



**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. 15-07467

Appearances

For Government: Andrew H. Henderson Esq., Department Counsel

For Applicant: *Pro se*

06/06/2017

Decision

LYNCH, Noreen A., Administrative Judge:

On June 14, 2016, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant listing trustworthiness concerns arising 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), implemented in September 2006.

Applicant timely answered the SOR and requested a decision based on the written record in lieu of a hearing. Department Counsel submitted a File of Relevant Material (FORM), dated August 19, 2016.¹ Applicant received the FORM on August 23, 2016. She submitted one document, which was marked as AX A, and accepted in the record. I received the case assignment on May 24, 2016. Based on a review of the case file, I find Applicant has not mitigated the trustworthiness concerns raised. Eligibility for a position of trust is denied.

¹The Government submitted five items in support of its case.

Findings of Fact

In her answer to the SOR, Applicant admitted allegations ¶¶1.a to 1.f, with explanations, and denied allegations ¶ 1.g and 1.h, under Guideline F, with explanations. (Item 1)

Applicant is 29 years old. She is an intake representative for a health concern, where she has worked since 2006. Applicant has taken college courses but has not yet obtained her undergraduate degree. (Item 2) Applicant is single and has one young child. This is her first application for a position of trust, which she completed on March 27, 2015. (Item 2)

The SOR alleges eight delinquent debts totaling approximately \$94,706. These debts include charged-off accounts, medical collection accounts, and a 2014 judgment. (Item 1) Credit reports confirm the debts. (Items 4 and 5)

Applicant explained in her SOR Answer that she has made payment plans with four accounts. She stated that it took her so long due to being a single parent and all the extra expenses that are associated with having a child, including day care. Applicant only recently began receiving any financial help from the child's father. Applicant noted that she will continue with her payment plans. She was sorry that it took her a long time to start payment plans but she has been struggling to provide for her child and "keep a roof over her head."

As to SOR allegation 1.a, (\$39,106) Applicant stated that she made a payment arrangement for the car loan and included the 2015 installment confirmation. At that time, the monthly payment was \$175 and the total balance was \$20,968. SOR allegation is for a 2014 judgment to the same company in the amount of \$36,661.

As to SOR allegation 1.b, (\$9,483), Applicant stated that she has made payment arrangements with the creditor for a monthly payment of \$150. She stated that she has combined this account with the one in SOR allegation 1.f for \$233. Applicant provided the contact information.

As to SOR allegation 1.c, (\$3,419), Applicant stated that she has made payment arrangements for a \$300 monthly payment. She provided the contact information and phone number.

As to SOR allegation 1.d, (\$1,803), Applicant stated that she has made payment arrangements with the company for a monthly amount of \$50. She provided the contact information.

As to SOR allegation 1.e, (\$1,290), Applicant stated that she has a payment arrangement of \$30 a month and provided the contact information.

As to SOR allegation 1.g, (\$2,711), Applicant denied this debt. She stated that she contacted a “credit check” and there is no record of this debt. She provided the contact information.

As to SOR allegation 1.h, this is a duplicate of the car loan alleged in SOR 1.a. She explained she only had one loan with that auto company.

In June 2015, during an investigative interview, Applicant volunteered that she was late on her home mortgage loan since 2013. The monthly mortgage amount was \$759. Applicant stated that she was three or four days late with the amount because she was attempting to open a trucking business. After she purchased the truck, she learned it needed repairs that she could not afford. Thus, the business did not open. At that time, she incurred late fees for the mortgage loan. However, Applicant told the investigator that she was current on the mortgage account as of June 2015. (Item 3)

Applicant disclosed her financial issues voluntarily. The majority of the accounts became delinquent in 2013. During the 2015 interview, she had no payment plans in place. (Item 3) Applicant did not present any documentary evidence of payments for any SOR debts. She intends to pay her delinquent debts. There is no information in the record concerning financial counseling or her earnings.

The 2015 and 2016 credit bureau reports in the record confirm the alleged delinquent debts, with nine non-SOR account that notes “pays as agreed.” In response to the FORM, Applicant sent an email, with no attachment that informed the Government that she was switching two accounts to another financial collection group and provided contact information.

Policies

When evaluating an applicant’s suitability for a public trust position, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” An 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.

The Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .”² The burden of proof is something less than a preponderance of evidence.³ The ultimate burden of persuasion is on the applicant.⁴

A person seeking access to sensitive information enters into a fiduciary relationship with the Government based on 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 classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Analysis

Guideline F, Financial Considerations

The trustworthiness concern for Financial Considerations is set out in AG ¶ 18:

Failure or an 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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant’s admissions and credit reports establish her delinquent debts. Consequently, Financial Considerations Disqualifying Conditions (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations) apply. With such conditions raised, it is left to Applicant to overcome the case against her and mitigate trustworthiness concerns.

The nature, frequency, and relative recency of Applicant’s financial difficulties make it difficult to conclude that it occurred “so long ago.” An unpaid debt is a continuous course of conduct for the purposes of DOHA adjudications. See, ISCR Case No. 10-11083 at 2 (App. Bd. Dec. 17, 2012). She has unresolved debts. Consequently, Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(a) (the behavior happened so long ago, was so infrequent, or occurred under such

² See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

³ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁴ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment) does not apply. The majority of debts became delinquent in 2013. Applicant was aware of them in 2015 during her interview. She has made payment plans but they are all still unresolved with no information concerning payments made or if she has the financial capability to make the monthly payments.

FC MC AG ¶ 20(b) (the conditions that resulted in the behavior 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) partially apply. Applicant provided several explanations. She is a single parent with no child support and she tried to start a business which failed and put her in more debt. Applicant did not present new information regarding the status of the delinquent debts.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) does not apply. Applicant claims she is working to resolve the debts, but she provided no documentary evidence to support her claim. There is no information about financial counseling. AG ¶ 20(c) (the person has received or is receiving counseling for the problem) does not apply. Consequently, I find that there are not clear indications that her financial problems are being resolved or are under control.

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 an applicant's conduct and all the 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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a position of trust must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. As noted above, the ultimate burden of persuasion is on the applicant seeking a public trust position.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors. Applicant is 29 years old. She has worked for her current employer since 2006.

Applicant offered several reasons for her financial difficulties, but she has been on notice since at least 2015 and still has no record of payments on the delinquent debts. There is no information in the record to discern whether Applicant has the means to pay her debts. She stated that she wanted to pay her debts and she has paid some non-SOR accounts, but she has not provided sufficient information (receipts) to show good-faith efforts to pay even some of the smaller debts. She has not demonstrated a track record of financial responsibility and good judgment. She has not mitigated the security concerns under the financial considerations guideline.

The clearly consistent standard indicates that trustworthiness determinations should err, if they must, on the side of denials. A denial of Applicant's trustworthiness does not necessarily indicate anything adverse about her character or loyalty. It means that the individual has presented insufficient mitigation to meet the strict standards controlling access to sensitive information.

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.g:	Against Applicant
Subparagraph 1.h:	For 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 a position of public trust. Eligibility for access to a position of public trust is denied.

NOREEN A. LYNCH.
Administrative Judge