



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



In the matter of:

Applicant for Public Trust Position

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ADP Case No. 15-03632

Appearances

For Government: Braden M. Murphy, Esquire, Department Counsel

For Applicant: *Pro se*

02/13/2017

Decision

DAM, Shari, Administrative Judge:

Applicant has a long history of financial problems that began prior to 2004 when she filed Chapter 7 bankruptcy. She failed to mitigate the trustworthiness concerns raised under Guideline F, Financial Considerations. Her eligibility for a public trust position is denied.

Statement of Case

On June 3, 2013, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On November 20, 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); DOD Regulation 5200.2-R, *Personnel Security Program* (January 1987), as amended (Regulation); and the adjudicative guidelines (AG) effective within the DOD for SORs issued after September 1, 2006.

On January 26, 2016, Applicant responded to the SOR in writing and elected to have the case decided on the written record in lieu of a hearing. (Item 3.) On March 2, 2016, Department Counsel prepared a File of Relevant Material (FORM), containing seven Items, and mailed it to Applicant the same day. Applicant received the FORM on March 21 2016, and had 30 days from its receipt to file objections and submit additional information. Applicant did not submit any additional information or file objections to the Government's evidence; hence, Items 1 through 7 are admitted into evidence. On January 27, 2017, the Defense Office of Hearings and Appeals (DOHA) assigned the case to me.

Findings of Fact

The SOR alleged 19 delinquent debts and a 2004 Chapter 7 Bankruptcy. Applicant admitted all allegations, and offered explanations about their status. (Item 3.) These admissions are incorporated into these findings.

Applicant is 36 years old and unmarried. She is a high school graduate. She has two children, ages 16 and 7. From 1997 to November 2015, she worked for private companies. In June 2013, she submitted an e-QIP for a position with a defense contractor. In her Answer, she stated that she had been out of work since November 2015, but anticipated returning in February 2016. (Items 3, 4.)

During a background interview in July 2013, Applicant told a government investigator that her financial problems were the result of not having medical insurance since 2009. In her Answer, she stated that other factors contributed to the financial delinquencies: she cared for her mother before her death; she was a single mother; she suffered an illness; and she was earning less money in her current position than she did previously. She stated that the debts discharged in her 2004 Chapter 7 bankruptcy were unpaid credit cards, which she accumulated with a former boyfriend. She also discussed many current delinquent debts and said she intended to address them. (Item 3, 6.)

Based on credit bureau reports (CBRs) from June 2013 and April 2015, the SOR alleged 19 delinquent debts that totaled \$21,804, and arose between 2008 and 2013. They consisted of unpaid medical bills, credit card accounts, cell phones bills, and other miscellaneous bills. The SOR also alleged a Chapter 7 bankruptcy that was filed in May 2004 and discharged in 2004. (Items 5, 7.)

In her January 26, 2016 Answer, Applicant stated that she made payment arrangements for many delinquent debts and sent those creditors \$5.00 on January 25, 2016. She said she sent other creditors \$5.00 or \$10.00 on January 25, 2016, and intended to pay the debts without a payment plan. She would continue making all payments until the debts were paid. She said she could not identify some creditors. She submitted proof of having made \$5.00 or \$10.00 payments to six creditors through her bank and provided payment confirmation numbers for \$5.00 to four creditors. She said

she mailed payments of \$5.00 or \$10.00 to several creditors, but provided no proof of those mailings or canceled checks. She made all of these payments the day before she submitted her Answer to the SOR.

The Government notified Applicant in its March 2, 2016 FORM, that she had an opportunity to submit additional information about her debts. She did not submit any other information.

Applicant did not submit documentation that she obtained credit or financial counseling, or sought assistance for addressing and managing her debts. She did not provide a budget from which her ability to resolve the delinquencies and avoid additional debt problems can be predicted with any certainty.

Policies

Positions designated as ADP-I/II/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 AGs. 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.

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 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.

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 [sensitive] 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 sensitive information in order to raise money. It encompasses concerns about an individual’s self-control, judgment, and other qualities essential to protecting sensitive information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding sensitive information.¹

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

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

(c) a history of not meeting financial obligations.

Applicant has a history of being unable or unwilling to satisfy financial obligations, which began before 2004 and continues to date. The evidence raises both disqualifying conditions, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes 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.

There is insufficient evidence to establish mitigation under any of the above mitigating conditions. Applicant failed to demonstrate that her ongoing financial problems are unlikely to continue or recur, or that her reliability and trustworthiness is not in question. AG ¶ 20(a) does not apply. She provided some evidence that her financial problems arose as the result of her illness, caring for her mother, being a single mother, and a period of unemployment and underemployment. Those were circumstances beyond her control. Applicant indicated she made \$5 and \$10 payments to some creditors on January 25, 2016. She did not provide evidence that she continued to make those payments or submit the negotiated payment plans she said she had with some creditors. There is little evidence that she responsibly attempted to manage the debts or established reasonable payment arrangements under those circumstances. Thus, the evidence establishes minimal mitigation under AG ¶ 20(b).

Applicant did not provide evidence that she participated in credit or financial counseling, established a budget, or developed a reliable plan to manage the debts. Her one-time minimal payments to some creditors is insufficient to conclude that the unresolved financial problems are under control. AG ¶ 20(c) does not apply. She did not submit sufficient evidence that she made a good-faith effort to continuously resolve the delinquent debts subsequent to making minimal initial payments. AG ¶ 20(d) does not apply. Applicant stated that she did not recognize some alleged debts or that they are not her debts. However, she did not submit any proof that she successfully disputed any debts. The evidence does not establish mitigation under AG ¶ 20(e).

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 the facts and circumstances surrounding this case. Applicant is a 36-year-old woman, who has history of financial problems that began prior to 2004 when she filed Chapter 7 bankruptcy and her debts were discharged. Beginning in 2008, she began having financial problems again, some of which were not within her control. In July 2013, she spoke with a government investigator and discussed the delinquent debts. In November 2015, she received the SOR. On January 26, 2016, she answered the SOR, stating that she sent small payments to many creditors the previous day. In early March 2016, DOD placed Applicant on notice that her answer to the SOR failed to include sufficient evidence that her financial obligations were resolved or were being addressed. She had 30 days to submit documentation pertinent to resolving her multiple debts. She did not respond.

Overall, the record evidence leaves me with questions as to Applicant's eligibility and suitability for a public trust position, as she has not established a reliable track record of resolving her delinquent debts and demonstrating responsible judgment. For

these reasons, I conclude Applicant did not meet her burden to mitigate the trustworthiness concerns arising from her financial problems.

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
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Subparagraphs 1.a through 1.t:	Against Applicant
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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 or continue Applicant's eligibility for a public trust position. Eligibility for access to sensitive ADP information is denied.

SHARI DAM
Administrative Judge