



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



In the matter of:

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ADP Case No. 17-00216

Applicant for Public Trust Position

Appearances

For Government: Adrienne M. Driskill, Esq., Department Counsel

For Applicant: *Pro se*

11/17/2017

Decision

TUIDER, Robert, Administrative Judge:

Applicant mitigated concerns pertaining to Guideline E (personal conduct); however, she was unable to mitigate concerns pertaining to Guideline F (financial considerations). Eligibility for a public trust position is denied.

Statement of the Case

On March 1, 2017, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing trustworthiness concerns under Guidelines F and E. On March 21, 2017, Applicant responded to the SOR, and elected to have the case decided on the written record in lieu of a hearing. On April 12, 2017, she amended her SOR answer.

On May 10, 2017, the Government submitted its written case. On May 23, 2017, Applicant received a complete copy of the file of relevant material (FORM). She was afforded 30 days to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not submit additional information. On October 16, 2017, the case was assigned to me. The Government exhibits, marked as Items 1 through 5, are admitted in evidence.

Findings of Fact

The SOR alleged 11 debts under financial considerations totaling \$29,429. Applicant admitted all of the allegations, with explanations. Her admissions are accepted as findings of fact. Additional findings of fact follow.

Applicant is a 35-year-old medical assistant employed by a defense contractor since June 2015. She seeks a public trust position in conjunction with her current employment. Applicant graduated from high school in June 2000. She attended a vocational school from January 2003 to November 2003, and was awarded a certificate. Per her SOR answer, Applicant planned to marry in October 2017, and has a 15-year-old son and a 7-year-old daughter.

Financial Considerations

Applicant's 11 debts consist of student loans and consumer debts. (SOR ¶¶ 1.a – 1.k) These allegations are established through the Government's exhibits (Items 1 – 5) Although Applicant provided documentation regarding her student loan repayment plan, she did not provide proof that she made any of the payments on the plan, nor did she provide proof of payment for a debt she claimed that she paid by garnishment. In short, she did not provide any documentation showing any of her debts were paid or otherwise resolved. (Item 1) During her October 16, 2016 Office of Personnel Management (OPM) Personal Subject Interview (PSI), she discussed her financial situation with the investigator and stated that she would resolve her debts in the near future. (Item 3)

In conclusion, the file lacks sufficient evidence that Applicant paid, arranged to pay, settled, compromised, disputed, or otherwise resolved her SOR allegations. She did not describe financial counseling or present a budget. The record lacks corroborating or substantiating documentation and detailed explanations of the causes for her financial problems and other mitigating information. The FORM noted that Applicant had 30 days from the receipt of the FORM "in which to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation, as appropriate. If you do not file any objections or submit any additional information . . . your case will be assigned to an Administrative Judge for a determination based solely" on the evidence set forth in this FORM. As noted, Applicant did not submit evidence responsive to the FORM.

Personal Conduct

When Applicant completed her November 2, 2015 Electronic Questionnaires for Investigations Processing (e-QIP), she failed to list any of the debts alleged under Guideline F, as she was required to do. (SOR ¶ 2.a) In Applicant's amended SOR answer, she explained, "I didn't read (the) question asked of me and just answered with a "No". If I would have read the question, I would have said yes and attached pertinent information that you need. I do apologize for that." (Item 1) She was completely forthcoming during her October 2016 PSI about her finances. During her October 2016 PSI, I note that Applicant made other mistakes when completing her e-QIP such as providing incomplete employment information and incorrectly listing prescription medicine.

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 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

Financial Considerations

AG ¶ 18 articulates the trustworthiness concern for financial problems:

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.

AG ¶ 19 provides three disqualifying conditions that could raise a trustworthiness concern and may be disqualifying in this case: “(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.” Based on the information in the SOR, the record established the disqualifying conditions in AG ¶¶ 19(a), 19(b), and 19(c), requiring additional inquiry about the possible applicability of mitigating conditions.

AG ¶ 20 lists five potential mitigating conditions:

(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.

The Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's [trustworthiness] eligibility, there is a strong presumption against the grant or maintenance of a [trust position]. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising [trustworthiness] concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in [public trust positions] is that articulated in *Egan, supra*. “Any

doubt concerning personnel being considered for access to [sensitive] information will be resolved in favor of the national security.” Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

In summary, no mitigating conditions fully apply. Applicant has been gainfully employed for the majority of her adult life, and she is presumed to be a mature, responsible citizen. Nonetheless, without other information suggesting her long-standing financial problems are being addressed, doubts remain about her suitability for access to sensitive information. Protection of the national interest is the principal focus of these adjudications. According, those doubts must be resolved against the Applicant.

Personal Conduct

AG ¶ 15 articulates the trustworthiness concern for 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 national security investigative or adjudicative processes.

AG ¶ 16 describes one condition that could raise a trustworthiness concern 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 eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant stated when she completed her November 2015 E-QIP, she did not deliberately falsify her e-QIP. She was open and forthcoming during her OPM PSI about her finances and readily acknowledged his omission. I also note that she made other mistakes when completing her e-QIP that were apparently viewed as inadvertent.

Based on the available information, it appears Applicant became confused or was careless when completing her November 2015 e-QIP. Her lack of attention to detail cannot be imputed as a willful and deliberate attempt to undermine the investigative process. Although the information she provided about her past financial situation proved to be incorrect, as was other information she provided, I attribute these lapses to carelessness and am satisfied that she did not deliberately and intentionally fail to disclose her delinquent debts with intent to deceive.¹

¹ The Appeal Board has cogently explained the process for analyzing falsification cases, stating:

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 F and E in my whole-person analysis. Unmitigated financial considerations trustworthiness concerns lead me to conclude that grant of a public trust position to Applicant is not warranted at this time. This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a public trust position in the future. With more effort towards documented financial responsibility and compliance with applicable regulations, she may well be able to demonstrate persuasive evidence of her eligibility for a public trust position.

In closing, Applicant chose to rely on the written record versus a hearing. In so doing, however, and with regard to financial considerations, she failed to submit sufficient evidence to supplement the record with relevant and material facts regarding her circumstances or articulate his position limiting my assessment that discussed in the FORM. I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, and the AGs, to the facts and circumstances in the context of the whole person. Personal conduct

(a) when a falsification allegation is controverted, Department Counsel has the burden of proving falsification; (b) proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred; and (c) a Judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning the applicant's intent or state of mind at the time the omission occurred. [Moreover], it was legally permissible for the Judge to conclude Department Counsel had established a prima facie case under Guideline E and the burden of persuasion had shifted to the applicant to present evidence to explain the omission.

ISCR Case No. 03-10380 at 5 (App. Bd. Jan. 6, 2006) (citing ISCR Case No. 02-23133 (App. Bd. June 9, 2004)).

trustworthiness concerns are mitigated; however, financial considerations trustworthiness concerns are not mitigated.

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
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Subparagraphs 1.a – 1.k:	Against Applicant
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Paragraph 2, Guideline E:	FOR APPLICANT
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Subparagraph 2.a:	For Applicant
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Conclusion

I conclude that it is not clearly consistent with national interest to grant Applicant eligibility for a public trust position. Eligibility for a public trust position is denied.

ROBERT TUIDER
Administrative Judge