



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



In the matter of:)	
)	
REDACTED)	ADP Case No. 15-08342
)	
Applicant for Security Clearance)	

Appearances

For Government: Erin P. Thompson & Tovah A. Minster, Department Counsel
For Applicant: *Pro se*

08/08/2017

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant mitigated concerns raised by her failure to list her past-due debts on her application for a public trust position, but her financial situation continues to raise a concern. Eligibility for a public trust position is denied.

Statement of the Case

On May 18, 2016, the Department of Defense (DoD) sent Applicant a Statement of Reasons (SOR) recommending the denial of her application to occupy a public trust position. The SOR alleges concerns under the financial considerations and personal conduct guidelines. Applicant answered the SOR and requested a hearing.

On February 28, 2017, a date mutually agreed to by the parties, the hearing was held. Applicant testified at the hearing and the exhibits offered by the parties were admitted into the administrative record without objection.¹ At Applicant's request, the record was kept open to give her the opportunity to submit additional documentation in support of her case. She did not submit any additional evidence. The transcript (Tr.) was received on March 8, 2017, and the record closed on April 7, 2017.²

¹ Government Exhibits 1 – 5; Applicant's Exhibits A – D. Prehearing correspondence, the notice of hearing, and case management order are attached to the record as Appellate Exhibits I – III.

² Tr. 52-55, 59-60 (discussion about post-hearing submission).

Findings of Fact

Applicant, 28, graduated from high school in 2007 and then attended a technical college for a time, but did not earn a degree. She is a single mother of an eight-year-old son. She is employed as a clerk at a military hospital. She has been working in her current position since approximately December 2014. Her current manager provided a glowing recommendation, commenting favorably about Applicant's reliability and dependability. Others, including a physician and a senior enlisted military member, also provided letters, describing Applicant's work, reliability, and dependability in positive terms. Applicant earns about \$35,000 annually, and lives with her mother and several other family members who all contribute to paying the rent and other household expenses.

Applicant's financial problems began shortly after her son was born (premature). When Applicant returned to work, her son's father was unreliable in helping care for their child. She lost her job (at the same location she is now employed) and was unemployed for a time. While unemployed, Applicant's car was repossessed for non-payment and she became delinquent on several other debts.³

The SOR lists three delinquent debts totaling about \$14,000. The debt in SOR 1.a is the deficiency balance for the car that was repossessed after Applicant lost her job in 2007. She thought that she was no longer liable for the debt after her mother, who was the primary debtor on the car loan, filed for bankruptcy. As for the other two SOR debts, a credit card account and a cell phone account that are in collections (1.b and 1.c), Applicant claimed that she had paid one of the debts by using her 2015 tax refund and was going to pay the other debt with her anticipated 2016 tax refund. She filed her 2016 income tax returns shortly before the hearing, and promised to provide documentation post-hearing showing both debts were resolved. No such evidence was received.⁴

As for her current financial situation, Applicant testified that, though she lives paycheck-to-paycheck, she is generally able to pay her recurring expenses and debts on time. With her June 2016 Answer, Applicant submitted a credit report that does not contain any negative entries. However, Applicant admitted at hearing that she had fallen behind on her student loans. She stated that she had taken action to address her student loan debts. As of the hearing, Applicant's student loans were in a non-pay (forbearance) status, with monthly payments scheduled to begin on April 3, 2017. Applicant testified that she was in a position to pay her \$35 monthly student loan debt after recently competing monthly payments for a T.V. that she purchased on store credit in 2015.⁵

Applicant also admitted at hearing that she was delinquent on one of her current credit cards. She planned on using her anticipated tax refund to resolve this debt and the

³ Tr. 26-38; Exhibit 1, Section 13A; Exhibit C.

⁴ Tr. 23-25, 39-44, 52-55, 59-60; Exhibit 3 at 6; Exhibit B.

⁵ Tr. 47-51; Exhibit 3 at 3 (Applicant was two months past-due on her student loans when interviewed in August 2015); Exhibits A, B, D.

\$979 collection account referenced in SOR 1.b. She had previously agreed to a payment plan with the creditor for this collection account, but was unable to make the required monthly payments. She promised to resolve the collection account and the new delinquent credit card debt by applying some of her anticipated \$4,000 tax refund to these debts. She did not submit evidence post-hearing showing that she was repaying her student loans or satisfied the delinquent credit card debt and collection account.⁶ As of the hearing, Applicant had not obtained financial or debt counseling. She acknowledged that her financial problems were, in part, attributable to matters beyond her control, but also her own financial irresponsibility.⁷

Applicant submitted an application for a public trust position in October 2014. In response to relevant questions, Applicant did not list the car repossession and the two collection accounts that are referenced in SOR 1.a – 1.c. Applicant admits she incorrectly answered the questions, but denies any intent to falsify. She discussed the car repossession, her belief that any debt associated with the repossessed car had been resolved through her mother's bankruptcy, and the two collection accounts during an August 2015 background interview. She volunteered information about one of the collection accounts before the background investigator showed her a credit report containing derogatory credit information. She promised during this August 2015 interview to resolve the two collection accounts (SOR 1.b and 1.c) when she received her tax refund.⁸ These two collection accounts remain unresolved.

Law, Policies, and Regulations

This case is decided under DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive) and the adjudicative guidelines (AG) implemented on June 8, 2017, through Security Executive Agent Directive 4 (SEAD-4).⁹

⁶ Tr. 48-51; Exhibit B. Non-alleged matters (past-due student loan account and delinquent credit card) were only considered for the limited purpose of assessing mitigation and whole-person.

⁷ Tr. 41-45.

⁸ Tr. 23; Exhibit 1, Section 26; Exhibit 3 at 6-7.

⁹ Pursuant to a Memorandum from the Office of the Deputy Under Secretary of Defense for Counterintelligence and Security, dated November 19, 2004 (Memorandum), the Defense Office of Hearings and Appeals (DOHA) is directed to utilize the provisions of the Directive, to include the current version of the adjudicative guidelines, to resolve contractor cases forwarded to it for a trustworthiness determination. See *also* SEAD-4, ¶ E.1 (the current guidelines "shall be used by all authorized adjudicative agencies when rendering a determination for initial or continued eligibility . . . to hold a sensitive position."); ADP Case No. 14-01655 (App. Bd. Nov. 3, 2015) ("the Guidelines apply to all adjudications under the Directive, including both security clearance and public trust cases.")

The DoD Consolidated Adjudications Facility used the previous version of the guidelines, which were in force at the time the SOR was issued, in adjudicating Applicant's case. I have considered the previous version of the guidelines (*Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, dated December 29, 2005), and my ultimate conclusion in this case would be the same.

Positions designated as ADP I and ADP II are classified as sensitive 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.¹⁰

When evaluating an applicant's eligibility for a position of trust to support a federal contract, an administrative judge must consider the adjudicative guidelines and whole-person concept. In addition to brief introductory explanations, the guidelines list potentially disqualifying and mitigating conditions. The guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies the guidelines in a commonsense manner, considering all available and reliable information, in arriving at a fair and impartial decision.¹¹

The Directive sets forth the due process procedures that must be followed in all DOHA proceedings. Department Counsel must present evidence to establish controverted facts (i.e., SOR allegations denied by the applicant). While an applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate relevant conduct or circumstances that he or she admitted or proven by Department Counsel. An applicant has the ultimate burden of persuasion to establish their eligibility for a position of trust.¹² Any doubt raised by the evidence, must be resolved by the judge in favor of the national security.¹³

Analysis

Guideline F, Financial Considerations

Applicant's history of financial problems raise concerns about her ability to hold a sensitive position. The financial considerations concern is explained at AG ¶ 18:

Failure to . . . 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. . . .

¹⁰ Memorandum; Directive, § 3.2; SEAD-4, ¶ E.4. ADP Case No. 14-00590 (App. Bd. Dec. 10, 2014) ("The standard applicable to trustworthiness cases is that set forth in *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988) regarding security clearances: such a determination "may be granted only when 'clearly consistent with the interests of the national security'.")

¹¹ See *generally* SEAD-4, Appendix A, ¶ 2.

¹² Directive, ¶¶ E3.1.14, E3.1.15. See also ISCR Case No. 15-05565 (App. Bd. Aug. 2, 2017) (favorable decision reversed because Department Counsel failed to present evidence to substantiate denied SOR allegations); ISCR Case No. 14-05986 (App. Bd. May 26, 2017) (rejecting Department Counsel's argument that judge should have found against applicant based on non-alleged conduct).

¹³ Directive, ¶ E3.1.25; SEAD-4, Appendix A, ¶ 1(d).

The concern here is not limited to a consideration of whether a person with financial issues might be tempted to compromise sensitive information or engage in other illegality to pay their debts. It also addresses the extent to which the circumstances giving rise to delinquent debt cast doubt upon a person's judgment, self-control, and other qualities essential to protecting sensitive information.¹⁴

In assessing Applicant's case, I considered all pertinent disqualifying and mitigating conditions, including the following:

AG ¶ 19(a): inability to satisfy debts;

AG ¶ 19(b): unwillingness to satisfy debts regardless of the ability to do so;

AG ¶ 19(c): a history of not meeting financial obligations;

AG ¶ 20(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;

AG ¶ 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;

AG ¶ 20(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; and

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

Applicant's financial problems were caused by long-term unemployment and underemployment following the birth her child, lack of financial support from the child's father, and her own financial irresponsibility. She has started to take some steps to take control of her finances. Moreover, I recognize that the number of delinquent debts and their cumulative amount are relatively small. Yet, since the August 2015 background interview, Applicant has been aware that the two collection accounts listed on the SOR were an issue and could potentially place her job, which is dependent on obtaining a trustworthiness designation, in jeopardy. Two years have passed since that interview and, despite repeated promises to address the two collection accounts and having been provided ample time to submit supporting documentation, Applicant failed to provide evidence showing she has addressed these debts.

Additionally, Applicant has not obtained financial counseling and her financial situation appears to be getting worst. (*Contrast*, the credit report Applicant submitted with

¹⁴ ISCR Case No. 11-05365 at 3 (App. Bd. May. 1, 2012).

answer in June 2016, *with*, her February 2017 testimony, where she admitted a new delinquent credit card account.) AG ¶¶ 19(a) through 19(c) apply. None of the mitigating conditions fully apply.

Individuals applying for a sensitive position are not required to be debt free. They are also not required to resolve all past-due debts simultaneously or even resolve the delinquent debts listed in the SOR first. However, they are expected to present documentation to refute, explain, or mitigate concerns raised by their circumstances, to include the presence of delinquent debt. Moreover, they bear the burden of showing that they manage their finances in a manner expected of those granted a position of trust.¹⁵

Applicant failed to meet her burden of proof and persuasion. She may in the future be able to establish her eligibility for a position of trust by showing that she has addressed her past-due debts and is managing her personal finances in a responsible manner. At present, however, the questions and doubts about her eligibility, which were raised by the presence of delinquent debt, remain.¹⁶

Guideline E, Personal Conduct

The adjudicative process relies on the honesty and candor of all applicants, and starts with the answers provided in the application for a position of trust. The deliberate falsification of an application raises a serious concern about the suitability of an applicant. *See generally* AG ¶¶ 15, 16(a).¹⁷

However, an omission standing alone is not enough to establish that an applicant deliberately falsified their response to a question asked on the application. Instead, in assessing intent, an administrative judge must examine the relevant facts and circumstances surrounding the omission, including the person's age, level of education, and work experience. An omission is not deliberate if the person genuinely forgot the information, was unaware of the facts, inadvertently overlooked or misunderstood the question, or earnestly thought the matter did not need to be reported.¹⁸

Applicant's explanation for why she responded in the negative to questions on the application asking about delinquent debts was credible, reasonable, and consistent with other record evidence. Of note, after submitting her application, Applicant was interviewed by a background investigator. She self-reported one of the collection accounts at issue and then fully discussed her finances with the investigator. She was candid and forthcoming at hearing, including volunteering negative information about her finances. *See generally* AG ¶¶ 17(a), and 17(c) – (e).

¹⁵ ISCR Case 07-10310 at 2 (App. Bd. Jul. 30, 2008).

¹⁶ In reaching this conclusion, I considered the whole-person factors in AG ¶ 2(d).

¹⁷ *See also* SEAD-4, Appendix A, ¶ 2(i) (falsifications and misrepresentations during the investigative or adjudicative stages raise heightened concerns about a person's judgment, reliability, and trustworthiness).

¹⁸ *See generally* ISCR Case No. 02-12586 (App. Bd. Jan. 25, 2005).

Accordingly, the Guideline E allegation is decided in Applicant's favor. However, Applicant's financial situation continues to leave me with questions and doubts about her present eligibility for a position of trust.¹⁹

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 (Financial Considerations):	AGAINST APPLICANT
Subparagraphs 1.a – 1.c:	Against Applicant
Paragraph 2, Guideline E (Personal Conduct):	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Conclusion

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

Francisco Mendez
Administrative Judge

¹⁹ I considered the exceptions listed in SEAD-4, Appendix C. However, in light of Applicant's repeated unkept promises to address the collection accounts, I do not find that any of the exceptions (such as, conditioning her eligibility on Applicant providing proof that she has addressed her past-due debts and is maintaining her financial stability) are warranted in this case. See *generally* SEAD-4, ¶ E.3 and AG ¶ 2(h); *contrast with* ISCR Case No. 10-03646 at 2 (App. Bd. Dec. 28, 2011) (under previous version of the guidelines, judges had "no authority to grant an interim, conditional or probationary clearance.")