



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



In the matter of:)
)
) ADP Case No. 15-05306
)
)
Applicant for Public Trust Position)

Appearances

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

March 24, 2017

Decision

MOGUL, Martin H., Administrative Judge:

On February 28, 2015, in accordance with Department of Defense (DoD) Directive 5220.6, the DoD issued a Statement of Reasons (SOR) detailing the trustworthiness concerns under Guideline F for Applicant. (Item 1.) The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; 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 after September 1, 2006.

On March 26, 2016, Applicant replied to the SOR (RSOR) in writing, and she requested that her case be decided on the written record in lieu of a hearing. (Item 2.) On May 9, 2016, Department Counsel issued the Department's written case. A complete copy of the file of relevant material (FORM) was provided to Applicant. In the FORM, Department Counsel offered four documentary exhibits. (Items 1-4.) Applicant was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. A response was due on June 22, 2016. Applicant filed a timely response, and her one page letter has been entered into evidence without

objection as Item A. The case was assigned to this Administrative Judge on January 26, 2017. Based upon a review of the pleadings and exhibits, eligibility for access to a sensitive position is denied.

Findings of Fact

After a complete and thorough review of the evidence in the record, including Applicant's RSOR, the FORM, and Item A, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 53 years old. She is employed by a defense contractor, and she seeks access to a sensitive position in connection with her employment in the defense sector. (Item 1.)

Guideline F, Financial Considerations

The SOR lists 11 allegations (1.a. through 1.k.) regarding financial difficulties, specifically one bankruptcy and 10 overdue debts, totaling more than \$14,000, under Adjudicative Guideline F. Items 2 through 4 establish each of the debts and the bankruptcy listed on the SOR. All of the SOR allegations will be discussed below:

1.a. This overdue debt is cited in the SOR for a delinquent account in the amount of \$7,171. Applicant admitted this allegation in her RSOR, and she wrote that she had voluntarily surrendered the source of this debt. (Item 2.) No independent evidence has been offered to establish that this debt has been resolved or reduced.

1.b. This overdue debt is cited in the SOR for a delinquent account in the amount of \$440. Applicant admitted this allegation in her RSOR. (Item 2.) In the FORM, Department Counsel withdrew this allegation. I find that this debt should not be considered adversely to Applicant.

1.c. This overdue debt is cited in the SOR for a delinquent account in the amount of \$822. Applicant admitted this allegation in her RSOR. (Item 2.) No independent evidence has been offered to establish that this debt has been resolved or reduced.

1.d. This overdue debt is cited in the SOR for a delinquent account in the amount of \$1,648. Applicant admitted this allegation in her RSOR. (Item 2.) No independent evidence has been offered to establish that this debt has been resolved or reduced.

1.e. This overdue debt is cited in the SOR for a delinquent account in the amount of \$1,614. Applicant denied this allegation in her RSOR. (Item 2.) However, no independent evidence has been offered to establish that this debt has been resolved or reduced.

1.f. This overdue debt is cited in the SOR for a delinquent account in the amount of \$1,214. Applicant admitted this allegation in her RSOR. (Item 2.) No independent evidence has been offered to establish that this debt has been resolved or reduced.

1.g. This overdue debt is cited in the SOR for a delinquent account in the amount of \$849. Applicant admitted this allegation in her RSOR. (Item 2.) No independent evidence has been offered to establish that this debt has been resolved or reduced.

1.h. This overdue debt is cited in the SOR for a delinquent account in the amount of \$383. Applicant admitted this allegation in her RSOR. (Item 2.) No independent evidence has been offered to establish that this debt has been resolved or reduced.

1.i. This overdue debt is cited in the SOR for a delinquent account in the amount of \$139. Applicant denied this allegation in her RSOR. (Item 2.) However, no independent evidence has been offered to establish that this debt has been resolved or reduced.

1.j. This overdue debt is cited in the SOR for a delinquent account in the amount of \$129. Applicant admitted this allegation in her RSOR. (Item 2.) No independent evidence has been offered to establish that this debt has been resolved or reduced.

1.k. The SOR alleges that Applicant filed a Chapter 7 Bankruptcy in 2000, which discharged her debts in 2000. Applicant admitted this allegation in her RSOR. (Item 2.)

Applicant explained in her RSOR, notarized on March 26, 2016, that her financial difficulties arose after her spouse became unemployed, and subsequently spiraled into a state of severe depression and negative behavior. Applicant had to pay the rent and other bills on her salary alone, which was not sufficient to meet all of the requirements. Applicant has subsequently separated from her husband, and she has moved and adjusted her lifestyle to attempt to live within her means. Applicant indicated that she started working to repair her credit, which, she wrote, “can take some time.” (Item 2.) In her Post-FORM letter dated May 31, 2016, Applicant wrote, “I have started working towards repairing my credit, which as you know can take some time.” (Item A.) Despite Applicant stating that she had started repairing her credit, no evidence was introduced to show that from February 28, 2015, the date of the SOR, through May 31, 2016, Applicant resolved or reduced any of the debts listed on the SOR.

Policies

Positions designated as ADP I, ADP II. And ADP III are classified as “sensitive Positions.” (See DoD Regulation 5200.2-R (Regulation) C3.1.2.1.1.7 and C3.1.2.1.2.3.) “The standard that must be met for . . . assignments 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.)

When evaluating an applicant’s suitability for access to a sensitive position, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an applicant’s eligibility for access to a sensitive position.

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 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 [a sensitive position] 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 access decision.

A person who seeks access to a sensitive position 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 that 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.

Section 7 of Executive Order 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

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 classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns and could potentially apply in this case. Under AG ¶ 19(a), "an inability or unwillingness to satisfy debts," is potentially disqualifying. Similarly under AG ¶ 19(c), "a history of not meeting financial obligations," may raise security concerns. I find that both of these disqualifying conditions apply to Applicant in this case. The evidence has established that Applicant accumulated significant delinquent debt, most of which has been overdue for several years.

AG ¶ 20 provides conditions that could mitigate security concerns from financial difficulties. Under AG ¶ 20(b), it may be mitigating where, "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." Applicant's husband's periods of unemployment and their separation could potentially make this condition applicable in this case. However, since there is no evidence that any of these debts have been resolved or reduced by Applicant, I do not find that Applicant has acted responsibly. Therefore, this mitigating condition is not applicable in this case.

Additionally, I do not find that AG ¶ 20(d) is applicable, since Applicant has not "initiated a good-faith effort to repay [her] overdue creditors or otherwise resolve debts." Finally, because Applicant has not reduced or resolved her overdue debts, and because the evidence has not established that her current financial situation is stable, I do not find any other mitigating condition applies to this case. Therefore, I find Guideline F against Applicant.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility and suitability for a sensitive position by considering the totality of applicant's conduct and all the 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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for access to a sensitive position 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. Based on the lack of evidence to establish that Applicant has resolved or reduced the past-due debts listed on the SOR, I find that the record evidence leaves me with significant questions and doubts as to Applicant's eligibility and suitability for a sensitive position, under the whole-person concept. For all these reasons, I conclude Applicant has not mitigated the trustworthiness concerns under the whole-person concept.

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
Subparagraph 1.a.:	Against Applicant
Subparagraph 1.b.:	Withdrawn
Subparagraphs 1.c. - 1.k.:	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 for access to a sensitive position. Eligibility for access to sensitive information is denied.

Martin H. Mogul
Administrative Judge