



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



In the matter of:

Applicant for Public Trust Position

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ADP Case No. 15-06457

Appearances

For Government: Andrew Henderson, Esquire, Department Counsel

For Applicant: *Pro se*

November 2, 2016

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant has delinquent debts that began accumulating in 2008. All but three of her 30 delinquent accounts remain unaddressed. She failed to mitigate the trustworthiness concerns raised under Guideline F, Financial Considerations. Her eligibility for a public trust position is denied.

In March 2015 Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On April 27, 2016, the Department of Defense (DoD) issued Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns under Guideline F, Financial Considerations. 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 DoD for SORs issued after September 1, 2006.

Applicant submitted an answer to the SOR (Answer) on May 19, 2016, and requested a hearing before an administrative judge. On June 27, 2016, the Defense

Office of Hearings and Appeals (DOHA) assigned the case to me. On July 1, 2016, DOHA issued a Notice of Hearing setting the case for July 21, 2016. The case was heard as scheduled. Department Counsel offered Government Exhibits (GE) 1 through 5 into evidence without objection. Applicant testified and offered Applicant Exhibits (AE) A through G into evidence, without objection. All exhibits were admitted. DOHA received the hearing transcript (Tr.) on July 29, 2016.

Findings of Fact

The SOR contained 30 allegations related to delinquent debts. In her response to the SOR, Applicant admitted the allegations referenced in SOR ¶¶ 1.e, 1.g, 1.i through 1.p, and 1.r through 1.dd. She denied those referenced in SOR ¶¶ 1.a through 1.d, 1.f, 1.h, and 1.q. Her admissions are incorporated into these findings of facts.

Applicant is 47 years old. She is a single mother of five children, and has four grandchildren. Two of her grandchildren reside with her. She is a high school graduate and has attended some college. She has worked for her employer since February 2013. She has been divorced twice, in 1993 and in 2010. (GE 1; Tr. 23, 36-37.)

Applicant attributed her financial problems to a series of events beyond her control. Her second husband was diagnosed with Parkinson's disease at age 29. At that time, he made double Applicant's salary. However, his medical condition deteriorated and he could no longer work. They were no longer able to afford their mortgage payments on her salary alone. Their house was foreclosed upon. Applicant's husband then left their family. They divorced in 2010. Applicant took a second full-time job working at night to try to support her five children, but has had difficulty paying all of her bills. Applicant and her children also suffer from medical conditions that require frequent medical care. Applicant intends to repay her debts, but does not have the resources to do so. (GE 2; Tr. 16-23.)

Based on credit bureau reports from September 2004 and March 2015, the SOR alleged 30 delinquent debts totaling over \$14,000. They accumulated between 2008 and 2015. (GE 3, GE 4.) The status of Applicant's delinquent debt is as follows:

Applicant is indebted on three student loans in the total amount of \$7,089, as alleged in SOR ¶¶ 1.a through 1.c. Applicant denied being delinquent on these loans. A credit report dated June 21, 2016, reflects that these three accounts are current and Applicant is making monthly payments on them. These debts are being resolved. (GE 5; AE C; Tr. 33-34.)

Applicant is alleged to be indebted to a bank in the approximate amount of \$523, as alleged in SOR ¶ 1.d. She contests this debt. She cannot find it on her credit reports. She went to the bank and was told she did not have a delinquent account. However, she did not present documentation to support her claim. She has not formally disputed it with the credit bureaus. This debt is not resolved. (Tr. 39-40.)

Applicant is indebted to a single collection agent on 18 separate debts totaling approximately \$4,763, as alleged in ¶¶ 1.e, 1.h, 1.k through 1.p, 1.r through 1.z, and 1.bb. They remain unresolved. (GE 3; GE 4; AE F.)

Applicant is indebted on eight other delinquent accounts including ¶¶ 1.f, a satellite television service totaling \$797; 1.g, a delinquent store credit card totaling \$573; 1.i, a delinquent credit card totaling \$285; 1.j, a delinquent medical account totaling \$244; 1.q, a delinquent debt to a city totaling \$201; 1.aa, a delinquent medical debt totaling \$76; 1.cc, a delinquent medical debt totaling \$62; and 1.dd, a mortgage account that went into foreclosure. Applicant failed to present documentation to show she has resolved or disputed any of these accounts.

Applicant plans to increase her income by becoming a licensed insurance agent in her spare time. She has satisfactorily completed an on-line training course to further accomplish this goal. (AE E; Tr. 35.)

Applicant testified candidly and remorsefully. She submitted three letters of recommendation from a director, an attorney, and a coworker. All expressed support for Applicant. (AE D.) Applicant's performance reviews reflect she is a good employee and demonstrates integrity. (AE A; AE B.) She has earned certificates of appreciation for her dedication and excellence in volunteer work. (AE G.)

Policies

Positions designated as ADP I, II, and III are classified as "sensitive positions." (See Regulation ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3.) "The standard that must be met for . . . assignment 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.) 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. (See Regulation ¶ C8.2.1.)

When evaluating an applicant's suitability for a public trust position, the administrative judge must consider the disqualifying and mitigating conditions in the Adjudicative Guidelines (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(a), 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.

According to 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 the applicant or proven by Department Counsel” The applicant has the ultimate burden of persuasion as to obtaining a favorable trustworthiness decision.

A person who applies for access to sensitive 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.

Section 7 of Executive Order 10865 provides that “Any determination under this order adverse to an applicant shall be a determination 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 trustworthiness concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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 [or sensitive] information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

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

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant has unpaid delinquent debts that accumulated between 2008 and present, which she has been unable or unwilling to satisfy. The evidence is sufficient to raise those disqualifying conditions.

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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (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;
- (d) the individual initiated 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.

Applicant's delinquent debts have been ongoing since 2008. Although she is making payments on her three student loans, 27 other SOR-listed debts remain unaddressed. The evidence does not support the application of AG ¶ 20(a) as to the remaining debts.

Applicant's delinquent debts are directly attributable to circumstances beyond her control, such as her second-husband's illness, the loss of his income, and eventually, their divorce. However, they divorced over six years ago. In the past six years, Applicant has been unable to further address her financial obligations. For this mitigating condition to be fully applicable, Applicant must show that individual acted responsibly under the

circumstances. She failed to meet her burden to show responsibility in this case. AG ¶ 20(b) does not provide mitigation for the security concerns raised.

Applicant did not present evidence of financial counseling. While she is current on her three student loan accounts, 27 other debts remain unresolved. She did not demonstrate a good-faith effort to resolve those 27 accounts. Neither AG ¶¶ 20(c) nor 20(d) apply.

Although Applicant stated that she was disputing several debts, she did not provide written evidence verifying those assertions or documenting a successful outcome of the dispute. AG ¶ 20(e) does not apply.

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(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.

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 all facts and circumstances surrounding this case. Applicant is an intelligent, articulate 47-year-old woman. She has successfully worked for a defense contractor since 2013. Her current employer provided favorable comments on her performance. She experienced a number of circumstances beyond her control. Since then, she has been unable to demonstrate responsible behavior with respect to her delinquent accounts. At this time, she has not established a sufficient track record of responsibly handling her financial affairs. Overall, the record evidence leaves me with questions as to Applicant's eligibility and suitability for a public trust position. For these reasons, I conclude Applicant did not sufficiently mitigate the trustworthiness concerns arising from her delinquent debts.

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
Subparagraph 1.a-1.c:	For Applicant
Subparagraph 1.d- 1.dd:	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 a public trust position. Eligibility for access to sensitive information is denied.

JENNIFER I. GOLDSTEIN
Administrative Judge