



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



In the matter of:)
)
) ADP Case No. 15-08784
)
Applicant for a Public Trust Position)

Appearances

For Government: Rhett Petcher, Esq., Department Counsel
For Applicant: *Pro se*

07/27/2017

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Defense Department's intent to deny her eligibility for a public trust position to work in the defense industry. Applicant failed to mitigate concerns raised by her failure to file federal income tax returns for several years. She also owes over \$7,000 in unpaid federal taxes and \$960 in other delinquent debts. Her request for eligibility to occupy a position of trust is denied.

Statement of the Case

On June 7, 2016, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing trustworthiness concerns under the financial considerations guideline.¹ DOD adjudicators were unable to find that it is clearly consistent with the interests of national security to grant or continue Applicant's access to sensitive information and recommended that the case be submitted to an administrative judge for

¹ The DOD CAF acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended; as well as DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive), and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, implemented on September 1, 2006.

a determination whether to revoke or deny Applicant's eligibility to occupy a public trust position.

Applicant answered the SOR and requested a decision without a hearing.² The Government submitted its written case on July 27, 2016. A complete copy of the file of relevant material (FORM) and the Directive were provided to Applicant. She received the FORM on August 23, 2016, and did not respond. The documents appended to the FORM are admitted as Government's Exhibits (GE) 1 through 2 and 4 through 6, without objection. The document identified as GE 4 is excluded as explained below.

Procedural Matters

Inadmissibility of Report of Investigation (ROI)

GE 4 is a ROI summarizing the interview Applicant had with an investigator in May 2015. The interview, which contains adverse information, has not been authenticated as required under ¶ E3.1.20 of the Directive. Footnote 1 of the FORM advises Applicant of that fact and further cautions her that if she fails to object to the admission of the interview summary in her response to the FORM that her failure may be taken as a waiver of the authentication requirement. Applicant's failure to respond to the FORM or, specifically, to Footnote 1 does not demonstrate that she understands the concepts of authentication, waiver, and admissibility. It also does not establish that she understands the implications of waiving an objection to the admissibility of the interview. Accordingly, GE 4 is inadmissible and I have not considered it.

Findings of Fact

Applicant, 41, has worked for her employer, a federal contractor since October 2004. Applicant completed an eligibility application in March 2015. She disclosed her failure to file federal income tax returns from 2008 through 2013 (SOR ¶ 1.a), indicating that at the time she completed the eligibility application she did not owe any outstanding taxes. The ensuing investigation revealed that Applicant also failed to file her federal income tax return in 2014 (SOR ¶ 1.b), that she owes approximately \$7,100 in unpaid federal taxes for the 2008 through 2013 tax years (SOR ¶¶ 1.c - 1.h), and that she owes \$960 in other delinquent accounts (SOR ¶¶ 1.i - 1.m). Applicant admits all the SOR allegations except SOR ¶¶ 1.i (\$287), 1.k (\$287), and 1.m (\$5). She does not provide any explanations for her denials.³

The record contains little information about Applicant's reasons for failing to file and pay her federal income taxes on time. In her eligibility application, Applicant cites hardship, but does not elaborate. In her October 2015 response to interrogatories, Applicant was given an opportunity to "provide any additional information, facts or circumstances [she] believed would assist in the favorable adjudication in her case. The

² GE 1.

³ GE 1-2, 4-6.

tax transcripts Applicant provided in response to the interrogatories show that Applicant filed her 2008 through 2013 federal tax returns between May and July 2015. Applicant also indicated that she has submitted an installment agreement request to the IRS. She did not provide any evidence of payments toward the resolution of her delinquent debts.⁴

Law and Policy

This case is adjudicated under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Review Program* (Jan. 2, 1992), as amended (Directive); and the National Security Adjudicative Guidelines (AG), effective June 8, 2017.

Analysis

Guideline F, Financial Considerations

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgement, or willingness 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. The record establishes a *prima facie* case that Applicant has a history of not meeting her financial obligations, to include, timely filing and paying her federal income taxes as required as well as \$960 in other delinquent accounts.⁵

None of the financial considerations mitigating conditions apply. Applicant did not explain her inability to meet her financial obligations. Despite having multiple opportunities to do so, Applicant did not provide information about the status of the delinquent accounts alleged in the SOR or her efforts to repay them.

Based on the record, doubts remain about Applicant's eligibility to occupy a position of trust. In reaching this conclusion, I have also considered the whole-person factors at AG ¶ 2(d). Applicant failed to meet her burdens of production and persuasion to refute or mitigate the SOR allegations. She did not provide any evidence to show financial rehabilitation or reform. Accordingly, her request is denied.

⁴ GE 2, 6.

⁵ AG ¶¶ 19(c), (f).

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, Financial Considerations: AGAINST APPLICANT

Subparagraphs 1.a-1.m: Against Applicant

Conclusion

In light of all of the circumstances, it is not clearly consistent with the interests of national security to grant Applicant access to sensitive information. Applicant's eligibility to occupy a position of trust is denied.

Nichole L. Noel
Administrative Judge