



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



In the matter of:)
)
) ADP Case No. 15-03833
)
Applicant for Public Trust Position)

Appearances

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

11/10/2016

Decision

CREAN, THOMAS M., Administrative Judge:

Based on a review of the pleadings, eligibility for a public trust position is denied. Applicant did not present sufficient information to mitigate financial trustworthiness concerns.

On July 25, 2013, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) to obtain eligibility for a public trust position with a defense agency. (Item 3) Applicant was interviewed by a security investigator from the Office of Personnel Management (OPM) on September 30, 2013. (Item 4) After reviewing the results of the OPM investigation, the Department of Defense (DOD) could not make the affirmative findings required to grant Applicant access to sensitive information. On December 22, 2015, DOD issued Applicant a Statement of Reasons (SOR) for financial trustworthiness concerns under Guideline F. The action was taken under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended; Department of Defense Regulation 5200.2-R, *Personnel Security Program*, dated Jan. 1987, as amended (Regulation); and the adjudicative guidelines (AG).

Applicant answered the SOR on January 12, 2016, admitting the 13 allegations of delinquent debt and the one allegation of filing a Chapter 13 bankruptcy petition.

Applicant requested a decision on the record. Department Counsel submitted the Government's written case on February 23, 2016. Applicant received a complete file of relevant material (FORM) on March 22, 2016, and was provided the opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant timely submitted information in response to the FORM which was received at DOHA on April 13, 2016. (Item 8) I was assigned the case of September 27, 2016.

Procedural Issues

Applicant was advised in the FORM that the summary of the Personal Subject Interview (PSI) with an OPM investigator (Item 4) was not authenticated and could not be considered over her objection. She was further advised that she could make any corrections, additions, or deletions to the summary to make it clear and accurate, and could object to the admission of the summary as not authenticated by a Government witness. She was additionally advised that if no objection was raised to the summary, the Administrative Judge could determine that she waived any objection to the admissibility of the PSI summary. Applicant, in her response to the FORM, did not raise any objection to consideration of the PSI. Since there is no objection by Applicant, I will consider information in the PSI in my decision.

Findings of Fact

After a thorough review of the pleadings, I make the following findings of fact. Applicant is a 53-year-old high school graduate with some college credits. She married in May 1991 and separated in June 2013. The divorce was final on December 9, 2014, and Applicant and her former husband now live separately. She has one child and three stepchildren. Applicant was employed as an office business manager for various businesses from August 1986 until October 2010, when her employer sold the business. She was unemployed from October 2010 until April 2011. She received unemployment compensation while she was unemployed. She has been employed as a provider advocate for a health care agency with government contracts since April 2011. The health care agency is sponsoring her for a public trust position. (Item 3, e-QIP, dated July 25, 2013; Item 4, PSI, dated September 30, 2013)

The SOR alleges and credit reports (Item 5, dated November 27, 2015; Item 6, dated April 9, 2014; and Item 7, dated August 22, 2013) confirm the following delinquent accounts for Applicant; a mortgage account past due for \$1,251 on a balance of \$107,911 (SOR 1.a); a loan for a vehicle for their son past due for \$1,307 on a balance of \$19,354 (SOR 1.b); a loan for her husband's vehicle past due for \$1,349 with a balance of \$16,838 (SOR 1.c); a loan Applicant co-signed for her son past due for \$286 on a balance of \$8,337 (SOR 1.d); an account charged off for \$1,014 (SOR 1.e); an account in collection for \$916 (SOR 1.f); an account charged off for \$807 (SOR 1.g); a department store account charged off for \$463 (SOR 1.h); a credit card debt charged off for \$452 (SOR 1.i); an account for services her husband continued after she moved out of the house in 2013 in collection for \$424 (SOR 1.j); a medical debt for \$73 (SOR 1.k); a tax lien by the Internal Revenue Service (IRS) for \$44,691 (SOR 1.l); and a debt for

state taxes for tax year 2011 of \$7,000 (SOR 1.m). The SOR also alleges that Applicant filed a Chapter 13 bankruptcy in September 2015. The bankruptcy is still pending. (SOR 1.n) The total amount of the debt is approximately \$60,000. All of Applicant's delinquent debts and the bankruptcy are listed on her credit reports. Applicant included the federal and state tax debts on her e-QIP. She admitted all of the debts in her response to the SOR and acknowledged and discussed the delinquent debts with the security investigator during her PSI. (Item 2, Response to SOR, dated January 12, 2016; Item 3, e-QIP, dated July 25, 2013; Item 4, PSI, dated September 30, 2013)

Applicant and her husband started to have financial problems in 2007, when she was unemployed or underemployed. Her husband had severe medical issues affecting his ability to maintain employment. Applicant and her husband incurred large medical debts for his treatment. They were unable to keep up with their debts because of their employment situation. In 2011, her husband withdrew a large amount from his 401K account without her knowledge and without accounting for the tax liability based on the withdrawal of the 401K funds. Her husband refuses to pay the taxes owed on the 401K withdrawn funds. (Item 4, PSI, at 4)

In her response to the SOR, Applicant admits all of the debts. Applicant's former husband lives in the house with the mortgage to SOR 1.a. He refuses to make payments on the mortgage even though he is the one occupying the house. Prior to separating from her husband in 2013, Applicant co-signed vehicle loans for her husband's vehicle at SOR 1.b and her son's vehicle at SOR 1.c. Applicant did not agree with her husband to purchase the vehicle for their son, but she did co-sign the loan. Applicant believes her former husband should be solely responsible for both vehicle loans even though she co-signed for the loans. Her former husband is not making the payments on either loans. Applicant also co-signed a loan for her son that is in default as noted in SOR 1.d. She indicated that her son is working to have her removed from the loan. (Item 4, PSI at 5)

In her response to the SOR, Applicant admits to the debts at SOR 1.e to 1.i noting that she could not afford to make payments on these debts. As to the service debt at SOR 1.j, Applicant claims that her husband continued the service after she moved out in June 2013, and he should be solely responsible for the debt. As to the debt at SOR 1.k, Applicant admits the debt but she is not sure of the identity of the creditor. She presented no information concerning her efforts to identify the creditor. (Item 2, Response to SOR, dated January 12, 2016)

The taxes owed on the 401K withdrawal are the tax debts at SOR 1.l and 1.m. Since Applicant and her husband filed joint tax returns, Applicant feels obligated to assist in paying the taxes owed. In May 2013, as they were separating, Applicant claims she agreed to pay \$615 monthly towards the tax debt, and that she has been making the payments since May 2013. She believes her tax debt is now approximately \$48,000. In her response to the SOR, Applicant stated she is working with some tax relief companies to get the amount she is paying the IRS lowered. However, she has not provided any documents to establish that she is working with a tax relief company, and has made the payments claimed towards the tax debts.

Applicant filed a Chapter 13 bankruptcy in September 2015. In her response to the FORM, Applicant provided copies of checks to show payments to the bankruptcy trustee starting in September 2015. She also included her earning statements in 2016 which shows deductions of \$172.63 biweekly for the bankruptcy wage earner plan. However, Applicant did not provide the Chapter 13 documents to verify the debts to be resolved by the bankruptcy. (Item 8, Response to FORM, undated)

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 over-arching adjudicative goal is a fair, impartial and common sense 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 applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion as to obtaining 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 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

Financial Considerations

There is a trustworthiness concern for a failure or inability to live within one's means, satisfy debts, and meet financial obligations indicating 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 (AG ¶ 18). Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligation to protect sensitive information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a position of trust. An applicant is not required to be debt free, but is required to manage her finances in such a way as to meet her financial obligations.

Adverse information in credit reports can normally meet the substantial evidence standard to establish financial delinquency. Applicant has significant delinquent debts that she has not resolved. Applicant's delinquent debts are established by credit reports and Applicant's admissions. These debts pose a trustworthiness concern raising Financial Consideration Disqualifying Conditions AG ¶ 19(a) (inability or unwillingness to satisfy debts), and AG ¶ 19(c) (a history of not meeting financial obligations).

I considered the following Financial Considerations Mitigating Conditions under AG ¶ 20:

(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 problems were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce, or

separations) 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 has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts.

These mitigating conditions apply only in part. Applicant incurred delinquent debt starting in 2007, when she was unemployed or underemployed and her husband's medical condition prevented him from working. Her husband withdrew funds from his 401K without consideration of the taxes that would be owed. Applicant separated from her husband in 2013 and they finally divorced in 2014. Applicant claims she is not responsible for the past due mortgage debt at SOR 1.a because her husband lives in the house, and the vehicle loans at SOR 1.b and 1.c are for her husband's and her son's vehicles. While she is a co-signer on the mortgage and the loans, Applicant does not believe she is responsible for these debts since her husband and son are living in the house and using the vehicles. She claims that she is not responsible for the debt at SOR 1.j because her husband continued the service after she moved from the house. Since she did not agree to continue the service after she left, I resolve this debt for Applicant. She acknowledges her responsibility for the remaining debts in the SOR.

The mitigating condition at AG ¶ 20(a) does not apply. Applicant's debts are numerous recent and were not incurred under circumstances making recurrence unlikely. While Applicant does not believe she is responsible for some of the debts, she is a co-signer on the mortgage and the car loans. As a co-signer, she has responsibility to the creditors for the debts. She did not present any information on her efforts to absolve herself of responsibility for these debts. She admits the remaining debts, including the tax debts at SOR 1.l and 1.m.

The mitigating condition at AG ¶20(b) does not apply. Some of the debts may have been incurred by conditions beyond Applicant's control, such as the tax debts. However, she failed to establish the second requirement of the mitigating condition. She has not established that she acted reasonably and responsibly under the circumstances. She claims to have made payments on the tax debts, but she did not present information on payments, attempts to contact creditors, or plans to resolve the debts.

Applicant presented no information that she received financial counseling. There is no indication that her financial problems are being resolved and are under control. AG 20(c) does not apply.

Applicant did not establish a good-faith effort to pay her debts. For a good-faith effort, there must be an ability to repay the debts, the desire to repay, and evidence of a good-faith effort to repay. Good faith means acting in a way that shows reasonableness,

prudence, honesty, and adherence to duty and obligation. A systematic method of handling debts is needed. Applicant must establish a meaningful track record of debt payment. A meaningful track record of debt payment can be established by evidence of actual debt payments or reduction of debt through payment of debts. A promise to pay delinquent debts is not a substitute for a track record of paying debts in a timely manner and acting in a financially responsible manner. Applicant must establish that she has a reasonable plan to resolve financial problems and has taken significant action to implement that plan.

Applicant has been employed full time in a reasonably paying position since April 2011. Applicant did not present any documents to establish any direct payment on any of the debts. She admitted not making payments on the mortgage or car loans because she does not believe she is responsible for those debts. Applicant presented information that she filed a Chapter 13 bankruptcy in September 2015. Bankruptcy is a legal and permissible means of resolving debt. She presented information that she has made the required payments on the bankruptcy plan since her filing. However, she presented no information concerning the debts to be resolved in the bankruptcy. Without this information, it cannot be determined if Applicant established a meaningful track record of payment of the remaining debts alleged in the SOR. While she established a track record of bankruptcy payments, her failure to provide the bankruptcy documents does not show a meaningful track record of payments of her debts. Applicant's failure to establish payment of her debts shows that she has not acted reasonably and honestly with regard to her financial duties and obligations. She is not managing her personal financial obligations responsibly. Based on all of the financial information, I conclude that Applicant has not mitigated trustworthiness concerns based on financial considerations.

Whole-Person Analysis

Under the whole-person concept, the administrative judge must evaluate an applicant's trustworthiness eligibility 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.

Under AG ¶ 2(c), the ultimate determination of whether to grant a trustworthiness clearance 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. Applicant is required to show that she has a plan to resolve her financial problems and that she has taken significant action to implement that plan.

Applicant has not established that she has taken sufficient actions to reasonably and responsibly within her limited finances resolve her delinquent debts. Applicant has not shown that she can responsibly manage her financial obligations. Overall, the record evidence leaves me with questions and doubts as to Applicant's judgment, reliability, trustworthiness, and eligibility and suitability for a trustworthiness clearance. For all these reasons, I conclude that Applicant has not mitigated trustworthiness concerns arising under the financial considerations guideline. Eligibility for a trustworthiness position is denied.

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.i:	Against Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k – 1.m:	Against Applicant
Subparagraph 1.n:	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.

THOMAS M. CREAN
Administrative Judge