



**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. 17-01143

Appearances

For Government: Tara R. Karoian, Esq., Department Counsel

For Applicant: *Pro se*

03/01/2018

Decision

CREAN, THOMAS M., Administrative Judge:

Based on a review of the pleadings, eligibility for a public trust position is denied. Applicant did not present sufficient credible information to mitigate financial trustworthiness concerns.

Statement of the Case

On December 2, 2015, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) to obtain eligibility for a public trust position to work in support of a defense agency. (Item 3) Applicant was interviewed by an agent from the Office of Personnel Management on January 26, 2016. (Item 6, Personal Subject Interview (PSI)). After reviewing the results of the background investigation, the Department of Defense (DOD) could not make the affirmative findings required to grant Applicant access to sensitive information.

On June 6, 2017, DOD issued Applicant a Statement of Reasons (SOR) for financial trustworthiness concerns under Guideline F. DOD took the action under DOD Manual 5200.02, *Procedures for the DOD Personnel Security Program (PSP)*; and the adjudicative guidelines (AG) implemented by DOD on June 8, 2017.

Applicant answered the SOR on July 27, 2017, admitting the one allegation of delinquent debt, and requested a decision on the record. (Item 2) Department Counsel submitted the Government's written case on August 22, 2017. (Item 7). Applicant received a complete file of relevant material (FORM) on September 22, 2017, and was provided the opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant provided additional information in response to the FORM that was received by DOD on September 28, 2017. (Item 8) On September 29, 2017, Department Counsel noted that she had no objection to consideration of the additional material. (Item 9) I was assigned the case on January 17, 2018.

Procedural Issues

Applicant was advised in the FORM that the summary of the PSI (Item 6) was not authenticated and could not be considered over her objection. She was further advised that she could make any corrections, additions, or deletions to the summary to make it clear and accurate, and could object to the admission of the summary as not authenticated by a Government witness. She was additionally advised that if no objection was raised to the summary, the Administrative Judge could determine that she waived any objection to the admissibility of the PSI summary. Applicant did not raise any objection to consideration of the PSI when she responded to the FORM. Since there is no objection by Applicant, I will consider information in the PSI in my decision.

Findings of Fact

After a thorough review of the pleadings, I make the following findings of fact. Applicant is 36 years old. She graduated from high school in 2001, and received her professional pharmacy degree in May 2006. She worked for a national pharmacy chain as a pharmacist from May 2006 until August 2010, when she started working as a pharmacist for the military health care system. She married in May 2007 and has no children. (Item 3, e-QIP, dated November 3, 2015)

The SOR alleges, and credit reports (Item 4, dated June 6, 2017; and Item 5, dated December 30, 2015) confirm, Applicant's one delinquent debt for a charged-off mortgage for \$377,678. (SOR 1.a) Applicant admits the debt.

Applicant and her husband purchased a house in June 2007. The mortgage payments were approximately \$2,000 a month. Due to the national housing crisis and the recession in her state, the house lost significant value. Applicant indicated that she was unsuccessful in her attempts to sell her house or modify her loan because of the negative equity and unfavorable loan to value ratio. She provided no timeline, details, or documentation to reflect her efforts to sell or otherwise deal with the financial issue with the house. Her last payment on the loan was in May 2011. The house and the loan was foreclosed in February 2012.

Applicant noted on the e-QIP that the house was foreclosed because its value was significantly less than the mortgage because of the circumstances of a housing

market crisis. She was unable to refinance the high interest rate because of the low loan to equity ratio. In the PSI, Applicant again noted the significant loss of house value because of the national housing market crisis. Applicant believed that the mortgage lender attempted to take some collection action. She notes in her response to the FORM that the house was eventually sold. She states that the mortgage was a singular regrettable one time situation and not continued behavior. She does not believe she is responsible for the difference between the amount owed on the mortgage and the foreclosed price of the house because her state is a non-recourse state. The record indicates that Applicant had sufficient funds to pay the amount of the mortgage due each month. Applicant's e-QIP and PSI show that in 2009, 2010, and 2011, during the national housing crisis and recession, she took at least five cruises or vacations overseas.

Applicant and her husband purchased a new house with a new mortgage in March 2016. Her credit score must have been sufficient for her to qualify for this mortgage. The credit reports show that all Applicant's bills and debts are paid as agreed. The only negative on the credit reports is the one mortgage that was foreclosed. In her e-QIP, Applicant only lists that mortgage as a delinquent debt. In her response to the SOR and her response to the FORM, Applicant notes that all of her debts are current and are paid as agreed, and that there is no record of a failure to meet financial obligations.

Policies

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 over-arching adjudicative goal is a fair, impartial and common sense 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.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to [sensitive information] will be resolved in favor of the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture. 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 as to obtaining 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 protect or safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of sensitive information.

Analysis

Financial Considerations

There is a trustworthiness concern for a failure or inability to live within one's means, satisfy debts, and meet financial obligations, because such behavior may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulation, and raise questions about an individual's reliability, trustworthiness, and ability to protect sensitive information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligation to protect sensitive information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life. (AG ¶ 18).

A person's relationship with her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a position of trust. An applicant is not required to be debt free, but is required to manage her finances in such a way as to meet her financial obligations.

Adverse information in credit reports can normally meet the substantial evidence standard to establish financial delinquency. Applicant had a house that was foreclosed when she failed to make mortgage payments. Her delinquent debt is established by credit reports, her admission in the e-QIP, and her response to the SOR. The debt poses a trustworthiness concern raising Financial Consideration Disqualifying Conditions under AG ¶ 19:

- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligation.

There is no indication that Applicant did not have the ability to pay the mortgage. Her ability to pay all of her other debts on time and not have delinquent debt indicates her ability to pay her mortgage. The record does indicate that she defaulted because of the housing market and the house was a losing investment. She made a strategic decision to walk away from the loan even though she has the ability to pay the debt.

I considered the following Financial Considerations Mitigating Conditions under 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;

(b) the conditions that resulted in the financial problems 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 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; and

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

The mitigating conditions do not apply. Applicant incurred the mortgage deliberately and freely. An ongoing unsatisfied debt is considered recent. Applicant's default of her mortgage was willful. Even though Applicant points to the national housing crisis and recession in 2008, she does not provide information to show that she could not pay the mortgage. In fact, her e-QIP shows that she made overseas tourism trips or cruises each year from 2009 to 2011, indicating she had funds available to pay the mortgage. She presented no evidence of a good-faith effort to pay the mortgage debt. The record contains no corroborating or substantiating documentation of Applicant's efforts to mitigate and resolve her financial problem from the mortgage. The default was not the result of poor planning and financial hardship. It was the result of a calculated decision about a house that was underwater that showed no sign of recovery. Applicant presented no information that she received financial counseling, but indicated that she did not require financial counseling because she was able to pay her debts.

I find that Applicant did not act responsibly and make a good-faith effort to pay her mortgage debt. She simply made a decision that it was financially better to walk away from the loan than try to pay it. In short, the information provided by Applicant does not contain sufficient evidence to determine that Applicant either paid, arranged to pay, settled, compromised, or otherwise resolved her mortgage debt. Her debt management decision to abandon her mortgage under the circumstances casts doubt on her current reliability, trustworthiness, and good judgment. The information in the case file is sufficient to establish that she did not act responsibly under the circumstances.

In a similar case (ISCR Case No. 15-04851, April 28, 2017), the Appeal Board determined that in the circumstances of a strategic default of a mortgage, an Applicant does not act reasonably and responsibly to resolve debts. In requesting an administrative determination, Applicant chose to rely on the written record. She provided insufficient evidence to supplement the record with relevant and material facts regarding her circumstances, articulate her position, and mitigate the financial trustworthiness concerns. She did not provide adequate credible information regarding her past efforts to address her delinquent debt. She did not present a sufficiently credible plan of how and when she planned to resolve her mortgage debt. Instead, she stated her intent not to pay the debt. Applicant did not establish that she acted reasonably and honestly with regard to her financial duties and obligations. Applicant has not mitigated financial trustworthiness concerns.

Whole-Person Analysis

Under the whole-person concept, the administrative judge must evaluate an applicant's trustworthiness eligibility by considering the totality of the applicant's conduct and all relevant circumstances. An 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 a trustworthiness clearance 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. Applicant has the ability to pay her debts. She has the financial resources to pay and manage her financial obligations within her resources. However, she has not established that she can properly manage her finances because of the strategic default of her mortgage. Her failure to properly manage her finances indicates that she may not properly manage sensitive information. Overall, the record evidence leaves me with questions and doubts pertaining to Applicant's judgment, reliability, trustworthiness, and her eligibility and suitability for a position of trust. For all these reasons, Applicant's eligibility for a public trust position is denied.

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

Subparagraph 1.a: 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 eligibility for a public trust position. Eligibility for access to sensitive information is denied.

THOMAS M. CREAN
Administrative Judge