



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



In the matter of:

ADP Case No. 15-04664

Applicant for Public Trust Position

Appearances

For Government: Candace L. Garcia, Esquire, Department Counsel

For Applicant: *Pro se*

06/23/2017

Decision

WHITE, David M., Administrative Judge:

Applicant incurred 31 delinquent debts, totaling more than \$27,000, most of which remain outstanding. She did not mitigate resulting trustworthiness concerns. National security eligibility to occupy a sensitive public trust position is denied.

On March 20, 2014, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP). (Item 3.) On December 13, 2015, the Department of Defense (DoD) issued Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns under Guideline F (Financial Considerations). (Item 1.) The action was taken under 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 Department of Defense for SORs issued after September 1, 2006.

On February 1, 2016, Applicant answered the SOR in writing and elected to have the case decided on the written record in lieu of a hearing. (Item 2.) On May 6, 2016, Department Counsel prepared a File of Relevant Material (FORM), containing six Items. The Defense Office of Hearings and Appeals (DOHA) mailed Applicant a complete copy

of the FORM on May 9, 2016. Applicant received the FORM on July 1, 2016, and was provided 30 days from its receipt to file objections and submit additional information. She submitted her receipt for the FORM within the time provided. On August 25, 2016, she submitted a letter clarifying that she intentionally chose to return only that receipt because she had no objection to consideration of any contents of the FORM, and did not request that any changes be made to its contents. On April 24, 2017, DOHA assigned the case to me.

The SOR in this case was issued under the adjudicative guidelines that came into effect within the DoD on September 1, 2006. Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines* (December 10, 2016), implements new adjudicative guidelines, effective June 8, 2017. All national security eligibility decisions¹ issued on or after June 8, 2017, are to be decided using the new *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), as implemented in Appendix A of SEAD 4. I considered the previous adjudicative guidelines, as well as the new AG, in adjudicating Applicant's trustworthiness and national security eligibility. My decision would be the same under either set of guidelines, although this decision is issued pursuant to the new SEAD 4 AG.

Findings of Fact

Applicant is 36 years old. She has worked for a Government healthcare services contractor since March 2014. She is a high school graduate, and has taken some community college classes. She has never served in the military or held a civilian position with the Federal Government. She was eligible to hold a public trust position during her previous employment with a different healthcare contractor between 2001 and 2010. At the close of the record in 2016, she was married but going through divorce proceedings. She has one eight-year-old child. (Item 3; Item 4.)

The SOR alleged that Applicant had 31 delinquent debts, totaling \$27,208. The debts range from a \$15,560 charged-off auto loan account to a \$50 waste collection bill. Sixteen of these debts were for less than \$200, including eight that were less than \$100. Record credit reports indicate these debts became delinquent between 2008 and 2014. In her response to the SOR, Applicant admitted to all of the debts with some explanations.

In general, Applicant said that her husband managed their family finances before initiation of their divorce proceedings, and she trusted that their bills were being taken care of. She said that she intended to rectify her debts, had reached out to a debt management company, and was working on a financial "plan to start by paying off the lowest bills first and move up from there." (Item 2.) She provided no documentation of contact with a debt management company, of a financial plan, or of a workable budget.

¹ SEAD 4 ¶ D.7 defines "National Security Eligibility" as, "Eligibility for access to classified information or eligibility to hold a sensitive position, to include access to sensitive compartmented information, restricted data, and controlled or special access program information."

The only record documentation that Applicant provided to demonstrate resolution of an SOR-alleged debt is an October 15, 2015 court document showing that she fully satisfied the \$230 judgment debt to a payday loan company, alleged in SOR ¶ 1.t. She claimed, without providing documentation, that she had resolved the \$581 debt alleged in SOR ¶ 1.e, and the \$50 debt alleged in SOR ¶ 1.s. She also claimed, without documentation, that she contacted the collection agency that reported the \$723 and \$336 collection accounts, alleged in SOR ¶¶ 1.u and 1.v, and was advised that both accounts had a zero balance. Finally, she said that she had disputed the \$715 and \$1,627 debts alleged in SOR ¶¶ 1.d and 1.ee, but failed to provide and documentation of such disputes or a legitimate basis therefor. She admitted, without further explanation, that she owes the remaining 24 SOR-alleged delinquent debts totaling \$22,946. (Item 2.)

Applicant submitted no evidence of financial counseling, or of budget estimates from which to analyze her current financial situation. No character references were submitted to describe Applicant's judgment, trustworthiness, integrity, or reliability. I was unable to evaluate her credibility, demeanor, or character in person since she elected to have her case decided without a hearing.

Policies

Positions designated as ADP-I/II/III are classified as "sensitive positions," and require a national security eligibility trustworthiness determination. 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.

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 AG ¶ 2, 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.

Directive ¶ E3.1.14 requires the Government to 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, and has the ultimate burden of persuasion as to obtaining a favorable [trustworthiness] decision.”

A person who applies for access to sensitive ADP 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 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. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personal security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds.

AG ¶ 19 describes three conditions that could raise trustworthiness concerns and may be disqualifying in this case:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant accumulated substantial delinquent debt since 2008, which she has been unable or unwilling to repay. This evidence raises trustworthiness concerns under these disqualifying conditions, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five 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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated and is adhering to 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.

Over the past nine years, Applicant accumulated more than \$27,000 in delinquent debts that were alleged in the SOR. She did not provide evidence that these debts arose from conditions beyond her control, or that she acted responsibly under the circumstances. She documented no counseling to assist with debt resolution, nor did she demonstrate an ability to avoid recurrence of financial problems. According to the record evidence, all but one of the debts alleged in SOR ¶¶ 1.a through 1.ee remain unresolved, and no documented basis to dispute the legitimacy of any of them was provided. Applicant therefore failed to establish mitigation of trustworthiness concerns under AG ¶¶ 20(a) through 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(d):

(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 mature individual who is accountable for the decisions and choices that led to her financial difficulties. She failed to demonstrate a basis for finding current good judgment, or permanent behavioral change, concerning her history and pattern of financial irresponsibility. Her ongoing delinquent debts establish continuing potential for pressure, coercion, or duress.

Overall, the record evidence leaves me with questions and doubts as to Applicant's present eligibility and suitability to occupy a sensitive public trust position. For these reasons, I conclude Applicant did not meet her burden to mitigate the trustworthiness concerns arising from her financial considerations.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a through 1.s:	Against Applicant
Subparagraph 1.t:	For Applicant
Subparagraphs 1.u through 1.ee:	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 to occupy a public trust position. National security eligibility for access to sensitive ADP information is denied.

DAVID M. WHITE
Administrative Judge