



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



In the matter of:)
)
) ADP Case No. 15-07854
)
Applicant for Public Trust Position)

Appearances

For Government: Pamela C. Benson, Esq., Department Counsel
For Applicant: *Pro se*

02/26/2018

Decision

CERVI, Gregg A., Administrative Judge

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

Statement of the Case

Applicant submitted a questionnaire for investigations processing (e-QIP) on November 14, 2014. On May 11, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent her a Statement of Reasons (SOR) detailing trustworthiness concerns under Guideline F.²

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 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.³ The Government's written brief with supporting documents, known as the File of Relevant Material (FORM), was submitted by Department Counsel on June 26, 2017.

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 trustworthiness concerns. Applicant received the FORM on July 11, 2017, but she did not submit a response to the FORM, nor did she raise an objection to consideration of the personal subject interview summary. The Government's exhibits included in the FORM (Items 1 to 7) are admitted into evidence. The case was assigned to me on November 29, 2017.

Findings of Fact

Applicant is a 37-year-old help-desk employee sponsored for a public trust determination by a defense contractor since 2014. She graduated from high school in 1999 and received an associate's degree in 2005. She was unemployed for one month in 2014, and one year from 2008 to 2009 after being terminated from a job because of a time-sheet dispute. Applicant was married in 2002 and divorced in 2010. She has a 15-year-old child.

The SOR alleges various delinquent debts, including medical debts, student loans, and consumer debts, totaling approximately \$122,989. Applicant believes that SOR ¶¶ 1.a and 1.b; and 1.j and 1.r are duplicate entries. She also stated that she was unaware of the debts listed as SOR ¶¶ 1.i, 1.m, 1.s, 1.z, 1.aa, and 1.bb. She disputed the basis for the debt listed in SOR ¶ 1.y, and claims to be paying debts listed in SOR ¶¶ 1.c, 1.d, 1.r, and 1.v. The remaining SOR allegations were admitted. Applicant's 2017 credit report shows the medical judgment in SOR ¶ 1.q and a disputed debt in SOR ¶ 1.y have been satisfied.

Applicant claimed in her answer to the SOR that the "outstanding debts in these documents belong to me," but that "some of them are unknown and I am trying to investigate what they are." She stated that she has started to repay several of the medical bills and student loans. She noted that she has had many hardships over the past several years and she is working hard to make things better for her family and to pay her debts. She stresses that she has never violated her employers' trust and has not had a security or financial violation. In her personal subject interview (PSI), Applicant noted that she began struggling with meeting financial obligations in 2011, and the Government began withholding her tax refunds since 2013 to repay her student loans. She noted that she defaulted on two car loans resulting in repossessions in 2013 and 2014. She was a co-signer on a loan with her husband, who defaulted on the payments. (SOR ¶¶ 1.e and 1.s)

³ Applicant stated in her answer that if the decision resulted in a denial of eligibility, she would want an in-person hearing. Department Counsel arranged for a hearing, but Applicant objected and requested, through a series of e-mails, that the case be decided on the written record. (Item 1)

Despite Applicant's claim in 2016 that she was investigating the SOR debts and had resolved some of them, she has not submitted documentary evidence showing efforts to resolve her debts.

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.

Although Applicant's financial condition that led to the SOR debts may have been outside of her control due to a period of unemployment and divorce, she has not shown efforts to resolve her debts.

Applicant's credit reports show that SOR ¶¶ 1.a and 1.b; and 1.j and 1.r are likely duplicate entries. Her 2017 credit report shows the medical judgment in SOR ¶ 1.q and a disputed debt in SOR ¶ 1.y have been satisfied. I have insufficient evidence to conclude that Applicant's remaining debts, including her student loans, are under control and that financial delinquencies are unlikely to recur in the future. Except as noted above, the record does not support application of mitigating conditions.

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 has not shown sufficient evidence of resolution of the SOR debts except for those noted above. I considered the factors that may have 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.c–1.p, 1.s–1.x, 1.z–1.dd:	Against Applicant
Subparagraphs 1.b, 1.q, 1.r and 1.y:	For Applicant

Conclusion

I conclude that it is not clearly consistent with the national security interests of the United States to grant Applicant eligibility for a public trust position. Eligibility for access to sensitive information is denied.

Gregg A. Cervi
Administrative Judge