



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



In the matter of:)
)
) ADP Case No. 15-05283
)
Applicant for Public Trust Position)

Appearances

For Government: Robert J. Kilmartin, Esq., Department Counsel
For Applicant: *Pro se*

06/19/2017

Decision

RIVERA, Juan J., Administrative Judge:

Applicant failed to submit sufficient evidence to show that she has a track record of financial responsibility, that she does not have a financial problem, and that her financial problem is being resolved or is under control. She deliberately omitted material financial information from her trustworthiness position application. She failed to mitigate the Guidelines F (financial considerations) and E (personal conduct) trustworthiness concerns. Eligibility to hold a position of trust is denied.

Statement of the Case

Applicant submitted an electronic questionnaire (Application) requesting eligibility for a position of trust on November 25, 2014. After reviewing it and the information gathered during a background investigation, on March 25, 2016, the Department of Defense (DoD) issued Applicant a Statement of Reasons (SOR) listing trustworthiness concerns under Guidelines F and E.

Applicant answered the SOR on June 11, 2016, and elected to have her case decided on the written record. A copy of the Government's file of relevant material

(FORM), producing the evidence supporting the trustworthiness concerns, was provided to her by transmittal letter, dated July 29, 2016. Applicant received the FORM on August 4, 2016. She was allowed 30 days to submit any objections to the FORM and to provide material in explanation, extenuation, and mitigation. She failed to respond to the FORM and submitted no objections or any additional information. The case was assigned to me on June 6, 2017.

Procedural Issues

In the FORM, Department Counsel advised Applicant that the FORM included her unauthenticated summary of interview with a background investigator from April 21, 2015. Applicant was informed she could object to the summary of her interview and it would not be admitted, or that she could make corrections, additions, deletions, and update the document to make it accurate. Applicant was informed that her failure to respond to the FORM or to raise any objections could be construed as a waiver, and I would consider the preferred evidence. Applicant failed to respond to the FORM, submitted no documents, and raised no objections. I admitted the FORM evidence and considered it.

Pursuant to ¶ E3.1.17 of the Directive, I amended SOR ¶ 2.a to correct a typographical error and conform the SOR with the evidence. SOR ¶ 2.a incorrectly alleged Applicant falsified an electronic Application submitted on "October 10, 2013." The electronic Application was submitted on "November 25, 2014," and this date will be substituted in SOR ¶ 2.a.

Findings of Fact

In her Answer, Applicant admitted all of the Guideline F factual allegations (SOR ¶¶ 1.a through 1.i). She denied the Guideline E allegation (SOR ¶ 2.a). Her admissions are incorporated herein as findings of fact. After a thorough review of the record evidence, I make the following additional findings of fact:

Applicant is a 41-year-old associate account manager employed with a federal contractor since 2004. She attended college between 1999 and 2001, and earned an associate's degree. She married in 2006 and divorced in 2014. She has no children.

Applicant submitted a request of eligibility for a position of trust when she was hired in 2004. During the 2005 background investigation, she was asked about her delinquent accounts. Applicant told the investigator that she was not aware she had any delinquent accounts and denied having financial problems. She explained she had opened accounts for her mother and boyfriend, but she believed they had been paying those accounts, and that her boyfriend was timely paying the household accounts. At the time of the interview, Applicant did not have a repayment plan, but she promised to pay and resolve her delinquent accounts. (GE 5)

In her 2014 trustworthiness application, Applicant indicated she has worked for her employer since 2004, and reported no periods of unemployment or underemployment since then. In Section 26 (Financial Record) of her 2014 application, Applicant stated that she had no delinquent accounts or any financial problems within the prior seven years.

In April 2015, a background investigator asked Applicant about the delinquent accounts alleged in the SOR. Applicant stated she started having financial problems after her January 2014 divorce. Her income was insufficient to pay her living expenses and debts. At the time of the interview, she was residing with her mother to save money to pay her debts. She claimed she was working on becoming financially stable.

During the interview, Applicant acknowledged her delinquent student loan (SOR ¶ 1.f). She claimed she consolidated her student loans in March 2015, and that she was making payments on them. She presented no documentary evidence of her loan consolidation or of any payments made. Applicant explained she did not disclose her delinquent student loan in her 2014 application because she had already taken action on her student loans.

In 2013, Applicant dropped a college class and acquired a \$1,850 debt. She told the investigator she was making monthly payments of about \$70 to pay the debt. She explained she did not disclose the debt in her 2014 application because she was taking care of it. Applicant was asked about a charged off debt to a jeweler. She claimed she believed the debt was paid.

The investigator asked Applicant about the debt alleged in SOR ¶ 1.d. She acknowledged the debt and explained that she was assessed a fee for damages to a leased apartment. Applicant stated this was the first time she had heard of the debt since she left the apartment. She expressed her willingness to make small payments over a period to pay the fee. Applicant denied any knowledge of the remaining SOR debts.

Applicant told the investigator she was saving money to buy a home, and she knew she needed to resolve her delinquent debts before she could buy the home. She wanted to have the financial delinquencies resolved within the next few years. Her plan was to make small payments over time and repay her debts.

Attached to her SOR answer, Applicant included a contract with a credit repair company she retained in March 2016, to help her resolve her financial problems. She claimed she paid the company \$1,000 for their services. Applicant presented no documentary evidence to show she has settled, paid, or resolved any of the SOR debts.

Applicant provided no information about her current earnings and financial position. She provided little information about her monthly income, monthly expenses, and whether her current income is sufficient to pay her current day-to-day living expenses and debts. There is no information to indicate whether she participated in

financial counseling or whether she follows a budget. In sum, she presented no documentary evidence of any payments made, efforts to contact creditors, establish payment plans, or efforts to otherwise resolve her financial problems, except for retaining a credit repair company in March 2016.

SOR ¶ 2.a alleges that Applicant deliberately falsified her 2014 SCA when she answered “no” to Section 26 and failed to disclose that she had seven delinquent accounts within the prior seven years. Applicant denied she deliberately falsified her application. She stated in her answer to the SOR that she was not aware of her delinquent debts, except for the student loan. She acknowledged that she should have paid closer attention to her credit. She claimed that in March 2016, she started looking for a house to rent. When her lease applications were consistently denied, she looked at her credit report, discovered the debts, and took action by hiring the credit repair company.

At the start of her April 21, 2015 interview, Applicant volunteered to the investigator that she failed to disclose in her 2014 Application her delinquent student loan and another debt to a college. She also admitted to knowing of at least two additional delinquent accounts that she failed to disclose in her Application. She mistakenly believed she did not have to disclose her delinquent student loans because she was addressing them. She claimed another delinquent debt was paid, so she did not disclose it. Concerning the delinquent assessed fee, she did not disclose it because nobody contacted her after she left the apartment. The investigator noted Applicant expressed her willingness to repay her debts. Notwithstanding, Applicant presented no documentary evidence to establish the student loan consolidation, any payments made toward the student loans, or any payment made toward any of the SOR debts.

Policies

In issuing the SOR, DOD 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);¹ and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG) implemented by DOD on September 1, 2006. The case will be decided under Security Executive Agent Directive (SEAD) 4, National Security Adjudicative Guidelines (AG), effective June 8, 2017.

The DOD considers ADP positions to be sensitive positions. For a person to be eligible for sensitive duties, the person’s loyalty, reliability, and trustworthiness must be such that assigning the person to a sensitive position is clearly consistent with the national security interests of the United States. SEAD 4, E(4); SEAD 4, App. A ¶ 2.d.

¹ ADP cases are adjudicated under the provisions of the Directive. (Deputy Under Secretary of Defense’s Memorandum for the Director, Defense Office of Hearings and Appeals, dated November 19, 2004.)

Applicants for ADP positions are entitled to the procedural protections in the Directive before any final unfavorable access determination is 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 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.

A public trust position decision resolves whether it is clearly consistent with the interest of national security to grant or continue an applicant's access to sensitive information. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national security interest of the United States to grant or continue his or her access to sensitive information.

Persons with access to sensitive information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national security as their own. The "clearly consistent with the national security interest of the United States" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government. Access to sensitive information determinations should err, if they must, on the side of denials. SEAD 4, ¶ E(4); SEAD 4, App. A, ¶¶ 1(d) and 2(b). Eligibility for a public trust position decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing access to sensitive information.

Analysis

Guideline F, Financial Considerations

Under Guideline F, the trustworthiness concern is that 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. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. (AG ¶ 18)

Applicant's history of financial problems is well documented in the file record. She acquired the delinquent SOR accounts between 1999 (student loans) and 2014. She presented no documentary evidence of any payments made, efforts to contact creditors, established payment plans, or efforts to otherwise resolve her financial problems (except for retaining the services of a credit repair company in 2016). Three of the financial considerations disqualifying conditions apply: AG ¶ 19(a): inability to satisfy debts; AG ¶ 19(b): unwillingness to satisfy debts regardless of the ability to do so; and AG ¶ 19(c): a history of not meeting financial obligations.

AG ¶ 20 lists five conditions that could mitigate the financial considerations trustworthiness concerns:

(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, 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 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.

None of the financial considerations mitigating conditions fully apply. Applicant has a long history of financial problems, dating back to 1999, that are recent and ongoing.

I considered Applicant's 2014 divorce, a circumstance beyond her control that may have contributed or aggravated her financial problems. Notwithstanding, Applicant's evidence is insufficient to show she acted responsibly under the circumstances to warrant applicability of AG ¶ 20(b). She has been with her current employer since 2004. She presented no documentary evidence of any payments made, efforts to contact creditors, established payment plans, or of efforts to otherwise resolve her financial problems, except for hiring a credit repair company in 2015.

Applicant provided little information about her current earnings and financial position. She did not provide any information about her monthly income and expenses, and whether her current income is sufficient to pay her current day-to-day living expenses and debts. There is no information to show that she participated in financial counseling or that she follows a budget. The available information is insufficient to establish clear indications that she does not have a current financial problem, or that her financial problem is being resolved, or is under control. Applicant failed to establish that she has a track record of financial responsibility.

Guideline E, Personal Conduct

AG ¶ 15 articulates the trustworthiness concerns for personal conduct:

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 or sensitive information. Of special interest is any failure to provide truthful and candid answers during national security investigative or adjudicative processes.

Applicant's omission of material financial information on her 2014 Application triggers the applicability the following disqualifying condition under AG ¶ 16:

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

AG ¶ 17 lists six conditions that could potentially mitigate the personal conduct security concerns:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress; and

(f) the information was unsubstantiated or from a source of questionable reliability.

None of the above mitigating conditions fully apply. In light of the evidence as a whole, Applicant's claims of innocent mistake are not sufficiently established by the scant evidence she submitted. I considered Applicant's age, education, experience working for a government contractor, her long history of financial problems, the number and value of the debts, her participation in background interviews in 2004 and 2015, and her past promise to resolve her delinquent debts. On balance, Applicant had ample knowledge of her delinquent accounts at the time she completed her 2014 Application, and she has been placed on notice of the Government's financial considerations concerns. Her evidence is insufficient to mitigate the Guideline E security concerns.

Whole-Person Concept

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. SEAD 4, App. A, ¶¶ 2(a), 2(d) and 2(f). I have incorporated my comments under Guidelines F and E in my whole-person analysis. Some of these factors were addressed under those guidelines, but some warrant additional comment.

Applicant, 41, was made aware of the Government's trustworthiness concerns about her delinquent debts in 2005, when she completed her 2014 Application, during her 2005 and 2015 interviews, when she received the SOR, and when she was provided the FORM. She was allowed a period of 30 days after receipt of the FORM to produce evidence in extenuation and mitigation. She failed to provide any documentary evidence to show she has been in contact with her creditors, or that she attempted to settle or pay her delinquent debts. Her evidence is insufficient to show that she has a track record of financial responsibility, that she does not have a financial problem, or that her financial problem is being resolved or is under control.

Once a concern arises regarding an Applicant's eligibility for a position of trust, there is a strong presumption against the grant or renewal of eligibility for such position. Unmitigated concerns about Applicant's financial situation and her falsification of her 2014 Application lead me to conclude that grant of eligibility for a position of trust to Applicant is not warranted at this time.

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
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant eligibility for a position of trust to Applicant. Eligibility for a position of trust is denied.

JUAN J. RIVERA
Administrative Judge