



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



In the matter of:)
)
) ADP Case No. 15-02961
)
Applicant for Public Trust Position)

Appearances

For Government: Caroline E. Heintzelman, Esq., Department Counsel
For Applicant: *Pro se*

08/31/2016

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant did not mitigate the financial considerations trustworthiness concerns. Eligibility for access to sensitive information is denied.

Statement of the Case

On November 23, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant 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.

Applicant answered the SOR on December 17, 2015, and elected to have the case decided on the written record in lieu of a hearing. The Government’s written case was submitted on January 25, 2016. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the trustworthiness concerns. Applicant received the FORM on February 9, 2016. As of April 4, 2016, she had not

responded. The case was assigned to me on May 24, 2016. The Government exhibits included in the FORM are admitted in evidence.

Findings of Fact

Applicant is a 50-year-old employee of a defense contractor. She has worked for her current employer since October 2014. She is seeking eligibility to hold a public trust position. She has associate's degrees that were awarded in 2003 and 2014. She has never married and she has no children.¹

The SOR alleges 31 delinquent debts. However, the following debts are duplicates: SOR ¶¶ 1.a (no balance alleged) and 1.z (\$3,185); 1.s (\$1,595) and 1.y (\$1,962); and 1.x (\$372) and 1.aa (\$574). There may be additional duplicate debts that are not obvious from the evidence. The balances of the debts range from \$27 owed on a mail-order food account to \$3,185 owed to a bank. Applicant admitted owing all of the debts alleged in the SOR, but the \$553 debt alleged in SOR ¶ 1.ee was listed in the September 2014 credit report with a \$0 balance and the annotation: "Account legally paid in full for less than the full balance." The date of last action was December 2013.²

Applicant attributed her financial problems to periods of unemployment and underemployment. She reported her delinquent debts when she submitted a Questionnaire for National Security Positions (SF 86) in September 2014. She discussed her finances during her background interview in November 2014. She had only recently been hired by her current employer. She stated that she would make arrangements to pay her accounts after she started receiving a steady paycheck.³

When she responded to the SOR, Applicant stated that she had been unable to start repaying her debts because of additional circumstances, which included broken appliances that required replacing; repairs to the vehicle that she drives (her father's 20-year-old pickup truck); \$4,700 toward necessary dental work; and expenses related to caring for her elderly and ill father. She also noted that she missed substantial time at work and overtime because of her dental procedures and taking her father to his medical appointments. Her medical insurance costs \$280 per month, and her monthly student loan payment is \$390. She realizes that she needs to file for bankruptcy protection or pay her debts, but she has not had the money to do either. She did not respond to the FORM, so no additional information was provided after her December 2015 response to the SOR.⁴

¹ Items 3, 4.

² Items 2-6.

³ Items 2-4.

⁴ 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 [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:

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

Applicant accumulated delinquent debts and was unable to pay her financial obligations. The above disqualifying conditions are applicable.

SOR ¶¶ 1.a and 1.z; 1.s and 1.y; and 1.x and 1.aa are duplicates. When the same conduct is alleged twice in the SOR under the same guideline, one of the duplicate allegations should be resolved in Applicant's favor. See ISCR Case No. 03-04704 at 3 (App. Bd. Sep. 21, 2005) (same debt alleged twice). SOR ¶¶ 1.a, 1.s, and 1.x are concluded for Applicant.

Conditions that could mitigate 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 unemployment, underemployment, broken appliances and pickup truck, dental work, and expenses related to caring for her elderly and ill father were all beyond her control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances.

With the possible exception of the \$553 debt alleged in SOR ¶ 1.ee, which may have been settled in December 2013, Applicant has not paid any of the debts alleged in the SOR, including the \$27 owed on a mail-order food account. During her background interview in November 2014, she stated that she would make arrangements to pay her accounts after she started receiving a steady paycheck. The Appeal Board has held that "intentions to pay off debts in the future are not a substitute for a track record of debt repayment or other responsible approaches." See ISCR Case No. 11-14570 at 3 (App. Bd. Oct. 23, 2013) (quoting ISCR Case No. 08-08440 at 2 (App. Bd. Sep. 11, 2009)).

There is a lack of evidence in the record about how and when Applicant will address her finances. I am unable to find that she acted responsibly under the circumstances or that she made a good-faith effort to pay her debts. Her financial issues are recent and ongoing. They continue to cast doubt on her current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a), 20(c), and 20(d) are not applicable. AG ¶ 20(b) is partially applicable. I find that financial considerations concerns remain despite the presence of some mitigation.

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.

I considered the factors that led to Applicant's financial difficulties. However, the limited information in the record has not convinced me Applicant has a viable plan to address her finances.

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 has not mitigated the 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
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b-1.r:	Against Applicant
Subparagraph 1.s:	For Applicant
Subparagraphs 1.t-1.w:	Against Applicant
Subparagraph 1.x:	For Applicant
Subparagraphs 1.y-1.dd:	Against Applicant
Subparagraph 1.ee:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, 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.

Edward W. Loughran
Administrative Judge