



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



In the matter of:

Applicant for Public Trust Position

ADP Case No. 15-05821

Appearances

For Government: Carroll Connelley, Esquire

For Applicant: *Pro se*

02/17/2017

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Applicant submitted sufficient evidence to mitigate Guideline F trustworthiness concerns. Applicant's eligibility to occupy a position of trust is granted.

Statement of the Case

On March 15, 2016, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing concerns under Guideline F (Financial Considerations) regarding her eligibility to occupy an automated data processing (ADP) position designated ADP-I/II/III. The action was taken under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006. Applicant timely responded to the SOR, admitting the sole allegation raised concerning a 2015 filing for Chapter 7 bankruptcy, and requested a hearing before a Defense Office of Hearings and Appeals (DOHA) Administrative Judge.

On October 13, 2016, I was assigned this case. On January 12, 2017, a notice of hearing was issued setting a hearing for February 1, 2017. The hearing was convened as scheduled. The Government offered six exhibits (Exs.), which were accepted into the record without objection as Exs. 1-6. Applicant testified and offered 10 exhibits, which were accepted into the record without objection as Exs. A-J. The transcript (Tr.) of the proceeding was received on February 8, 2017, and the record was closed. Based on my

review of the file and submissions, Applicant mitigated financial considerations trustworthiness concerns.

Findings of Fact

Applicant is 53-year-old customer service representative who has worked for the same defense contractor for 11 years. Positive recommendations from her supervisor and another work superior reflect an affable, respected, and efficient employee. She is similarly praised by members from her community. She earned a high school diploma and graduated from a vocational-technical school program. She is married with two children, aged 18 and 21.

As of 2011, Applicant and her husband were meeting their financial obligations despite the obstacles posed by living in an economically depressed region. At that point, they had no financial worries. Then, Applicant's pay for performance standards were altered and salary frozen as part of changes that impacted her division. Meanwhile, her husband's salary as a minister was also frozen. It impacted him greatly because much of his work required the use of his automobile, and the price of gasoline began to soar around the same time.¹ In addition, their eldest child went to college. The couple resorted to using their credit cards to meet their gasoline, utilities, living expenses, and other essentials. In sum, they used about 10 credit cards to meet their needs. (Tr. 25) Late charges were accrued and, eventually, living within their limited means, surrounded by escalating prices, became difficult despite their attempts to economize. Their debts started to become delinquent.

In 2014, Applicant and her husband decided to address their mounting debt, but were unsure as to the best approach. First, the couple discontinued their use of credit in favor of cash. (Tr. 35) Second, the minister took a part-time job in addition to his regular position in order to generate additional income.² Third, they met with an attorney regarding their financial situation. (Tr. 31) They were not seeking bankruptcy. Indeed, at the time, they were thinking of addressing their debts systematically, paying off their delinquent debts from lowest balance to highest.

After reviewing their nearly \$38,000 in delinquent credit card debt and related obligations, the attorney advised that it was his "professional assessment" that they file for Chapter 7 bankruptcy.³ (Tr. 27-28, 31-33) With no other option rendered, they followed the counselor's guidance. After receiving financial counseling, they petitioned for Chapter

¹ The minister commuted almost 80 miles a day to work, while Applicant drove and still drives to her job in a circuitous route in order to provide transportation to a disabled colleague. (Tr. 21-22) At the time, gasoline was priced at or above \$4.00 a gallon; neither received reimbursement for gasoline. (Tr. 27)

² The job started as a seasonal position. After being laid off after the holidays, however, Applicant's husband was rehired on a regular basis. He continues with that second job today.

³ Such amounts include notable interest and fees. (Tr. 28) The petition noted assets of approximately \$74,801 versus about \$68,000 of liabilities.

7 bankruptcy protection in January 2015; their dischargeable debt was discharged in June 2015.

Going forward, Applicant and her husband continued to pay their obligations in cash, eschewing reliance on credit cards. After withholdings and health insurance premiums, Applicant presently has a net monthly surplus of about \$2,200. Her husband generates about \$1,400 a month for his ministerial work and about \$700 a month from his secondary position, on which he owes quarterly taxes. (Tr. 37-39) They are in timely payment on their mortgage (\$525/month) and automobile loan (\$225/month). Other expenses include telephone, cable, and related services (\$337/month), wireless phone services for the couple and their children (\$220/month), propane (approximately \$105-\$150/month), and electricity (averaging \$150/month), parking (\$40/month), leaving a positive monthly balance of about \$2,700 for living and other obligations.

Now that their children are grown, the family coffers have received additional relief. Applicant's eldest child is a scholarship recipient who supplements his income with multiple jobs during his graduate studies. Her younger child works in order to meet the majority of her undergraduate expenses. (Tr. 30-31) Applicant provides a nominal monthly allowance of about \$40-\$80 to both her children. (Tr. 55) Although boarding at school, both children "spend about half their time" at Applicant's house, where they are housed, clothed, fed, and provided with Internet for their school studies. (Tr. 42, 55-56)

Each month after all expenses, Applicant has a net remainder of approximately \$830 for savings and emergencies. Since receiving financial counseling, she has become proactive with regard to family budgeting. (Tr. 49-51) She now has a clear sense of where their income is expended. In addition to reserving cash and funds to be expended for Applicant's husband's quarterly taxes, Applicant maintains approximately \$1,000 in a savings account and additional savings in a Christmas Club (\$150) and Travel Club (\$250) accounts. Overall, Applicant feels comfortable living within her current household budget and has found it efficient and workable. (Tr. 56)

Policies

When evaluating an applicant's suitability for a position of trust, the administrative judge must consider the adjudicative guidelines. The adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to protected information.

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 overarching adjudicative goal is a fair, impartial, and commonsense decision. Under 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 sensitive information is the paramount consideration.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and has the ultimate burden of persuasion to obtain a favorable decision.”

A person who seeks a public trust position enters into a fiduciary relationship with the Government predicated upon trust and confidence that transcends normal duty hours. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard information.

Analysis

Guideline F, Financial Considerations

Under Guideline F, AG ¶ 18 sets forth the applicable trustworthiness concern: 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. Here, the Government introduced credible evidence showing Applicant successfully filed for Chapter 7 bankruptcy in January 2015. The delinquent debt reflected in that filing and ultimate discharge raises financial considerations disqualifying conditions:

AG ¶ 19(a) inability or unwillingness to satisfy debts, and

AG ¶ 19(c) a history of not meeting financial obligations.

Five conditions could mitigate these financial concerns:

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;

AG ¶ 20(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), and the individual acted responsibly under the circumstances; AG ¶ 20(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;

AG ¶ 20(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(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.

Applicant admits she filed for Chapter 7 bankruptcy in early 2015. She noted reasonable efforts to economize and handle her delinquent debt after both she and her husband experienced salary freezes and a significant increase in expenses. Much of the debt cited was credit card debt. Neither she nor her husband now use credit cards. Applicant's husband took a second job to increase their income as they economized. They undertook such measures to contain their mounting debt before seeking advice on how to address their delinquent obligations from a legal counselor. As they proceeded on his advice to file for Chapter 7 bankruptcy protection, the couple underwent financial counseling, formulated a workable budget, and improved their spending habits. They quickly comported their behavior sufficiently to live within their means and start saving.

Today, the couple's children are in college, contributing to both their education and personal expenses. They should enter the workforce within the next few years. Applicant finds that her efforts have led her family to live comfortably while living within their means. She showed that she and her husband regularly save sufficient sums to meet unexpected needs and emergencies, while reserving funds for modest travel and holiday sharing. With their monetary situation stabilized and financial counseling obtained, Applicant is highly optimistic about her ability to manage her household income hence forward. In light of the foregoing, I find that AG ¶ 20(b)-(d) apply.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a position of trust by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the adjudicative process factors listed at AG ¶ 2(a). Under AG ¶ 2(c), the final determination of whether to grant eligibility for a position of trust must be an overall commonsense judgment based on 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. I incorporate my comments under the guideline at issue in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is 53-year-old customer service representative who has worked for the same defense contractor for 11 years. She is lauded as an employee and admired by members of her community. She completed both high school and a vocational technical program. Married, Applicant is the mother of two college-age children.

After 2011, Applicant and her husband started finding it difficult to live within their means as expenses increased, the price of gasoline spiked, and their respective salaries

were frozen. They started relying on credit cards until their debt became unwieldy and they could no longer make timely payments on their balances. As they implemented measures to contain their debt and adapt to their incomes, they sought the advice of an attorney. In January 2015, they took the only option he recommended and filed for Chapter 7 bankruptcy protection. With that action, they received financial counseling. It provided them with more insight into how to continue living without credit cards or mounting debt. They have not acquired any new debt since before they met with the counsel who advised them to seek bankruptcy protection, and they have continued to live within their means ever since. Applicant has a workable budget and is now saving for contingencies. Their children are soon to enter the workforce, which should provide Applicant with additional monetary relief. Given her strides both before and after the bankruptcy filing, I find Applicant mitigated the financial considerations concerns raised.

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:	FOR APPLICANT
Subparagraph 1.a:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to permit Applicant to maintain a public trust position. Eligibility for a public trust position is granted.

Arthur E. Marshall, Jr.
Administrative Judge