



**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. 17-02383

Appearances

For Government: David F. Hayes, Esquire, Department Counsel
For Applicant: *Pro se*

June 11, 2018

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

On April 9, 1993, the Composite Health Care Systems Program Office (CHCSPO), the Defense Office of Hearings and Appeals (DOHA), and the Assistant Secretary of Defense for Command, Control, Communications and Intelligence (ASDC3I) entered into a memorandum of agreement for DOHA to provide trustworthiness determinations for contractor personnel employed in Information Systems Positions as defined in DoD Regulation 5200.2-R, Personnel Security Program (Regulation), dated January of 1987.

Applicant submitted her Electronic Questionnaire for Investigations Processing (e-QIP) on November 29, 2016. (Government Exhibit 2.) On July 28, 2017, the Department of Defense (DoD), issued an SOR detailing the trustworthiness concerns under Guideline F regarding Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 21992), as amended (Directive); and

the adjudicative guidelines (AG), effective within the Department of Defense after June 8, 2017.

Applicant answered the SOR on August 23, 2017. She requested that her case be decided by an administrative judge on the written record without a hearing. (Item 1.) On September 7, 2017, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing five Items, was mailed to Applicant and received by her on September 22, 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 his receipt of the FORM. Applicant did not object to Items 1 through 5, and they are admitted into evidence, hereinafter referenced as Government Exhibits 1 through 5. Based upon a review of the pleadings and exhibits, eligibility for a public trust position is denied.

Findings of Fact

Applicant is 46 years old, divorced twice, and has two children. She has an Associate Degree in Applied Science and Electronics, and some additional college credits. She is employed with a defense contractor as a Engineering Technician and is seeking to obtain access to sensitive information in connection with this employment.

Guideline F - Financial Considerations

The Government opposes Applicant's request for access to sensitive information on the basis of allegations set forth in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR:

The Government alleges that Applicant is ineligible for a public trust position because she is financially overextended and at risk of having to engage in illegal acts to generate funds. There are twenty-nine delinquent debts, totaling in excess of \$60,000, set forth in the SOR. This delinquent debt includes back taxes, delinquent child support, medical bills, student loans and other miscellaneous debt. Applicant also failed to timely file her federal and state tax returns for tax years 2010 through 2016. Applicant admitted each of the allegations under this guideline. (Government Exhibit 1.) Applicant's credit report dated March 18, 2017, which includes information from all three credit reporting agencies, reflects that Applicant remains indebted to each of the creditors listed in the SOR. (Government Exhibit 4) Applicant has been working for her current employer since October 2016.

Applicant attributes her delinquent debt to various periods of unemployment: from May 2016 through the end of July 2016; and from February 2012 to August 2012; from October 2010 to the end of April 2011; from May 2009 to September 2009; from July 2008 to the end of April 2007; and from March 2007 to the end of April 2007. She also experienced financial difficulties due to her divorces, the first divorce was in January 2006. The second was in April 2011.

The following delinquent debts and /or taxes are outstanding:

1.a. and 1.b. Applicant states that she failed to file her state and Federal income tax returns for tax years 2010 through 2016. Applicant states that she did not do this unintentionally. She states that she was unable to pay her taxes due to her many lay-offs and she could not afford to file her tax returns. She further states that she has not satisfied the back taxes yet, but she is currently working with the state to re-file and pay the taxes.

1.c. A Federal tax lien in the amount of \$704 for tax year 2012 remains owing. 1.d. A Federal tax lien in the amount of \$33,980 for tax years 2011 remains owing. 1.e. A debt owed to the Attorney General in the amount of \$2,138 remains owing. 1.f. A debt owed to a creditor in the amount of \$114 remains owing. 1.g. A debt owed to a creditor in the amount of \$121 remains owing. 1.h. A debt owed to a creditor in the amount of \$1,361 remains owing. 1.i. A debt owed to a creditor in the amount of \$157 remains owing. 1.j. A debt owed to a creditor in the amount of \$1,368 remains owing. 1.k. a debt owed to a creditor in the amount of \$60 remains owing. 1.l. A debt owed to a creditor in the amount of \$1,678 remains owing. 1.m. A debt owed to a creditor in the amount of \$331 remains owing. 1.n. A debt owed to a creditor in the amount of \$2,836 remains owing. 1.o. A debt owed to a creditor in the amount of \$284 remains owing. 1.p. A debt owed to a creditor in the amount of \$951 remains owing. 1.q. A debt owed to a creditor in the amount of \$985 remains owing. 1.r. A debt in the amount of \$10,725 remains owing. 1.s. A debt owed to a creditor in the amount of \$1,017 remains owing. 1.t. A debt owed to a creditor in the amount of \$1,100 remains owing. 1.u. A debt owed to a creditor in the amount of \$4,370 remains owing. 1.v. A debt owed to a creditor in the amount of \$366 remains owing. 1.w. A debt owed to a creditor in the amount of \$6,731 remains owing. 1.x. A debt in the amount of \$1,766 remains owing. 1.y. A debt owed to a creditor in the amount of \$5,277 remains owing. 1.z. A debt owed to a creditor in the amount of \$4,665 remains owing. 1.aa. A debt owed to a creditor in the amount of \$2,122 remains owing. 1.bb. A debt owed to a creditor in the amount of \$1,206 remains owing. 1.cc. A debt owed to a creditor in the amount of \$4,223 remains owing. 1.dd. A debt owed to a creditor in the amount of \$2,924 remains owing. 1.ee. A debt in the amount of \$3,427 remains owing.

1ff. Applicant was arrested on May 13, 2003 for Theft by Check. Applicant states that this was a check she wrote for \$45 and that she never received the notice from the bank. Applicant states that she paid the check and the bank charges and restitution to have the matter expunged. There is no documentary evidence in the record to corroborate this.

In her answer to the SOR, Applicant states that she plans to set up payment arrangements within the next six months to start working to resolve most of the debts set forth above. In regard to her student loans, she states that she has started the application process to consolidate the loans, and plans to repay the debt through

automatic payroll deductions. The record is void of documentary evidence to show these efforts.

Policies

When evaluating an applicant's national security eligibility and suitability for a public trust position, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluation 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 adjudication process. The administrative judge's over-arching adjudicative goal is a fair, impartial, and commonsense decision. 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 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 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.

Section 7 of Executive Order (EO) 10865 provides: “[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 *also* EO 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 five conditions that could raise security concerns and may be disqualifying in this case:

- (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;
- (e) consistent spending beyond one's means or frivolous or irresponsible spending, which may be indicated by excessive indebtedness, significant negative cash flow, a history of late payments or of non-payment, or other negative financial indicators; 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.

Applicant has a history of financial distress brought on by multiple periods of unemployment, job lay-offs and two divorces. Applicant has been unable to afford to pay her delinquent debts, and thus has not shown a pattern of financial responsibility. Although she states that she is now paying some of her debt, her debt remains excessive, and it will be many years before she is even close to resolving the debt. There is nothing in the record to show that her spending habits have changed or that she will not get into this problem again. These facts establish prima facie support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate those concerns.

The guideline includes several conditions in AG ¶ 20 that could mitigate the security 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, 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;

(f) the affluence resulted from a legal source of income; 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.

It is recognized that circumstances beyond her control, namely, multiple periods of unemployment, job lay-offs and a divorce, negatively affected her finances. However, AG ¶ 20(b) does not provide full mitigation here. Applicant has not provided

documentation to demonstrate that she has acted responsibly under the circumstances, mainly by trying to set up payment plans of some sort to resolve her debts, or to show a good-faith effort of any sort. Furthermore, Applicant has not received financial counseling, and there are no clear indications that her financial problems are under control, or that she will be able to pay her delinquent debt and taxes. Most of the delinquent debts set forth in the SOR remain delinquent. Accordingly, I find against the Applicant under Guideline F (Financial Considerations). The record fails to establish sufficient mitigation of financial trustworthiness concerns under the provisions of AG ¶¶ 20(a) through 20(g).

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a position of trust 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 eligibility for a position of trust 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 a mature adult, who has failed to demonstrate that she can live within her means, budget her income accordingly, and pay her bills in a timely fashion. At this point, her financial problems continue as there is no evidence that they have been resolved.

Overall, the record evidence leaves me with serious doubt as to Applicant's judgment, eligibility, and suitability for a position of trust. She has not met her burden to mitigate the trustworthiness concerns arising under the guideline for Financial Considerations.

Formal Findings

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1:	Against the Applicant.
Subpara. 1.a.	Against the Applicant.
Subpara. 1.b.	Against the Applicant.
Subpara. 1.c.	Against the Applicant.
Subpara. 1.d.	Against the Applicant.
Subpara. 1.e.	Against the Applicant.
Subpara. 1.f.	Against the Applicant.
Subpara. 1.g.	Against the Applicant.
Subpara. 1.h.	Against the Applicant.
Subpara. 1.i.	Against the Applicant.
Subpara. 1.j.	Against the Applicant.
Subpara. 1.k.	Against the Applicant.
Subpara. 1.l.	Against the Applicant.
Subpara. 1.m.	Against the Applicant.
Subpara. 1.n.	Against the Applicant.
Subpara. 1.o.	Against the Applicant.
Subpara. 1.p.	Against the Applicant.
Subpara. 1.q.	Against the Applicant.
Subpara. 1.r.	Against the Applicant.
Subpara. 1.s.	Against the Applicant.
Subpara. 1.t.	Against the Applicant.
Subpara. 1.u.	Against the Applicant.
Subpara. 1.v.	Against the Applicant.
Subpara. 1.w.	Against the Applicant.
Subpara. 1.x.	Against the Applicant.
Subpara. 1.y.	Against the Applicant.
Subpara. 1.z.	Against the Applicant.
Subpara. 1.aa.	Against the Applicant.
Subpara. 1.bb.	For the Applicant.
Subpara. 1.cc.	Against the Applicant.
Subpara. 1.dd.	Against the Applicant.
Subpara. 1.ee.	Against the Applicant.
Subpara. 1.ff.	Against the Applicant.

Decision

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a public trust position for the Applicant.

Darlene Lokey Anderson
Administrative Judge