



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



In the matter of:

ADP Case No. 15-02389

Applicant for Public Trust Position

Appearances

For Government: Tara R. Karoian, Esq., Department Counsel

For Applicant: *Pro se*

09/29/2016

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the financial considerations trustworthiness concerns. Eligibility for access to sensitive information is denied.

Statement of the Case

On September 22, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued 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 (AG) implemented by the DOD on September 1, 2006.

On October 13, 2015, Applicant submitted an answer to the SOR, and she elected to have her case decided on the written record. On December 16, 2015, Department Counsel submitted the Government's file of relevant material (FORM). The FORM was mailed to Applicant, and it was received on January 7, 2016. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation,

or mitigation within 30 days of receipt of the FORM. Applicant did not object to the Government's exhibits and did not provide documents within the time period. The Government's documents are identified as Items 1 through 6 and admitted into evidence. The case was assigned to me on September 20, 2016.

Findings of Fact

Applicant admitted the allegations in SOR ¶¶ 1.a-1.k, 1.r, and 1.u-1.w. She denied the remaining allegations. Her admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact.

Applicant is 51 years old. She is a high school graduate. She married in 1987 and divorced in 1989. In 2009, she became the legal guardian for her boyfriend's sister's two children, due to their mother's incarceration.¹

In 2004, Applicant incurred a federal tax debt because she was working as an independent contractor and was unaware that taxes were not being withheld from her pay. She made \$600 a month payments to the Internal Revenue Service (IRS) from sometime in 2004 until June 2006, when she was no longer able to pay due to leaving her job. This debt is reflected in SOR ¶ 1.a (\$18,827). In her answer to the SOR, she stated that the IRS has classified this debt as uncollectible due to her financial situation. Applicant did not provide any proof documenting the status of this debt.²

Applicant attributes her financial problems to unemployment, underemployment and health issues. On her security clearance application (SCA), she lists her longest period of unemployment from October 2008 to August 2012. Applicant was diagnosed with cancer in 2005. She had health insurance, but not all of her medical bills were covered by her insurance, and she incurred other expenses, such as copays. In 2006, her job was restructured and she decided to leave it due to the drastic reduction in income from \$55,000 to \$35,000. She indicated that she continued to work for a period of time and then, due to the economy, she was laid off. She collected unemployment compensation and used her savings and severance package to support herself.³

In approximately 2009, Applicant took custody of her boyfriend's sister's two children. Applicant did not provide additional information regarding whether she receives any form of child support from the parents, their uncle who is her boyfriend, or benefits from the state or government.⁴

¹ Items 2, 3, 6.

² Items 2, 6.

³ Items 2, 6.

⁴ Items 2, 6.

Applicant admitted she owes the delinquent student loan in SOR ¶ 1.i (\$15,217), but stated it has been rehabilitated and is now in a forbearance status. She did not provide documentary proof of its current status. Her credit reports show the loan is in a collection status.

A judgment for \$1,374 (SOR ¶ 1.b) was entered against Applicant in 2009. She indicated during her January 2014 background interview that she would contact the creditor to pay the debt. No evidence was provided that this judgment was paid.

During Applicant's background interview with a government investigator she admitted she owed the debt in SOR ¶ 1.s (\$26,194) for a car loan. She indicated that she was delinquent in making three monthly payments, and the car was voluntarily repossessed and sold. She planned to pay the deficiency amount. In her answer to the SOR, she stated she understood that she owed a deficiency balance of \$12,000, but not the balance alleged. She did not provide any proof of actions she has taken to resolve the debt.

The debt in SOR ¶ 1.t is for a timeshare that was given to Applicant as a gift. She could not afford the maintenance fees, and she stated the unit was sold. She denied she owed the debt indicating she had informed the creditor that she could not afford the fees and asked them to sell it. Applicant did not provide documentary proof of her dispute or of the creditor's affirmation that she was no responsible for the delinquent fees.

Applicant admitted she owes the debts in SOR ¶¶ 1.c, 1.u, and 1.v, but she is unable to pay them. The debts in SOR ¶¶ 1.d through 1.k are medical debts she incurred due to her health issues. She admits she owes them but did not give any indication that she intended to resolve them. The debts alleged in SOR ¶¶ 1.m through 1.q, Applicant believes are debts that were transferred or sold to collection agencies. She indicated they may be her debts, but she does not know. She stated that when she received telephone inquiries from collection agencies "years ago" she asked them to identify the debts and they did not. There is no evidence that Applicant has made attempts to determine the creditors or the legitimacy of the debts. Credit reports from February 2015 and December 2012 substantiate the debts alleged in the SOR.⁵

Applicant indicated that she is currently employed and has health benefits. Her bi-monthly net pay is \$535. She was diagnosed in 2014 with congestive heart failure due to the radiation treatment she received during her cancer treatment. She also indicated that she now has full custody of the two children. She stated that she has been displaced due to massive flooding in the location where she lives.⁶

⁵ Items 2, 3, 4, 5.

⁶ Item 2.

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 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 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.

This concern is broader than the possibility that an individual might knowingly compromise classified 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 information.⁷

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

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

Applicant has 23 delinquent debts totaling approximately \$82,700, which include a tax lien, a judgment, a student loan, and consumer and medical debts that she is unable or unwilling to pay. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate financial considerations trustworthiness 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;

⁷ See ISCR Case No. 11-05365 at 3 (App.Bd. May 1, 2012).

(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.

AG ¶ 20(a) does not apply because Applicant has numerous debts that are not resolved. Applicant attributes her financial problems to being unemployed, underemployed, and health issues beginning in 2006. She also indicated that she is the guardian for two children. These conditions were beyond her control. To fully apply AG ¶ 20(b), Applicant must have acted responsibly. Applicant has not presented evidence of action she has taken to address any of her debts or to dispute them. She did not provide sufficient evidence about her current financial situation, which may include contributions from her boyfriend or other benefits she may receive to care for the children. There is insufficient evidence that under the circumstances, Applicant has acted responsibly in addressing her delinquent debts. AG ¶ 20(b) partially applies.

There is no evidence Applicant has received financial counseling. There is insufficient evidence to conclude her financial problems are being resolved or are under control. There is insufficient evidence to conclude Applicant has made a good-faith effort to repay overdue creditors or otherwise resolve her debts. Applicant did not provide documents to substantiate her statements that the tax lien has been classified as uncollectible and that she no longer owes it, or that her student loan is in forbearance. She has not provided evidence that she has contacted creditors to determine the legitimacy of certain debts or any action she may have taken to dispute the debts. AG ¶¶ 20(c), 20(d) and 20(e) do not apply.

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 all relevant 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 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 is 51 years old. She had a serious health issue in 2006 that impacted her finances. She also experienced periods of unemployment and underemployment and has taken on the responsibility of caring for two children. Applicant may legitimately be unable to pay her debts due to her financial situation, but she has failed to provide evidence of her actions to address any of the delinquent debts alleged or substantiate the status of the debts she says are not her responsibility. Applicant has an unstable financial track record. Limited information was provided to show the financial considerations are mitigated. Without additional explanations, information, and documents, I cannot conclude that Applicant's finances are under control. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a public trust position. For all these reasons, I conclude Applicant failed to mitigate the Guideline F, 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.w:	Against Applicant

Conclusion

In light of all of the circumstances it is not clearly consistent with national security to grant Applicant eligibility for a public trust position. Eligibility for access to sensitive information is denied.

Carol G. Ricciardello
Administrative Judge