



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



In the matter of:

ADP Case No. 16-00345

Applicant for Public Trust Position

Appearances

For Government: Mary Margaret Foremen, Esq., Department Counsel
For Applicant: *Pro se*

November 1, 2017

Decision

MOGUL, Martin H., Administrative Judge:

Statement of the Case

On September 9, 2016, in accordance with Department of Defense (DoD) Directive 5220.6, as amended (Directive), the DoD issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guidelines G, E and F.¹ (Item 1.) The SOR further informed Applicant that, based on information available to the government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant's access to sensitive personal information.

On October 5, 2016, Applicant submitted a written reply to the SOR (RSOR), and she requested that her case be decided on the written record in lieu of a hearing. (Item 2.) On December 27, 2016, Department Counsel issued the Department's written case.

¹ I considered the previous Adjudicative Guidelines, effective September 1, 2006, as well as the new Adjudicative Guidelines, effective June 8, 2017. My decision would be the same if the case was considered under the previous Adjudicative Guidelines, effective September 1, 2006.

A complete copy of the file of relevant material (FORM) was provided to Applicant. In the FORM, Department Counsel offered seven documentary exhibits. (Items 1-7.) Applicant was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. A response was due on February 12, 2017. Applicant submitted no additional evidence. The case was assigned to this Administrative Judge on October 1, 2017. Based upon a review of the pleadings and exhibits, national security eligibility for access to sensitive personal information is denied.

Findings of Fact

After a thorough and careful review of the pleadings, and exhibits, I make the following findings of fact:

Applicant is 38 years old. She is divorced and has two children. Applicant is employed as an authorization referral coordinator, and she seeks access to sensitive information in connection with her current employment. (Items 2, 3.)

Guideline G, Alcohol Consumption

The SOR lists three allegations (1.a. through 1.c.) regarding alcohol consumption, under Adjudicative Guideline G. The allegations will be discussed below in the order they were listed on the SOR:

1.a. The SOR alleges that in September 2013, Applicant was held in jail overnight after drinking and driving. (Item 1.) Applicant admitted this allegation in her RSOR, but she wrote she was held for failure to yield, not DUI. (Item 2.)

1.b. The SOR alleges that in November 2004, Applicant was arrested and charged with Driving Under the Influence (DUI) Liquor/Drugs/Vapors/Combo, DUI with a blood alcohol contents of .08 or more and Extreme DUI - BAC of .15 or more. (Item 1.) Applicant admitted this allegation in her RSOR, but she wrote that she was not the person driving the vehicle, and the case was dismissed. (Item 2.)

1.c. The SOR alleges that in July 1999 Applicant was arrested and charged with DUI. (Item 1.) Applicant admitted this allegation in her RSOR, and she admitted that she was found guilty of DUI and she did pay a fine and served 24 hours in jail. (Item 2.)

Applicant wrote in her RSOR that she has refrained from alcohol use due to a pineal cyst in her brain that was diagnosed in 2015. (Item 2.)

Guideline E, Personal Conduct

The SOR lists seven allegations (2.a. through 2.g.) regarding Personal Conduct, under Adjudicative Guideline E. The allegations will be discussed below in the order they were listed on the SOR:

2.a. The SOR alleges that the information set forth in subparagraphs 1.a. through 1.c., above constitutes Personal Conduct concerns.

2.b. The SOR alleges that in about July 2015, Applicant was terminated from her employment. (Item 1.) Applicant denied this allegation in her RSOR, contending that she left her employment by mutual agreement. (Item 2.) This issue was ultimately mediated, and Applicant's separation was allowed to be listed as by Mutual agreement. (Items 2. 3.)

2.c. The SOR alleges that in about November 2013, Applicant was terminated from her employment. (Item 1.) Applicant admitted this allegation in her RSOR, writing she was terminated for not being able to understand the job as quickly as her supervisor wanted. (Item 2.)

2.d. The SOR alleges that in about September 2013, Applicant left her employment after unsatisfactory performance. Applicant admitted this allegation in her RSOR, and she wrote that she was terminated because she failed to appear for work on the day she was stopped and held in jail overnight, as alleged in 1.a., above. (Item 2.)

2.e. The SOR alleges that in about March 2012, Applicant was terminated from her employment. (Item 1.) Applicant admitted this allegation in her RSOR, and she wrote she was terminated because she did not answer a phone call while she was drawing blood. (Item 2.)

2.f. The SOR alleges that in about 2009, Applicant was terminated from her employment. (Item 1.) Applicant admitted this allegation in her RSOR, and she wrote that she had left her training class to call her supervisor for a medical emergency, and she was terminated for leaving the class. (Item 2.)

2.g. The SOR alleges that in about September 2009, Applicant was terminated from her employment. (Item 1.) Applicant admitted this allegation in her RSOR, and she wrote that while she was on leave for bereavement, she was terminated. (Item 1.)

Applicant wrote in her RSOR that she has never compromised patient safety nor used any patient information for personal gain.

Guideline F, Financial Considerations

The SOR lists eight allegations (1.a. through 1.h.) regarding financial difficulties, specifically overdue debts, under Adjudicative Guideline F. All of the debts were established by credit reports submitted in evidence. (Items 6 and 7.) All of the SOR allegations will be discussed below in the order they were listed on the SOR:

3.a. This overdue debt is cited in the SOR for a delinquent account in the amount of \$2,910. (Item 1.) Applicant denied this debt in her RSOR. She wrote that she was disputing the debt for an apartment rent, and she was told she did not owe this debt

(Item 2.) No independent evidence has been introduced to establish that this debt has been resolved or reduced.

3.b. This overdue debt is cited in the SOR for a delinquent account in the amount of \$1,536. (Item 1.) Applicant admitted this debt in her RSOR, but claimed it had been paid through garnishment. Applicant attached her employment leave and earning statement which shows that this debt was resolved through garnishment. (Item 2.)

3.c. This overdue debt is cited in the SOR for a delinquent medical account in the amount of \$1,382. (Item 1.) Applicant admitted this debt in her RSOR, but claimed that she and her ex-husband were each ordered to pay 50% of their children's medical bills. A copy of their divorce decree was submitted confirming this order. (Item 2.) No independent evidence has been introduced to establish that this debt has been resolved or reduced by Applicant or her ex-husband.

3.d. This overdue debt is cited in the SOR for a delinquent medical account in the amount of \$275. (Item 1.) Applicant admitted this debt in her RSOR, but claimed that this was also a medical bill of her children and she and her ex-husband were each ordered to pay 50%. (Item 2.) No independent evidence has been introduced to establish that this debt has been resolved or reduced by Applicant or her ex-husband.

3.e. This overdue debt is cited in the SOR for a delinquent account in the amount of \$109. (Item 1.) Applicant denied this debt in her RSOR. She wrote that this was due to an insurance charge, and she has not been able to communicate with the creditor. (Item 2.) No independent evidence has been introduced to establish that this debt has been resolved or reduced.

3.f. This overdue debt is cited in the SOR for a delinquent medical account in the amount of \$103. (Item 1.) Applicant admitted this debt in her RSOR, but claimed that this was also a medical bill of her children and she and her ex-husband were each ordered to pay 50%. (Item 2.) No independent evidence has been introduced to establish that this debt has been resolved or reduced by Applicant or her ex-husband.

3.g. This overdue debt is cited in the SOR for a delinquent account in the amount of \$86. (Item 1.) Applicant denied this debt in her RSOR. She wrote she was informed by the creditor that she did not owe this debt, and she was awaiting documentation to establish that this debt was resolved. (Item 2.) No independent evidence has been introduced to establish that this debt has been resolved or reduced.

3.h. This overdue debt is cited in the SOR for a delinquent account in the amount of \$57. (Item 1.) Applicant denied this debt in her RSOR. She wrote she was informed by the creditor that she did not owe this debt, and she was awaiting documentation to establish that this debt was resolved. (Item 2.) No independent evidence has been introduced to establish that this debt has been resolved or reduced.

Applicant wrote in her RSOR that her financial problems occurred because she is a single mother raising two children, and for almost three years she did not receive child

support. She averred that she is working on resolving her delinquent debts. No evidence was introduced to establish that Applicant will be able to satisfy all of her delinquent debts or that she is current with all of her present debts.

Policies

The Deputy Under Secretary of Defense (Counterintelligence and Security) Memorandum, dated November 19, 2004, indicates trustworthiness adjudications will apply to cases forwarded to the DoD and DOHA by the Defense Security Service and Office of Personnel Management. DoD contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination may be made.

When evaluating an applicant's suitability for a public trust position, the administrative judge must consider the disqualifying and mitigating conditions in the AGs. 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 AG ¶ 2(a), describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), 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 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 the applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion as to obtaining a favorable trustworthiness decision.

A person who applies for access to sensitive information seeks to enter 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.

Analysis

Guideline G, Alcohol Consumption

The security concern relating to the guideline for Alcohol Consumption is set out in AG ¶ 21:

Excessive alcohol consumption often leads to the exercise of questionable judgment of the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness.

The guideline notes several conditions that could raise security concerns under AG ¶ 22. After reviewing Applicant's three alcohol related incidents, I find that the evidence is sufficient to raise disqualifying condition (a) in this case.

- (a) alcohol related incidents away from work, such as driving while under the influence, . . . or other incidents of concern, regardless of the frequency of the individual's alcohol use or whether the individual has been diagnosed with alcohol use disorder.

AG ¶ 23 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 23. Because of the lack of any independent evidence about Applicant's current alcohol consumption, I cannot find that any of the mitigating factors are applicable in this case, and I find against Applicant under Guideline G.

Guideline E, Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

The guideline notes several conditions that could raise security concerns under AG ¶ 16. Because of Applicant's three alcohol-related incidents, and her extensive, troubling employment history, I find that the evidence is sufficient to raise disqualifying conditions (c) and (d), in this case:

- (a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment

qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities;

(b) deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative;

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information;

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of:

(1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or government protected information;

(2) any disruptive, violent, or other inappropriate behavior;

(3) a pattern of dishonesty or rule violations; and

(4) evidence of significant misuse of Government or other employer's time or resources;

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes:

(1) engaging in activities which, if known, could affect the person's personal, professional, or community standing;

(2) while in another country, engaging in any activity that is illegal in that country;

(3) while in another country, engaging in any activity that, while legal there, is illegal in the United States;

(f) violation of a written or recorded commitment made by the individual to the employer as a condition of employment; and

(g) association with persons involved in criminal activity.

AG ¶ 17 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 17 listed below:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;

(f) the information was unsubstantiated or from a source of questionable reliability; and

(g) association with persons involved in criminal activities was unwitting, has ceased, or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

Because of Applicant's history and the recency of her conduct, I did not find that any of the mitigating factors are applicable in this case, and I find against Applicant under Guideline E.

Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations 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. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security 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 security concern insofar as it may result from criminal activity, including espionage.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Because Applicant has had delinquent debts for several years, I find that the evidence is sufficient to raise disqualifying conditions (a) and (c) as applicable in this case:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (c) a history of not meeting financial obligations;
- (d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, expense account fraud, mortgage fraud, filing deceptive loan statements and other intentional financial breaches of trust;
- (e) consistent spending beyond one's means or frivolous or irresponsible spending, which may be indicated by excessive indebtedness, significant negative cash flow, a history of late payments or of non-payment, or other negative financial indicators;
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required;

(g) unexplained affluence, as shown by a lifestyle or standard of living, increase in net worth, or money transfers that are inconsistent with known legal sources of income;

(h) borrowing money or engaging in significant financial transactions to fund gambling or pay gambling debts; and

(i) concealing gambling losses, family conflict, or other problems caused by gambling.

AG ¶ 20 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 20 including:

(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;

(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;

(f) the affluence resulted from a legal source of income; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

While Applicant's divorce was a contributing factor in her financial difficulties, no evidence was introduced to establish that Applicant has been responsible in resolving or reducing the majority of the delinquent debts, nor that she can be financially responsible

in the future. Therefore, I do not find that any of the mitigating factors under AG ¶ 20 are applicable in this case, and I find against Applicant under Guideline F.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant 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 access to personal information must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. I have incorporated my comments under Guidelines G, E, and F in my whole-person analysis.

Overall, the record evidence leaves me with significant questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the Alcohol Consumption, Personal Conduct, and Financial Considerations security concerns under the whole-person concept.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of the Directive, are:

Paragraph 1, Guideline G:	AGAINST APPLICANT
Subparagraph 1.a.:	Against Applicant
Subparagraph 1.b.:	Against Applicant
Subparagraph 1.c.:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a.:	Against Applicant
Subparagraph 2.b.:	For Applicant

Subparagraph 2.c.:	Against Applicant
Subparagraph 2.d.:	Against Applicant
Subparagraph 2.e.:	Against Applicant
Subparagraph 2.f.:	Against Applicant
Subparagraph 2.g.:	Against Applicant

Paragraph 3, Guideline F:	AGAINST APPLICANT
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Subparagraph 3.a.:	Against Applicant
Subparagraph 3.b.:	For Applicant
Subparagraph 3.c.:	Against Applicant
Subparagraph 3.d.:	Against Applicant
Subparagraph 3.e.:	Against Applicant
Subparagraph 3.f.:	Against Applicant
Subparagraph 3.g.:	Against Applicant
Subparagraph 3.h.:	Against Applicant

Conclusion

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

Martin H. Mogul
Administrative Judge