



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



In the matter of:

Applicant for Public Trust Position

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ADP Case No. 16-02775

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel
For Applicant: *Pro se*

05/18/2018

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant refuted the personal conduct trustworthiness concerns and mitigated the financial considerations trustworthiness concerns. Eligibility for access to sensitive information is granted.

Statement of the Case

On November 30, 2016, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing trustworthiness concerns under Guidelines E (personal conduct) and F (financial considerations). Applicant responded to the SOR on December 19, 2016, and elected to have the case decided on the written record in lieu of a hearing. On April 28, 2017, she changed her request to a hearing before an administrative judge.

The case was assigned to me on December 15, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on December 27, 2017, scheduling the hearing for February 14, 2018. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 4 were admitted in evidence without objection. The objection to GE 5 was sustained. Applicant testified and submitted Applicant's Exhibits (AE) A through E, which were admitted without objection. The record was held open for

Applicant to submit additional information. She submitted documents that I have marked AE F through J and admitted without objection. DOHA received the hearing transcript (Tr.) on February 23, 2018.

Findings of Fact

Applicant is a 34-year-old employee of a defense contractor. She has worked for her current employer since August 2015. She is a high school graduate. She is unmarried with two children.¹

Applicant smoked marijuana one time in about 2006. She described it as one puff of a marijuana cigarette at a party.²

Applicant submitted a Questionnaire for National Security Positions (SF 86) in June 2008. She did not report her one-time marijuana use on the questionnaire. She denied intentionally providing false information on the questionnaire. She stated that she must have misinterpreted the question. She did not think of herself as a drug user. She realizes now that she should have answered affirmatively, but she did not think so at the time.³

Applicant worked for a government agency (Agency 1) from about 2009 to 2011. She was unemployed for a period before she went to work for a different government agency (Agency 2) in 2011. In 2013, she was terminated from her position after a performance plan.⁴ She was unemployed for an extended period until she started her current job in 2015. She was unable to pay all her bills, and a number of debts became delinquent.⁵

The SOR alleges 15 delinquent debts totaling about \$17,700. The debts are listed on an October 2015 credit report. The debts include \$12,160 for a charged-off auto loan and eight medical debts totaling about \$2,400.

Applicant contracted with a law firm in 2015 to assist her with her credit. The law firm disputed all the accounts on Applicant's credit report. She then began paying or settling the debts that were validated. She paid or settled several debts that were not alleged in the SOR, including debts for \$1,443 and \$425 that were settled in February

¹ Tr. at 36, 51-52; GE 1.

² Tr. at 27; Applicant's response to SOR.

³ Tr. at 26-28, 50-51, 60; Applicant's response to SOR; GE 2.

⁴ The exact dates of employment at the two agencies are difficult to discern because of the large amount of errors on Applicant's September 2015 SF 86.

⁵ Tr. at 29-33, 36, 39, 43; GE 1, 4.

2016. She instituted payment plans for several debts, but her payments were delayed because of her mother's surgery and the birth of Applicant's second child.⁶

Applicant settled and paid the following SOR debts: SOR ¶ 1.a (\$1,430 – settled for \$635 in February 2018); SOR ¶ 1.b (\$12,160 – settled for indeterminate amount in March 2018); SOR ¶ 1.c (\$885 – settled for indeterminate amount in December 2016). The remaining debts have been removed from her credit report. Applicant acknowledges that she had accounts with several of the creditors, but was unsure of the amounts owed. She stated that she relied on the advice of the law firm to pay or settle what the firm could confirm she actually owed. Her current finances are stable. She has not accrued any new delinquent debts.⁷

Applicant submitted an SF 86 in September 2015. She answered negatively to all the financial questions on the SF 86. Under one employment question (Section 13A), she incorrectly listed that her employment from 2011 to 2013 was with Agency 1. Under a different question (Section 13B), she correctly listed that her employment during that period was with Agency 2. She reported the reason for leaving the employment in 2013 was "Laid off." She answered "No" to the following questions:

For this employment have any of the following happened to you **in the last seven (7) years**?

- Fired
- Quit after being told you would be fired
- Left by mutual agreement following charges or allegations of misconduct
- Left by mutual agreement following notice of unsatisfactory performance

* * *

For this employment, **in the last seven (7) years** have you received a written warning, been officially reprimanded, suspended, or disciplined for misconduct in the workplace, such as a violation of security policy?⁸

The SF 86 had multiple mistakes, inaccurate information, as well as typographical and grammatical errors. I find that her negative answer to the last question was not inaccurate. She was terminated from her position after a performance plan, but there was no evidence that she "received a written warning, been officially reprimanded, suspended, or disciplined **for misconduct** in the workplace." (emphasis added). The other answers were inaccurate.

⁶ Tr. at 25-26, 37-43, 52; Applicant's response to SOR; GE 3, 4; AE E.

⁷ Tr. at 25-26, 37-40, 44-45, 53; Applicant's response to SOR; GE 3, 4; A-H.

⁸ GE 1.

Applicant credibly denied intentionally providing false information on the SF 86. She stated that she completed the questionnaire in a hurry, and she missed several questions. She stated that she listed that she was “Laid off” her employment in 2013, and that she thought laid off and fired were the same thing.⁹ A review of Applicant’s 2008 SF 86 supports that assertion. For an employment that ended in 2007, she answered:

Severance Type **Fired from a job**

Specify Reason **Got layed off the job do to “contract” down sizing.**¹⁰

Applicant submitted letters attesting to her excellent job performance, honesty, work ethic, and integrity.¹¹

Policies

This case is adjudicated under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), which became effective on June 8, 2017.

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

⁹ Tr. at 33-35, 46-50, 61; Applicant’s response to SOR.

¹⁰ GE 2.

¹¹ AE I, J.

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.

Analysis

Guideline F, Financial Considerations

The trustworthiness concern 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.

The guideline notes several conditions that could raise trustworthiness concerns under AG ¶ 19. The following are potentially applicable in this case:

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

Applicant has a history of financial problems, including multiple delinquent debts. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate the financial considerations trustworthiness concerns are provided under AG ¶ 20. The following are potentially applicable:

- (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 started working for her current employer in August 2015 after an extended period of unemployment. She retained a law firm that disputed all the accounts on Applicant's credit report. She then went about paying or settling the debts that were validated. She settled two debts in February 2016, before the SOR was issued. The five debts that Applicant resolved through settlement total about \$16,300. The remaining debts were not validated by the law firm and have been removed from her credit report. Those debts include eight medical debts totaling about \$2,400 and four miscellaneous debts totaling less than \$900.

Applicant had a plan to resolve her financial problems, and she took significant action to implement that plan. Her financial difficulties were the result of conditions that were partially beyond her control. She acted responsibly under the circumstances and made a good-faith effort to pay her debts. They do not cast doubt on her current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a) and 20(d) are applicable. AG ¶¶ 20(b), 20(c) and 20(e) are partially applicable. Concerns about Applicant's finances are mitigated.

Guideline E, Personal Conduct

The trustworthiness concern for personal conduct is set out in AG ¶ 15, as follows:

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 clearance investigative or adjudicative processes.

AG ¶ 16 describes conditions that could raise a trustworthiness concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(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.

The SOR alleges that Applicant intentionally falsified Questionnaires for National Security Positions in 2008 and 2015. I have considered all the evidence, including Applicant's age, education, experience, demeanor, testimony, and character evidence. I also considered the multiple mistakes and inaccurate information in the questionnaires, as well as the many typographical and grammatical errors. I conclude that the questionnaires created challenges for Applicant. I do not believe she understood all the questions. I believe she is unsophisticated but honest. I conclude that she did not intentionally falsify the questionnaires. AG ¶ 16(a) is not applicable. Personal conduct trustworthiness concerns are concluded for Applicant.

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 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 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 potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines E and F in my whole-person analysis. I also considered Applicant's favorable character evidence.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a public trust position. I conclude Applicant refuted the personal conduct trustworthiness concerns and 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:	For Applicant
Subparagraphs 1.a-1.o:	For Applicant
Paragraph 2, Guideline E:	For Applicant
Subparagraphs 2.a-2.e:	For Applicant

Conclusion

It is clearly consistent with national security to grant Applicant eligibility for a public trust position. Eligibility for access to sensitive information is granted.

Edward W. Loughran
Administrative Judge