



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



In the matter of:)
)
) ADP Case No. 15-02385
)
Applicant for Public Trust Position)

Appearances

For Government: Adrienne Strzelczyk, Esq., Department Counsel
For Applicant: *Pro se*

08/26/2016

Decision

CERVI, GREGG A., Administrative Judge:

Applicant mitigated the financial concerns. Eligibility for a public trust position is granted.

Statement of the Case

Applicant completed a Questionnaire for National Security Positions (SF 86)¹ on July 28, 2014. The Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) on November 2, 2015, detailing trustworthiness concerns under Guideline F, financial considerations.²

¹ Applicant is requesting a trustworthiness determination for access to sensitive information, also known as a “public trust” determination, to occupy an automated data processing (ADP) position.

² The action was taken under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); DOD Directive 5200.2R, *Personnel Security Regulations* (Regulation); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on November 24, 2015, and included a letter of explanation. She elected to have the case decided on the written record in lieu of a hearing. The Government's written brief with supporting documents, known as the File of Relevant Material (FORM), was submitted by Department Counsel on January 20, 2016.

A complete copy of the FORM was provided to Applicant, who was afforded an opportunity to file objections to the proposed evidence, and submit material to refute, extenuate, or mitigate the trustworthiness concerns. Applicant received the FORM on February 3, 2016, and submitted an undated letter and several documents in response, marked as Applicant Exhibits (AE) A through F and admitted into evidence. She did not assert any objections to the Government's evidence. The case was assigned to me on July 1, 2016. The Government's exhibits included in the FORM (Items 1 through 6) are admitted into evidence.

Findings of Fact

Applicant is a 43-year-old employee of a defense contractor. She has worked for her current employer since 2014. She is a technical school graduate. She is unmarried and lives with her widowed mother.

The SOR alleges eight delinquent debts. Applicant admitted to the debts and explained that a former fiancé was permitted to use her credit cards and in 2013, accumulated charges that she did not authorize. She was also forced to leave an apartment that she shared with him because of violent behavior toward her and her mother. One debt involved payments for a television that he stole from her, and others were for women's clothing that she did not receive. She reported the theft to the police and disclosed the situation to her employer and on her SF 86. Despite promises from her former fiancé, he never paid for the charges for which he was responsible.

Since 2013, Applicant has been paying the debts and has resolved all but one small medical debt for which she is unable to locate the creditor (SOR ¶ 1.g). Despite additional expenses resulting from the loss of her father in January 2015, the remaining debts have been settled and paid over time, ending in March 2016. Applicant has expressed embarrassment for the debts her personal situation has caused, and believes she learned a lesson from this experience. She stated that prior to this relationship, she never broke an apartment lease and paid her bills on-time. She and her mother share living expenses and her latest credit report does not reflect any further financial distress.

Policies

Positions designated as ADP I and ADP II are classified as "sensitive positions." 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 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." Regulation ¶ C6.1.1.1. DOD contractor personnel are

entitled to the procedural protections in the Directive before any final unfavorable access determination may be made. Regulation ¶ C8.2.1.

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. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard sensitive information.

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.

The protection of the national security is the paramount consideration. Under AG ¶ 2(b), "[a]ny doubt concerning personnel being considered for access to [sensitive] information will be resolved in favor of national security." The Government must present substantial evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). An applicant has the ultimate burden of demonstrating that it is clearly consistent with national security to grant or continue eligibility for access to sensitive information.

Analysis

Guideline F, Financial Considerations

The concern 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.

The guideline notes several conditions that could raise trustworthiness concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and

(c) a history of not meeting financial obligations.

Applicant had a history of financial problems, and had debts she was unable or unwilling to resolve. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns 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: and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

There is sufficient evidence to determine that Applicant's financial problems have been resolved. She suffered a financial impact from an abusive relationship that has ended. She made significant efforts to address her debts, and eventually resolved the delinquencies in a satisfactory manner. I find that she acted responsibly under the circumstances once she was financially stable.

Applicant demonstrated that she has gained control of her financial situation, and her overall efforts to address her debts showed a clear intent to resolve them. She has a steady work history and her financial issues no longer cast doubts on her reliability, trustworthiness, and good judgment. Overall, I find that the financial considerations concerns have been mitigated. AG ¶¶ 20(a), (b), (c), and (d) apply.

Whole-Person Concept

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. In applying the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a public trust position by considering the totality of the applicant's conduct and all relevant circumstances. An 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.

I considered all of the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my findings of fact and comments under Guideline F in this whole-person analysis. Overall, I find that the financial concerns have been mitigated. I have no questions or concerns about her overall ability and willingness to fully face her financial responsibilities, and her reliability, trustworthiness, and good judgment.

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:	For Applicant
Subparagraphs 1.a - 1.h:	For Applicant

Conclusion

In light of all of the circumstances presented in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a public trust position. Eligibility for access to sensitive information is granted.

Gregg A. Cervi
Administrative Judge