



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



In the matter of:

Applicant for Public Trust Position

ADP Case No. 15-02388

Appearances

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

November 2, 2016

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant resolved three of nine debts. She remains indebted on six accounts totaling \$109,113. She failed to present sufficient evidence to mitigate the outstanding financial trustworthiness concerns. Based upon a thorough review of the pleadings, and exhibits eligibility for access to ADP I/II/III sensitive information is denied.

Statement of the Case

On April 9, 1993, the Composite Health Care Systems Program Office (CHCSPO), the Defense Office of Hearings and Appeals (DOHA), and the Assistant Secretary of Defense for Command, Control, Communications and Intelligence (ASD C3I), entered into a memorandum of agreement for DOHA to provide trustworthiness determinations for contractor personnel employed in Sensitive Information Systems Positions (ADP I/II/III), as defined in Department of Defense (DOD) Regulation 5200.2-R, *Personnel Security Program* (January 1987), as amended (Regulation).

On December 5, 2012, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On September 19, 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); the Regulation (*supra*); and the

adjudicative guidelines (AG) effective within the DoD for SORs issued after September 1, 2006.

Applicant answered the SOR on October 27, 2015, (Answer), and requested that her case be decided by an administrative judge on the written record without a hearing. (Item 2.) On January 5, 2016, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing six Items, was mailed to Applicant on January 6, 2016, and received by her on January 27, 2016.¹ The FORM notified Applicant that she had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. Applicant did not submit any information within the time period allotted. DOHA assigned the case to me on August 22, 2016. Items 1 through 5 are admitted into evidence.

Findings of Fact

Applicant is alleged to be indebted to nine creditors in the amount of \$109,932. She admitted the allegations contained in SOR ¶¶ 1.d through 1.i. She denied the delinquent debts alleged in SOR ¶¶ 1.a through 1.c. Her admissions are incorporated into the findings of fact herein.

Applicant is 56 years old and married. She served in the Navy from December 1979 to December 1983. She had an honorable discharge. (Item 3.)

Based on credit bureau reports (CBR) from February 2015, and December 2012, the SOR alleged nine delinquent debts totaling \$109,932, which accumulated between 2008 and 2015. (Items 4, 5.) They are as follows:

Applicant was indebted to a collection agent in the amount of \$375, as stated in SOR ¶ 1.a. In her Answer, she provided a copy of a check written to this creditor for \$375, dated October 27, 2015. This debt is resolved. (Item 2.)

Applicant was indebted to a service provider in the amount of \$339, as stated in SOR ¶ 1.b, for unreturned cable equipment. In her Answer, she provided a copy of a September 23, 2014 receipt, documenting that Applicant returned the equipment that caused this debt. This allegation is resolved. (Item 2.)

Applicant was indebted to a collection agent in the amount of \$105, as stated in SOR ¶ 1.c. In her Answer, she provided a copy of a check written to this creditor for \$105, dated October 27, 2015. This debt is resolved. (Item 2.)

Applicant remains indebted on the debts identified in SOR ¶¶ 1.d through 1.i, totaling \$109,113. She explained in her Answer:

¹ GE 6 is inadmissible. It will not be considered or cited as evidence in this case. It is the summary of an unsworn interview of Applicant conducted by an interviewer from the Office of Personnel Management in January 2013. Applicant did not adopt it as her own statement, or otherwise certify it to be accurate. Under Directive ¶ E3.1.20, this Report of Investigation summary is inadmissible in the absence of an authenticating witness.

My husband and I lost over half of our income when we moved from [State 1] to [State 2] in 2006. I still am not making the same amount that I was in 2006. I have trimmed our budget to the essentials and we are trying to live a very simple lifestyle. At this point in time I [do not] have extra money in the budget to pay on these debts, but they are my husband[']s and mine. (Item 2.)

Applicant provided no household budget showing monthly household expenses. She did not provide a copy of her earnings statement. Without this or similar information, I am unable to assess her current financial status and her ability or willingness to repay her past-due debts. The record lacks any evidence of credit or financial counseling.

Policies

Positions designated as ADP I, II, and III 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, 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.” (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. (Regulation ¶ C8.2.1.)

When evaluating an applicant’s suitability for a public trust position, 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 to be used in evaluating an applicant’s eligibility for access to sensitive information.

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 AG ¶ 2 describing the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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. Directive ¶ E3.1.15 states that, “[t]he applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.”

A person applying for access to sensitive information seeks to enter 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 protected information. Decisions include, by necessity, consideration of the possible risk 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.

Analysis

Guideline F, Financial Considerations

The trustworthiness concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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.

This concern is broader than the possibility that an individual might knowingly compromise classified, or 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 classified, or sensitive, information.²

² See ISCR Case No. 11-05365 at 3 (App.Bd. May 1, 2012).

AG ¶ 19 describes two conditions that could raise trustworthiness concerns and may be disqualifying in this case:

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

Applicant's financial problem began in 2006 and extends through the present time. She resolved three small debts. However, she remains indebted on six accounts totaling \$109,113. The evidence raises the above trustworthiness concerns, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate trustworthiness concerns arising from Applicant's financial difficulties:

- (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.

Applicant's financial problems are ongoing. Six of Applicant's delinquent accounts remain unresolved. She has not demonstrated that future financial problems are unlikely. Mitigation under AG ¶ 20(a) has not been established.

Applicant explained that her financial delinquencies were due to a loss of income related to a move in 2006. Not much is known about the cause of the move and whether there were circumstances beyond her control involved. Further, she failed to establish that she has acted responsibly since then. She has not demonstrated that she addressed her debts in a timely manner. She failed to present a plan to pay these debts. Mitigation under AG ¶ 20(b) has not been established.

Applicant provided no evidence of financial counseling. Further, there are no clear indications that her financial problems are being resolved or are under control. Mitigation under AG ¶ 20(c) has not been established.

AG ¶ 20(e) requires Applicant to provide documented proof to substantiate the basis of the dispute or provide evidence of actions to resolve the issue. Applicant provided evidence that she disputed the debt in SOR ¶ 1.b because she had returned the equipment to the service provider and no longer owed that debt. Mitigation under AG ¶ 20(e) applies solely to SOR ¶ 1.b.

Whole-Person Concept

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

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 Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment. Applicant's financial problems remain unresolved. In addition, she is a mature adult and as a former military member, should be aware that her personal finances are of concern to the Government. While she was given the opportunity to document the status of her debts, she failed to produce evidence of any actions on her remaining six delinquent accounts. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a position of trust. For all these reasons, I conclude Applicant failed to mitigate the Financial Considerations 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 through 1.c:

For Applicant

Subparagraphs 1.d through 1.i:

Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant eligibility for a public trust position. Eligibility for access to ADP I/II/III sensitive information is denied.

Jennifer I. Goldstein
Administrative Judge