



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



In the matter of:

ADP Case No. 18-00280

Applicant for Public Trust Position

Appearances

For Government: Chris Morin, Esq., Department Counsel

For Applicant: *Pro se*

11/26/2018

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 January 31, 2018, 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 June 7, 2018, and requested a hearing before an administrative judge. The case was assigned to me on August 1, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 1, 2018, scheduling the hearing for August 15, 2018. I convened the hearing as scheduled. The Government offered exhibits (GE) 1 through 3, and they were admitted into evidence without objection. Applicant testified and did not offer any documentary evidence. The

record was held open until September 24, 2018, to permit Applicant to submit documents. None were provided and the record closed. DOHA received the hearing transcript on August 23, 2018.

Findings of Fact

Applicant admitted the SOR allegations in ¶¶ 1.c through 1.f and 1.k through 1.o. She denied the allegations in SOR ¶¶ 1.a, 1.b, and 1.g through 1.j. Applicant's admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings, testimony, and exhibits, I make the following findings of fact.

Applicant is 34 years old. She is a high school graduate and has earned some college credits, but not a degree. She married in 2002, separated in 2004, and divorced in 2009. She has a 16-year-old child from the marriage. She has two younger children, ages 12 and 9, from a previous relationship. Both fathers terminated their parental rights and do not provide child support to the children. Applicant has been employed for ten years in the same field, but with different contractors.¹

Although employed, Applicant attributed her financial problems to underemployment. In August 2018, her income was reduced by \$700 a month. She testified that she is a single mother with expenses and did not realize the importance of having credit. Her father has made provisions for her children to be his dependents, so they will have medical insurance under his military retirement. Her parents help Applicant financially. Applicant has not had credit counseling, but has looked into the services. She intends on completing her associate's degree next semester.²

The debts alleged in SOR ¶ 1.a (\$3,820) and ¶ 1.c (\$1,172) are collection accounts for student loans. Applicant testified she obtained the loans in 2010 to attend school. The loans were in deferment for a period. Prior to 2015, she had a payment plan of \$300 a month. Later her salary decreased, and she was unable to meet the payments. She said she made inconsistent payments for about a year. She said she consolidated the loans in 2015, and in 2017 she enrolled in an income-based rehabilitation program for student loans and was required to pay \$14 a month. She testified she has not completed the rehabilitation program. She provided a document showing a payment schedule for the program that was to begin in February 2018 and continue until January 2019. The balance listed on the student loan is \$9,128. She testified that she made a lump sum payment to the Department of Education in the amount of \$4,000 to \$5,000 from her income tax refund. She is hopeful to have the loans in deferment when she resumes school in the fall. She did not provide any corroborating evidence regarding past monthly payments, the lump sum payment, or proof that she has made the monthly payments.³ The debts are unresolved.

¹ Tr. 16-32; GE 3.

² Tr. 32-34, 51-57.

³ AE A.

Applicant disputes the debt in SOR ¶ 1.b (\$1,228), an amount owed on a broken lease. She stated she did not break the lease. She spoke with a representative of the creditor to obtain paperwork. None was provided.⁴ The debt is unresolved.

The debts in SOR ¶ 1.d (\$969) and ¶ 1.e (\$400) are medical debts in collection. Applicant has not contacted the creditors, and they are not paid.⁵

The debt in SOR ¶ 1.f (\$207) is a utility debt in collection. Applicant testified she resolved it and would provide supporting documents. She did not.⁶ It is unresolved.

Applicant testified that when she and her husband married they held joint accounts. Her husband declared bankruptcy. She testified that many of the debts alleged in the SOR were included in his bankruptcy and discharged.

The debts alleged in the SOR are corroborated by Applicant's admissions and credit reports from June 2017 and January 2018. Applicant stated that the debts in SOR ¶¶ 1.g and 1.h belonged to her ex-husband and were discharged in bankruptcy. Credit reports show SOR ¶ 1.g was opened as an individual account in October 2010. SOR ¶ 1.h is also an individual account opened in September 2013 and charged off in 2013. SOR ¶ 1.i was opened as an individual account in September 2013 and charged off in May 2016. SOR ¶ 1.j was held by a credit company in 2016. Applicant failed to provide documents to show the debts did not belong to her or that they were discharged in her ex-husband's bankruptcy.⁷ These debts are unresolved.

Applicant admitted she owed the medical debts in SOR ¶¶ 1.k through 1.o. She did not have medical insurance at the time. She was told in January 2018, after receiving the SOR, that the creditor was willing to consolidate the debts and work out a payment plan. She has not followed through on establishing a plan, but intends to do so. She did not provide supporting documents.⁸ These debts are unresolved.

Regarding the debt in SOR ¶ 1.l (\$637), Applicant testified that the debt was resolved, but did not provide corroborating documents.⁹ It is unresolved.

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations

⁴ Tr. 35-37.

⁵ Tr. 38.

⁶ Tr. 37.

⁷ Tr. 39-46; GE 2, 3.

⁸ Tr. 46-49.

⁹ Tr. 49.

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 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.

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

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

Applicant has numerous delinquent debts that she has owed for several years that she is unable to pay or resolve. 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;
- (d) the individual initiated and is adhering to 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 attributed her financial problems to being a single mother, supporting three children, and being underemployed. She said that recently her income was reduced. She stated some of the debts were paid or resolved, but failed to provide sufficient evidence to confirm that or to indicate that she is addressing the delinquent debts. Her debts are recent and ongoing. She has not established a reliable financial track record of resolving her financial obligations. There is insufficient evidence to conclude future financial problems are unlikely to recur. AG ¶ 20(a) does not apply.

Periods of underemployment and being a single mother may have contributed to Applicant's financial problems. Both conditions may have been circumstances beyond her control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. Applicant testified that certain debts were resolved, and she had made past payments on her student loans, but failed to provide evidence to support her statements. The evidence is insufficient to show she has acted responsibly in managing her delinquent debts. AG ¶ 20(b) partially applies.

Applicant has not participated in financial counseling. 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 has numerous delinquent debts and did not provide a viable plan for resolving them. Applicant lacks a financial track record of payments to her creditors. AG ¶ 20(d) does not apply.

Applicant disputes certain debts saying they are paid or she is not responsible for them. She did not provide evidence that she paid some debts. She did not provide proof to corroborate her disputes or to show what actions she took to resolve the disputes on some debts. AG ¶ 20(e) does not apply.

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 those guidelines, but some warrant additional comment.

Applicant is a 34-year-old single mother. She accumulated delinquent debts due to underemployment and providing support for three children. She acknowledged she owes certain debts, and asserted that others were discharged in her ex-husband's bankruptcy. The debts alleged in the SOR are all listed as individual accounts in her name. She did not provide evidence of a plan to resolve the debts. Despite the record remaining open, no documents were provided to corroborate Applicant's testimony. She is unable to pay her debts. Applicant has not established a sufficient 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.o:	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