



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



In the matter of:)
)
XXXXXXXXXXXXXXXXXXXX) ADP Case No. 15-07799
)
Applicant for Public Trust Position)

Appearances

For Government: Philip J. Katauskas, Esquire, Department Counsel
For Applicant: *Pro se*

03/28/2017

Decision

METZ, John Grattan, Jr., Administrative Judge:

Based on the record in this case,¹ I grant. Applicant's eligibility for a public trust position.

On 25 March 2016, the Department of Defense (DoD) sent Applicant a Statement of Reasons (SOR) raising trustworthiness concerns under Guideline F, Financial Considerations.² Applicant timely answered the SOR, requesting a hearing before the Defense Office of Hearings and Appeals (DOHA). DOHA assigned the case

¹Consisting of the transcript (Tr), Government exhibits (GE) 1-4, hearing exhibit (HE) I, and Applicant exhibits (AE) A-C. AE C was timely received post-hearing. The record closed 25 October 2016, when Department Counsel stated no objection to AE C.

²DoD conducts trustworthiness determinations for contractor personnel employed in Information Systems Positions defined in DoD Regulation 5200.2-R, *Personnel Security Program* (Regulation), dated January 1987, as amended, pursuant to 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.

to me 16 August 2016 and I convened a hearing 13 October 2016. DOHA received the transcript 20 October 2016.

Findings of Fact

Applicant admitted SOR financial allegations 1.d, and 1.i-1.j. She is a 60-year-old general clerk employed by a Government contractor since June 2014. She was unemployed for over a year from September 2009 to September 2010, when she moved to her current location for employment. She has not previously had a trustworthiness determination.

The SOR alleges, and Government exhibits (GE 1-2) substantiate, 10 delinquent debts totaling over \$24,000. Applicant admits three delinquent debts totaling \$700. The bulk of the debt is for nearly \$21,000 delinquent education loans (SOR 1.b). Another \$2,100 is for a state tax lien filed in November 2013 (SOR 1.a). The remaining debts comprise four unpaid parking tickets (SOR 1.e-1.h), three telephone bills (SOR 1.c and 1.i-1.j), and a utility bill (SOR 1.d). Applicant reported none of these debts on her May 2015 application for a position of trust (GE 1). She was unaware of all of them except for the state tax lien and her education loans until she was interviewed by the Government investigator in July 2015 (GE 2).

Applicant was late filing her 2013 state and Federal tax returns because she mistakenly believed that she had three years to file them (Tr. 40). She also did not have the money to pay for filing at the time. This resulted in the state tax lien at SOR 1.a. During her July 2015 interview with a Government investigator (GE 2), she stated that she began making \$135 monthly payments to the state taxing authority in November 2014, and had reduced the balance to \$1,961. While she did not document the individual payments, the lien was satisfied in October 2016 (AE C).

Applicant began making regular bi-weekly payments on her education loans (SOR 1.b) in June 2014, and by October 2016 had reduced the outstanding balance to \$19,276.62 (AE B, C). On 25 March 2016, the collection agent for SOR creditor 1.c made a demand for payment, which Applicant made on 31 March 2016 (Answer). Applicant called the original creditor on SOR 1.d and was told that their records showed that the account had been paid (Tr. 46-47). However, she had not yet contacted the collection agent for the account (Tr. 48). In July and August 2015, Applicant paid the parking tickets at SOR 1.e -1.g (Answer; Tr. 48-50, 55), and provided this information to the Government investigator (GE 2). She does not appear to have addressed the parking ticket at SOR 1.h, or the two telephone bills at SOR 1.i-1.j.

Applicant attributes her debts to the recession and her unemployment in 2009-2010. Her employment record is less than a model of clarity, but includes periods of part-time employment and a year of uncompensated volunteer work.

Applicant documented no financial or credit counseling, and provided no budget. She provided no work or character references, or evidence of civic or community involvement.

Policies

The adjudicative guidelines (AG) list factors to evaluate a person's suitability for access to sensitive information. Administrative judges must assess disqualifying and mitigating conditions under each issue fairly raised by the facts and situation presented.

Each decision must also show a fair, impartial, and commonsense consideration of the factors listed in AG ¶ 2(a). The applicability of a disqualifying or mitigating condition is not, by itself, conclusive. However, specific guidelines should be followed when a case can be measured against them, as they are policy guidance governing the grant or denial of a clearance. Considering the SOR allegations and the evidence as a whole, the relevant adjudicative guideline is Guideline F (Financial Considerations).

Trustworthiness decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's public trust position. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to applicant to refute, extenuate, or mitigate the Government's case. Because no one has a right to a public trust position, the applicant bears a heavy burden of persuasion.

Persons with access to sensitive information enter into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring each applicant possesses the required judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels deciding any reasonable doubt about an Applicant's suitability for access in favor of the Government.³

Analysis

The Government established a case for disqualification under Guideline F, but Applicant mitigated the trustworthiness concerns. The recession, her unemployment, and underemployment caused her to fall behind on the accounts alleged in the SOR.⁴ However, she began addressing the education loans (her largest debt) in June 2014, and that is now current. She began addressing her tax lien (her next largest debt) in November 2014, and the lien was satisfied in October 2016. She addressed three of her four parking tickets in July and August 2015, and resolved one telephone bill before she received the SOR. The four remaining unresolved debts total less than \$900.

³See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁴¶ 19 (a) inability or unwillingness to satisfy debts; (c) a history of not meeting financial obligations.

Applicant meets most of the mitigating factors for financial considerations. Her financial difficulties were both recent and multiple, but she has been steadily employed full-time since June 2014.⁵ Her periods of unemployment and underemployment were certainly circumstances beyond her control, and she began taking responsible actions to address them long before she applied for a public trust position.⁶ In addition, while there is no evidence that she has sought credit counseling, she has clearly brought the bulk of her debts under control.⁷ And her payment efforts to date have been made in good faith.⁸ Finally, her remaining debts are small enough that they present insufficient trustworthiness concerns to warrant denial of her request for a position of public trust. I conclude Guideline F for Applicant.

Formal Findings

Paragraph 1. Guideline F: FOR APPLICANT

Subparagraphs a-j: For Applicant

Conclusion

Under the circumstances presented by the record in this case, it is clearly consistent with the interest of national security to grant or continue eligibility for a public trust position for Applicant. Eligibility for a public trust position granted.

JOHN GRATTAN METZ, JR
Administrative Judge

⁵¶ 20 (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur.

⁶¶ 20 (b) the conditions that resulted in the financial problem were largely beyond the person's control . . . and the individual acted responsibly under the circumstances.

⁷¶ 20 (c) the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control.

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