



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



In the matter of:)
)
 [REDACTED]) ADP Case No. 18-00109
)
 Applicant for Public Trust Position)

Appearances

For Government: Mary Margaret Foreman, Esq., Department Counsel
For Applicant: *Pro se*

09/20/2018

Decision

HESS, Stephanie C., Administrative Judge:

This case involves trustworthiness concerns raised under Guideline F (Financial Considerations.) Applicant has not paid or otherwise resolved any of her delinquent debts. Eligibility for access to sensitive information is denied.

Statement of the Case

Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) on March 15, 2017. On January 26, 2018, the Department of Defense (DOD) sent her a Statement of Reasons (SOR), citing trustworthiness concerns under Guideline F. The DOD acted under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective June 8, 2017.

Applicant received the SOR, submitted her Answer on February 23, 2018, and requested a decision on the record without a hearing. Department Counsel submitted the Government's written case on April 11, 2018. A complete copy of the file of relevant material (FORM), which included Government Exhibits (GX) 1 through 7, was sent to Applicant on April 12, 2018. She received the FORM on April 24, 2018, and was given an

opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. She did not respond.¹ The case was assigned to me on July 27, 2018.

Findings of Fact

The SOR alleges 21 delinquent debts totaling approximately \$13,410. These debts include 10 medical debts totaling \$4,847, a \$4,457 past-due balance for a repossessed vehicle, and a delinquent student loan. In her Answer, Applicant admitted SOR ¶¶ 1.f, 1.q, 1.r, and 1.u, which total \$2,576. She denies the remaining debts, stating that she disputes them. She provided copies of letters dated February 15, 2017, to each of the creditors of the SOR debts. Her admissions are incorporated in my findings of fact.

Applicant is a 30-year-old registered nurse employed on a part-time as-needed basis by a defense contractor since April 2017. She received her associate's degree in 2014 and her bachelor's degree in 2016. She took courses towards a second bachelor's degree from December 2016 until April 2017. Applicant was unemployed from June 2014 until March 2017, while a full-time student. This is her first application for a position of trust through DOD. (GX 3.)

The debts alleged in SOR ¶¶ 1.a through 1.p are listed on the January 2018 credit bureau report (CBR) and the debts alleged in SOR ¶¶ 1.q through 1.u are listed on the April 2017 CBR. Applicant discussed the SOR debts with the investigator during Applicant's personal subject interview (PSI) in July 2017. (GX 6; GX 5; GX 4.)

Applicant attributes her delinquent debts to her two years and nine months of unemployment while she was attending college full time. Applicant also did not have health insurance for part of the time she was unemployed, and as a result of medical problems, incurred medical debt.

Applicant incurred the delinquent debts alleged in the SOR between 2012 and 2017, a period of time which exceeds the span of her unemployment. While the copies of Applicant's dispute letters are dated February 15, 2017, the January 2018 CBR does not reflect that any of the listed delinquent accounts are disputed by Applicant. (GX 6.) Further, Applicant did not provide any evidence of additional contact with the creditors of the disputed debts or any other efforts to resolve her delinquent accounts. In her PSI, Applicant stated that she would enter repayment arrangements with each of the creditors when she gained full-time employment.

Policies

¹ The Defense Office of Hearings and Appeals (DOHA) transmittal letter is dated April 12, 2018, and Applicant's receipt is dated April 24, 2018. The DOHA transmittal letter informed Applicant that she had 30 days after receipt of the FORM to submit information.

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. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard sensitive information.

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 an evaluation of the whole person. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

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. The Government must present substantial evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). An applicant has the ultimate burden of demonstrating that it is clearly consistent with national security to grant or continue eligibility for a public trust position.

Analysis

Guideline F, Financial Considerations

The concern under this guideline is set out in AG ¶ 18:

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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

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 classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding sensitive information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

The following disqualifying conditions under this guideline apply:

AG ¶ 19(a): inability or unwillingness to satisfy debts; and

AG ¶ 19(c): a history of not meeting financial obligations.

While some of Applicant's financial difficulties may have been the result of circumstances largely beyond her control, such as her medical issues, there is no indication that she acted responsibly under the circumstances. Additionally, Applicant's over two and half years of unemployment was the result of her decision to return to college full time. While such an investment in her future may have been a responsible long-term decision, it was, nonetheless, her choice. Therefore, AG ¶ 20(b) does not apply. There is nothing in the record that explains the debts she incurred outside the period of her unemployment, nor does Applicant provide any explanation for her ongoing failure to resolve or otherwise address any of her delinquent debts. None of the other mitigating conditions under this guideline are applicable.

Although Applicant asserts that she disputed each of the SOR debts, despite admitting four of them, she did not provide any explanation or evidence of the current status of these disputes. Each of the SOR debts is established by the CBRs, thus, the Government has made its *prima facie* case as to all of the SOR allegations. Applicant has failed to meet her burden of proof of mitigation.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a position of trust must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. In applying the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a position of trust 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(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.

I have incorporated my comments under Guideline F in my whole-person analysis and I have considered the factors in AG ¶ 2(a). After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the trustworthiness concerns raised by her delinquent debts. Accordingly, I conclude she has not carried her burden of

showing that it is clearly consistent with the national interest to grant her eligibility for access to sensitive information.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): AGAINST APPLICANT

Subparagraphs 1.a – 1.u:

Against Applicant

Conclusion

I conclude that 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.

Stephanie C. Hess
Administrative Judge