



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



In the matter of:)
)
) ADP Case No. 15-02944
)
Applicant for Public Trust Position)

Appearances

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

08/29/2016

Decision

CERVI, Gregg A., Administrative Judge:

This case involves concerns raised under Guidelines F (Financial Considerations) and E (Personal Conduct). Applicant has not mitigated the financial considerations and personal conduct trustworthiness concerns. Eligibility for access to sensitive information is denied.

Statement of the Case

Applicant completed a Questionnaire for National Security Positions (SF 86) on December 19, 2012.¹ On October 30, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing trustworthiness concerns under Guidelines F (Financial Considerations) and E (Personal Conduct).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 Department of Defense acted 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 DOD on September 1, 2006.

Applicant responded to the SOR on November 20, 2015, and 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 December 30, 2015.

A complete copy of the FORM was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the concerns. Applicant received the FORM on January 15, 2016. She did not submit a response to the FORM, nor did she 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 to 7) are admitted into evidence.

Findings of Fact

The SOR alleges 19 delinquent debts, including 13 medical debts, totaling \$66,530. Additionally, the SOR alleges Applicant failed to disclose in her SF 86 two arrests in 2009 for misdemeanor driving with a suspended or revoked license and shoplifting. She admitted the financial allegations except she denied SOR ¶¶ 1.l and 1.o (claiming they are not on her credit report), and 1.m (claiming it was paid in 2015 and requested removal from the credit report). She provided a collection notice with her Answer, showing a student loan debt totaling \$60,836, with an indication that she owed on a payment plan. No other record showing payment plans for the remaining SOR debts was provided, and no record of payments on any of the SOR debts was provided. She also claimed her failure to report her past criminal conduct on her SF 86 was not deliberate; rather she claimed she was confused and poorly advised by her employer, and that she later discussed the two omitted offenses during her personal subject interview (PSI). The evidence submitted with the FORM substantiates the SOR allegations, including the allegations of which Applicant denied.³

Applicant is 27 years old and employed as a medical provider specialist for a defense contractor since January 2013. She has not previously held a public trust position. She has completed some college, but has not yet obtained a degree. She was married in 2010 and has a child. She stated in her Answer that she is now divorced.

Although she stated that she has either arranged payment plans or was in the process of paying off the SOR debts to which she admitted, she failed to provide any documentation of payments or payment plans except as previously noted. There is no documentary evidence supporting her denial of financial allegations that have been substantiated in the record. In her Answer, Applicant noted that over the past few years, she has struggled with unemployment, changed residences, separation, health issues, two pregnancies, and divorce.

No documents or additional information were submitted in response to the FORM. There is no documentary evidence of payments toward or resolution of the SOR

³ The denied debts are reported in GE 4.

debts, except as described above, and there has been no evidence submitted of financial counseling or assistance with budgeting and debt resolution.

In response to the Guideline E allegation, Applicant claimed that she omitted the misdemeanor offenses of driving while license suspended or revoked and shoplifting because she did not fully understand the question in her SF 86, and that her employer told her to answer to the best of her knowledge and discuss the details during her PSI. In her SF 86, Applicant made several notations to explain or elaborate on other answers, and disclosed a 2009 breach of trust accusation⁴ made against her that was dismissed. In her PSI, she voluntarily disclosed the shoplifting incident, but did not disclose the misdemeanor traffic offense until prompted by the investigator. She asserted that she did not think she had to disclose the shoplifting arrest on her SF 86 because the record was expunged, and she did not report the misdemeanor driving offense because she was in a rush to complete the SF 86 and may have been confused.

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

⁴ Applicant later informed the Office of Personnel Management (OPM) investigator during the PSI that the breach of trust offense was in 2007.

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 concerns under AG ¶ 19. The following are potentially applicable in this case:

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

Applicant has long-standing financial problems that she is unable or unwilling to resolve. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate the financial considerations 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.

Applicant's delinquent debts are long-standing and current. Although many of her debts likely become delinquent due to unsteady employment and personal difficulties, Applicant has not shown that she acted responsibly under the circumstances. Although she now claims she negotiated payment plans or is in the process of repaying the debts through small monthly installments, she did not provide evidence to support her claims. The only document provided was a collection notice, but no evidence of payments per the plan were provided in response to the FORM. Additionally, there is no evidence that she received financial counseling or assistance with addressing her debts, or that her financial problems are being resolved or are under control.

There is insufficient evidence to persuade me that any of the SOR debts have been or are being satisfactorily addressed, nor is there evidence that Applicant is financially stable and able to meet future financial responsibilities.

Based on the record presented, I find that the SOR debts have not been sufficiently addressed to warrant application of full mitigation credit. Applicant's precarious financial condition leaves me with questions and concerns about her overall ability and willingness to fully face her financial responsibilities, and creates doubts about her current reliability, trustworthiness, and good judgment.

Guideline E, Personal Conduct

The concern under this guideline is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The following disqualifying condition under AG ¶ 16 is relevant in this case:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant failed to disclose two arrests from 2009 on her SF 86. Applicant completed her SF 86 with written notations about past job losses, credit and debt issues, clarification of family names, and a breach of trust allegation against her. There is no indication that she was too rushed for time to include the two 2009 criminal incidents, or that she was counseled to exclude them. In her PSI, Applicant claimed she believed she should not include an expunged shoplifting record in her SF 86, and that she was rushed or confused about reporting the driving offense. The record evidence does not support these assertions; rather it tends to support the contrary.

I find her omissions were deliberate and sufficient to invoke disqualifying condition AG ¶ 16(a). No mitigating conditions apply. There is insufficient evidence to suggest Applicant's personal conduct issues have been resolved or are unlikely to reoccur, and her conduct raises questions about her reliability and trustworthiness.

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 Guidelines F and E in this whole-person analysis.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a position of public trust. I conclude Applicant did not mitigate the financial considerations and personal conduct 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.s:	Against Applicant
Paragraph 2, Guideline E:	Against Applicant
Subparagraph 2.a:	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.

Gregg A. Cervi
Administrative Judge