



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



In the matter of:

)
)
)
)
)
)
)
)
)
)

ADP Case No. 17-04256

Applicant for Public Trust Position

Appearances

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

For Applicant: *Pro se*

10/10/2018

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 December 6, 2016, Applicant submitted a security clearance application (SCA). On January 3, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR), detailing trustworthiness concerns under Guidelines 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 June 8, 2017.¹

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.”)

Applicant answered the SOR on March 23, 2018, and she admitted SOR ¶¶ 1.a - 1.c. She denied the final two SOR allegations, ¶¶ 1.d, and 1.e. Applicant attached additional documentation.² Applicant requested that her case be decided by an administrative judge on the written record in lieu of a hearing. On April 16, 2018, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing nine Items, was mailed to Applicant. 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. On May 9, 2018, she responded to the FORM and submitted additional evidence. Applicant did not object to the Government's Items. Hence, Items 1 through 9 are admitted into evidence without objection. Applicant's FORM response is also admitted as Applicant Exhibit (AE) A. The documentation she submitted with her FORM response, are also admitted into evidence without objection as AE B and AE C. DOHA assigned the case to me on July 30, 2018.

Findings of Fact

Applicant is 38 years old and has been employed by a DOD contractor as a case manager since October 2016. She attended some college courses, but did not obtain a college degree. Applicant was married in January 1999 and widowed in August 1999. Her husband was an active duty Marine. Applicant has been cohabitating with an individual since April 2014. She is the mother of two teenage daughters. She is requesting a position of trust with the government. (Item 5)

The SOR alleges that Applicant has five delinquent accounts, to include an overpayment of Social Security benefits. The combined total of her delinquent accounts is approximately \$15,557. In her March 2016 SCA, Applicant failed to disclose any adverse credit information under the financial section, as required. These debts appear in her two credit bureau reports and a social security statement. (Items 1, 6, 7, 8)

During Applicant's April 2017 background interview, she disclosed that she was unemployed from December 2006 to December 2007. She was supported by her Veterans Administration (VA) benefit and child support. She was also unemployed from January 2010 to August 2012. During this time, she attended college part-time, and stayed home with her young children. She was supported by VA benefits and child support. (Item 9)

In approximately 2011, Applicant began to experience financial difficulties when her child support was lowered, and later, the child-support payments stopped altogether. Her daughters' father quit his job in late 2011, and did not send child support, or pay his share of childcare expenses, for an extended period of time. During this time, Applicant was living in California earning \$33,000 annually as a contractor for the Wounded Warrior Regiment (WWR). Applicant made a decision to move to another state to improve her financial position. She was able to accept a better paying contractor position with the

² Applicant's additional documentation is included with her Answer to the SOR, see Item 2.

WWR. Applicant also took multiple financial management classes to prevent herself from sinking into another challenging financial position in the future. (Item 9; AE A)

SOR ¶ 1.a alleges a deficiency balance due on a repossessed car in the amount of \$7,017. Applicant admitted this debt and was unaware that she owed a balance after the creditor “charged-off” the debt. After learning that she is still responsible for a charged-off debt, Applicant contacted the creditor. She is willing to pay \$50 to the creditor each month, if the creditor allowed, until the balance is satisfied or settled. (Item 4)

Applicant admitted owing the Social Security Administration (SSA) approximately \$6,873, due to an overpayment of benefits. (SOR ¶ 1.b) The current balance of the account is now \$1,714. She has reduced this account by more than \$5,000. Applicant has scheduled a meeting with SSA to see if she is eligible for a waiver for the remainder of the debt. (Item 4; AE A, B)

SOR ¶ 1.c alleges an unpaid medical account in the amount of \$472. In January 2018, Applicant paid this account in full. (Item 4)

SOR ¶¶ 1.d and 1.e allege past due accounts for credit cards in the total amount of \$1,195. Applicant initially denied both of the accounts because they do not appear on her current credit report. However, Applicant has contacted both creditors requesting a current statement of her account. One of the creditors informed her that they do not have an account under her social security number other than her current card account, which is in good standing. She attached a current credit report which disclosed the creditor (¶ 1.d) and a zero balance. The creditor listed in SOR ¶ 1.e, was not listed on the credit report. Applicant indicated that if she received current statements from the creditors, she is willing to repay the debts. (Item 4; AE A, C)

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, 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. . . .

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

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

The record evidence shows that Applicant owes over \$15,500 for delinquent accounts. The above disqualifying conditions apply.

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; 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.

Applicant provided mitigating information, such as periods of unemployment, reduction in her child support, and her daughters' father failing to pay child support for an extended period of time. In addition, she earned \$33,000 annually in state with a high cost-of-living. Applicant acted responsibly by moving to a state where the cost of living is lower, and due to her relocation, she was able to accept a better paying position as a contractor. Applicant has been able to pay down her SSA debt by approximately \$5,160 and fully satisfied her medical debt of \$472. AG ¶¶ 20(a), (b) and (d) apply.

AG ¶¶ 20(c) partially applies. Applicant took financial management classes, but did not submit any verifiable records. Nonetheless, she has demonstrated that she can systematically pay her debts while not incurring additional debt.

AG ¶¶ 20(e) partially applies. Applicant did not provide sufficient documentation of any legitimate dispute she has initiated with her creditors. However, she is currently in the process of attempting to get the SSA to waive the remaining balance of her debt.

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(d), 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 pertinent 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(d) were addressed under those guidelines, but some warrant additional comment.

Applicant's underemployment, unemployment, and the reduction/loss of child support, all contributed to her financial difficulties. She has maintained employment since August 2012, and moved across the country to live in a location with lower cost-of-living expenses. She accepted a better paying contractor position with her employer, and she has taken financial management classes to improve her financial decisions. Applicant's debt owed to the SSA has been reduced by more than \$5,000, and she also satisfied an outstanding medical debt. She is working with her creditors to arrange payment plans to resolve her other delinquent accounts. Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a position of trust with the government. For all these reasons, I conclude Applicant has mitigated the Guideline F (Financial Considerations) 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.e: 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