



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



In the matter of:)
)
) ADP Case No. 15-02086
)
Applicant for Public Trust Position)

Appearances

For Government: Tara R. Karoian, Department Counsel
For Applicant: *Pro se*

04/06/2017

Decision

KILMARTIN, Robert J., Administrative Judge:

Applicant did not mitigate the financial considerations trustworthiness concerns. Applicant's eligibility for a position of trust is denied.

Statement of the Case

On October 10, 2015, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns under Guideline F, financial considerations. The action was taken under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); DOD Regulation 5200.2-R, *Personnel Security Program* (January 1987), as amended (Regulation), and the adjudicative guidelines effective within the DOD for SORs issued after September 1, 2006.

Applicant timely answered the SOR, and elected to have her case decided on the written record. Department Counsel submitted the Government's file of relevant material (FORM) on February 16, 2016. The FORM was mailed to Applicant, and it was received on February 26, 2016. Applicant was afforded an opportunity to file objections and

submit material in refutation, extenuation, or mitigation within 30 days from receipt of the FORM. Applicant did not object to the Government evidence and provided no response to the FORM. The Government's documents, identified as Items 1 through 6, are admitted into evidence without objection. The case was assigned to me on March 20, 2017.

Findings of Fact

Applicant admitted the allegations in SOR ¶¶ 1.a – 1.g, and SOR ¶¶ 1.i – 1.t. She also provided amplifying comments and supporting information in a two-page Answer dated December 20, 2015. She attached four pages of supplemental documentation to her Answer. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 45 years old. She graduated with a bachelor's degree in 1994. She obtained a master's degree in 2008. She is divorced and has two children, 15 and 19 years old. She has been employed by a federal contractor since November 2012. Previously, she was employed as a foreclosure paralegal at various law firms, and she had short periods of unemployment in between jobs. She reports losing approximately half of her household income when she divorced in 2007.³

SOR ¶¶ 1.a – 1.e allege delinquencies for various student loans. In her Answer, Applicant asserted that "payment arrangements are in place in the amount of \$134/month." Yet, she attached only one receipt showing a payment of \$134 on October 28, 2015. The total balance reflected on this receipt is \$154,596.⁴ She presented no other evidence of a continued stream of payments on the student loans. Further, her Answer to SOR ¶¶ 1.f, 1.g, and 1.i – 1.t, repeatedly asserts that "the account has been settled and the balance is \$0." Yet, with exception of one proof of payment document for \$374 (SOR ¶ 1.g), Applicant has provided no substantiating documentation to show that these delinquent accounts have been settled.

Ten of the delinquent debts alleged in the SOR concern unnamed creditors for specified medical account numbers.⁵ In her Questionnaire for National Security Positions submitted in November 2012, also known as her security clearance application (SCA), Applicant disclosed that she was involved in an automobile accident in September 2011, and a settlement was pending so that she could resolve all of these medical debts within the next year. She received the settlement in late 2012.⁶ The delinquent medical debts have still not been resolved.⁷

³ GE 3 at p. 34.

⁴ GE 2, attached receipt.

⁵ GE 1.

⁶ GE 3, at p. 37.

⁷ GE 4 and 5

Applicant repeatedly stated “I deny; I could not locate this account on my credit reports” in her Answer to SOR ¶¶ 1.h, and 1u – 1.x.⁸ Yet, these delinquent debts are plainly reflected in her credit bureau reports. Further, Applicant disclosed and discussed the delinquent debt at SOR ¶ 1.v in section 26 of her SCA⁹, as well as the delinquent debts owed for SOR ¶¶ 1.w and 1.x.¹⁰

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. Department of Defense 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. 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.”

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 to obtain a favorable trustworthiness decision.

⁸ GE 2.

⁹ GE 3, at p. 33.

¹⁰ GE 3, at p. 35.

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 trustworthiness concern relating to the guideline for financial considerations is set out in AG ¶ 18:

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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a trustworthiness concern. It may indicate proceeds from financially profitable criminal acts.

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 classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handing and safeguarding sensitive information.

The guideline notes several conditions that could raise trustworthiness concerns. The following are potentially applicable:

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

Applicant admitted to 19 of the 24 delinquent debts alleged in the SOR. The receipt she attached to her Answer to the SOR, indicates that the total outstanding balance for the delinquent student loans alone is over \$154,000. Many of the delinquent debts are over five years old, and resulted from injuries sustained in her automobile accident in 2011. She received a settlement approximately one year after the

automobile accident, but she provided no evidence showing what she did with those funds received in the settlement. She obtained her most recent degree in 2008. Applicant has shown no payments on the related student loans. There is sufficient evidence to support the application of the above disqualifying condition.

Conditions that could mitigate trustworthiness concerns arising from financial difficulties are provided under AG ¶ 20. The following 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; and,
- (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.

Applicant disclosed some of her financial problems in her SCA. She has provided documentation to show one payment of \$134 on her student loan debt; a "proof of payment" for SOR ¶ 1.g; and a collection letter with scribbling in the margins which may be indicative of payment on the account at SOR ¶ 1.r. She has produced no other documentation to show payments or progress on the other 21 delinquent debts alleged. The delinquencies alleged in the SOR are recent and ongoing. Arguably, her divorce in 2007, periods of unemployment, and automobile accident, were conditions beyond Applicant's control. Yet, she has not demonstrated that she has acted responsibly under the circumstances. She has provided no evidence of counseling, good-faith efforts to repay creditors, or that her financial problems have been resolved or are under control. None of the mitigating conditions enumerated above, applies.

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 the 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 public trust position 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 F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines.

Applicant's finances remain a concern. She has not met her burden of persuasion. The record evidence leaves me with questions or doubts as to Applicant's suitability for a public trust position. For all these reasons, I conclude Applicant failed to mitigate the financial considerations 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.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraphs 1.h – 1. X:	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 grant Applicant eligibility for a public trust position. Eligibility for access to sensitive information is denied.

Robert J. Kilmartin
Administrative Judge