



**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. 15-06664

Appearances

For Government: Pamela Benson, Esq., Department Counsel

For Applicant: *Pro se*

09/29/2016

Decision

DAM, Shari, Administrative Judge:

Applicant has 22 delinquent debts, 18 of which are unresolved medical bills. She failed to mitigate the trustworthiness concerns raised under the financial considerations guideline. Her eligibility for a public trust position is denied.

Statement of Case

On February 17, 2015, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On March 21, 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 effective within the DOD for SORs issued after September 1, 2006.

On April 1, 2016, Applicant answered the SOR in writing (AR) and requested a hearing before an administrative judge. On June 2, 2016, the Defense Office of Hearings and Appeals (DOHA) assigned the case to me. On June 13, 2016, DOHA issued a Notice of Hearing setting the case for July 12, 2016. The case was heard as scheduled. Department Counsel offered Government Exhibits (GE) 1 through 3 into evidence. Applicant testified and offered Applicant Exhibits (AE) A through C into evidence. All exhibits were admitted without objections and the record closed. DOHA received the hearing transcript (Tr.) on July 22, 2016.

Findings of Fact

The SOR contained 22 allegations of delinquent debts, totaling \$18,135. In her response to the SOR, Applicant admitted all allegations, except those alleged in SOR ¶¶ 1.g, 1.h, 1.i, 1.l, 1.m, and 1.v. (AR.) She denied those six on the basis that they no longer appeared on her credit report. Her admissions are incorporated into these findings of facts.

Applicant is 32 years old and unmarried. She has four children, ages 12, 10, 8, and 15 months. She receives child support for one of the children. She has an associate's degree in accounting and some credit hours toward a bachelor's degree. She began working for her employer, a defense contractor, in September 2014. Her supervisor is aware of this proceeding and the financial issues related to it. (Tr. 14-18; GE 1.)

Applicant's financial problems began in 2009 when she was a single mother, a full-time student, and working part time, earning the minimum wage without medical insurance. Her problems have continued into 2016 because she has not had sufficient income to pay her bills and delinquent debts over the years, although she now has medical insurance. (Tr. 18-20.)

In February 2016, Applicant began working with a company that repairs one's credit. It charges a \$100 a month and challenges entries on one's credit reports on the basis of legal technicalities, which may subsequently result in their deletion. Applicant intended to work with the company through July 2016. (Tr. 52.)

In her response to the SOR, Applicant denied six SOR allegations on the basis that they were disputed and removed from her credit report through the credit repair company. (AR.) Applicant testified that to date, 22 delinquent debt entries have been removed from her credit report.¹ (Tr. 25-27, 48.) If some of these debts remain viable after being removed or deleted from her credit report, she stated she would try to pay them. (Tr. 34.) She agreed that many of the SOR-listed debts are her debts, and that she intends to pay them when she has enough money. (Tr. 31, 42, 47.) She said she has contacted a few collection agencies for her creditors, but cannot afford the settlement amount or payment plan that they requested. (Tr. 40-41, 49.)

¹ The evidence is not clear as to which debts alleged in the SOR have been deleted.

Applicant submitted a budget. Her net monthly income is \$2,000 and expenses are \$1,880, leaving about \$120 remaining. She said her hourly rate is \$16.50 and that she does not earn overtime. (Tr. 21; AE B.) She thinks her student loans total \$60,000. They are deferred until December 2016. (Tr. 23.) She, as well as her children, have medical insurance now. (Tr. 21.) She does not receive any state or federal assistance. (Tr. 55.) She is living on the money she earns. (Tr. 68.)

Based on credit bureau reports from March 2015 and May 2016, the SOR alleged 22 delinquent debts, which became delinquent between 2009 and 2016. They total \$18,135. (GE 2, GE 3.) None of them are paid, resolved, or being resolved, except the cable bill in SOR ¶ 1.f for \$606, which was resolved. (Tr. 45, 49.) Although Applicant said she intended to pay her debts, it is unclear how she will handle those that are deleted from her credit report, which she acknowledged are her responsibility. (Tr. 52.) She has not participated in financial or credit counseling, but did take a course in financial management while earning her associate's degree.

Policies

Positions designated as ADP I, ADP II, and ADP III are classified as "sensitive positions." (See DoD 5200.2- R ¶¶ 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, describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and (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. Directive ¶ E3.1.15, further states that 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 [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.

Since 2009 Applicant has been accumulating delinquent debts, which she remains unable or unwilling to satisfy. The evidence raises both trustworthiness concerns, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

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 has incurred substantial delinquent debts, which continue to date, the majority of which are medical debts. She has not yet established a reliable track record of debt resolution, such that it is possible to determine that similar problems will not recur. The evidence does not support the application of AG ¶ 20(a). She demonstrated

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

that conditions beyond her control contributed to her financial problems, specifically the time period in which she did not have medical insurance and an ongoing lack of sufficient income. There is little evidence that she acted responsibly under such circumstances, while the bills were accumulating. The evidence does not support the full application of AG ¶ 20(b).

Applicant did not provide evidence that she participated in credit or financial counseling or submit sufficient documentation demonstrating that her financial problems are under control. The evidence does not establish mitigation under AG ¶ 20(c). She provided evidence that she made a good-faith effort to resolve a cable bill. AG ¶ 20(d) provides mitigation for that debt. Applicant used a company to challenge, and ultimately had deleted, many debts listed on her credit reports, which she acknowledged are her debts. There is insufficient evidence to establish mitigation under AG ¶ 20(e).

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 32-year-old single mother of four children, who has a history of financial problems attributable to insufficient income and the lack of medical insurance. She stated that she is able to manage her current monthly bills, but is unable to pay delinquent bills. The Appeal Board explained that such a circumstance was not necessarily a bar to having access to sensitive information stating:

However, the Board has previously noted that an applicant is not required to be debt-free nor to develop a plan for paying off all debts immediately or simultaneously. All that is required is that an applicant act responsibly given his [or her] circumstances and develop a reasonable plan for

repayment, accompanied by “concomitant conduct” that is, actions which evidence a serious intent to effectuate the plan. See ISCR Case No. 07-06482 at 3 (APP. Bd. May 21, 2008).

At this time Applicant has not established a strategy or plan for resolution of any of her unpaid debts, other than to have them deleted from her credit report. I find Applicant to be a credible and honest individual; however, there is insufficient evidence to conclude that her negative financial situation is being resolved or will not recur in the future. Despite acknowledging her medical debts, she has not paid even a small debt for \$62 since the SOR was issued in March 2016. 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 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 ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a through 1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraphs 1.g through 1.v:	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.

SHARI DAM
Administrative Judge