



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



In the matter of:)
)
) ADP Case No: 17-01531
)
Applicant for Public Trust Position)

Appearances

For Government: Caroline E. Heintzelman, Esquire, Department Counsel
For Applicant: *Pro se*

02/09/2018

Decision

DAM, Shari, Administrative Judge:

Applicant mitigated the financial considerations trustworthiness concerns. National security eligibility for a position of trust is granted.

Statement of Case

On June 20, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F, Financial Considerations. The action was taken under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, (AG) effective within the DOD after June 8, 2017.

Applicant answered the SOR on July 28, 2017 (Answer), and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on August 24, 2017, and issued a Notice of Hearing on that day. The hearing was scheduled for September 21, 2017. Department Counsel offered Government Exhibits (GE) 1 through 4 into evidence. Applicant testified and offered

Exhibits (AE) A through H into evidence. All exhibits were admitted without objection. DOHA received the hearing transcript (Tr.) on September 29, 2017. The record remained open until November 17, 2017, for submission of additional exhibits. Applicant timely submitted AE I through N. The exhibits are admitted without objection.

Findings of Fact

Applicant is 24 years old and unmarried. She graduated from high school in 2011. She has some college credits, but has not yet earned a degree. She has two young children. She began her current position in June 2016. Applicant's supervisor is aware of this proceeding and the underlying trustworthiness concerns. (Tr. 16-18)

Applicant began having financial problems about six years ago when she purchased her first car and then lost her job six months later, in 2012. She was unable to find a fulltime position until recently. She worked at different low-paying positions and had periods of unemployment. During that time she also had one of her children. She lives with her parents and received welfare for some of the time relevant to her debts. One of her children's fathers pays child support; the other father does not. (Tr. 20-22; GE 1)

Based on credit bureau reports (CBR) from April 2017 and June 2016, the SOR alleged six delinquent debts that totaled \$12,280 and became delinquent between 2011 and 2015. (GE 3, GE 4.) The status of each debt is as follows:

SOR ¶ 1.a: Applicant contacted the creditor to negotiate a payment plan of this \$10,648 delinquent automobile car loan. She cannot negotiate a settlement at this time because she does not have enough money to make a large payment. She agreed to begin making monthly payments. In September 2017, she made her first \$150 payment on this debt. The creditor indicated that if she makes payments for a period of time, it will consider a settlement. She made another \$150 payment in October 2017. (Tr. 26-27, 36; AE A; AE M) This debt is being resolved.

SOR ¶ 1.b: The \$600 credit card debt is being resolved through automatic monthly payments of \$31. Applicant made payments in June, July, and September 2017. She established the payment plan before the SOR was issued. She does not know why an August 2017 payment was not made. She made another \$31 payment in October 2017. She intends to continue paying this debt until it is resolved. (Tr. 27-30; AE B, AE K.) It is being resolved.

SOR ¶ 1.c: This \$584 medical debt is being paid by monthly payments of \$20. Applicant made two payments to date. The balance is \$544. (Tr. 30-31; AE C; AE J.) It is being resolved.

SOR ¶ 1.d: Applicant has made four \$22 payments on the \$314 cell phone debt. The payments are being automatically deducted from her bank account. (Tr. 31-32, 35; AE D, AE I.) It is being resolved.

SOR ¶¶ 1.e and 1.f: These two debts, \$79 and \$55, are combined into one account. Applicant made four \$25 payments on this account through automatic deductions from her bank account. (Tr. 33-35, 40; AE F, AE L.) These are being resolved.

Applicant has not participated in credit or financial counseling, but uses a spreadsheet for her budget. (Tr. 18; AE N) She earns \$14 per hour, from which she pays her monthly medical insurance premium of \$400. She has about \$250 remaining at the end of the month after paying expenses. Over the years, she has received a total of \$100 from her son's father, rather than the court-ordered child support of \$50 month. Her daughter's father helps pay for daycare, but he does not contribute the total \$380 a month he is obligated to pay. (Tr. 22-26, 33) She does not have any delinquent debts that are not listed in the SOR. She found it financially difficult to address these debts until after she had been working fulltime for a while and had some money available. She intends to resolve all debts. (Tr. 33-34)

Applicant has learned the importance of managing her finances and paying her debts. Her parents are aware of these issues and have helped her resolve the allegations. She is performing well in her position and anticipates receiving a new position with a higher salary. (Tr. 37-39)

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are to be used in determining an applicant's eligibility for a position of trust.

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 AG ¶ 2 describing 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 applicable guidelines in the context 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable [trustworthiness] decision.”

A person applying for a position of trust seeks to enter 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 national security eligibility. 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.

Finally, as emphasized in Section 7 of Executive Order 10865, “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *a/so* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Guideline F: Financial Considerations

The trustworthiness concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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 describes conditions that could raise trustworthiness concerns. Three 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.

Applicant accumulated delinquent debts between 2011 and 2015, which she was unable or unwilling to timely resolve until recently. These facts establish prima facie support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate those concerns.

AG ¶ 20 describes five conditions that could mitigate the trustworthiness concerns arising from Applicant's alleged financial difficulties:

(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, or 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; and

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

The six SOR-alleged debts accumulated between 2011 and 2015. In the past two years, Applicant has not accumulated additional delinquent debts. The evidence establishes mitigation under AG ¶ 20(a), as the circumstances that contributed to her financial delinquencies are unlikely to recur and do not cast doubt on her current trustworthiness.

Some of Applicant's financial delinquencies were caused by periods of unemployment or underemployment, which were circumstances beyond her control. Applicant did not provide information that she attempted to responsibly manage the debts before they became delinquent, which is required to establish full mitigation under AG ¶ 20(b). This mitigation condition partially applies.

Applicant did not submit evidence that she participated in financial or credit counseling; however, there are clear indications that her financial delinquencies are coming under control. AG ¶ 20(c) minimally applies. Applicant initiated a good-faith effort to resolve the alleged debts, albeit some of her efforts occurred after receiving the SOR.

She is making monthly payments on all of the outstanding delinquent debts, having paid between \$500 and \$600 on the debts. AG ¶ 20(d) applies.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility for a security clearance 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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant is an honest and intelligent single mother, who recognizes her responsibility to resolve her debts and is committed to doing so. She has begun making payments on the largest debt, an automobile repossession. Her budget accommodates the payments.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases, stating:

In evaluating Guideline F cases, the Board has previously noted that the concept of 'meaningful track record' necessarily includes evidence of actual debt reduction through payment of debts. However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrates that he has ' . . . established a plan to resolve his financial problems and taken significant actions to implement that plan.' The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2 (a) ('Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.') There is no requirement that a plan provide for payments

on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.¹

Applicant provided sufficient evidence to demonstrate a plan to implement and resolve outstanding delinquent debts within the scope of the term defined in the above case. The likelihood that financial problems will recur or Applicant will stop making payments on the plans she initiated is minimal based on her efforts to-date and knowledge that similar problems could jeopardize her employment. She lives with her parents, who have helped her manage the debts. Overall, the record evidence leaves me without doubt as to Applicant's judgment, eligibility, and suitability for a public trust position. She met her burden to mitigate the trustworthiness concerns arising under the guideline for financial considerations.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraphs 1.a through 1.f: For Applicant

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 a position of trust. National security eligibility is granted.

SHARI DAM
Administrative Judge

¹ ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).