



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



In the matter of:)
)
) ADP Case No. 17-01503
)
Applicant for Public Trust Position)

Appearances

For Government: Bryan Olmos, Esq., Department Counsel
For Applicant: *Pro se*

03/26/2018

Decision

CERVI, Gregg A., Administrative Judge

This case involves trustworthiness concerns raised under Guideline F (Financial Considerations). Eligibility for access to sensitive information is denied.¹

Statement of the Case

Applicant submitted a questionnaire for investigations processing (e-QIP) on March 16, 2016. On June 1, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent her a Statement of Reasons (SOR) detailing trustworthiness concerns under Guideline F.²

¹ Applicant is requesting a trustworthiness determination for access to sensitive information, also known as a “public trust” determination, to occupy an automated data processing (ADP) position.

² The DOD CAF acted under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.

Applicant answered the SOR and elected to have the case decided on the written record in lieu of a hearing. The Government's written brief with supporting documents, known as the File of Relevant Material (FORM), was submitted by Department Counsel on August 25, 2017.

A complete copy of the FORM was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the trustworthiness concerns. Applicant received the FORM on October 11, 2017, and she submitted a response to the FORM (AE A), dated October 11, 2017, including attached documents. The Government's exhibits included in the FORM (Items 1 to 6) and AE A are admitted into evidence. The case was assigned to me on November 29, 2017.

Findings of Fact

Applicant is a 63-year-old healthcare industry analyst employed by a defense contractor since 2015. She was most recently unemployed from September 2014 to April 2015. She graduated from high school in 1972 and attended college, but did not receive a degree. Applicant was married in 1985 and divorced in 1996. She has one adult child.

The SOR alleges various delinquent debts, including federal tax liens entered in 2011–2013 totaling approximately \$195,000. She is also alleged to have small medical, phone, and cable television debts, and she failed to file a federal income tax return in 2012. Applicant admitted the allegations and stated that she will complete her tax filing by July 2017; she paid the medical and phone debts; and the cable television creditor was unable to locate the alleged debt. Applicant noted in her answer that she was living beyond her means and took measures to correct the problem in early 2016 by attempting to sell her home. However, because of the federal tax liens on her home, she was unable to sell it, and the home was foreclosed. She claimed that \$48,000 in "excess funds" from the sale of the home were applied to her federal tax debt. She did not provide documentary evidence in support of her claims. She stated in her personal subject interview that she failed to set aside sufficient funds to pay taxes while she was self-employed.

In Applicant's response to the FORM, she noted that she has worked in the healthcare industry since 1975, and has been trusted with sensitive information and always acted responsibly. She admitted to being "remiss" in her income taxes over the years, and she has made payments during the past years. She stated her 2012 taxes were mailed within the hour of completion. She provided a signature page of her 2012 tax return, dated July 10, 2017. She also noted her intent to meet with the IRS on a budget and payment plan in November 2017. Finally, she provided a partial credit report that shows a \$1,286 account by a heating company in a collection status that is not alleged in the SOR. No additional documentary evidence of debt resolution and current financial status was submitted.

Law and Policies

The Director of National Intelligence (DNI) issued revised adjudicative guidelines (AG) in a Security Executive Agent Directive, effective on June 8, 2017.³ The revised AG apply to this case.

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.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility 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.

³ I decided this case using the AG implemented by DOD on June 8, 2017. However, I also considered this case under the previous version of the AG implemented on September 1, 2006, and my conclusions are the same using either set of AG.

Analysis

Financial Considerations

The concern under this guideline 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. . . .

The relevant disqualifying conditions under AG ¶ 19 include:

- (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; and
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

The documentary evidence supporting the SOR allegations and Applicant's admissions are sufficient to establish the disqualifying conditions.

The following mitigating condition under AG ¶ 20 is potentially relevant:

- (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;

(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; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Although Applicant was unemployed for about eight months until April 2015, which may have contributed to her financial condition, she has not shown sufficient justification for failing to file her 2012 income tax return when due, or her failure to pay taxes owed. Despite her unemployment, her financial responsibility is questionable. Likewise, she has not provided sufficient evidence of efforts to resolve her taxes and other debts, or that her financial situation is under control. Applicant is credited for filing the 2012 income tax return and the cable television creditor was unable to locate a debt. For the remaining allegations, no mitigating conditions fully apply.

Whole-Person Concept

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 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.

I considered all of the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my findings of fact and comments under Guideline F in my whole-person analysis.

Applicant has not shown sufficient evidence of resolution of the SOR debts despite her attestations to the contrary. I considered the factors that may have led to Applicant's financial difficulties. However, the limited information in the record has not convinced me that Applicant has made sufficient efforts to resolve her debts, or that she is financially responsible.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a public trust position. For all these reasons, I

conclude Applicant has not mitigated the financial considerations trustworthiness concerns.

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.c, and 1.e-1.f:	Against Applicant
Subparagraphs 1.d and 1.g:	For Applicant

Conclusion

I conclude that it is not clearly consistent with the national security interests of the United States to grant Applicant eligibility for a public trust position. Eligibility for access to sensitive information is denied.

Gregg A. Cervi
Administrative Judge