



**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. 16-03364

Appearances

For Government: Erin P. Thompson, Esquire, Department Counsel
For Applicant: *Pro se*

05/25/2018

Decision

LYNCH, Noreen A., Administrative Judge:

Statement of the Case

The Applicant seeks eligibility to occupy an automated data processing (ADP) position designated ADP-I/II/III. On December 30, 2016, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued to her a Statement of Reasons (SOR) detailing concerns under Guideline F (Financial Considerations).¹ In a response notarized on March 20, 2017, she admitted all allegations and requested a hearing before an administrative judge. The case was assigned to me on November 9, 2017. The Defense office of Hearings and Appeals (DOHA) issued a notice of hearing on February 12, 2018, scheduling the case for March 9, 2018. The hearing was convened as scheduled. The Government offered six Exhibits (GE) 1-6, which were admitted into the record. Applicant testified on her own behalf and presented a binder of documents, which was marked as Applicant's Exhibit (AE) A with attachments. I held the record open and

¹ The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on or after September 1, 2006. Since that time, the AG has been revised for any adjudication on or after June 8, 2017. The revised AG is applied here.

Applicant submitted two documents, which were admitted as AE B and C without objection. The transcript (Tr.) was received on March 16, 2018. Based on my review of the record as a whole, I find Applicant mitigated financial considerations trustworthiness concerns.

Findings of Fact

Applicant is a 32-year-old employee for a defense contractor. She has been working as a contractor since 2007. She is single and has one young daughter. She is the sole provider for her child. Applicant attended college from 2004 until 2007, but did not obtain a bachelor's degree. This is her first application for a position of public trust. (GE 1)

Applicant explained that her financial troubles began in 2012 with the birth of her daughter. She does not receive any child support or health insurance, and her income was not sufficient to take care of her child and her normal expenses. (GE 5, Tr. 20) She did not receive paid maternity leave and was not employed for about three months. (Tr. 21) She admitted that she was not as responsible as she should have been. However, she moved in with her parents to reduce her overall expenses.

SOR 1.a is a Chapter 7 bankruptcy filing in April 10, 2014, which Applicant admits. She fell behind in her bills and was advised to file for bankruptcy. However, her student loans were not included in the bankruptcy. (GE 6) The bankruptcy was discharged in 2014.

SOR 1.b details an indebtedness to the Federal Government for delinquent taxes in the amount of \$2,669.87 for tax year 2012. Applicant stated that she was not having sufficient tax withheld and at the time she did not have the money to pay the IRS. In 2014, she hired People's Tax Relief. (Tr. 22) She paid the group about \$5,000 to resolve the tax issue. She submitted tax transcripts that show she is in a not collectible status and the balance due is zero. Applicant qualified for a federal program and is cleared. (Tr. 22) She noted that if her income would change substantially, the status may change. (Tr. 27)

SOR 1.c is for delinquent state taxes for the same tax year (2012) for \$3,735. She presented documentation that she has been on a payment plan with the state. She pays \$100 monthly in her payment plan. She has never missed a payment and has been making payments since April 2016. She provided documentation to support this claim.

SOR 1.d to 1.f are student loans that were in collection. The total amount is approximately \$5,300. She is in the process of consolidating the student loans, which could not be included in her 2014 bankruptcy. After she pays \$105 monthly for three months, the loans will be consolidated. She submitted evidence of her first payment.

As to SOR 1.g, a charged-off account in the amount of \$19,608 is a car loan, which is disputed. This was a used car purchased so that Applicant could get to work.

There were transmission issues. Applicant made monthly payments for six months. The vehicle was involuntarily repossessed. She contacted the law firm handling the case and the balance is about \$13,748. She submitted documentation that she is making payments of \$200 monthly. (AE)

SOR 1. h for a charged-off account in the amount of \$7,168 that was included in the 2014 bankruptcy. Counsel stipulated that the bankruptcy schedule included that account. (Tr. 32)

SOR 1. i, k, l, m and n are medical accounts. Applicant submitted documentation that she has paid a total of \$180 for three of the medical accounts. The remaining two medical accounts for \$654 and \$437 are to be paid. SOR 1.n in the amount of \$50 for a hospital bill is paid. She submitted documentation for her assertions.

SOR 1.j for a charged-off account in the amount of \$449 has been settled for \$292 and Applicant provided documentation.

In addition to the above accounts, Applicant presented documentation that she has paid other non-SOR accounts. Her credit report reflects that she also satisfied a non-SOR judgment.

Applicant is paying her bills. She is still living with her parents. She earns about \$40,000 a year. She has also started to work part time to earn more income. (Tr. 36) The amount that she earns monthly varies. She pays rent to her parents in the amount of \$500. Her next priority is to increase her savings.

Applicant submitted two letters of reference. She is described as someone who started working at an early age and has had to learn many things from the various challenges in her life. She is paying her debts and now takes full responsibility. Applicant has an excellent rapport with her co-workers.

Another letter from a co-worker who has known her for ten years writes that Applicant has risen through the ranks achieving promotions and accolades for her excellent service. She has been in a supervisory position for nine years. She is one of the most reliable supervisors and is well respected by peers and management.

Policies

When evaluating an applicant's suitability for a trustworthiness position, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to protected information.

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. 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, in making a decision.

The protection of the national security is the paramount consideration. Any doubt concerning personnel being considered for access to sensitive information will be resolved in favor of the national interest. In reaching this decision, I have only drawn conclusions that are reasonable, logical, and based on the evidence provided.

Under the Directive, the Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and has the ultimate burden of persuasion to obtain a favorable trustworthiness decision.

A person seeking eligibility for a trustworthiness position enters into a fiduciary relationship with the Government based on trust and confidence. This relationship transcends normal duty hours. Decisions include consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard protected information. Such decisions shall be in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.

Analysis

Under Guideline F, AG ¶ 18 sets forth that the concern under this guideline is that failure or inability 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.

Here, Applicant admits responsibility for all the delinquent debts at issue and the fact that she filed bankruptcy in 2014. This is sufficient to invoke financial considerations disqualifying conditions:

AG ¶ 19(a): inability to satisfy debts, and

AG ¶ 19(c): a history of not meeting financial obligations.

Five conditions could mitigate the finance related security concerns posed here:

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(c) the person has received or is receiving counseling for the problem from a legitimate and credible source, such as a non-profit counseling service, and there are clear indications that the problem is being resolved or is under control;

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

AG ¶ 20(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.

The financial matters at issue are for the most part resolved or in the process of being resolved. Applicant provided documentation of her efforts to pay and or settle her debts. She used a legal means in 2014 (bankruptcy) to resolve debts. She had a child in 2012, which exacerbated any financial issues. She is a single mother and is supporting her daughter. She receives no child support. She took measures to reduce her living expenses by moving in with her parents. Sufficient information about Applicant and her finances were provided to assess whether such delinquencies will again recur in the future. Applicant's references to financial, medical, and student loans, and tax issues for the year of 2012, show that she acted responsibly at the time. She still has some debt, but is resolving it and has a plan. She does not need to have all of her debts paid. The mitigating conditions apply.

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 adjudicative process factors listed in the AG. Under AG ¶ 2(a), the need to utilize a "whole-person" evaluation is set forth. I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I incorporated my comments under the guideline at issue in my whole-person analysis.

Applicant is a 32-year-old employee of a defense contractor. She attended college for a number of years but did not obtain an undergraduate degree. She wanted to improve her work opportunities. As a result, she incurred student loans. She is a single parent of a five-year-old daughter. She lives with her parents. She filed for bankruptcy in 2014 as

a legal means to resolve debt. The student loans could not be included in the bankruptcy. She is in the process of consolidating them. She is now working two jobs and continues to pay her bills. She resolved her tax issues and the majority of her delinquent debt. She is on the right track.

Applicant provided sufficient documentation to mitigate the financial considerations trustworthiness concerns raised in this case.

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:

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| Paragraph 1, Guideline F: | FOR APPLICANT |
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| Subparagraphs 1.a-1n: | For Applicant |
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Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for an ADP position. Eligibility for access to protected information is granted.

NOREEN A. LYNCH.
Administrative Judge