



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



In the matter of:)
)
) ADP Case No. 15-02123
)
Applicant for Public Trust Position)

Appearances

For Government: Braden M. Murphy, Esq., Department Counsel
For Applicant: *Pro se*

05/25/2017

Decision

RIVERA, Juan J., Administrative Judge:

Applicant failed to submit evidence to show that she has a track record of financial responsibility, that she does not have a financial problem, or that her financial problem is being resolved or is under control. She failed to mitigate the Guideline F trustworthiness concerns. Eligibility to hold a position of trust is denied.

Statement of the Case

Applicant submitted an electronic questionnaire (Application) requesting eligibility for a position of trust (Automatic Data Processing (ADP) position) on December 11, 2012. On September 17, 2015, the Department of Defense (DoD) issued Applicant a Statement of Reasons (SOR) listing trustworthiness concerns under Guideline F (financial considerations).

DOD acted 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);¹ and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG) implemented by DOD on September 1, 2006. The AG are codified in 32 C.F.R. § 154, Appendix H (2006), and they replace the guidelines in Appendix 8 of the Regulation.

Applicant answered the SOR on October 22, 2015, and elected to have her case decided on the written record. A copy of the Government's file of relevant material (FORM), adducing the evidence supporting the trustworthiness concerns, was provided to her by transmittal letter, dated December 9, 2015. Applicant received the FORM on January 8, 2016. She was allowed 30 days to submit any objections to the FORM and to provide material in explanation, extenuation, and mitigation. She failed to respond to the FORM and submitted no objections or any additional information. The case was assigned to me on May 18, 2017.

Procedural Issue

In the FORM, Department Counsel advised Applicant that the FORM included his unauthenticated summary of interview with a government background investigator from January 29, 2013. Applicant was informed she could object to the summary of her interview and it would not be admitted, or that she could make corrections, additions, deletions, and update the document to make it accurate. Applicant was informed that her failure to respond to the FORM or to raise any objections could be construed as a waiver, and the evidence would be considered by me. Applicant failed to respond to the FORM, submitted no documents, and raised no objections. I admitted the document and considered it.

Findings of Fact

In her Answer, Applicant admitted the factual allegations in SOR ¶¶ 1.a through 1.d, and 1.f through 1.t. She denied the allegation in SOR ¶ 1.e. Her admissions are incorporated herein as findings of fact. After a thorough review of the record evidence, including her answers to the SOR, her January 29, 2013 statement, and her Application, I make the following additional findings of fact:

Applicant is a 44-year-old employee of a federal contractor. She graduated from high school in 1991 and attended college between 2006 and 2007, and between 2010 and 2012, but did not earn a degree. She has never been married, but has a 19-year-old son.

¹ On April 3, 2017, DOD Manual 5200.02, *Procedures for the DoD Personnel Security Program (PSP)*, (Manual) was published. It cancelled and incorporated the Regulation, but it did not include the provisions for ADP cases. ADP cases continue to be adjudicated in accordance with the Deputy Under Secretary of Defense's Memorandum for the Director, Defense Office of Hearings and Appeals, dated November 19, 2004.

Applicant's employment history shows that she was employed from July 2000 to January 2005. She was unemployed between January 2005 and September 2005; employed from September 2005 to June 2006; unemployed between June 2006 and November 2011; employed from November 2006 to March 2007; unemployed between March 2007 and May 2007; employed from May 2007 to February 2008; unemployed between February and March 2008; employed between March 2008 and November 2009; unemployed between December 2009 and July 2011; and employed between July and December 2011. Her current employer, a federal contractor, hired Applicant in December 2011. There is no information about her employment activities after she submitted the application for a position of trust in December 2012. This is her first application for a position of trust.

In her 2012 Application (Section 26 – Financial Record), Applicant disclosed that she had student loans in deferment. She disclosed she had financial problems, which included numerous delinquent medical debts for services she incurred between 2006 and 2012. She was unemployed or underemployed and did not have medical insurance when the services were rendered. Applicant stated her goal was to resolve her financial problems once she found full-time employment and had a steady income. In the meantime, she was seeking help to pay her delinquent accounts.

During her January 2013 interview with a background investigator, Applicant told him that she had kidney problems in 2006-2007 and incurred medical expenses. In 2009, she was involved in a car accident and required medical treatment. In 2010, Applicant had one kidney removed. In December 2011, she developed a kidney stone and required surgery for its removal. She missed two weeks of work, and her employer told her not to return to work. Applicant's work history has numerous periods of unemployment or underemployment. During those periods, Applicant supported herself with her savings, child support, and sometimes unemployment benefits.

Applicant discussed with the investigator that she had 19 delinquent medical accounts. She explained that she did not have medical insurance when she received the medical services and her income was insufficient to pay for her living expenses, necessities, and her old delinquent debts. She made no efforts to pay, settle, or resolve the medical debts because she did not have stable employment or income. Most of her employment in recent years was part time or on temporary jobs.

Applicant told the investigator that she recently contacted the hospital where she received most of her medical treatment and promised the creditor to start a payment plan as soon as she had a full-time job. Applicant believes that she is honest and trustworthy. She averred that she would never do anything wrong just because of her credit. She believes her financial problems were due to circumstances beyond her control. She promised to make efforts to resolve all of her delinquent debts. As of her interview, she had not received any financial counseling.

The background investigation addressed her financial problems and revealed the 20 delinquent debts alleged in the SOR, totaling over \$24,000. Eighteen of the debts

alleged in the SOR are Applicant's delinquent medical accounts. Two accounts, totaling \$1,399, are for cable T.V. and phone services. All of the alleged accounts are established by the FORM's evidence.

In her SOR answer, Applicant claimed she settled and paid the debt alleged in SOR ¶ 1.e, and that she was working on a payment plan with the creditor of the debt alleged in SOR ¶ 1.f. She did not submit any documentary evidence to support her claims.

Applicant provided no information about her current earnings and financial position. She provided little information about her monthly income, monthly expenses, and whether her current income is sufficient to pay her current day-to-day living expenses and debts. There is no information to indicate whether she participated in financial counseling or whether she follows a budget. She presented no documentary evidence of any payments made, efforts to contact creditors, establish payment plans, or efforts to otherwise resolve her financial problems.

Policies

The DOD considers ADP positions to be "sensitive positions." For a person to be eligible for sensitive duties, the person's loyalty, reliability, and trustworthiness must be such that assigning the person to a sensitive position is clearly consistent with the national security interests of the United States. Manual ¶ 7.1a(2); AG ¶ 2.b. Applicants for ADP positions are entitled to the procedural protections in the Directive before any final unfavorable access determination is made. (Under Secretary of Defense's Memorandum for the Director, Defense Office of Hearings and Appeals, dated November 19, 2004)

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 an evaluation of the whole person. The administrative judge's overarching adjudicative goal is a fair, impartial and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

A public trust position decision resolves whether it is clearly consistent with the interest of national security to grant or continue an applicant's access to sensitive information. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national security interest of the United States to grant or continue his or her access to sensitive information.

Persons with access to sensitive information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national security as their own. The “clearly consistent with the national security interest of the United States” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government. “[Access to sensitive information] determinations should err, if they must, on the side of denials.” AG ¶ 2(b). Eligibility for a public trust position decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing access to sensitive information.

Analysis

Guideline F, Financial Considerations

Under Guideline F, the trustworthiness concern is that 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. (AG ¶ 18)

Applicant’s history of financial problems is well documented in the file record. She acquired the delinquent SOR accounts between 2006 and 2012. She presented no documentary evidence of any payments made, efforts to contact creditors, establish payment plans, or efforts to otherwise resolve her financial problems. Two of the financial considerations disqualifying conditions apply: AG ¶ 19(a): inability or unwillingness to satisfy debts, and AG ¶ 19(c): a history of not meeting financial obligations.

AG ¶ 20 lists five conditions that could mitigate the financial considerations trustworthiness concerns:

- (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.

None of the financial considerations mitigating conditions fully apply. Applicant has a long history of financial problems that are recent and ongoing. I carefully considered Applicant's periods of unemployment, underemployment, and her health problems. Obviously, her medical services were a necessity and not frivolous spending. Applicant's periods of unemployment, underemployment, and her health problems could be considered circumstances beyond her control that may have contributed or aggravated her financial problems. Notwithstanding, Applicant's evidence is insufficient to show she acted responsibly under the circumstances to warrant applicability of AG ¶ 20(b). She presented no documentary evidence of any payments made, efforts to contact creditors, establish payment plans, or of efforts to otherwise resolve her financial problems.

Applicant provided little information about her current earnings and financial position. She did not provide any information about her monthly income and expenses, and whether her current income is sufficient to pay her current day-to-day living expenses and debts. There is no information to show that she participated in financial counseling or that she follows a budget. The available information is insufficient to establish clear indications that she does not have a current financial problem, or that her financial problem is being resolved, or is under control. Applicant failed to establish that she has a track record of financial responsibility.

Whole-Person Concept

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. AG ¶ 2(c).

Applicant started working for a federal contractor in December 2011, and this is her first trustworthiness application. She failed to submit evidence to show that she has a track record of financial responsibility, that she does not have a financial problem, or that her financial problem is being resolved or is under control. She failed to mitigate the Guideline F trustworthiness concerns.

Applicant was made aware of the Government's financial considerations trustworthiness concerns when he completed her 2012 Application, during her 2013 interview, when she received the SOR, and when she was provided the FORM. She was allowed a period of 30 days after receipt of the FORM to produce evidence in extenuation and mitigation. She failed to provide any documentary evidence to show

she has been in contact with her creditors, or that she attempted to settle or pay her delinquent debts since she acquired them.

Once a concern arises regarding an Applicant's eligibility for a position of trust, there is a strong presumption against the grant or renewal of eligibility for such position. Unmitigated financial considerations concerns lead me to conclude that grant of eligibility for a position of trust to Applicant is not warranted at this time. The financial considerations trustworthiness concerns are not mitigated.

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.t:	Against Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is not in the interest of national security to grant eligibility for a position of trust to Applicant. Eligibility for a position of trust is denied.

JUAN J. RIVERA
Administrative Judge