



**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. 17-03501

Appearances

For Government: Nicole L. Smith, Esq., Department Counsel

For Applicant: *Pro se*

07/16/2018

Decision

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings and exhibits, I conclude that Applicant mitigated security concerns regarding personal conduct, but did not mitigate the trustworthiness concerns regarding her financial considerations. Eligibility for a public trust position is denied.

Statement of Case

On November 15, 2017, the Department of Defense (DoD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) detailing reasons why DoD adjudicators could not make the affirmative determination of eligibility to hold a public trust position, and recommended referral to an administrative judge to determine whether eligibility to hold a public trust position should be granted, continued, denied, or revoked. The action was taken under Executive Order (Exec. Or.) 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 DOD 5200.02, *Procedures for the DoD Personnel Security Program* (PSP).

The Security Executive Agent, by Directive 4, *National Security Adjudicative Guidelines* (SEAD 4), dated December 16, 2016, superceded and replaced the September 2006 adjudicative guidelines (AGs) They apply to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. Procedures for administrative due process for contractor personnel continue to be governed by DoD Directive 5220.6, in accordance with the guiding principles governing fair process proceedings in Exec. Or. 10865, and subject to the updated substantive changes in the AGs, effective June 8, 2017.

Applicant responded to the SOR on December 13, 2017, and elected to have her case decided on the basis of the written record. Applicant received the File of Relevant Material (FORM) on March 6, 2018. She did not supplement the record with objections to any of the exhibit items in the FORM. Nor did she provide supplemental information pertaining to her responses.

Summary of Pleadings

Under AG Financial Considerations, Applicant allegedly accumulated delinquent debts exceeding \$58,000. Allegedly, each of these listed debts remains outstanding and unresolved.

Under AG Personal Conduct, Applicant allegedly falsified her electronic questionnaires for investigations processing (e-QIP) executed in August 2016 by omitting all of her delinquent debts. Allegedly, Applicant's omissions reflect omissions of material fact.

In her response to the SOR, Applicant denied all but two of the financial allegations with explanations. She claimed she has been making payments on her student loans covered by SOR ¶¶ 1.a and 1.o, she denied allegations covered by SOR ¶ 1.b for the stated reasons the lender did not complete the paperwork necessary to receive payments through the Veterans Administration (based on her husband's disability status as a disabled veteran). Denying the allegations covered by SOR ¶ 1.n (a federal tax lien entered in 2011 for \$13,165), she claimed the debt is not hers.

Applicant denied the remaining alleged debts. For these listed debts, she claimed a lack of awareness of any of them. She claimed she will pursue payment arrangements with the creditors listed in the SOR. Addressing the allegations covered by SOR ¶ 2.a, Applicant denied falsifying her e-QIP. She claimed she was not aware of any accounts being in delinquent status, and she did not feel that she deceived anyone or did anything wrong when completing her e-QIP.

Findings of Fact

Applicant is a 47-year-old administrative assistant for a defense contractor who seeks eligibility for a public trust position. The allegations covered in the SOR and admitted by Applicant are incorporated and adopted as relevant and material findings. Additional findings follow.

Background

Applicant married her first husband in March 1991 and divorced in September 2003. (Item 3) She has one adult child from this marriage. She remarried in July 2005 and has no children from this marriage. Applicant attended several colleges between August 1989 and June 1999 and earned an associate's degree in office administration in June 1999. (Item 3) She reported no military service.

Applicant was recently employed by her current employer. She reported unemployment between June 2016 and August 2016. (Item 3) Between July 2012 and June 2016, she worked for various employers in administrative positions. (Item 3).

Applicant's finances

Between September 2011 and September 2017, Applicant accumulated a number of delinquent debts. Two of the debts represent sold student loans exceeding \$27,000 that were in deferred status before they became due and payable in 2016. (Items 4-5) Her other listed debts are comprised of medical and consumer debts that have been reported to be in delinquent status in her most recent credit reports. (Items 4-5)

While Applicant has disputed most of the listed SOR debts, she provided no documented evidence to corroborate and substantiate the reasonable basis of her disputes. Nor did she provide any documented evidence to demonstrate progress in contacting the listed creditors to verify the listed debts and make payment arrangements where warranted. By all evidentiary accounts, these listed medical and consumer debts are presumed to belong to Applicant and remain unpaid and unresolved.

E-QIP omissions

Asked to complete an e-QIP in August 2016, Applicant omitted all of the debts listed in the SOR under ¶¶ 1.aa-1.kk. She denied any deliberate attempts to omit the listed debts, claiming the only debts she acknowledged from listed debts in the SOR were her student loans. And for these loans, she believed they were still in deferment status. (Item 2) She assured she was not aware of any other delinquent accounts that were referred for collection and denied having any federal tax lien. Without more to establish motive or specific intent to omit these debts from her e-QIP, no inferences of falsification can be attributed to Applicant in connection with her omissions of accounts reported to be delinquent in her credit reports.

Policies

The SEAD 4, App. A, lists guidelines to be used by administrative judges in the decision-making process covering trustworthiness cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect privacy information. These guidelines include conditions that could raise

a concern about trustworthiness access and may be disqualifying (disqualifying conditions), if any, and many of the conditions that could mitigate trustworthiness concerns.

These guidelines must be considered before deciding whether or not eligibility to hold a public trust decision should be granted, continued, or denied. The guidelines do not require administrative judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision. Each of the guidelines is to be evaluated in the context of the whole person in accordance with App. A, ¶ 2(c).

In addition to the relevant AGs, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in App. A, ¶ 2(d) of the AGs, which are intended to assist the judges in reaching a fair and impartial commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person. Based on her credit reports, the listed debts are presumed to belong to her and are accurately reported.

The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable trustworthiness risk. The following App A, ¶ 2(d) factors are pertinent: (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.

Viewing the issues raised and evidence as a whole, the following individual guidelines are pertinent in this case:

Financial Considerations

The Concern: Failure or inability 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 of dependence. An individual who is financially overextended is at greater risk of having to engage in illegal acts or otherwise questionable acts to generate funds. . . . AG ¶ 18.

Personal Conduct

The Concern: 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 ¶ 15.

Burden of Proof

By virtue of the principles and policies framed by the AGs, a decision to grant or continue an applicant's eligibility to hold a sensitive position may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a commonsense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a sensitive position depends, in large part, on the relevance and materiality of that evidence. *See United States, v. Gaudin*, 515 U.S. 506, 509-511 (1995).

As with all adversarial proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) it must prove by substantial evidence any controverted facts alleged in the SOR, and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain eligibility to hold a public trust position. The required materiality showing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused privacy information before it can deny or revoke a security clearance. Rather, the judge must consider and weigh the cognizable risks that an applicant may deliberately or inadvertently fail to safeguard privacy information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the evidentiary burden shifts to the applicant for the purpose of establishing his or her trustworthiness through evidence of refutation, extenuation, or mitigation. Based on the requirement of Exec. Or. 10865 that all security clearances and related eligibility to hold sensitive positions be clearly consistent with the national interest, the applicant has the ultimate burden of demonstrating his or her clearance eligibility. "[Trustworthiness] determinations should err, if they must, on the side of denials." *See Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

Analysis

Trustworthiness concerns are raised over Applicant's accumulation of delinquent student loans, medical, and consumer debts. These debts have not been settled or otherwise resolved and remain outstanding.

Holding a public trust position involves the exercise of important fiducial responsibilities, among which is the expectancy of consistent trust and candor in protecting and guarding personally identifiable information (PII). DOD Manual 5200.02, which incorporated and canceled DOD Regulation 5200.2-R, covers both critical-sensitive and non-critical sensitive national security positions for civilian personnel. See 5200.02, ¶ 4.1a(3)(c)3. Positions designated as Category I and Category II automated data processing positions (ADP) were previously classified as critical-sensitive and non-critical sensitive positions under DOD Regulation 5200.2-R, *Personnel Security Program*, (Jan. 1987, as amended) (the Regulation), ¶¶ C3.1.2. 1.1.7. Other positions that did not meet ADP criteria were classified as non-sensitive positions under the Regulation.

Definitions for critical-sensitive and non-critical sensitive positions provided in 5200.02, ¶ 4.1a (3)(c) contain descriptions similar to those used to define ADP I and II positions under DoD Regulation 5200.2-R. (32 C.F.R. § 154.13 and Part 154, App. J) ADP positions are broken down as follows in 32 C.F.R. § 154.13 and Part 154, App. J): ADP I (critical-sensitive positions covering the direction, design, and planning of computer systems) and ADP II (non-critical-sensitive positions covering the design, operation, and maintenance of computer systems). Considered together, the ADP I and II positions covered in DoD Regulation 5200.2-R refine and explain the same critical-sensitive and non-critical-sensitive positions covered in DoD Manual 5200.02, ¶ 4.1a (3)(c) and are reconcilable as included positions in 5200.02.

So, although ADP trustworthiness positions are not expressly identified in DoD Manual 5200.02, they are implicitly covered as non-critical sensitive positions that require “access to automated systems that contain active duty, guard, or personally identifiable information or information pertaining to Service members that is otherwise protected from disclosure by DoD 5400.11-R. . . .” DoD 5200.02, Sec. 4.1, ¶ 3(c). See DoD Directive 5220.6 ¶¶ D5(d) and D8. By virtue of the implied retention of ADP definitions in DoD Manual 5200.02, ADP cases continue to be covered by the process afforded by DoD 5220.6.

Financial concerns

Applicant’s accumulation of delinquent student loan, medical, and consumer debts collectively warrant the application of three of the disqualifying conditions (DC) of the Guidelines: DC ¶¶ 19(a), “inability to satisfy debts;” 19 (b), “unwillingness to satisfy debts regardless of the ability to do so,” and 19(c), “a history of not meeting financial obligations.”

Applicant’s pleading admissions with respect to two of the allegations negate the need for any independent proof (see *McCormick on Evidence*, § 262 (6th ed. 2006)). Each of Applicant’s delinquent debts are fully documented in her credit reports. See ISCR Case 03-01059 at 3 (App. Bd. Sep. 24, 2004).

Financial stability in a person cleared to protect privacy information is required precisely to inspire trust and confidence in the holder of a non-critical sensitive position. While the principal concern of a non-critical sensitive position holder's demonstrated financial difficulties is vulnerability to coercion and influence, judgment and trust concerns are implicit in cases involving debt delinquencies.

Applicant provided no documentary evidence of her addressing her reported delinquent student loan, medical, and consumer debts, despite afforded opportunities to do so, both before and after the issuance of the FORM. Without substantiating evidence of her paying or otherwise resolving her student loan, medical, and consumer debts, conclusions must be drawn that she has not addressed her payment obligations of the listed debts in the SOR.

In evaluating Guideline F cases, the Appeal Board has stressed the importance of a "meaningful track record" that includes evidence of actual debt reduction through voluntary payment of debts. ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted) In Applicant's case, her lack of demonstrated responsible efforts in addressing or otherwise resolving her delinquent student loan and consumer debts with the income resources available to her preclude her from meeting public trust position eligibility criteria at this time. See ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. Nov. 29, 2005).

Personal Conduct

Allegations of Applicant's falsifying her 2016 e-QIP by omitting her listed SOR debts were never backed by sufficient evidence of motive and specific intent to substantiate the allegations. So, while credibility assessments are more difficult to make without a physical appearance of Applicant, her explanations under the circumstances are sufficient to avert conclusions of falsification.

Whole-Person Assessment

Whole-person assessment is unfavorable to Applicant. She has shown insufficient progress to date in addressing her student loans and other delinquent debts to merit enough positive overall credit to mitigate financial concerns. While she warrants credit for her educational achievements and work history in general, her overall efforts are not enough to overcome historical trust and judgment issues associated with her accumulation of delinquent student loan, medical, and consumer debts.

Overall, Applicant's actions to date in addressing her finances are insufficient to demonstrate solid probative evidence of restored financial responsibility and judgment to overcome reasonable doubts about her trustworthiness, reliability, and ability to protect classified information. See AG ¶ 18. Unfavorable conclusions are warranted with respect to the allegations covered by SOR ¶¶ 1.a-1.kk.

By contrast, favorable conclusions are warranted with respect to the allegations covered by SOR ¶ 2.a of the personal conduct guideline based on the absence of probative evidence of motive and specific intent to falsify her e-QIP. Eligibility to hold a security clearance under the facts and circumstances of this case is consistent with the national interest.

Formal Findings

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact, conclusions, conditions, and the factors listed above, I make the following formal findings:

GUIDELINE F (FINANCIAL CONSIDERATIONS): AGAINST APPLICANT

Subparagraphs 1.a-1.kk:	Against Applicant
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GUIDELINE E (PERSONAL CONDUCT): FOR APPLICANT

Subparagraph 2.a:	For Applicant
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Conclusions

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 Applicant's eligibility to hold a public trust position. Eligibility to hold a public trust position is denied.

Roger C. Wesley
Administrative Judge

