



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



In the matter of:)
)
) ADP Case No. 15-02160
)
)
Applicant for Public Trust Positions)

Appearances

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

February 3, 2017

Decision

MOGUL, Martin H., Administrative Judge:

On September 18, 2015, the Department of Defense (DoD) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F for Applicant. (Item 1.) The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992) (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense after September 1, 2006.

On October 23, 2015, Applicant furnished a reply to the SOR (RSOR) in writing, and she requested that her case be decided on the written record in lieu of a hearing. (Item 3.) On December 9, 2015, Department Counsel issued the Department's written case. A complete copy of the file of relevant material (FORM) was provided to Applicant. In the FORM, Department Counsel offered seven documentary exhibits. (Items 1-7.) Applicant was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. A response was due on February 12, 2016. Applicant did not submit any additional evidence. The case was assigned to this

Administrative Judge on August 22, 2016. Based upon a review of the pleadings and exhibits, eligibility for access to a sensitive position is denied.

Findings of Fact

After a complete and thorough review of the evidence in the record, including Applicant's RSOR, the FORM, and the exhibits, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 36 years old. She is married and she has two children. Applicant is employed as a Claims Customer Service Representative since August 2011 in the health care industry, and she seeks access to sensitive information in connection with her current employment. (Item 4.)

Guideline F, Financial Considerations

The SOR lists nine allegations (1.a. through 1.i.) regarding financial difficulties, specifically overdue debts totaling approximately \$32,000. The allegations will be discussed below in the same order as they were listed on the SOR:

1.a. This overdue debt is cited in the SOR for a collection account in the amount of \$5,258. Applicant admitted this allegation in her RSOR, and she wrote that she had made arrangements to pay \$50 a month toward this debt beginning November 2015. (Item 3.) No independent evidence has been offered to establish that this debt has been resolved or reduced.

1.b. This overdue debt is cited in the SOR for a charged-off account in the amount of \$3,029. Applicant admitted this allegation in her RSOR, and she wrote that she had made arrangements to pay \$50 a month toward this debt beginning November 2015. (Item 3.) No independent evidence has been offered to establish that this debt has been resolved or reduced.

1.c. This overdue debt is cited in the SOR for a collection account in the amount of \$2,579. Applicant admitted this allegation in her RSOR, and she wrote that she had made arrangements to make one payment of \$50 and then pay off the rest of the debt before November 27, 2015. (Item 3.) No independent evidence has been offered to establish that this debt has been resolved or reduced.

1.d. This overdue debt is cited in the SOR for a collection account in the amount of \$628. Applicant admitted this allegation in her RSOR, and she wrote that she had made arrangements to make one payment of \$50 and then pay off the rest of the debt before November 27, 2015. (Item 3.) No independent evidence has been offered to establish that this debt has been resolved or reduced.

1.e. This overdue debt is cited in the SOR for a charged-off account in the amount of \$2,273. Applicant wrote in her RSOR that this is the same debt as the debt listed as 1.c., above. (Item 3.) This debt is established by the credit reports included with the

FORM. (Items 5 and 6.) No independent evidence has been offered to establish that this debt is a duplicate or that it has been resolved or reduced.

1.f. This overdue debt is cited in the SOR for a charged-off account in the amount of \$2,879. Applicant admitted this allegation in her RSOR, and she wrote that she had not been successful in contacting the creditor of this debt, but she will continue trying. (Item 3.) No independent evidence has been offered to establish that this debt has been resolved or reduced.

1.g. This overdue debt is cited in the SOR for a collection account in the amount of \$7,512. Applicant admitted this allegation in her RSOR, and she wrote that she planned to make payment arrangements in the future with this creditor after she had paid off one of her other debts. (Item 3.) No independent evidence has been offered to establish that this debt has been resolved or reduced.

1.h. This overdue debt is cited in the SOR for a charged-off account in the amount of \$627. Applicant wrote in her RSOR that this is the same debt as the debt listed as 1.d., above. (Item 3.) This debt is established by the credit reports included with the FORM. (Items 5 and 6.) No independent evidence has been offered to establish that this debt is a duplicate, or that it has been resolved or reduced.

1.i. This overdue debt is cited in the SOR for a collection account in the amount of \$3,608. Applicant wrote in her RSOR that this is the same debt as the debt listed as 1.f., above. (Item 3.) This debt is established by the credit reports included with the FORM. (Items 5 and 6.) No independent evidence has been offered to establish that this debt is a duplicate and has been resolved or reduced.

Applicant explained on her RSOR that she became unemployed in October 2010, and while she did stay current on her mortgage, car payments, and insurance, she was unable to make her credit card payments. Applicant wrote that she was unemployed for three months before she was able to obtain her current employment. She also indicated that she is not making as much as she had with her previous employer, which has made it difficult to resolve her credit card debts. Finally, she wrote that she "is trying to make good and [sic] my past credit obligations and will continue to do so as well with any new ones." (Item 3.)

After the FORM was forwarded to Applicant, she was given the opportunity to submit evidence showing that she had been making payment on some of her debts, as she has indicated on her RSOR. Applicant did not submit any documents to show that she was making payments according to her plan. Applicant also failed to submit a personal financial statement or any other documents to show that her current financial position is stable and that she is able to resolve her present debts.

Policies

When evaluating an applicant's suitability for access to a sensitive position, a security clearance the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an applicant's eligibility for access to access to a sensitive position.

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 over-arching 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 [a sensitive position] 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 applicant or proven by Department Counsel. . . ." The Applicant has the ultimate burden of persuasion as to obtaining a favorable access decision.

A person who seeks access to a sensitive 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. 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 that 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.

Section 7 of Executive Order 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The 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 classified [or sensitive] information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise concerns and could potentially apply in this case. Under AG ¶ 19(a), "an inability or unwillingness to satisfy debts," is potentially disqualifying. Similarly under AG ¶ 19(c), "a history of not meeting financial obligations" may raise security concerns. I find that both of these disqualifying conditions apply to Applicant in this case. The evidence has established that Applicant accumulated significant delinquent debt over several years, which has not been satisfied.

AG ¶ 20 provides conditions that could mitigate concerns from financial difficulties. Since no independent evidence has been submitted to show Applicant has resolved or reduced any of her significant delinquent debt, I cannot find that she has acted responsibly, and thus I cannot find that any mitigating condition is a factor for consideration in this case.

Until Applicant is able to significantly resolve or reduce her overdue debts, I find that Applicant has not mitigated the Financial Consideration concerns, which are found against Applicant.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a sensitive position 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 security clearance 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. Based on all of the reasons cited above as to why the disqualifying conditions are applicable and controlling, and no mitigating conditions are applicable, I find that the record evidence leaves me with significant questions and doubts as to Applicant's eligibility and suitability for a sensitive position under the whole-person concept. For all these reasons, I conclude Applicant has not mitigated the concerns under the whole-person concept.

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

Subparagraphs 1.a. - 1i.: 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 for access to a sensitive position. Eligibility for access to sensitive information is denied.

Martin H. Mogul
Administrative Judge