



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



In the matter of:)
)
) ADP Case No. 15-02430
)
Applicant for Public Trust Position)
)

Appearances

For Government: Andrew Henderson, Esquire, Department Counsel
For Applicant: *Pro se*

February 16, 2017

Decision

CEFOLA, Richard A., Administrative Judge:

On April 13, 2014, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On October 25, 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 Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DoD for SORs issued after September 1, 2006.

Applicant submitted an answer to the SOR (Answer) on November 17, 2015, and requested a hearing before an administrative judge. On June 20, 2016, the Defense Office of Hearings and Appeals (DOHA) assigned the case to me. On July 19, 2016, DOHA issued a Notice of Hearing setting the case for hearing on August 5, 2016. The case was heard as scheduled. Department Counsel offered Government Exhibits (GXs) 1 through 4 into evidence without objection. Despite the record being left open until

September 6, 2016, Applicant offered no Exhibits, only a written closing statement. Applicant testified on her own behalf. DOHA received the hearing transcript (TR) on August 15, 2016.

Findings of Fact

Applicant is 60 years old. (GX 1 at page 5.) She is employed by a health care provider. (TR at page 16 lines 7~13.) She is married, and her daughter and her daughter's family are living with Applicant and her husband. (GX 1 at pages 20~22, and TR at page 23 line 24 to page 24 at line 6.)

The SOR contained 21 allegations related to delinquent debts and a foreclosure. Applicant neither admitted nor denied the allegations of the SOR; and as such, they are considered denied. However, the alleged debts are listed on credit reports accessed from May of 2014, December of 2014, and March of 2016. (GXs 2~4.)

Guideline F - Financial Considerations

Applicant attributes her current financial difficulties to health issues, and to periods of unemployment for herself, her husband, and her daughter's husband, as they now live with Applicant. (TR at page 16 line 7 to page 20 line 24, and at page 23 line 25 to page 24 line 22.) Their current monthly income is about \$4,000. (TR at page 22 line 18 to page 24 line 22.)

1.a. Applicant is indebted to State A, as the result of a tax judgment in the amount of about \$9,925. She has offered nothing to show she is addressing this outstanding judgment. (TR at page 20 line 25 to page 22 line 17, and at page 26 line 17 to page 28 line 13.)

1.b. and 1.c. Applicant is indebted to the Federal Government, as the result of tax judgments in an amount totaling about \$122,547. She has offered nothing to show she is addressing these outstanding judgments. (*Id.*)

1.d.~1.q. Applicant is indebted to numerous health care providers for past-due debts totaling about \$35,118. She has offered nothing to show she is addressing these outstanding debts. (TR at page 38 line 17 to page 29 line 12.)

1.r.~1.t. Applicant is indebted to three additional health care providers for past-due debts totaling about \$590. She has offered nothing to show she is addressing these outstanding debts. (TR at page 29 lines 13~20.)

1.u. I find that the alleged past-due debt to Creditor U in the amount of \$120 is her son's debt; and as such, this allegation is found for Applicant. (TR at page 24 line 23 to page 25 line 4.)

1.v. Applicant lost a house in March of 2012 as the result of a foreclosure. (TR at page 25 lines 5~25.)

Policies

Positions designated as ADP I, II, and III 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 the DoD and DOHA by the Defense Security Service and Office of Personnel Management. DoD 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 Adjudicative Guidelines (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 AG ¶ 2(a), describing 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.” 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.

According to 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 the applicant or proven by Department Counsel” The applicant has the ultimate burden of persuasion as to obtaining a favorable trustworthiness decision.

A person who applies 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 sensitive 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.

Section 7 of Executive Order 10865 provides that “Any determination under this order adverse to an applicant shall be a determination 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 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 [or sensitive] information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

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 has accumulated a significant amount of delinquent debt. Her actions have demonstrated both a history of not addressing his debt and an inability to do so. The evidence is sufficient to raise the above disqualifying conditions.

One Financial Considerations mitigating conditions under AG ¶ 20 is potentially applicable:

- (b) the conditions that resulted in the financial problem were largely beyond the person’s control (e.g. loss on employment, . . . unexpected medical emergency . . .) and the individual acted responsibly under the circumstances.

Although the evidence shows that Applicant's current financial difficulties can be attributed to periods of unemployment and health, she has done little to address her rather substantial past-due debts.

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.

According to AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a trustworthiness determination 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 relevant facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Overall, the record evidence leaves me with questions as to Applicant's eligibility and suitability for a public trust position. For these reasons, I conclude Applicant did not sufficiently mitigate the trustworthiness concerns arising from her delinquent debts.

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
Subparagraph 1.a.~1.t.:	Against Applicant
Subparagraph 1.u.:	For Applicant
Subparagraph 1.v.:	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.

Richard A. Cefola
Administrative Judge