



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



In the matter of:)
)
) ADP Case No. 17-00110
)
Applicant for Public Trust Position)

Appearances

For Government: Ross Hyams, Esq., Department Counsel
For Applicant: *Pro se*

12/19/2017

Decision

BENSON, Pamela, C., Administrative Judge:

Applicant failed to mitigate the trustworthiness concerns arising under Guideline F, financial considerations, or Guideline E, personal conduct. National Security eligibility for access to sensitive information is denied.

Statement of the Case

On September 3, 2015, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP). On April 21, 2017, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing trustworthiness concerns under Guideline F, Financial Considerations, and Guideline E, Personal Conduct. (Item 1.) The action was taken under DoD Directive 5220.6, and the Adjudicated Guidelines (AG) effective within the DoD after September 1, 2006. On June 8, 2017, new AG were implemented and are effective for decisions issued on or after that date.¹

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

Applicant answered the SOR on May 30, 2017. She admitted SOR 1.a, 1.b, 1.e, and 1.h. She denied SOR 1.c, 1.d, 1.g, and 2.a. Applicant provided explanations and documentation with her answer. She requested that her case be decided by an administrative judge on the written record in lieu of a hearing. (Item 3) On June 30, 2017, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing seven items, was mailed to Applicant on July 11, 2017, and received by her on July 25, 2017. The FORM notified Applicant that she had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of her receipt of the FORM. (Item 2)

Applicant responded to the FORM in an undated, but timely written submission, to which Department Counsel had no objection. She did not object to Items 1 through 7, which are admitted into evidence. Applicant's FORM response is marked Applicant's Exhibit (AE) A through H, and admitted into evidence. The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on November 13, 2017.

Findings of Fact

Having thoroughly considered the evidence in the record, including Applicant's admissions, I make the following findings of fact: Applicant is 44 years old and employed by a Federal government contractor since March 2015. She earned her first Associate's degree in 1993, and her second Associate's degree in 1995. In December 2002, she earned a Bachelor's degree. She married her current spouse in 1995 and has a 24 year old son. She is applying for sensitive information eligibility.

As recently as November 2016, Applicant had seven delinquent accounts totaling \$22,048. (Items 1 and 7) Another delinquent debt cited in the SOR (§ 1.f \$532), was listed in her credit report from October 2015. (Item 6) The total amount of indebtedness for the eight delinquent accounts cited in the SOR was \$22,580. The SOR alleged that under the financial section of her e-QIP, Applicant failed to disclose any delinquent financial information as required. (Items 2 and 4) Applicant claimed that she misread the questions and did not realize that she was required to list her delinquent accounts. As of the close of the record, she had provided documentation of two civil cases being dismissed against her (§§ 1.c, and 1.d), and attached a payment receipt for one debt cited in the SOR (§ 1.g). (Items 3, AE B, AE D, and AE E) There is insufficient documentation to show that the debts alleged in §§ 1.a, 1.b, 1.e, 1.f, or 1.h, have been settled, resolved, or being satisfied through a payment plan. She failed to provide a legitimate basis to dispute her responsibility for any of these debts. Those current outstanding debts, not including the debts in the civil cases dismissed against her, total approximately \$17,215.

In Applicant's response to the Government's brief, she claimed that she recently discovered the debt alleged in SOR § 1.a \$9,193, as belonging to another family member, despite the debt being listed in her November 2016 credit report, and after admitting this debt in her answer to the SOR. This is by far the largest debt cited in the

SOR. She failed to provide corroborating documentation to support her claim. She also listed that the creditor in SOR ¶ 1.e sent her an IRS 1099, which she reported as income for tax purposes, however, she failed to provide documentation so that her claim could be verified. The court documents provided by Applicant showed two cases from the same collection company being dismissed, (¶¶ 1.c, and 1.d), but she failed to provide an explanation as to why those cases were dismissed, or if she still owed the creditors for the original debts. Lastly, the court documentation purported to show a third collection company case dismissal, included documents that were unsigned, left blank, and did not include a date-stamp by the court. This evidence is insufficient to support her claim that this third case was also dismissed. (AE C)

Applicant listed that her financial problems stemmed from her spouse's loss of employment due to a medical emergency in about May 2013. (Items 3 and 5) The medical emergency resulted in long-term medical conditions that ultimately prevented her spouse from returning to work. Applicant provided documentation that her spouse received weekly benefits from the state employment commission. She listed that in addition to the reduced amount of income her spouse receives, his medical issues continue to be costly despite having medical insurance. At the time her spouse became ill, he was the only person in the home earning income. Applicant was able to find employment in September 2013, and continued employment until early 2015. She experienced a brief period of unemployment, and then she started working for her current employer in March 2015. (Item 4)

Applicant provided no budget information from which to predict her future solvency, or her ability to make payments toward her delinquent debts. There is no evidence of financial counseling. However, Applicant did provide documentation to support findings that she is a valued employee and highly recognized by her employer for her reliability and quality performance. (AE F and G)

Policies

When evaluating an applicant's national security eligibility 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(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.

Directive ¶ E3.1.14, requires that 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 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 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....

AG ¶ 19 provides conditions that could raise trustworthiness concerns. The following are potentially applicable:

- (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.

Applicant experienced financial difficulty beginning in at least 2013, after her spouse became ill and was unable to return to work. She incurred more than \$22,000 of delinquent debt over the past four years. She paid one small debt and was able to show that two court cases against her had been dismissed, without further explanation. However, more than \$17,000 in delinquent debt remains, for which she demonstrated

neither progress toward resolution, nor a basis for dispute. These facts establish sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate trustworthiness concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 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 began experiencing financial problems following her spouse's illness in 2013, which was a situation beyond her control. She has been continuously employed with her current employer since March 2015. Applicant has only paid one small delinquent debt cited in the SOR. She also showed that two court cases against her had been dismissed, but she provided no details as to why these cases were dismissed. Did she enter into a settlement with the creditors? She has not been able to show that her financial problems are under control or that she has initiated a good-faith effort to repay any of her remaining creditors. She denied the legitimacy of the largest debt, but she failed to provide corroborating evidence to show that she is not legally responsible for this debt. Mitigating condition AG ¶ 20 (b) partly applies, however, mitigating conditions ¶¶ 20(a), (c), (d), and (e) do not apply.

Guideline E: Personal Conduct

AG ¶ 15 expresses the trustworthiness concerns pertaining to personal conduct:

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 the national security investigative or adjudicative processes.

AG ¶ 16 describes a condition that could raise trustworthiness concerns and may be disqualifying 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 clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant is a mature, educated adult who earned two Associate's degrees and a Bachelor's degree. It is not credible that she could have misread several questions in her e-QIP that required full and complete disclosure of her adverse financial situation. In addition, she was going through the legal system at, or near, the time she filled out the e-QIP concerning the judgments that had been filed against her. She failed to report any adverse financial information on the e-QIP. This evidence establishes significant trustworthiness concerns under AG ¶ 16(a).

AG ¶ 17 includes three conditions that could mitigate trustworthiness concerns arising from Applicant's potentially disqualifying personal conduct:

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

(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; and

(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 caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

Applicant did not provide, and the record does not otherwise contain, evidence that would support mitigation under any of the foregoing conditions.

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 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.

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 F and E in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment.

Applicant continues to owe more than \$17,000 to numerous creditors for debts incurred after her spouse became ill and unable to work. Although I am sympathetic to her situation, it is also important to note that Applicant paid one small debt cited in the SOR. She was able to show that two civil cases had been dismissed against her, but she failed to show that she is no longer legally responsible for those debts. She claimed a department store debt was paid after she was issued a 1099, but failed to provide any verification of the 1099. She claimed that the largest debt cited in the SOR belonged to a family member, but she failed to provide any documentation to support her claim. She has not demonstrated any effort to address the remaining unpaid debts. The omission of adverse financial information on her e-QIP was deliberate and recent. Overall, the evidence creates significant doubt as to Applicant's trustworthiness, reliability, and suitability for a position of trust with the Government. She failed to meet her burden to mitigate the trustworthiness concerns arising under the guidelines for financial considerations, or personal conduct.

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.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT

Conclusion

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

Pamela C. Benson
Administrative Judge