



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



In the matter of:

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ADP Case No. 17-01564

Applicant for Public Trust Position

Appearances

For Government: Alison O'Connell, Esq., Department Counsel

For Applicant: *Pro se*

05/08/2018

Decision

BENSON, Pamela C., Administrative Judge:

Applicant has mitigated the financial considerations trustworthiness concerns. Eligibility for access to sensitive information is granted.

Statement of the Case

On April 23, 2015, Applicant submitted a security clearance application (SCA). On March 25, 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. The action was taken under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); DOD Regulation 5200.2-R, *Personnel Security Program* (January 1987), as amended (Regulation); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.¹

¹ ADP Case No. 14-01655 (App. Bd. Nov. 3, 2015) ("The Guidelines apply to all adjudications under the Directive, including both security clearance and public trust cases.")

On July 15, 2017, Applicant submitted an answer to the SOR, and she requested that her case be decided by an administrative judge on the written record in lieu of a hearing. (Item 4) On September 28, 2017, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing ten Items, was mailed to Applicant on September 29, 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. Applicant responded to the FORM on December 8, 2017, and provided documents labeled as Applicant Exhibits (AE) A-F. The Items submitted by the Government are labeled as Government Exhibits (GE) 1 through 10. All Exhibits were admitted into evidence without objection. The DOHA Office assigned the case to me on February 14, 2018.

Findings of Fact

Applicant admitted SOR ¶¶ 1.a, 1.f, 1.g and 1.i., and she denied ¶¶ 1.b-1.e, and 1.h. under Guideline F. Her admissions were incorporated into the findings of fact. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 51 years old and employed by a Federal government healthcare contractor as a coding and document educator since September 2012. She has never married. She has two adult children, ages 24 and 20. She is requesting access to sensitive information eligibility.²

Applicant's tax problems started in 2008 while she was working two jobs. Her part-time employer did not deduct taxes from her pay. She then fell behind on current tax years because she was repaying taxes owed for previous years. She had state tax liens filed against her for 2010 and 2012 unpaid state taxes. She voluntarily relinquished her car to the bank in about 2015 after she called them to let them know that she could not maintain regular car payments. She attributed her financial difficulties to being a single parent financially responsible for her children, recovering from a stroke, and a history of low paying jobs.³

The SOR alleges that Applicant failed to timely pay three medical accounts (¶¶ 1.c, 1.h and 1.i), a phone service account (¶ 1.b), a repossessed vehicle deficiency balance (¶ 1.a), a speeding ticket (¶ 1.g), and two state tax liens (¶¶ 1.d and 1.e). She previously filed for Chapter 7 bankruptcy in 2005, and her debts were discharged by the bankruptcy court in 2006. (¶ 1.f). The total amount of delinquent debt listed in the SOR was approximately \$12,798.⁴ The SOR debts are supported by GE 5, 6, 7 and 8.

² GE 5.

³ GE 10.

⁴ GE 1.

Applicant submitted documentation to show that the phone service account was successfully disputed. Applicant returned equipment but the phone service creditor did not have any record of it. After filing the dispute, the phone service creditor removed the account from Applicant's credit report (§ 1.b; AE B). The 2012 state tax lien showed a balance due of \$1,530. (§ 1.d; AE E). Applicant made a handwritten note on the bottom of the circuit court document, however, that "Per tax office Balance 746.36 – current payment plan." Applicant provided court records which showed the 2010 state tax lien was satisfied on April 5, 2013. (§ 1.e; AE D) She also provided proof of payment for the speeding ticket and a medical account (§§ 1.g, 1.h; AE A and AE C). Applicant's final document (AE F) was a handwritten statement indicating that she was currently in the process of setting up a payment plan with the car creditor for the \$9,854 debt alleged in SOR § 1.a. She was also trying to find the unlisted companies to pay the \$75 and \$50 medical debts alleged in SOR §§ 1.c and 1.i.

Applicant listed on her April 2015 SCA that she had filed all of her Federal and state tax returns, but she had not been able to pay all of the taxes owed. She listed owing 2012 Federal taxes in the amount of \$4,530, and disclosed that she was currently on a repayment plan with the IRS. During her background interview in February 2017, Applicant stated that she did not want to have continuing tax problems, so she made appropriate changes to her payroll. Due to these changes, Applicant did not owe any Federal or state taxes for tax year 2015.⁵

Policies

Positions designated as ADP I and ADP II are classified as "sensitive positions." (See Regulation §§ C3.1.2.1.1.7 and C3.1.2.1.2.3.) "The standard that must be met for . . . assignment to sensitive duties is that, based on all available information, the person's loyalty, reliability, and trustworthiness are such that . . . assigning the person to sensitive duties is clearly consistent with the interests of national security." (See Regulation § C6.1.1.1.)

When evaluating an applicant's eligibility for a position of trust to support a DOD contract, an administrative judge must consider the disqualifying and mitigating conditions in the AG. (Directive, Enclosure 2) These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies the guidelines in a commonsense manner, considering all available and reliable information, in arriving at a fair and impartial 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 national security."

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,

⁵ GE 5, 10.

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 security concern 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 or, 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. . . .

This concern is broader than the possibility that an individual might knowingly compromise sensitive information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting sensitive information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding sensitive information.⁶

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Three are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and

⁶ See ISCR Case No. 11-05365 at 3 (App.Bd. May 1, 2012).

(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.

Applicant failed to pay state taxes owed for at least tax years 2010 and 2012. The 2012 state tax lien is not fully satisfied and she has an additional \$9,979 of unresolved debt. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate financial considerations trustworthiness concerns are provided under AG ¶ 20. The following 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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated 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.

Applicant, as a single parent, experienced unforeseen medical issues, and was underemployed. These were conditions beyond her control. She initiated good-faith payments and fully resolved two debts. She is investigating two unlisted creditors in order to resolve the final two unpaid medical debts in the amount of \$50 and \$75. She has satisfied one tax lien and is currently paying the other tax lien. She is in the process of negotiating a repayment plan for her repossessed vehicle. She has not incurred any additional delinquent accounts and she is living within her means while repaying her debts. Applicant acted responsibly under the circumstances and demonstrated her stated intentions to repay all of her debts. There is sufficient evidence to conclude that future financial problems are under control. AG ¶¶ 20(a), (b), (c) and (d) apply.

Applicant successfully disputed one delinquent account, which was removed from her credit report. She had returned equipment that was not properly documented by the creditor. AG ¶ 20(e) applies.

Applicant's tax issues arose in approximately 2008 after she started working a second, part-time job and wrongfully assumed her employer was deducting taxes from her wages. She filed all of her tax returns timely, but she fell behind on her state taxes due to her repayment of delinquent taxes from a previous year. She has continued paying her taxes on a repayment plan and has fully satisfied taxes owed for 2010. She is currently paying on the 2012 state tax lien. She corrected the tax payroll issue so that she would not owe additional taxes. AG ¶ 20(g) applies.

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(a):

(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 Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Beginning in 2008, Applicant experienced tax problems due to her part-time employer not deducting taxes from her pay. She filed all of the tax returns, but she did not have enough money to pay the taxes in full. Applicant has indicated a willingness to continue to repay her debts. She took responsible action by making changes in the payroll office to prevent future tax problems. Her positive resolution of one state tax lien, continuing payments on the second state tax lien, and the resolution of four debts, it shows that Applicant's financial problems are now under control and currently in the process of being resolved.

Overall, the record evidence leaves me with no questions or doubts as to Applicant's eligibility and suitability for access to sensitive information. For all these reasons, I conclude Applicant has mitigated the financial considerations trustworthiness concerns.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraphs 1.a-1.i: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with interests of national security to grant Applicant eligibility for a public trust position. Eligibility for access to sensitive information is granted.

Pamela C. Benson
Administrative Judge