



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



In the matter of:)
)
) ADP Case No. 15-05296
)
Applicant for Public Trust Position)

Appearances

For Government: Chris Morin, Esq., Department Counsel
For Applicant: *Pro se*

06/22/2017

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 credible information to mitigate financial trustworthiness concerns.

On January 9, 2015, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) to obtain eligibility for a public trust position to work in support of a defense agency. (Item 3) The Department of Defense (DOD) could not make the affirmative findings required to grant Applicant access to sensitive information. On January 14, 2016, DOD issued Applicant a Statement of Reasons (SOR) for financial trustworthiness concerns under Guideline F.

DOD took the action under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by DOD on September 1, 2006. The AGs implemented by DOD on September 1, 2006, were replaced by AGs implemented by DOD on June 8, 2017. The decision in this case is based on the new AGs, effective June 8, 2017. I have also considered this case based on the AGs implemented on September 1, 2006. The outcome of my decision would have remained the same if adjudicated under the former AGs.

Applicant answered the SOR on February 9, 2016. (Item 2). She admitted the 23 allegations of delinquent debt, and requested a decision on the record. Department Counsel submitted the Government's written case on May 23, 2016 (Item 5). Applicant received a complete file of relevant material (FORM) on June 6, 2016, and was provided the opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant provided additional information in response to the FORM that was received by DOD on June 30, 2016. On July 2, 2016, Department Counsel noted that he had no objection to consideration of the additional material. (Item 6) I was assigned the case on April 7, 2017.

Findings of Fact

After a thorough review of the pleadings, I make the following findings of fact. Applicant is a 51-year-old high school graduate employed as a medical claims processor for a DOD contractor since March 2001. She married in April 1995 and has two children. There is no information in the case file to indicate Applicant's income, assets, and debt payments. (Item 3, e-QIP, dated January 9, 2015)

Applicant listed her delinquent credit card, medical, and retail debts on her January 9, 2015 e-QIP. She stated that she would make arrangements to pay the debts. (Item 3)

The SOR alleges and a credit report (Item 4, dated January 29, 2015) confirm the delinquent debts for Applicant. The debts consist of seven medical debts in collection and 16 loans to banks or credit card debts to department stores. Applicant noted that five of the credit card debts are duplicates. The amount of the delinquent debt is in excess of \$35,000.

Applicant admitted all of the delinquent debts in her response to the SOR. She notes that the medical debts to the same provider at SOR 1.f, 1.g, 1.h, 1.r, 1.s, and 1.t were consolidated into one debt. (Item 1, Response to SOR, Medical Statement of Accounts, at 12) Applicant claims that she started making payments of \$25 a month on the consolidated medical debts in February 2016. In her response to the FORM, Applicant only provided a receipt for a \$25 payment in May 2016. Her bank statement did not show any \$25 payments to the medical creditor. There is no document from Applicant or in the case file to show any other medical payments. (Item 1, Response to SOR, at 6; Item 6, Response to FORM)

Applicant provided information in her response to the FORM, that she made monthly payments of \$10 monthly payments on the department store debts at SOR 1.c and 1.d. Those payments are reflected in her bank statement. (Item 6, Response to FORM)

Applicant reported that the debt at SOR 1.r is a duplicate of the debt at SOR 1.f; the debt at SOR 1.s is a duplicate of the debt at SOR 1.g; and debt at SOR 1.t is a duplicate of the debt at SOR 1.h. There is no information in the case file to verify that

these debts are duplicates. However, since the amount of each duplicate debt is the same, I find that the debts are duplicates.

Applicant claims in her response to the SOR that the debts at SOR 1.j, 1.m, 1.o, 1.q, and 1.v have been cancelled. She provided documentation to verify that the debts were cancelled. The applicable Internal Revenue Service (IRS) form for cancelled debts was received for each cancelled debt. (Item 1, Response to SOR, at 13-17) There is no explanation as to the reasons for the cancelled debts. There is no indication that the cancelled debt were included on subsequent tax returns. I find that the debts were cancelled without any payment on the debts.

Applicant claims in her response to the SOR that she employed a law firm to file a bankruptcy action. The documents from the law firm furnished by Applicant do not show that a bankruptcy action is pending. There is no mention of bankruptcy on the documents. Applicant and the law firm did not provide a copy of the bankruptcy petition or the required bankruptcy documents. The documents from Applicant's attorney list debts that correspond to the SOR debts. The bank records Applicant provided in response to the FORM show \$100 monthly payments to the law firm. However, there is no information from the law firm that there have been payments to the creditors on the debts. In fact, the documents specifically state for each debt that no payments were made and the debts are pending. There is insufficient information to conclude that that Applicant filed a bankruptcy petition and the debts are being resolved in bankruptcy. (Item 6, Response to FORM)

Policies

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(a), 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 the 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, thereby indicating poor self-control, lack of judgment, or unwillingness to abide by rules and regulation. These issues 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's delinquent debts are established by credit reports and Applicant's admissions in her e-QIP and her response to the SOR. The debts pose a trustworthiness concern raising Financial Consideration Disqualifying Conditions under AG ¶ 19:

- (a) inability to satisfy debt;
- (b) unwillingness to satisfy regardless of the ability to do so;
- (c) a history of not meeting financial obligation; and
- (e) consistent spending beyond one's means or frivolous or irresponsible spending, which may be indicated by excessive indebtedness, significant

negative cash flow, a history of late payments or of non-payment, or other negative financial indicators

Applicant has significant unresolved consumer and credit card debts to retail and department stores. Applicant's department store and credit card debt spending history, and her history of lack of payments of the debts indicate that her spending was frivolous and beyond her means.

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, a death, divorce, or separations, 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 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; and

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

These mitigating conditions do not apply. Applicant incurred credit card and retail debt deliberately and freely to finance her lifestyle. Applicant's debts are numerous, recent, and not incurred under circumstances making recurrence unlikely. It is not an unusual circumstance beyond Applicant's control to use credit cards to purchase items at a retail store. The circumstances leading to the delinquent medical debts may have been beyond her control, however there is insufficient information in the case file to make that determination.

Applicant presented no information that she received financial counseling. Applicant has been employed by the same employer for 17 years. In 2015, she stated she would make arrangements to pay her debts. Two years later, she presented only limited and inadequate information and evidence of a good-faith effort to pay her delinquent debts. She is making very limited payments of \$10 monthly on only two of her debts. There is insufficient evidence to conclude that Applicant has a reasonable and adequate plan to resolve her financial problems. There is no indication that Applicant's financial problems will be resolved within a reasonable period.

The record lacks corroborating or substantiating documentation and detailed explanation of the cause of her financial problems or mitigating information. In requesting an administrative determination, Applicant chose to rely on the written record. In so doing, she failed to provide sufficient evidence to supplement the record with relevant and material facts regarding her circumstance, articulate her position, and mitigate the financial trustworthiness concerns. She failed to provide adequate credible information regarding her past efforts to address her delinquent debts. She did not present a sufficiently credible plan of how and when she would resolve her debts. Applicant's failure to make reasonable payments on her debts or show a responsible plan to pay her debts shows that she has not acted reasonably and honestly with regard to her financial duties and obligations.

I am unable to find that she acted responsibly and that she made a good-faith effort to pay her debts. Her financial problems are recent and ongoing and continue to cast doubt on her current reliability, trustworthiness and good judgment. Applicant's information is insufficient to establish that she acted responsibly under the circumstances and that her finances are under control. In short, the file lacks sufficient evidence that Applicant paid, arranged to pay, settled, compromised, or that her delinquent accounts were otherwise resolved through her efforts. Applicant has not mitigated financial trustworthiness concerns.

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(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.

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 credible reasonable plan to resolve her financial problems, and that she has taken significant action to implement that plan. Applicant has not established that she has a reasonable plan to resolve her delinquent debts. She has not taken sufficient actions to reasonably and responsibly resolve her delinquent debts and manage her

financial obligations within her resources. Accordingly, she has not established that she can be trusted to manage sensitive information. Overall, the record evidence leaves me with questions and doubts pertaining to Applicant's judgment, reliability, trustworthiness, and her eligibility and suitability for a position of trust. For all these reasons, Applicant's 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.q, 1.v -1.w:	Against Applicant
------------------------------------	-------------------

Subparagraphs 1.r, 1.s, 1.t:	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