



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



In the matter of:)
)
) ADP Case No. 15-08423
)
Applicant for Public Trust Position)

Appearances

For Government: Bryan Olmos, Esq., Department Counsel
For Applicant: *Pro se*

07/14/2017

Decision

GARCIA, Candace Le'i, Administrative Judge:

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

Statement of the Case

On June 24, 2016, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing trustworthiness concerns under Guideline F, financial considerations, and Guideline E, personal conduct. 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).¹

¹ I decided this case using the AG implemented by DOD on June 8, 2017. However, I also considered this case under the previous AG implemented on September 1, 2006, and my conclusions are the same using either set of AG.

Applicant answered the SOR on July 29, 2016, and elected to have the case decided on the written record in lieu of a hearing. The Government's written case was submitted on August 25, 2016. The Government withdrew the personal conduct allegation. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the trustworthiness concerns. Applicant received the FORM on September 2, 2016. Applicant did not respond to the Government's FORM. The case was assigned to me on June 1, 2017.

The Government's documents identified as Items 1 through 6 are admitted into evidence. Other than her Answer to the SOR, admitted into evidence as Item 2, Applicant failed to submit any additional documentation.

Findings of Fact

In her response to the SOR, Applicant admitted all of the financial considerations allegations.

Applicant is 32 years old. She married in 2007, divorced in 2009, married again in 2012, divorced in 2015. As of July 2016, she had recently married and did not have any children.²

Applicant attended community college from October 2010 to December 2010 and August 2012 to December 2012, and attended university online from 2007 to at least May 2015. She received her certified nursing assistant certification in December 2010. She worked as a self-employed daycare provider between February 2007 and April 2010, was unemployed from December 2012 to March 2013, and has worked for her current employer since January 2015.³

The SOR alleges two judgments totaling \$1,291, three delinquent student loans totaling \$13,993, and 16 delinquent consumer and medical accounts totaling \$21,842. The debts are established by Applicant's admissions and the credit reports from February 2015, April 2016, and July 2016.⁴

Applicant took out student loans to pay for college but was unable to repay them because of a lack of income. She had difficulty paying her bills after her first divorce in March 2009. She was unemployed from December 2012 to March 2013 because she had trouble finding a job after she moved from one state to another state. Some of her medical bills stem from surgeries she had between 2013 and 2014, which she believed would be covered by her insurance as a result of hardship papers she had filed. After she separated from her second husband in April 2014, she had difficulty paying bills on

² Items 2-4.

³ Items 2-4.

⁴ Items 1-6.

her own. She experienced a decrease in income from what she earned at her prior job when she obtained her current job in January 2016. She has been in a better position to start resolving her delinquent debts since her marriage in July 2016.⁵

Applicant stated that she is investigating the debts in SOR ¶¶ 1.a, 1.b, and 1.j, and she plans to resolve them if they are her debts. She stated that she has contacted her medical creditors in SOR ¶¶ 1.f to 1.i, 1.l, 1.n, 1.p, and 1.q, as well as the creditors for SOR debts ¶¶ 1.c to 1.e, 1.m and 1.u, and is attempting to pay or set up payment plans for these debts. She stated that she is paying \$168 biweekly towards her student loans in SOR ¶¶ 1.r to 1.t, and she is also paying the medical debt in SOR ¶ 1.o. She stated that she made arrangements to pay SOR ¶ 1.k with a 401k withdrawal. While Applicant provided her July 2016 credit report to show that she has 16 accounts in good standing, she has not provided corroborating evidence of actions she may have taken to resolve any of the SOR debts. There is no evidence that Applicant has received credit counseling.⁶

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.

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.

⁵ Items 2-4.

⁶ Items 2-4.

Analysis

Guideline F, Financial Considerations

AG ¶ 18 expresses the trustworthiness concern pertaining to financial considerations:

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 [trustworthiness] 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 [trustworthiness] concern insofar as it may result from criminal activity, including espionage.

AG ¶ 19 describes conditions that could raise a trustworthiness concern and may be disqualifying. I considered the following relevant:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant accumulated delinquent debts and was unable to pay her financial obligations. The above disqualifying conditions are applicable.

I have considered all of the mitigating conditions under AG ¶ 20 and considered the following relevant:

- (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;
- (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 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.

Applicant's lack of income, divorces, unemployment, and medical expenses were beyond her control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances.

Applicant has not provided evidence of actions she may have taken to resolve any of the SOR debts. The Appeal Board has held that "intentions to pay off debts in the future are not a substitute for a track record of debt repayment or other responsible approaches." See ISCR Case No. 11-14570 at 3 (App. Bd. Oct. 23, 2013) (quoting ISCR Case No. 08-08440 at 2 (App. Bd. Sep. 11, 2009)). I am unable to find that Applicant acted responsibly under the circumstances, made a good-faith effort to pay her debts, or has a reasonable basis to dispute the legitimacy of some of her medical debts and provided documented proof or evidence of actions to resolve them. Her financial issues are recent and ongoing. They continue to cast doubt on her current reliability, trustworthiness, and good judgment. AG ¶¶ 20(d), and 20(e) are not applicable. AG ¶ 20(b) is partially applicable. I find that financial considerations concerns remain despite the presence of some mitigation.

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 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 factors that led to Applicant's financial difficulties. However, the limited information in the record has not convinced me Applicant has a viable plan to address her finances.

Overall, the record evidence leaves me with 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.u:	Against Applicant
Paragraph 2, Guideline E:	WITHDRAWN
Subparagraph 2.a:	Withdrawn

Conclusion

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

Candace Le'i Garcia
Administrative Judge