



**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. 17-02651

Appearances

For Government: Michelle Tilford, Esq., Department Counsel

For Applicant: *Pro se*

06/25/2018

Decision

DAM, Shari, Administrative Judge:

Applicant failed to mitigate the alleged financial and personal conduct trustworthiness concerns. National security eligibility for a position of trust is denied.

Statement of the Case

On August 18, 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, and Guideline E, Personal Conduct. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines (AG) effective within the DOD for SORs issued after June 8, 2017.

On August 28, 2017, Applicant answered the SOR (Answer), and elected to have her case decided on the written record in lieu of a hearing. A complete copy of the Government's File of Relevant Material (FORM), containing seven Items, was mailed to

Applicant on September 28, 2017, and received by her on November 7, 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 receipt of the FORM. Applicant timely submitted a letter and two attachments that I marked as Applicant Exhibit (AE) A. Neither the Government nor Applicant objected to any exhibits. Items 1 through 7 and AE A are admitted into evidence. On February 18, 2018, the Department of Hearings and Appeals (DOHA) assigned this case to me.

Findings of Fact

Applicant admitted all of the allegations contained in the SOR. (Item 2.)

Applicant is 62 years old and divorced twice. She has a grown child. She earned an associate's degree in 1976. She started working for her current employer, a defense contractor, in 2005. In May 2016, she submitted an application for a position of public trust (e-QIP). (Item 3.)

Based on Applicant's admissions and credit bureau reports (CBR) from May 2017, June 2016, and October 2005, the SOR alleged a 1997 Chapter 7 bankruptcy and 23 delinquent debts. They include credit card bills, medical debts, miscellaneous debts, and student loans, which became delinquent between 2010 and 2016 and totaled \$13,438. (Items 4, 5, 6)

Applicant admitted that she needed assistance with managing money. She recently contacted her employer's Employee Assistance Program (EAP). (Answer) She stated that she intend to pay her debts before she retired in four years. She was ashamed of her "poor money management." (AE A.)

Applicant provided proof that she paid two alleged debts. In November 2017, she paid the \$129 debt alleged in SOR ¶ 1.g and the \$132 debt alleged in SOR ¶ 1.u. (AE A) She stated that she made a payment arrangement for another debt, but it is unclear which allegation she is referring to. She did not submit proof that she started making payments on that debt. She did not provide credible documentation that she paid, resolved, or disputed the other 21 debts.

In response to question Section 26: Financial Record of her May 2016 E-QIP, Applicant did not disclose any delinquent debts or charged-off accounts. (Item 3) In her Answer, she explained that the e-QIP was intimidating and that she did not have all of the requested information when she completed it. (Item 2) In her Response to the FORM, she acknowledged that she "exercised poor judgment" when she answered the financial questions and admitted she should have answered affirmatively to the financial question. (AE A)

Policies

When evaluating an applicant's national security eligibility, 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 evaluating 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. According to Directive ¶ E3.1.15, "[t]he 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.

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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

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.

Beginning in 2010, Applicant accumulated delinquent debts that she has been unable or unwilling to fully resolve. Previously, she filed and had debts discharged in bankruptcy in 1997. The evidence raises the above trustworthiness concerns, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could potentially mitigate trustworthiness concerns arising from financial problems:

- (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; and

(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.

Twenty-one of the alleged delinquent debts are ongoing, unresolved, and continue to cast doubt on Applicant's reliability. AG ¶ 20 (a) does not apply. There is no evidence to establish mitigation under AG ¶ 20(b) because Applicant acknowledged that poor management of money caused her financial problems. Although she submitted evidence that she inquired about participating in credit or financial counseling, there is no evidence that she completed it. There are no clear indications that her 21 SOR-alleged debts are under control. The evidence does not establish mitigation under AG ¶ 20(c). Applicant paid and resolved two debts, which demonstrated a good-faith effort to resolve the debts alleged in SOR ¶¶ 1.g and 1.u. AG ¶ 20(d) applies to those debts. Applicant did not provide evidence to substantiate a reasonable basis to dispute the legitimacy of any debts. AG ¶ 20(e) does not apply.

Guideline E: Personal Conduct

AG ¶ 15 explains the trustworthiness concerns relating to personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

AG ¶ 16 describes a condition that could raise a trustworthiness concern and may be disqualifying in this case:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant acknowledged that she knowingly failed to disclose delinquent debts in her 2016 e-QIP. The evidence establishes the above disqualifying condition.

AG ¶ 17 provides a condition that could potentially mitigate trustworthiness concerns raised under this guideline:

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

There is insufficient evidence to establish mitigation under the above condition. The failure to disclose requested information is not a minor offense and casts doubt on Applicant's reliability and judgment.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility 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 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 and Guideline E in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment.

Applicant is a 62-year-old woman who has worked for a defense contractor since 2005. In August 2017, the Government issued a SOR to her alleging a history of delinquent debts and the non-disclosure of them. In September 2017, the Government's FORM specifically informed her that she failed to provide sufficient evidence to mitigate the allegations in the SOR, and gave her 30 days to submit additional information. She provided minimal evidence, addressing the allegations. Overall, the record evidence leaves me with substantial doubt as to Applicant's judgment, reliability, eligibility, and suitability for a position of trust. She failed to meet her burden to mitigate the trustworthiness concerns raised under the guidelines for financial considerations and personal conduct.

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:	AGAINST APPLICANT
Subparagraphs: 1.a through 1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraphs 1.h through 1.t:	Against Applicant
Subparagraph 1.u:	For Applicant
Subparagraphs 1.v-1.x	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a public trust position. National eligibility for access to sensitive information is denied.

SHARI DAM
Administrative Judge