacy technician. There is no evidence that she has received financial counseling. Applicant has been in the workforce since at least 2005, although she was unemployed from approximately December 2010 to May 2012, and January 2005 to March 2005.¹

Applicant openly acknowledged her debt problems on her position of public trust application. In a 2013 subject interview, she reported that she had been in repayment on a balance of about \$8,550 in past-due medical bills for about three years. She disputed one debt for \$543, but admitted responsibility for all other debts discussed during the interview.² A few years ago, she stopped making \$100 payments on a repayment plan when she went on maternity leave, got a reduction in pay at the same time her student loans came out of forbearance, and decided her family's immediate needs were her priority. She provided no documentation regarding the repayment plan, any payments made, or any formal disputes regarding the cited \$543 balance.

Regarding the 51 delinquent debts cited in the 2015 SOR (allegations 1.a-1.yy), Applicant admits the allegations. The related debts amount to approximately \$8,530. They range from \$978 to \$11, with nearly half of those debts reflecting balances of \$100 or less. The debts are all medical in nature, incurred while Applicant lacked medical health insurance coverage. She attributes them to health care provided for gastrointestinal issues, headaches, asthma, allergies, gynecological conditions, and other problems.³

Applicant expresses sincere hopes of satisfying the debts at issue. Her present budget reflects that she and her husband have a monthly net income of approximately \$3,000 and monthly expenses of \$2,500. From their \$500 monthly remainder, Applicant pays for groceries, gasoline, diapers, and the basic needs of a family of four.

At the time she responded to the SOR in approximately December 2015, Applicant wrote that she had restarted making installments on her repayment plan at a rate of \$50 a month, but she did not provide documentary evidence regarding this effort. She noted that "(o)nce I get caught up with other bills, I plan to increase the payment to get the debt paid off."⁴ She concluded her response to the SOR by writing that she could "supply any documentation to support anything listed above if it is required."⁵ Despite the

¹ A 2003 high school graduate, Applicant was also unemployed from August 2003 until August 2004 while enrolled in a cosmetology program.

² The SOR notes two debts for \$543 (1.d and 1.e), but it is unclear which, if either, of these debts are the one Applicant discussed during the subject interview. See FORM attachment 3, Personal Subject Interview at 10.

³ See FORM attachment 3, Personal Subject Interview at 10.

⁴ FORM attachment 1, Response to SOR, letter, undated.

⁵ FORM attachment 1, Response to SOR, letter, undated.

Government's encouragement in the February 2016 FORM that she submit corroborative evidence regarding her repayment efforts, Applicant neither responded to the SOR nor submitted any documentation related to her debts.

Policies

When evaluating an applicant's suitability for a position of trust, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to sensitive information

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 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, 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 to obtain a favorable decision."

A person who seeks a public trust position 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. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard information.

Analysis

Guideline F, Financial Considerations

Under Guideline F, AG ¶ 18 sets forth the applicable trustworthiness concern: 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.

Here, the Government introduced credible evidence showing Applicant was delinquent on a little over \$8,500 in delinquent debt. This is sufficient to invoke financial considerations disqualifying conditions:

AG ¶ 19(a) inability or unwillingness to satisfy debts, and

AG ¶ 19(c) a history of not meeting financial obligations.

Five conditions could mitigate these financial concerns:

AG ¶ 20(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;

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;

AG ¶ 20(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;

AG ¶ 20(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(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.

There is no evidence of progress on the delinquent debts at issue. Although Applicant references three years of payment on a debt repayment plan and a renewed effort to resume payments on that plan, she provided no documentation substantiating these efforts. Moreover, little progress is noted between the balances reflected in the 2013 personal subject interview and the balances set forth in the 2015 SOR. There is no evidence Applicant has received financial counseling. Applicant experienced a notable period of unemployment and a pay reduction several years ago. While all of the debts at issue are medical in nature, there is insufficient evidence upon which it can be judged whether her handling of these debts was reasonable at the time. Therefore, while there is evidence tending to raise mitigating condition AG ¶ 20(b) in part, none of the other mitigating conditions apply.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a position of trust 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). Under AG ¶ 2(c), the ultimate

determination of whether to grant eligibility for a position of 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 incorporated my comments under the guideline at issue in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is a 31-year-old customer service representative applying for a position of trust. She has been in her present position since 2012. She is married and has two young children. Applicant has earned a high school diploma, an associate's degree, and certification as a pharmacy technician. In the past decade, she experienced a significant period of unemployment, from approximately December 2010 to May 2012.

The delinquent debt acquired by Applicant is slightly over \$8,500 and consists of 51 delinquent balances, many of for \$100 or less. These were acquired while suffering various medical issues during a period without health insurance. This, along with her period of unemployment and a reduction in pay coinciding with her last maternity leave, poses understandable reasons for her acquisition of debt. The main focus, therefore, shifts to the continued existence of the delinquent debts at issue.

This process does not require an applicant to address all debts at issue. It does, however, demand that an applicant present a workable plan to address their delinquent debts, show that their plan has been successfully implemented, and document that their financial outlook has improved. Here, Applicant wrote she was in a debt repayment plan before her last maternity leave, and that she had recently resumed reduced payments toward the plan. Although she expressed a willingness to provide documentary evidence of such efforts to address her financial issues, no such documentary evidence was submitted in response to the FORM. Without such documentation, I cannot find that she implemented the repayment plan she referenced or conclude that progress regarding her debts is being made. Consequently, eligibility for a public trust position is denied.

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.yy:

Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interest of national security to permit Applicant to maintain a public trust position. Eligibility for a public trust position is denied.

Arthur E. Marshall, Jr.
Administrative Judge