



**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. 15-07196

Appearances

For Government: Nicole A. Smith, Department Counsel
For Applicant: *Pro se*

06/27/2017

Decision

KILMARTIN, Robert J., Administrative Judge:

Applicant did not mitigate the financial considerations trustworthiness concerns. Applicant's eligibility for access to sensitive information in a public trust position is denied.

Statement of the Case

On April 25, 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 DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the adjudicative guidelines (AG's) effective within the DOD for SORs issued after September 1, 2006. This decision is based on the newly promulgated adjudicative guidelines effective June 8, 2107.¹

Applicant timely answered the SOR, and elected to have her case decided on the written record. Department Counsel submitted the Government's file of relevant material

¹ Although I have decided this case under the new AG's promulgated by Security Executive Agent Directive (SEAD) 4, of December 10, 2016 and effective on June 8, 2017, I have also considered the case under the former AG's effective on September 1, 2006, and my decision would be the same under either AG's.

(FORM) on July 20, 2016. The FORM was mailed to Applicant, and it was received on August 23, 2016. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days from receipt of the FORM. Applicant did not object to the Government evidence and provided no response to the FORM. The Government's exhibits identified as Items 1 through 6 are admitted into evidence without objection. The case was assigned to me on June 13, 2017.

Findings of Fact

Applicant admitted 85 of the 87 SOR allegations of delinquent debts totaling \$90,336 in her Answer to the SOR. She only denied SOR ¶ 1.y (stating she never heard of the pet-hospital creditor) and SOR ¶ 1.bbbb (a \$78 grocery-store bill that she thought was taken care of already). She also claimed to have a payment plan in place for the debt alleged at SOR ¶ 1.rr (a \$400 debt to T-Mobile). She provided amplifying comments in her two-page Answer dated May 23, 2016.³ In response to the vast majority of her 87 delinquencies, she stated that she owed these medical debts because she had no health insurance. Applicant had medical issues concerning her heart.⁴ In addition to her numerous delinquent medical bills, Applicant has miscellaneous delinquent consumer debts. She has provided no documentation to show disputes with any of her creditors or actual payments made toward a payment plan, let alone proof that any of these debts have been resolved. Indeed, she provided no documents with her Answer or otherwise. All of the alleged debts are reflected in her credit reports. After a thorough and careful review of the pleadings and exhibits submitted, I make the following additional findings of fact.

Applicant is 47 years old. She graduated from high school in 1988. She has never been married but she has one adult child and two minor children. She has been employed as a customer service representative for a federal-contractor since February 2014. Applicant reports no military service but she claims she did have a previous security clearance from the U.S. Postal Service. She is applying for a position of trust for the first time. She reported no financial problems in section 26 of her April 27, 2015, Questionnaire for National Security Positions (SF 86) (Security Clearance Application) (SCA). However, in the final "Additional Comments" section of her SCA, Applicant mentioned that she had "a lot of little creditors. I have a copy of my medical bills, too numerous to list here I believe."⁶

In her June 10, 2015 personal subject interview with an investigator from the Office of Personnel Management (OPM), Applicant stated that she was fired from her job at Credit Solutions in August 2013, due to tardiness.⁷ After that, she supported

³ Item 2, Answer to SOR.

⁴ Item 2, p. 2.

⁶ Item 3, at page 44.

⁷ Item 4.

herself with unemployment compensation. When she got her present job in 2014, her wages were garnished to pay delinquent debts. In response to the OPM investigator's questions when he confronted Applicant with her numerous delinquencies, she repeatedly said she "does not recall specific details" and she intends to contact creditors and set up payment plans. Applicant has produced no evidence that she followed through and actually contacted the creditors, or set up payment plans.

Policies

Positions designated as ADP I and ADP II are classified as "sensitive positions." (See Code of Federal Regulations Title 32 – National Defense, part 154.13 and part 154, Appendix J – ADP Position Categories and Criteria for Designating Positions) "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." The Deputy Under Secretary of Defense (Counterintelligence and Security) Memorandum, dated November 19, 2004, indicates trustworthiness adjudications will apply to cases forwarded to DOHA by the Defense Security Service and Office of Personnel Management. Department of Defense contractor personnel are afforded the right to the procedures contained in DOD Directive 5220.6 before any final unfavorable access determination may be made.

When evaluating an applicant's suitability for a public trust position, the administrative judge must consider the disqualifying and mitigating conditions in the 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 the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial and commonsense decision. According to AG ¶ 2(a), 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."

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 applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable trustworthiness decision.

A person who seeks access to sensitive information enters 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 safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of sensitive information.

Analysis

Guideline F, Financial Considerations

The trustworthiness concern relating to the guideline for financial considerations is set out in AG ¶ 18:

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. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a [trustworthiness] concern insofar as it may result from criminal activity, including espionage.

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 classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding information.

The guideline notes several conditions that could raise trustworthiness concerns. The following are potentially applicable:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant admitted to 85 of the 87 delinquent debts alleged in the SOR totaling over \$90,336. These are longstanding debts, as evidenced by her 2015 credit bureau report. She is a single mother of three children and she has endured periods of unemployment and serious medical issues. In her Answer to the SOR, she claims that

she tried to pay off the debt reflected in SOR ¶ 1.a (back rent) and she will call the creditor to make payment arrangements. She also stated that she was on a payment plan to pay off the mobile phone debt reflected in SOR ¶ 1.rr. In respect to the \$78 grocery bill at SOR ¶ 1.bbbb, she stated “I will call to get this resolved asap.” Yet, Applicant has produced no documents to show that she did any of these things. She has done little or nothing to meet her burden in mitigating these debts. There is sufficient evidence to support the application of the above disqualifying conditions.

Conditions that could mitigate trustworthiness concerns arising from financial difficulties are provided under AG ¶ 20. The following are potentially applicable:

(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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the individual has received, or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated and is adhering to 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 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 disclosed that she had a lot of little creditors in the final section of her SCA, and her medical bills were too numerous to list. She produced no documentation to show payments or progress on any of her delinquent debts alleged in the SOR. The delinquencies alleged in the SOR are recent and ongoing. Arguably, her periods of unemployment and medical issues were conditions beyond Applicant's control. Yet, she has not demonstrated that she has acted responsibly under the circumstances. She provided no evidence of financial counseling, good-faith efforts to repay creditors, or a budget to show that her financial problems have been resolved or are under control. None of the mitigating conditions enumerated above apply.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a position of trust by considering the totality of the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a public trust position 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 the facts and circumstances surrounding this case. I have incorporated my comments under F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines. Applicant is a single mother of three children and she suffers from severe medical problems that were not covered by health insurance. She has also endured periods of unemployment and struggled through a downturn in the economy.

Applicant's finances remain a trustworthiness concern. She has not met her burden of persuasion. The record evidence leaves me with questions and doubts as to Applicant's suitability for a public trust position. For all these reasons, I conclude Applicant failed to mitigate the financial considerations trustworthiness concerns.

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 – 1.iii:	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.

Robert J. Kilmartin
Administrative Judge