



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



In the matter of:)
)
) ADP Case No. 07-08986
)
)
Applicant for Public Trust Position)

Appearances

For Government: Ray T. Blank, Jr., Department Counsel
For Applicant: *Pro Se*

July 29, 2008

Decision

DAM, Shari, Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

On January 3, 2007, Applicant submitted a Public Trust Position Application (SF-85P). On February 22, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

On March 24, 2008, Applicant answered the SOR in writing and elected to have the case decided on the written record in lieu of a hearing. On April 16, 2008,

Department Counsel prepared a File of Relevant Material (FORM), containing seven Items, and mailed Applicant a complete copy on April 21, 2008. Applicant received the FORM on April 29, 2008, and had 30 days from its receipt to file objections and submit additional information. Applicant did not submit any additional information. On July 7, 2008, DOHA assigned the case to me.

Findings of Fact

In her Answer to the SOR, dated March 24, 2008, Applicant admitted all factual allegations contained in Paragraph 1 of the SOR. She denied the allegation contained in Paragraph 2 and offered an explanation.

Applicant is 25 years old and single. Since January 2007, she has worked as a customer service representative for a federal health service network.

In January 2007, Applicant completed an SF-85P. In response to "**Question 20. Your Financial Record - 180-Day Delinquencies:** Are you now over 180 days delinquent on any loan or financial obligation? (include loans or obligations funded or guaranteed by the Federal Government.)," Applicant answered "No," and failed to disclose her delinquent debts.

On December 5, 2007, Applicant completed a set of Interrogatories, inquiring about her finances and eight delinquent debts, which were later included in the February 2008 SOR. She indicated that she intended to resolve those debts by filing bankruptcy after she received her 2007 tax refund. She noted that she contacted a credit counseling company in 2005, but did not enter into a repayment plan because she could not afford the monthly payment. (Item 5).

The SOR alleged that Applicant owes approximately \$37,810 to fifteen creditors, including department stores, credit card companies, charged-off accounts, and bounced checks. The SOR based those allegations on credit bureau reports (CBR) from January 2007 and December 2007, which noted that her debts began accruing in 2003 and continued accruing up to the present. In her Answer, she admitted that she owed all of those debts. She did not provide any evidence documenting that she paid or resolved any of those debts, or an explanation as to the reason she accumulated so many debts.

The SOR also alleged that Applicant deliberately failed to disclose ten delinquent debts on the January 2007 SF-85P. She denied the falsification allegations and explained that she did not disclose the delinquent debts because she "thought the [question] was speaking of school, business, car or personal loans." (Item 2).

Applicant disclosed that she was fined for a moving violation in June 2001 in response to "**Question 16: Your Police Record**" on the SF-85P.

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.) The Deputy Under Secretary of Defense (Counterintelligence and Security) Memorandum, dated November 19, 2004, indicates trustworthiness adjudications will apply to cases forwarded to DOHA by the Defense Security Service and Office of Personnel Management. Department of Defense contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination may be made. (See Regulation ¶ C8.2.1.)

When evaluating an Applicant’s suitability for a public trust position, the administrative judge must consider the disqualifying and mitigating conditions in the revised adjudicative guidelines (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(c), 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 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. Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

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

Guideline F, Financial Considerations

The trustworthiness concern relating to the guideline for financial considerations 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.

The guideline notes several conditions that could raise trustworthiness concerns, two of which may be pertinent to this case. Under AG ¶ 19(a) "an inability or unwillingness to satisfy debts" is potentially disqualifying. Similarly, under AG ¶ 19(c) "a history of not meeting financial obligations" may raise security concerns. Based on two CBRs and her admissions, Applicant has been unable or unwilling to satisfy debts that began accumulating in 2003. The evidence is sufficient to raise these two potentially disqualifying conditions.

After the Government produced substantial evidence of those two disqualifying conditions, the burden shifted to Applicant to produce evidence and prove mitigation of the resulting security concerns. AG ¶ 20 provides six conditions that could mitigate security concerns arising from financial difficulties:

- (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;

(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; and,

(f) the affluence resulted from a legal source of income.

Applicant's financial difficulties started in 2003 and continued into 2008. Because the problems have been ongoing for at least five years and have remained unresolved, AG ¶ 20(a) does not apply.

Applicant did not provide any explanation addressing the underlying reasons for her financial difficulties; hence AG ¶ 20(b) cannot apply. She did not submit any documentation that she received credit counseling or that her problems are under control. Nor is there any evidence that she made a good-faith attempt to resolve any of the debts or dispute them. AG ¶ 20(c), AG ¶ 20(d) and AG ¶ 20(e) do not apply. There is no record evidence to support the application of AG ¶ 20(f), nor was unexplained affluence alleged in the SOR.

Guideline E, Personal Conduct

The trustworthiness concern pertaining to the guideline for personal conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The Government alleged, in ¶ 2.a of the SOR, that Applicant falsified her answer to a question on the SF-865P because she failed to disclose specific delinquent debts. The Government contended that those omissions raise a trustworthy concern and are disqualifying under AG ¶ 16(a):

deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant denied those allegations.

When a falsification allegation is controverted or denied, the government has the burden of proving it. Proof of an omission, standing alone, does not establish or prove an applicant's state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant's state of mind at the time the omission occurred. ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004) (explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004).

Applicant misunderstood the scope of Question 20 and apparently became confused as to the scope of the questions by the language in parenthesis after the question, to wit: "(Include loans or obligations funded or guaranteed by the Federal Government.)" She thought the question was limited to car, school, business or personal loans. She did not understand that the question inquired into any delinquent debts. After reviewing the entire question and noting that she disclosed a minor traffic violation in the SF-85P, I find that her misinterpretation is plausible and that she did not intentionally falsify her SF-85P. Hence, Paragraph 2 is found in her favor and it is not necessary to consider mitigating conditions under this guideline or further reference under the "whole person" concept.

"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 the 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) 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.

According to AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security 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 25 years old. She started working for a federal contractor in January 2007. According to the record, her delinquent debts began accumulating in 2003. At the time the SOR was filed, she owed approximately \$37,810 to numerous creditors and still owes that amount. That is a

significant amount of indebtedness for a young woman, especially in light of the fact that majority of the creditors are department stores, credit card companies and bounced checks. Clearly, she has had difficulty managing her finances since she was 20 years old. Although she indicated that she intended to resolve her debt, albeit by filing bankruptcy, she did not present any evidence that she has done anything to resolve or pay her financial obligations to-date. Until she establishes a solid budget and a track record of fiscal responsibility, similar instances of exercising poor judgment in her financial life are likely to recur.

Overall, the record evidence leaves substantial questions and doubts as to Applicant's eligibility and suitability for a public trust position at this time. For all these reasons, I conclude that Applicant failed to mitigate the trustworthiness concerns arising from her financial issues.

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 through 1.o: | Against Applicant |
| Paragraph 2, Guideline E: | FOR APPLICANT |
| Subparagraph 2.a: | For 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.

SHARI DAM
Administrative Judge