



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



In the matter of:)
XXXXXXXXXXXXXXXXXXXXXXXXXXXX) ADP Case No. 16-03193
Applicant for Public Trust Position)

Appearances

For Government: David F. Hayes, Esquire, Department Counsel
For Applicant: *Pro se*

05/29/2018

Decision

METZ, John Grattan, Jr., Administrative Judge:

Based on the record in this case,¹ I deny Applicant's eligibility for a public trust position.

On 7 December 2016, the Department of Defense (DoD) sent Applicant a Statement of Reasons (SOR) raising trustworthiness concerns under Guideline F, Financial Considerations.² Applicant timely answered the SOR, requesting a decision without hearing by the Defense Office of Hearings and Appeals (DOHA). The record in this case closed 27 March 2017, when Applicant's Response to the FORM was due.

¹Consisting of the File of Relevant Material (FORM), Items 1-5.

²DoD conducts trustworthiness determinations for contractor personnel employed in Information Systems Positions pursuant to DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive). The SOR was issued under the adjudicative guidelines (AG) effective within the DoD for SORs issued after September 1, 2006. However, on 10 December 2016, the Director of National Intelligence (DNI) signed Security Executive Agent Directive 4, implementing new AG, effective with any decision issued on or after 8 June 2017. My decision is the same under both guidelines.

Applicant provided no additional evidence. DOHA assigned the case to me 1 October 2017.

Findings of Fact

Applicant denied the SOR financial allegations, except for SOR 1.a, 1.d-1.e, and 1.g. She is a 48-year-old customer service representative sponsored for a public trust position by a defense contractor, for whom she has worked since May 1998. She had a favorable trustworthiness determination in the past, but provided no dates. She is a divorced mother of an adult daughter and a seven-year-old son.

The SOR alleges, and Government exhibits (Items 3-5) establish, 29 delinquent debts totaling nearly \$21,000. Applicant denies all but about \$12,000 in delinquent debt. She denies 22 medical debts because “[a]ccording to my most recent credit reports, this is not a valid debt.”³ She asserts the same claim for the SOR 1.c cell phone debt. She claims to have disputed the automobile debt at SOR 1.a. The debts consist of two delinquent automobile loans totaling \$13,500, 24 delinquent medical accounts totaling \$5,800, a \$1,200 delinquent cell phone account, an unpaid automobile insurance account, and a delinquent consumer credit account.

Applicant disclosed SOR debts 1.a-1.c and 1.e, as well generic medical bills totaling over \$4,000 on her November 2015 trustworthiness application (Item 2). She discussed all the SOR debts during a May 2016 interview with a Government investigator (Item 3), based on her December 2015 credit report (Item 4). She told the investigator that she was paying \$25 monthly on her medical bills. She had not taken action to resolve the remaining debts.

Applicant’s Answer provided no corroboration of her claimed resolution of the debts; no documents of her claimed dispute on the automobile loan, no proof that the medical and other debts were not valid, and no proof of the few claimed payments.

Applicant attributes her financial problems to the birth of her son in July 2009 (from which date most of her medical debts originate) and her May 2014 divorce from her husband. However, she provided no evidence of any efforts to resolve her medical debts between 2009 and 2014, or of any efforts since her divorce.

Applicant provided no budget or personal financial statement indicating her financial situation. She has not documented any credit or financial counseling. She provided no work or character references, or evidence of civic or community involvement.

³She failed to indicate what recent credit reports she was relying upon in January 2017, and did not provide copies of those credit reports, or otherwise explain what entries on the credit reports indicated that the debts were not valid.

Policies

The adjudicative guidelines (AG) list factors to evaluate a person's suitability for access to sensitive information. Administrative judges must assess disqualifying and mitigating conditions under each issue fairly raised by the facts and situation presented. Each decision must also show a fair, impartial, and commonsense consideration of the factors listed in AG ¶ 2(d). The applicability of a disqualifying or mitigating condition is not, by itself, conclusive. However, specific guidelines should be followed when a case can be measured against them, as they are policy guidance governing the grant or denial of eligibility for a public trust position. Considering the SOR allegations and the evidence as a whole, the relevant adjudicative guideline is Guideline F (Financial Considerations).

Trustworthiness decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's public trust position. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to applicant to refute, extenuate, or mitigate the Government's case. Because no one has a right to a public trust position, the applicant bears a heavy burden of persuasion.

Persons with access to sensitive information enter into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring each applicant possesses the required judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels deciding any reasonable doubt about an Applicant's suitability for access in favor of the Government.⁴

Analysis

The Government established a case for disqualification under Guideline F, and Applicant did not mitigate the security concerns. Applicant has an extensive history of financial difficulties that remained largely unaddressed since at least November 2015.⁵

Applicant meets none of the mitigating conditions for financial considerations. given that she has provided no details about her medical bills or her divorce.⁶ Although those issues may be circumstances beyond her control, she has not documented that

⁴See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁵¶19(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;

⁶¶20(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur . . .

she took responsible action to address her financial problems.⁷ Applicant has had no credit or financial counseling; she has documented no efforts to resolve her debts.⁸ Moreover, she has obviously not engaged in a good-faith effort to address her debts.⁹ Accordingly, I conclude Guideline F against Applicant.

Formal Findings

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraphs a-cc: Against Applicant

Conclusion

Under the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue eligibility for a public trust position for Applicant. Eligibility for a public trust position denied.

JOHN GRATTAN METZ, JR
Administrative Judge

⁷¶20(b) the conditions that resulted in the financial problem were largely beyond the person's control . . . and the individual acted responsibly under the circumstances;

⁸¶20(c) the person has received or is receiving counseling for the problem . . . and there are clear indications that the problem is being resolved or is under control;

⁹¶20(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.