



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



In the matter of:)
)
) ADP Case No. 17-04174
)
)
Applicant for Public Trust Position)

Appearances

For Government: Chris Morin, Esq., Department Counsel
For Applicant: *Pro se*

12/03/2018

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the financial considerations trustworthiness concerns. Eligibility for access to sensitive information is denied.

Statement of the Case

On December 21, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reason (SOR) to Applicant 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); and the adjudicative guidelines (AG) effective within the DOD on June 8, 2017.

Applicant answered the SOR on February 5, 2018, and elected to have her case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's file of relevant material (FORM), and Applicant received it on April 10, 2018. The Government's evidence is identified as Items 1 through 7. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. She provided a timely response and

submitted documents marked as Applicant Exhibits (AE) A through I. There were no objections to any exhibits, and they are all admitted into evidence. The case was assigned to me on June 29, 2018.

Findings of Fact

Applicant admitted the SOR allegations in ¶¶ 1.a through 1.g and 1.i and 1.j. She denied the SOR allegation in ¶ 1.h. Applicant's admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact.

Applicant is 46 years old. She earned a bachelor's degree in 1994 and a master's degree in 1996. She married in 2000 and divorced in 2010. She remarried in 2012 and divorced in 2014. She has two children, ages 17 and 13 years old.

Applicant disclosed one period of unemployment from June 2015 to December 2015. She worked from 1996 to the present at various jobs. From February 2007 to August 2007, she stayed home with her children before returning to work. She has held a part-time job from December 2015 until the present. She worked full time from January 2016 to April 2016. During Applicant's March 2017 background investigation, she updated her employment status and disclosed that she has been employed full time since November 2016.¹

In Applicant's answer to the SOR, she attributed her financial problems to becoming responsible for some marital debts after her divorce that she was unable to pay as a single mother with one income. She did not list which debts were from her divorce. She explained that she filed a Chapter 13 bankruptcy in January 2015, which was dismissed in September 2015, because she was unable to make the scheduled payments when she became unemployed. She stated that she was currently employed and able to meet monthly expenses and support her children, but she did not have sufficient income to pay the delinquent debts alleged in the SOR.²

During Applicant's background investigation in March 2017, she acknowledged that after her bankruptcy was dismissed, she still owed the debts listed in the court documents. She told the investigator that when she was able, she intended to set up payment plans with creditors for all outstanding debts. She was unable to provide a future date when these debts would be addressed.³

The debts alleged in the SOR are corroborated by Applicant's admissions, bankruptcy documents, and credit reports from December 2016 and October 2017.⁴

¹ Items 3, 4.

² Item 7.

³ Item 4.

⁴ Items 2, 3, 4, 5, 6, 7.

In Applicant's response to the FORM, she provided a document to show that the collection account alleged in SOR ¶ 1.e (\$1,303-current balance \$1,701) was paid through an involuntary seizure of Applicant's 2017 state tax refund.⁵ This debt is resolved.

Applicant denied the allegation in SOR ¶ 1.h (\$1,694) a judgment entered in April 2017. In her response to the FORM, she provided a document to show that this debt was a state tax lien from 2013. She also provided a document to show the lien was satisfied in April 2018.⁶ This debt is resolved.

Applicant stated in her answer to the SOR and response to the FORM that she was paying the collection account in SOR ¶ 1.c (\$1,898). The account is still in collection status. Applicant's document confirms that she made monthly payments for different amounts toward the debt since April 2017 and the current balance owed as of March 2018 was \$1,773. She provided a receipt to show a payment of \$25 was made in April 2018.⁷ This debt is being resolved.

Applicant stated in her response to the FORM that she is unable to pay the debts alleged in SOR ¶¶ 1.a (\$7,777); 1.b (\$1,949); 1.d (\$1,788), 1.f (\$1,184); 1.g (\$398) and 1.i (\$3,727) that were part of her dismissed bankruptcy. She stated she is living within her means and attempting to improve her credit and finances. She recently paid other credit cards that were not alleged. She considers herself a hard worker and good mother, but acknowledges she made some poor financial decisions.⁸

Policies

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

According to AG ¶ 2(a), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge

⁵ AE D, I.

⁶ AE E, F, I.

⁷ AE B, C, I.

⁸ AE I.

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.”

Directive ¶ E3.1.14, states that the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states that 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 trustworthiness concern relating to the guideline 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 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.

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.⁹

AG ¶ 19 provides conditions that could raise trustworthiness concerns. The following is potentially applicable:

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

Applicant had numerous delinquent debts that began accumulating several years ago that she is unable to pay or resolve. She filed Chapter 13 bankruptcy in January 2015, which was dismissed in September 2015. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate trustworthiness concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 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, 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; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant attributed her financial problems to being a single mother, supporting two children, and being responsible for marital debts. Her bankruptcy was dismissed when she was unemployed and could not make the scheduled payments. During her background interview she stated she intended to pay the delinquent debts. In her answer to the SOR and response to the FORM, she stated she is unable to pay her delinquent debts. Her debts are recent and ongoing. She has not established a reliable

⁹ See ISCR Case No. 11-05365 at 3 (App.Bd. May 1, 2012).

financial track record. There is insufficient evidence to conclude future financial problems are unlikely to recur. AG ¶ 20(a) does not apply.

Applicant's financial delinquencies are the result of being a single mother and responsible for marital debts. These factors were beyond her control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. She did not provide a detailed explanation as to which debts related to her divorce; what debts were her ex-husband's responsibility; information about her current finances, or any other action she took to resolve these debts. She told the government investigator that she intended to pay the debts in the future, but in her response to the FORM she said she is unable to pay them. The evidence is insufficient to show she has acted responsibly regarding her delinquent debts. AG ¶ 20(b) partially applies.

Applicant did not provide evidence that she has had financial counseling or has a budget to show responsible financial management. There is insufficient evidence to conclude that there are clear indications that her financial problems are being resolved or are under control. AG ¶ 20(c) does not apply.

Applicant did not provide sufficient evidence of good-faith efforts to resolve her debts. She does not intend to pay the remaining delinquent debts alleged in the SOR. The debt in SOR ¶ 1.e was paid, albeit through an involuntary seizure of her state tax refund. Although the debt is resolved, this does not constitute a good-faith effort to repay the creditor. She has made some payments to the creditor in SOR ¶ 1.c. While there is no documentation from the creditor confirming a payment plan or that the account is no longer in collection, there is evidence showing that she is making an attempt to resolve the debt. The debt in SOR ¶ 1.h is satisfied. AG ¶ 20(d) applies to SOR ¶¶ 1.c and 1.h.

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(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.

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.

Applicant is a 46-year-old college-educated single mother. She accumulated delinquent debts after her divorce. She failed to provide specific information as to which debts were attributable to her divorce. She failed to provide information about her current finances. One of her debts was paid through an involuntary seizure of her state tax refund. She filed a Chapter 13 bankruptcy, but it was dismissed, when she could not make the scheduled payments. She did not provide sufficient evidence of her efforts to responsibly resolve her delinquent debts. Applicant stated she is unable to pay the past delinquent debts alleged. Although three of the alleged debts are resolved or being resolved, her finances remain a concern. Applicant has not established a reliable financial track record. There is insufficient evidence to overcome the trustworthiness concerns raised under Guideline F, financial considerations.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a-1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraphs 1.f-1.g:	Against Applicant
Subparagraphs 1.h:	For Applicant
Subparagraphs 1.i-1.j:	Against Applicant

Conclusion

In light of all of the circumstances, it is not clearly consistent with the national interest to grant Applicant eligibility for a public trust position. Eligibility for access to sensitive information is denied.

Carol G. Ricciardello
Administrative Judge