



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



In the matter of:)
)
) ADP Case No. 15-02281
)
Applicant for Public Trust Position)

Appearances

For Government: Ross Hyams, Department Counsel
For Applicant: *Pro se*

04/28/2017

Decision

KILMARTIN, Robert J., Administrative Judge:

Applicant did not mitigate the financial considerations trustworthiness concerns. Applicant's eligibility for access to sensitive information is denied.

Statement of the Case

On November 14, 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 May 24, 2016. The FORM was mailed to Applicant, and it was received on June 13, 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 exhibits identified as GE 1 through 7 are admitted into evidence without objection. The case was assigned to me on April 7, 2017.

Findings of Fact

Applicant admitted the allegations in SOR ¶¶ 1.a – 1.e, and SOR ¶ 1.g. She also provided amplifying comments in her two-page Answer dated March 21, 2016.² She stated that SOR ¶ 1.a concerns a mobile home that Applicant purchased initially. Her mother took over possession and payments, but then fell behind. The mobile home was repossessed and sold. Applicant is not aware of any deficiency.³ She also admitted to the delinquent student loan alleged in SOR ¶ 1.b, and the delinquent medical debt alleged in SOR ¶ 1.c. In response to both of these allegations, Applicant stated "I will be contacting this company to set up payment arrangements or a settlement offer."⁴ She was unsure about the debt alleged in SOR ¶ 1.f, and she admits SOR ¶¶ 1.e and 1.g, but states "this is a debt that I owe, but will not be paying off" in both cases. Lastly, she disputes the debt alleged in SOR ¶ 1.h, but provided no documentation to show this dispute with her cell phone service provider. It is reflected in her credit reports. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 39 years old. She graduated high school in 1996. She has been unemployed since October 2012, but she is eligible for re-hire with her previous federal-contractor employer. She was also unemployed from September 2009 to November 2010. Applicant has never served in the armed forces, and she never married.⁶ She reports two children, born in 2001, and 2008, and she is applying for a position of trust for the first time. She reported financial problems including delinquent student loans in section 26 of her November 2012 Questionnaire for National Security Positions (SF 86) due to "lack of stable income."⁷

SOR ¶¶ 1.f alleges a delinquent \$210 medical debt. In her Answer to the SOR, Applicant states she is unaware of this debt, but it is plainly reflected in her 2015 credit bureau report. Applicant took out student loans in the amount of approximately \$10,000 to attend college and obtain her medical assistance certificate in 2009.⁸ At one point, her wages were garnished to make payments toward her student loan. Applicant claims

² GE 3, Answer to SOR.

³ GE 3, Answer to SOR.

⁴ GE 3, Answer to SOR.

⁶ GE 4, SF-86, at pages 17 -18.

⁷ GE .4, at page 31.

⁸ GE 5, at page 4.

that she started making payments of \$50 each month on the student loans, but could not keep up.⁹ In her subject interview of January 2012, Applicant stated her intent to reach out to this creditor and resume a payment plan. She had some credit counseling, when she attempted to purchase a home in early 2012. In that same interview, Applicant stated that her delinquent debts were due to periods of unemployment.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.

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

⁹ GE 5, at page 3.

¹⁰ GE 5, at page 10.

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 classified 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 handling and safeguarding 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 six of the eight delinquent debts alleged in the SOR totaling over \$25,000. These are longstanding debts, as evidenced by her 2012 credit bureau report. She endured several periods of unemployment. In her Answer to the SOR, she claims that she thought the debt reflected in SOR ¶ 1.b had been consolidated with her other student loans. She promised to contact this creditor, but there is no evidence of her following through on that promise. Inexplicably, she admits to the delinquent debts alleged at SOR ¶¶ 1.e and 1.g, but states she will not be paying them. She has done little or nothing to meet her burden in mitigating these debts. 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;
- (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 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 disclosed some of her financial problems in her SF 86. She has produced no documentation to show payments or progress on any of her delinquent debts alleged in the SOR. The delinquencies alleged in the SOR are recent and ongoing. Arguably, her periods of unemployment were conditions beyond Applicant's control. Yet, she has not demonstrated that she has acted responsibly under the circumstances. She 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 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 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 trustworthiness concern. She has not met her burden of persuasion. The record evidence leaves me with questions and 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.h:	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 a public trust position. Eligibility for access to sensitive information is denied.

Robert J. Kilmartin
Administrative Judge