



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



In the matter of:)
)
) ADP Case No. 15-06919
)
Applicant for Public Trust Position)

Appearances

For Government: Andrew H. Henderson, Esq., Department Counsel
For Applicant: *Pro se*

11/07/2017

Decision

CERVI, Gregg A., Administrative Judge

This case involves trustworthiness concerns raised under Guideline F (Financial Considerations). Eligibility for access to sensitive information is granted.¹

Statement of the Case

Applicant submitted a questionnaire for investigations processing (e-QIP)² on March 10, 2015. On May 23, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent her a Statement of Reasons (SOR) detailing trustworthiness concerns under Guideline F.³

¹ Applicant is requesting a trustworthiness determination for access to sensitive information, also known as a “public trust” determination, to occupy an automated data processing (ADP) position.

² Also referred to as a security clearance application (SCA).

³ The DOD CAF acted 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.

Applicant answered the SOR and elected to have the case decided on the written record in lieu of a hearing. The Government's written brief with supporting documents, known as the File of Relevant Material (FORM), was submitted by Department Counsel on August 9, 2016.

A complete copy of the FORM was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on August 16, 2016. She submitted substantial documentation and a narrative response to the FORM, marked as Applicant Exhibit (AE) A. The Government's exhibits included in the FORM (Items 1 to 6) and AE A are admitted into evidence. The case was assigned to me on August 8, 2017.

Findings of Fact

Applicant is a 68-year-old registered nurse sponsored for a public trust determination by a defense contractor since 2002. She was married in 1969 and divorced in 1993. She remarried in 2003.

The SOR alleges one charged-off credit card debt totaling \$24,355. Applicant admitted the debt existed, but claimed in her answer to the SOR that she was no longer indebted to the company. She provided several documents in support of her answer.

Applicant and her husband have suffered from several period of disability due to medical conditions over the past several years, and they each lost significant income as a result. They accumulated credit card debts that they were unable to pay. In 2011, they sought the assistance of a credit-repayment company, who assisted them with negotiating and paying overdue debts. She made regular monthly payments toward her debts through the company. The SOR debt was resolved from partial payments and eventually a negotiated charge-off of the debt. The creditor agreed to refrain from collection efforts and issued Applicant an IRS Form 1099-C (Cancellation of Debt). Because of the SOR, Applicant made a further inquiry in 2016 on the status of the debt and determined that the creditor agreed to remove the debt notation from her credit report.

Applicant noted that her current financial status was good, and that she and her spouse were able to meet their financial obligations. Her submissions to the FORM included annotated financial and employment records, and positively reflect Applicant's understanding and organization of her finances. She has been a productive employee and her work evaluations reflect her value to the company, and her most recent credit report does not reflect any additional delinquencies.

Law and Policies

The Director of National Intelligence (DNI) issued revised adjudicative guidelines (AG) in a Security Executive Agent Directive, effective on June 8, 2017.⁴ The revised AG apply to this case.

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 national security eligibility will be resolved in favor of the 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 as to obtaining 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 protect or safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of sensitive information.

⁴ I decided this case using the AG implemented by DOD on June 8, 2017. However, I also considered this case under the previous version of the AG implemented on September 1, 2006, and my conclusions are the same using either set of AG.

Analysis

Financial Considerations

The concern under this guideline 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. . . .

The relevant disqualifying conditions under AG ¶ 19 include:

- (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.

The documentary evidence supporting the SOR allegations are sufficient to establish the disqualifying conditions.

The following mitigating condition under AG ¶ 20 is potentially relevant:

- (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 financial 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; 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 resolved her sole delinquent debt in 2013 and ensured that it was removed from her credit report once she became aware that it was still being reflected there. The debt is aged and no longer a financial burden on the Applicant. She received assistance with her financial condition from a professional, and offered documentary evidence of such assistance. Her most recent credit report does not reflect any additional delinquencies.

Applicant's financial condition that led to the SOR debts was largely outside of her control. She took appropriate action to contact creditors to resolve all debts, and the SOR debt was satisfactorily resolved and removed from her CBR. Applicant appears to be on a sound financial footing and can meet all of her current financial needs. Sufficient time has passed to suggest that further financial delinquencies are unlikely to recur. AG ¶¶ 20 (a), (b), (c), and (d) apply.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's trustworthiness eligibility 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.

I considered all of the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my findings of fact and comments under Guideline F in my whole-person analysis. Applicant's resolved SOR debt and showing of current financial responsibility leaves me without doubts about her overall financial condition and ability or willingness to face her financial responsibilities. Her financial condition no longer casts doubt on her current reliability, trustworthiness, and good judgment.

Accordingly, I conclude she has carried her burden of showing that it is clearly consistent with the national security interests of the United States to grant her eligibility to hold a sensitive position.

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:	For Applicant
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Subparagraph 1.a:	For Applicant
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Conclusion

I conclude that it is clearly consistent with the national security interests of the United States to grant Applicant access to sensitive information. Eligibility for a public trust position is granted.

Gregg A. Cervi
Administrative Judge