



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



In the matter of:

Applicant for Public Trust Position

)
)
)
)
)

ADP Case No. 17-04321

Appearances

For Government: David F. Hayes, Esq., Department Counsel

For Applicant: *Pro se*

09/21/2018

Decision

CREAN, THOMAS M., Administrative Judge:

Based on a review of the pleadings, eligibility for a public trust position is denied. Applicant did not present sufficient credible information to mitigate financial trustworthiness concerns.

Statement of the Case

On March 1, 2017, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) to obtain eligibility for a public trust position to work for a defense contractor. (Item 2) Applicant was interviewed by an agent from the Office of Personnel Management (OPM) on August 1, 2017. (Item 3, Summary of Personal Subject Interview (PSI)) After reviewing the results of the background investigation, the Department of Defense Consolidated Adjudication Facility (DOD CAF) could not make the affirmative findings required to grant Applicant access to sensitive information.

On January 9, 2018, the DOD CAF issued Applicant a Statement of Reasons (SOR) for financial trustworthiness concerns. DOD took the action under DOD Dir. 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, Security Executive Agent directive 4, and the adjudicative guidelines (AG) effective "for all covered individuals" on or after June 8, 2017.

Applicant answered the SOR on February 2, 2018. She admitted nine allegations (SOR 1.b -1.g, and 1.p to 1.r), denied nine allegations (SOR 1.a, and 1.h – 1.o). She requested a decision on the record in lieu of a hearing. (Item 1) Department Counsel submitted the Government's written case on March 16, 2018. (Item 6). Applicant received a complete file of relevant material (FORM) on March 30, 2018, and was provided the opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant provided additional information in response to the FORM on April 25, 2018. (Item 7) On May 2, 2018, Department Counsel noted that he had no objection to consideration of the additional material. (Item 8) I was assigned the case on June 13, 2018.

Procedural Issues

Applicant was advised in the FORM that the summary of the PSI (Item 3) was not authenticated and could not be considered over her objection. She was further advised that she could make any corrections, additions, or deletions to the summary to make it clear and accurate, and could object to the admission of the summary as not authenticated by a Government witness. She was additionally advised that if no objection was raised to the summary, the Administrative Judge could determine that she waived any objection to the admissibility of the PSI summary. Applicant did not raise any objection to consideration of the PSI when she responded to the FORM. Since there is no objection by Applicant, I will consider information in the PSI in my decision.

Findings of Fact

After a thorough review of the pleadings, I make the following findings of fact. Applicant is 52 years old. She received a bachelor's degree in September 2009, and has additional college credits from the same on-line university where she earned her bachelor's degree. She has been employed as a psychiatric technician for a DOD contractor at a military hospital since June 2012. Prior to that employment, she worked for a civilian psychiatrist from June 2010 until January 2012. She was unemployed from January 2012 to May 2012. She received unemployment compensation and attended school or was a stay-at-home mother when unemployed. Applicant married in January 2000 and divorced in May 2012. She has been living with a cohabitant since December 2016. She has four children, only one residing with Applicant. She was initially granted access to sensitive information in September 2012. (Item 2; Item 3)

The SOR alleges and credit reports (Item 4, dated April 7, 2017, and Item 5, dated November 28, 2017) confirm the delinquent debts in the SOR. The alleged SOR delinquent debts consist of ten past-due student loans totaling approximately \$18,000 (SOR 1.a, 1.f, and 1.h to 1.o); a charged-off car loan for \$3,762 (SOR 1.b); three credit card debts either charged-off or in collection for \$2,964 (SOR 1.c), \$1,905 (SOR 1.d), and \$1,524 (SOR 1.e); a judgment on a credit card debt for \$2,724 (SOR 1.g); two medical accounts in collection for \$6,268 (SOR 1.p) and \$3,977 (SOR 1.q); and a television cable service debt for \$274 (SOR 1.r). The amount of the delinquent debt as reported in the SOR is approximately \$41,400. It is noted that documents provided by Applicant indicate that her delinquent student loans are in excess of \$92,000.

Applicant listed the delinquent automobile loan (SOR 1.b) and two credit card debts (SOR 1.c and 1.e) on her e-QIP noting that she was unable to pay the debt because the financial part of her divorce was not settled. Applicant reported in the PSI that when she and her husband divorced, he took the car that had been paid and left her with two cars that required payments. She struggled to make the payments. After missing some payments, the car noted in SOR 1.b was repossessed. She did not provide any information on her efforts to contact the creditor or make payment arrangements. As to the credit cards, Applicant stated that she was making payments on the cards but became overwhelmed with other expenses. Paying the credit cards was not a priority. She prioritized the purchase of necessity (home, food, utilities) over making payments on the delinquent debts. Applicant did not present documents to establish that she has a plan to pay these debts, or any efforts she made to pay the debts.

Applicant told the security investigator in the PSI that between 2011 and 2013 she consolidated her student loans in an effort to make payment easier. Applicant thought all of her student loans were consolidated, but learned some were not consolidated. She applied to have these loans consolidated with the other student loans. She also applied for and received approval for her student loan payments to be income-based and she is not required to make payments at this time. She also applied for loan forgiveness but has not received any response to her request. Applicant did not present any documents to verify her information.

Applicant told the security investigator that she has no knowledge of many of the delinquent debts in the SOR. She did note the medical account at SOR 1.q was when she had an emergency room visit and did not have health insurance. She told the security investigator that she would look into all of the unknown accounts, and that she plans to pay her debts when financially able. Her student loans are her first priority. She stated that she is current with all of her other everyday financial obligations. She told the security investigator that she no longer has any credit cards. The security investigator told Applicant that she could provide any documents concerning her debts. She stated that she would attempt to gather such financial documents. Applicant has not presented sufficient documents to verify her claims.

Applicant in her reply to the SOR provided documents to verify that all of her student loans were consolidated with the student loan servicing company noted at SOR 1.f. There were also other student loans listed for graduate study. The total amount of the student loan that were consolidated is approximately \$92,000. The account history provided with her reply shows some small payments on the student loans made in 2017 and early 2018. While Applicant did not present other payment information, she noted that the consolidated loans were deferred because she is in school. Applicant did not present documents establishing and verifying that the student loans are in deferment. She also repeated that she was waiting for a decision on the equitable distribution of the marriage debts with her husband. She did not provide any documents to verify the status of the action to equitably distribute the marital debt. It is noted that the divorce was in 2012 and the property issues had not been resolved according to Applicant six years later. She stated her intention to resolve her debts when the equitable distribution

of the marital property was completed. She did not present any receipts for payments made on any of her debts. She alleges that the debts are SOR 1.c and 1.g are duplicate debts. I find that these debts are duplicates since they are for a similar amount to the same collection company.

In her reply to the FORM (Item 7), Applicant did not provide any documents but wrote that she understood she had debts and was trying to pay a little at a time. Her husband had been the sole financial provider in the family and she was unprepared when they separated. She intends to pay her debts but can only afford small payments and one debt at a time. She was still waiting for a court date to determine the equitable distribution of the marital property. She requested that the marital debts in her name be shared with her former husband. Since the divorce was granted, she has struggled to provide for her four children and her grandchild. She has not received alimony and only one child support payment. Her former husband pays the mortgage but she struggles to pay the utilities, feed the children, and provide necessities. She chooses to provide for her children rather than pay on debts acquired during the marriage. She is trying to resolve her debt but she will not be able to pay everything until the equitable distribution of the marital property is completed.

Policies

When evaluating an applicant's suitability for a public trust position, the administrative judge must consider the disqualifying and mitigating conditions in the AG. 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 over-arching adjudicative goal is a fair, impartial and common sense 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 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 access to [sensitive information] 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. 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 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 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

Financial Considerations

There is a trustworthiness concern for a failure or inability to live within one's means, satisfy debts, and meet financial obligations, and may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulation, raising questions about an individual's reliability, trustworthiness, and ability to protect sensitive information. An individual who is financially overextended is at risk of having to engage in illegal or otherwise questionable acts to generate funds (AG ¶ 18). Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligation to protect sensitive information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a position of trust. An applicant is not required to be debt free, but is required to manage her finances in such a way as to meet her financial obligations.

Adverse information in credit reports can normally meet the substantial evidence standard to establish financial delinquency. Applicant has significant unresolved consumer and student loan debts. Her delinquent debts are established by credit reports, her admissions in the e-QIP, and her response to the SOR. The debts pose a trustworthiness concern raising the following Financial Consideration Disqualifying Conditions under AG ¶ 19:

- (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 obligation.

I considered the following Financial Considerations Mitigating Conditions under AG ¶ 20:

- (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 problems 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 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 the overdue creditors or otherwise resolve debts.

The mitigating conditions only partially apply. Applicant incurred debt when she and husband divorced in 2012, and she did not have his income to assist her in paying her debts. These conditions are beyond her control. Her husband had been the primary source of income when they were married. Except for small payments on her student loans, she did not provide any documents to show that she has a plan to pay her debts and has taken steps to implement that plan. Applicant did not present information that she contacted her creditors to arrange payment plans, or that she received financial counseling. Applicant's debts are numerous and recent, and they were incurred under circumstances making recurrence possible. The only information Applicant provided was that she is waiting for a decision on the equitable distribution of the marital debts with her husband. It is likely she will continue to accumulate delinquent debt since she is still providing for her children. She presented no information on her plans to live within her means. There is insufficient evidence to conclude that Applicant has a reasonable and adequate plan to resolve her financial problems and that she is ready and willing to adhere to a payment plan. Thus, Applicant did not present evidence of a good-faith effort to pay delinquent debts, and there are no indication that Applicant's financial problems will be resolved within a reasonable period.

The record does not contain corroborating or substantiating documentation of Applicant's efforts to mitigate and resolve her financial problems. In requesting an administrative determination, Applicant chose to rely on the written record. She did not provide sufficient evidence to supplement the record with relevant and material facts regarding her circumstances, articulate her position, and mitigate the financial trustworthiness concerns. She did not provide adequate credible information regarding her efforts to address her delinquent debts. She did not present a sufficiently credible plan of how and when she planned to resolve her debts. Applicant's lack of reasonable payments on her debts, and her failure to provide information on a responsible plan to pay her debts shows that she has not acted reasonably and honestly with regard to her financial duties and obligations. I find that she did not act responsibly and did not make a good-faith effort to pay her debts. Her financial problems still cast doubt on her current

reliability, trustworthiness and good judgment. Applicant's information is not sufficient to establish that she acted responsibly under the circumstances and that her finances are under control. In short, the information provided by Applicant contains insufficient evidence to determine that Applicant paid, arranged to pay, settled, compromised, or otherwise resolved her debts. Applicant has not mitigated financial trustworthiness concerns.

Whole-Person Analysis

Under the whole-person concept, the administrative judge must evaluate an applicant's trustworthiness eligibility by considering the totality of the applicant's conduct and all relevant circumstances. An 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 a trustworthiness clearance 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. Applicant is required to show that she has a credible and reasonable plan to resolve her financial problems and that she has taken significant action to implement that plan. Applicant did not establish a reasonable plan to resolve her delinquent debts. She did not show that she has taken sufficient actions to implement the plan, and she did not establish that she is managing her financial obligations within her resources. Accordingly, she did not establish that she can be trusted to manage sensitive information. Overall, the record evidence leaves me with questions and doubts pertaining to Applicant's judgment, reliability, trustworthiness, and her eligibility and suitability for a position of trust. For all these reasons, Applicant's eligibility for a public trust position is denied.

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 (Duplicate)

Subparagraphs 1.d - 1.r:

Against Applicant

Conclusion

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

THOMAS M. CREAN
Administrative Judge