



**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. 15-06530

Appearances

For Government: Chris Morin, Esquire, Department Counsel

For Applicant: *Pro se*

04/13/2017

Decision

DAM, Shari, Administrative Judge:

Applicant has a history of delinquent debts that began prior to 2015 when she filed Chapter 7 bankruptcy, and also had unpaid student loans. She failed to mitigate the trustworthiness concerns raised under Guideline F, Financial Considerations. Eligibility for a public trust position is denied.

Statement of Case

On June 19, 2014, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On February 28, 2016, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns under Guideline F, Financial Considerations. The action was taken 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); and the adjudicative guidelines (AG) effective within the DOD for SORs issued after September 1, 2006.

On March 28, 2016, Applicant responded to the SOR in writing and elected to have her case decided on the written record in lieu of a hearing. (Item 2.) On April 18, 2016, Department Counsel prepared a File of Relevant Material (FORM), containing seven Items, and mailed it to Applicant the same day. Applicant received the FORM on April 28, 2016, and had 30 days from its receipt to file objections and submit additional information. Applicant did not submit any additional documents or file objections to the Government's evidence; hence, Items 2 through 7 are admitted into evidence. On March 20, 2017, the Defense Office of Hearings and Appeals (DOHA) assigned the case to me.

Findings of Fact

The SOR alleged nine delinquent student loans and a 2015 Chapter 7 Bankruptcy. Applicant admitted all ten allegations. (Item 2.) Her admissions are incorporated into these findings.

Applicant is 46 years old and married. She earned a bachelor's degree in 1993 and a master's degree in 2012. She has worked for her current employer since September 2013. Prior to that, she worked for a private company for seven months. She worked for the Federal government from January 2009 to June 2011. In the past 10 years, she was unemployed 2 months in 2007, 7 months in 2008, and 25 months between 2011 and 2013. (Item 3.)

Based on credit bureau reports (CBRs) from June 2014 and April 2015, the February 2016 SOR alleged nine student loans that became delinquent between 2013 and 2014. The delinquent balance owed for the loans at the time the SOR issued was \$4,366. The total balance owed for those nine loans is \$75,390. The SOR also alleged that in April 2015, Applicant filed Chapter 7 bankruptcy and it was discharged in August 2015.¹ (Items 5, 6, 7.)

In July 2015, Applicant completed financial interrogatories. In response to questions about the status of her delinquent student loans, she wrote, "Attempting to rehabilitate. Cannot make arrangements until bankruptcy discharged." (Item 4.)

In her March 2016 Answer, Applicant stated that she was "not done paying for the bankruptcy proceedings," and thus was unable to resolve her student loans. She indicated that she intended to resolve them. (Item 2.)

The Government notified Applicant in its April 2016 FORM, that she had not submitted evidence documenting actions she had taken to resolve her student loans. It stated that she had 30 days in which to submit information. She did not file any additional information.

¹The record does not contain evidence documenting the total amount of delinquent debt contained in the bankruptcy discharge.

Applicant did not submit documentation that she obtained credit or financial counseling beyond the mandatory counseling required for bankruptcy filing, or sought assistance for addressing and managing her student loans. Her budget lists her monthly income as \$1,040, and expenses of \$1,400, indicating a shortage of \$400. (Item 4.)

Policies

Positions designated as ADP-I/II/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 AGs. 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.

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 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.

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

This concern is broader than the possibility that an individual might knowingly compromise sensitive information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting sensitive information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding sensitive information.²

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 a history of being unable or unwilling to satisfy financial obligations, which began before she filed Chapter 7 bankruptcy in April 2015, and continues to date. The evidence raises both disqualifying conditions, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes conditions in AG ¶ 20 that could mitigate trustworthiness concerns arising from Applicant's financial difficulties:

² See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

(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; and

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

There is insufficient evidence to establish mitigation under any of the above mitigating conditions. Applicant failed to demonstrate that her ongoing delinquent student loans are unlikely to continue or recur, or that her reliability and trustworthiness is not in question. AG ¶ 20(a) does not apply. She provided some evidence that her financial delinquencies may have occurred as the result of a period of unemployment over several years, which may have been a circumstance beyond her control. She did not present evidence that she attempted to manage her debts and student loans during those times. Thus, the evidence establishes minimal mitigation under AG ¶ 20(b).

Applicant did not provide evidence that she participated in credit or financial counseling beyond the mandatory counseling required for filing bankruptcy, or that she developed a reliable plan to resolve the debts. Rather, the record indicates that she does not have the ability to address her debts. AG ¶ 20(c) does not apply. She did not submit evidence that she made a good-faith effort to resolve debts or student loans before filing Chapter 7 bankruptcy, or subsequent to the discharge of debts through the proceeding in 2015. AG ¶ 20(d) 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 the facts and circumstances surrounding this case. Applicant is a 46-year-old woman, who has a history of financial delinquencies that began prior to 2013 when her student loans started to become delinquent and subsequently included a 2015 Chapter 7 bankruptcy.

In June 2014, Applicant submitted an e-QIP. In April 2015, she filed Chapter 7 bankruptcy. In July 2015, she responded to the Government's financial interrogatories, acknowledging that she had filed bankruptcy and had delinquent student loans. In August 2015, the court discharged the bankruptcy. In February 2016, DOHA issued the SOR. In March 2016, she answered the SOR, admitting all allegations and stating that she had been unable to resolve her student loans while the bankruptcy was pending. In April 2016, she received notice that she failed to submit sufficient information to mitigate the financial allegations, and specifically mentioned the unresolved student loans. It notified her that she had an additional 30 days to submit documentation relevant to her delinquent loans and financial issues. She did not respond.

Overall, the record evidence leaves me with questions as to Applicant's eligibility and suitability for a public trust position, as she has not established a reliable record of resolving her delinquent debts and demonstrating responsible judgment. For these reasons, I conclude Applicant did not meet her burden to mitigate the trustworthiness concerns arising from her financial problems.

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:

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| Paragraph 1, Guideline F: | AGAINST APPLICANT |
| Subparagraphs 1.a through 1.j: | 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 or continue Applicant's eligibility for a public trust position. Eligibility for access to sensitive ADP information is denied.

SHARI DAM
Administrative Judge