



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



In the matter of:

ADP Case No. 15-07782

Applicant for Public Trust Position

Appearances

For Government: Chris Morin, Esq., Department Counsel

For Applicant: *Pro se*

04/27/2017

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant has not mitigated the financial considerations trustworthiness concerns. Eligibility for access to sensitive information is denied.

Statement of the Case

On July 3, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant 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) implemented by the DOD on September 1, 2006. On June 8, 2017, new AGs were implemented and are effective for decisions issued after that date.¹

On September 19, 2016, Applicant submitted an answer to the SOR and requested a hearing before an administrative judge. The case was assigned to me on

¹ I considered the previous AGs, effective September 1, 2006, as well as the new AGs, effective June 8, 2017. My decision would be the same if the case was considered under the previous AGs.

January 24, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on February 23, 2017, and the hearing was convened as scheduled on April 19, 2017. Government Exhibits (GE) 1 through 3 were admitted in evidence without objection.² Applicant testified and offered Exhibits (AE) A through C. They were admitted into evidence without objection. The record was held open until May 3, 2017, and was subsequently extended to May 22, 2017, to allow Applicant to submit additional documents. Applicant did not provide additional documents and the record closed.³ DOHA received the hearing transcript (Tr.) on April 27, 2017.

Findings of Fact

Applicant admitted the allegations in SOR ¶¶ 1.a through 1.e, 1.m, 1.r, and 1.u through 1.bb. She denied the remaining allegations. Her admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 52 years old. She earned her General Equivalency Diploma, went to vocational school, and has taken some college classes. She has been married three times and is presently in a common law marriage. She has an adult daughter, who lives with her and works part-time. Her husband has been unemployed for approximately nine months due to an injury.⁴

Applicant failed to pay her 2014 federal (SOR ¶ 1.a - \$3,114) and state income taxes (SOR ¶ 1.b - \$509). She testified that she had not had enough money withheld from her paycheck to cover her tax debt when she withdrew \$28,000 from her 401k pension account, as a result of hardship. She never contacted the Internal Revenue Service (IRS) to address the tax debt. She stated she probably received correspondence from the IRS, but could not remember. She believes her federal tax debt was paid through refunds to which she was entitled for subsequent years. She believed her state tax refund was applied to the amount she owed on her federal tax debt. She stated she received a \$300 refund for tax year 2016. She cannot remember if the state contacted her about tax issues. She did not provide any documents showing her 2014 federal or state tax debts are paid.⁵

Applicant took the hardship loan from her 401k pension account to pay bills. She stated the money is almost depleted, and she cannot recall specifically how she spent it. She is not required to repay it because it was a hardship loan. She owns a horse. From the pension loan, Applicant used approximately \$2,000 to purchase a horse trailer. She used about \$5,000 to pay personal loans and bills. She testified she has two other 401k

² Hearing Exhibit I (HE) is Department Counsel's discovery letter. HE II is an exhibit list.

³ HE III are copies of the email correspondence from Applicant, with responses from Department Counsel and me regarding Applicant's requests for an extension of the date for the closing of the record.

⁴ Tr. 19-25.

⁵ Tr. 25-37.

loans that she is repaying. She does not have a budget. She stated she pays what bills she can on payday and then is broke. She stated she intended to attend financial counseling, but never did. She is attempting to obtain a loan to pay her debts. She has \$5 or \$10 in her checking and saving accounts.⁶

A credit report from June 2015 substantiates the debts alleged in the SOR.⁷ Applicant did not provide information about the debts in SOR ¶¶ 1.c, 1.d, 1.e, 1.f, 1.h, 1.k, 1.m, and 1.n.

Applicant believed the debts in SOR ¶¶ 1.p, 1.q, 1.r, 1.s, 1.t, 1.u, 1.v, 1.w, 1.x, 1.z, 1.aa, 1.bb are medical bills. She stated these debts became due in the past two years and are likely for copays or cost-share amounts. She testified she received bills for her medical expenses, but did not open the bills until they were delinquent. She attributed her behavior to a symptom of depression, for which she is being treated. Applicant stated that after she spoke with a government investigator, as part of her background interview in July 2015, she contacted the creditors, but she never followed through to address the debts. She assumed she paid the bills in SOR ¶¶ 1.aa and 1.bb, but had no proof. She stated she made \$5 payments on some of the bills.⁸ The above listed debts are unresolved.

The debt in SOR ¶ 1.l is a home equity loan. Applicant testified she sold the home in January 2017. She owned the home, but her brother was living in it, and was supposed to make the mortgage payments. He passed away in May 2016. Applicant provided a document regarding a lawsuit on the property. The lawsuit was dismissed. She believed that when the home sold, it satisfied her home mortgage and equity loan. Applicant's March 2017 credit report shows the account has a zero balance past due. The debt is resolved.⁹

Applicant testified that the debt in SOR ¶ 1.g for a car loan was paid. She stated she has the title to the car. Her March 2017 credit report shows the account as "paid, charge-off." The debt is resolved.¹⁰

The debt in SOR ¶ 1.i (\$956) is a credit card account. It is reflected on Applicant's June 2015 credit report, but not on her March 2017 credit report. Applicant testified she contacted the credit bureau about the debt, but had not received a response.¹¹ It is unresolved.

⁶ Tr. 29, 64-69.

⁷ GE 2.

⁸ Tr. 54-61.

⁹ Tr. 38-45; GE 2; AE A, B.

¹⁰ Tr. 45-46; AE A.

¹¹ Tr. 46-49; GE 2.

The debt in SOR ¶ 1.j is a past due car loan in Applicant's name (past due \$381, balance \$18,586). Applicant's daughter uses the car. They agreed each would pay half of the monthly payment. She testified that they could not afford to make the payments.¹² The debt is unresolved.

The debt in SOR ¶ 1.o (\$323) is a cable television account that was in Applicant's name, but which she permitted her brother to use. She asked the creditor if she could make \$5 payments on the account, but she did not follow through with the payments.¹³ It remains unresolved.

Applicant attributed her financial problems to her 2004 divorce. She learned her husband was a drug addict and she acquired a lot of marital debt. Her current husband is unable to work. She stated she does not have enough money to pay debts and support her family. She stated she is in the process of getting a personal loan to pay her debts. Applicant provided copies of her productivity reports, awards, and performance evaluations that reflect her performance exceeds expectations.¹⁴

Policies

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

¹² Tr. 61-63; GE 2.

¹³ Tr. 50-53.

¹⁴ Tr. 70-74; AE C.

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 for financial considerations is set out in AG ¶ 18:

Failure 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. Affluence that cannot be explained by known sources of income is also a security 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 sensitive information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding sensitive information.¹⁵

The guideline notes several conditions that could raise trustworthiness concerns under AG ¶ 19. Two are potentially applicable in this case:

- (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 has numerous delinquent debts. The evidence is sufficient to raise the above disqualifying conditions.

¹⁵ See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Conditions that could mitigate financial considerations trustworthiness concerns 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 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;
- (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; and
- (g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant has numerous delinquent debts that remain unpaid and unresolved. She does not have a thorough understanding of her finances. She failed to follow through on contacting creditors regarding delinquent debts. She has made limited attempts to pay those debts. Insufficient evidence was provided to conclude that her financial problems are unlikely to recur. Her inability or unwillingness to address her debts casts doubt on her current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

Applicant attributed her financial problems to her current husband's unemployment and her 2004 divorce. These matters are beyond her control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. Applicant admitted she did not open her bills when they arrived. She did not follow through on contacting creditors or make the minimum payments to creditors as promised. She has not acted responsibly under the circumstances. AG ¶ 20(b) partially applies.

There is no evidence of financial counseling. Most of Applicant's bills have not been addressed. She provided minimal proof of actions she has taken to resolve her delinquent debts. There is insufficient evidence that her financial problems are under control. She testified that she believed her tax debts were resolved through the involuntary withholding of tax refunds that were applied to the debts. She did not provide evidence that these debts were resolved with tax refunds. Her actions do not constitute a good-faith effort to resolve tax debts. Insufficient evidence was provided regarding her efforts to resolve other debts. There is no evidence that her financial issues are under control AG ¶¶ 20(c) and 20(d) do not apply.

Applicant did not provide sufficient evidence of any attempt to dispute the legitimacy of a past-due debt or documents to substantiate any effort to resolve such issues. AG ¶ 20(e) does not apply.

Applicant did not provide evidence that she made arrangements with the IRS or her state regarding her tax issues and they are resolved. AG ¶ 20(g) does not apply.

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(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 Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

Applicant is 52 years old. She has numerous delinquent debts that she is unable or unwilling to resolve. Applicant may be doing the best she can under the circumstances, but she does not have a firm grasp on her debts and has intentionally ignored some by not opening bills until they were delinquent. She has not made good-faith efforts to contact creditors. She failed to pay minimum payments to a creditor after

she promised to do so. She intended to seek financial counseling, but never did so. Overall, the record evidence leaves me with serious questions and doubts about Applicant's eligibility and suitability for a public trust position. For all these reasons, I conclude Applicant has not mitigated 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.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraphs 1.h-1.k:	Against Applicant
Subparagraph 1.l:	For Applicant
Subparagraphs 1.i-1.bb:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant eligibility for a public trust position. Eligibility for access to sensitive information is denied.

Carol G. Ricciardello
Administrative Judge