



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



In the matter of:

Applicant for Public Trust Position

)
)
)
)
)
)

ADP Case No. 15-07052

Appearances

For Government: Tara R. Karoian, Esquire, Department Counsel

For Applicant: *Pro se*

05/08/2017

Decision

DAM, Shari, Administrative Judge:

Applicant has a history of financial problems that began in 2008. She failed to mitigate the trustworthiness concerns raised under Guideline F, Financial Considerations. Her eligibility for a public trust position is denied.

Statement of Case

On March 17, 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 April 18, 2016, Applicant responded to the SOR in writing and elected to have the case decided on the written record in lieu of a hearing. (Item 2.) On May 18, 2016,

Department Counsel prepared a File of Relevant Material (FORM), containing five Items, and mailed it to Applicant the following day. Applicant received the FORM on June 2, 2016, and had 30 days from its receipt to file objections and submit additional information. Applicant did not submit any additional information or file objections to the Government's evidence; hence, Items 1 through 5 are admitted into evidence. On March 2, 2017, the Defense Office of Hearings and Appeals (DOHA) assigned the case to me.

Findings of Fact

The SOR alleged 15 delinquent debts. Applicant admitted the allegations in SOR ¶¶ 1.b, 1.f, 1.g, and 1.h, and denied the other 11 allegations. She submitted some documents with her Answer. (Item 2.) Her admissions are incorporated into these findings.

Applicant is 33 years old and unmarried. She is a high school graduate and attended a technical college for one semester. In April 2015, she began a position with a government contractor. Prior to this job, she worked for a retail store for over four years. She was unemployed from May 2009 to August 2010. (Item 3.)

On March 4, 2015, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). During a background interview with a government investigator on May 21, 2015, she discussed information in the e-QIP, including delinquent debts. She acknowledged her student loans, but disputed owing some of the medical debts. (Item 5.)

Based on a credit bureau report (CBR) from April 2015, the SOR alleged 15 delinquent debts that totaled \$37,684, and arose between 2008 and 2012. They consisted of 11 unpaid medical bills, 2 student loans, a cell phone bill, and a utility bill. (Item 4.)

In her April 18, 2016 Answer, Applicant stated that she made payment arrangements for the medical debts in SOR ¶¶ 1.b (\$9,948) and 1.f (\$313). On April 14, 2016, she agreed to pay \$25 a month until the debts were paid. She also stated that the defaulted student loans alleged in SOR ¶¶ 1.g (\$113) and 1.h (\$70) had been resolved in July 2015. As proof, she submitted a copy of her agreement and an April 2016 CBR that reported the loans as having no outstanding balance. She denied owing the remaining 11 debts because she said they were not listed on the April 2016 CBR. (Answer: Encl. B, C.)

The Government notified Applicant in its May 18, 2016 FORM, that she had not submitted sufficient evidence to mitigate the financial concerns. It gave her an opportunity to submit additional information about the status of her debts, which she did not do.

Applicant did not provide documentation that she obtained credit or financial counseling, or sought assistance for managing her debts. She did not provide a budget from which to determine her ability to resolve the delinquencies and avoid additional debt problems in the future.

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.¹

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 in 2008 and continues to date. The evidence raises both disqualifying conditions, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

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

The guideline includes conditions in AG ¶ 20 that could mitigate trustworthiness concerns arising from financial delinquencies:

- (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 failed to demonstrate that her ongoing financial problems are unlikely to continue or that her reliability and trustworthiness are not in question. AG ¶ 20(a) does not apply. She provided some evidence that the delinquent debts may have arisen during periods of unemployment, which may have been the result of circumstances beyond her control. However, she did not submit evidence that she responsibly attempted to manage the debts under those circumstances. The evidence establishes partial mitigation under AG ¶ 20(b).

Applicant did not provide evidence that she participated in credit or financial counseling or established a budget. Four days before filing an Answer, she entered into a payment agreement to resolve two medical debts with monthly payments. While that was a positive step toward resolving debts, her overall actions to date are insufficient to conclude that her financial problems are under control. AG ¶ 20(c) does not apply. She submitted evidence that she made a good-faith effort to resolve two student loans in July 2015. AG ¶ 20(d) applies to those debts. Applicant did not provide evidence that 11 alleged debts from 2008 to 2012 were not her responsibility, other than to rely on the fact that they were no longer on her current credit report. She did not provide proof that she successfully investigated or disputed any of those debts. The evidence does not 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 33-year-old woman, who has a history of financial problems that began in 2008. In May 2015, she spoke with a government investigator and discussed her delinquent debts. In March 2016, she received the SOR. In April 2016, she answered the SOR and included a repayment plan for two medical debts that she negotiated four days prior and evidence that two student loans were resolved. Despite having a subsequent opportunity, she failed to provide additional substantiating documents.

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 section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a through 1.f:	Against Applicant
Subparagraphs 1.g and 1.h:	For Applicant

Subparagraphs 1.i through 1.o:

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 information is denied.

SHARI DAM
Administrative Judge