



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



In the matter of:

Applicant for Public Trust Position

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ADP Case No. 14-03116

Appearances

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

08/31/2015

Decision

HOWE, Philip S., Administrative Judge:

On March 8, 2013, Applicant submitted her Electronic Questionnaire for Investigations Processing (e-QIP). On July 30, 2014, the Department of Defense issued to Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns under Guidelines F and E. The action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense Regulation 5200.2-R, *Personnel Security Program*, dated January 1987, as amended (Regulation); Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing on October 14, 2014. Applicant requested her case be decided on the written record in lieu of a hearing.

On April 17, 2015, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM), consisting of Items 1-8, was provided to the Applicant. She was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the file on April 24, 2015. Applicant did not file a Response to the FORM within the 30 day time allowed that would have expired on May 24, 2015.

A letter dated May 26, 2015, by Applicant to the case adjudicator is in the file, seeking additional time to submit "necessary information before a decision is made on my case." She wanted to know if she could get the extra time. There is a note on that letter from the adjudicator that she left a message for Applicant but never received a return phone call. The case was then processed to me for a decision. I reviewed the file and contacted the Department Counsel who confirmed Applicant asked for more time to submit documents. He gave her until the week of August 10-14, 2015, to submit documents. On August 10th she did. He had no objection to the admission of these exhibits into the record. I admitted them after marking them as Exhibits A to K.

I received the case assignment on July 23, 2015. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Findings of Fact

Applicant admitted the allegations in Paragraph 1 and denied the allegations in Paragraph 2. She submitted documents to support her contentions. (Items 1-3)

Applicant is 62 years old and works for a defense contractor. Applicant has two children and is divorced. She retired from one job and could not find jobs that paid her what income she wanted, so she moved to another state. She was unemployed after her retirement from October 2009 to October 2010, and December 2012 to January 2013. (Item 4)

The SOR lists 10 delinquent debts totaling \$24,002. Applicant claims she paid most of them in 2014 by installment payments or by paying the balance owed, after receiving the SOR. Her Answer, consisting of a letter dated August 11, 2014, with attachments, claimed she was waiting for zero balance letters from the creditors. There is only one such letter in the documents she submitted originally. The earliest date of a debt is 2008. Her August 2015 submission consisted of the same August 11, 2014 letter with updates of payoff letters for most debts. (Items 1, 2, 5, 6)

Applicant's mortgage was in foreclosure with the past-due amount of \$20,319 on a loan balance of \$175,394 (Subparagraph 1.a). The SOR does not charge Applicant with a tax debt on the foreclosure nor do her credit reports include information to that effect. However, Applicant submitted documents showing she paid a tax relief service various amounts of money totaling \$6,500 to work on the tax debt she claims is owed to the Internal Revenue Service. The exact status of her mortgage foreclosure and its relationship to the purported tax debt is not explained by her. Her latest documents show an offer in compromise with the IRS on this debt for \$6,808. Any debt to the mortgage company is not addressed by the Applicant. If this debt is really owed to the IRS, then it is resolved. If it is the mortgage debt on the foreclosure it is unresolved. (Items 2, 5, 6; Exhibits A-D)

Applicant owed a mobile telephone service \$1,946 (Subparagraph 1.b). Applicant claimed the case was settled for \$583.94 and it was to be paid by installments of \$291.97 starting in September 2014. She did submit an email from the collection agency dated August 6, 2014, stating the terms of the settlement. She paid the settlement amount in two installments of \$291.97. This debt is resolved. (Items 2, 5, 6; Exhibits A, E)

Applicant owed a satellite television service \$407 (Subparagraph 1.c). She claimed in her Answer that the debt would be paid in four payments with the final one in November 2014. However, her August 2014 bank statement shows two payments to this creditor of \$50 and \$291.97, totaling \$341.97. Her latest submission is a payment in full letter from the creditor dated June 11, 2015. This debt is resolved. (Items 2, 5, 6; Exhibits A, F)

Applicant owed a telephone company \$257 from 2012 (Subparagraph 1.d). She claimed she settled the account for \$111.69 paid September 12, 2014. She stated in her Answer that a payoff letter would arrive by September 22, 2014. There is a zero balance letter dated June 11, 2015, from the collector. This debt is resolved. (Items 1, 2, 5, 6; Exhibits A, G)

Applicant owed an internet cable company \$227 (Subparagraph 1.e). Applicant's Answer claims she paid this debt and expects to receive a zero balance letter. Applicant submitted a copy of her bank record showing on August 18, 2014, that \$227.04 was paid to the cable service provider. Then she sent an email from the creditor showing the account was paid in full. This debt is resolved. (Items 1, 2, 5, 6; Exhibits A, H)

Applicant owed a debt collector on two accounts the amounts of \$197 (Subparagraph 1.f) and \$104 (Subparagraph 1.g) for another cable service provider. Applicant's Answer claims she paid these two accounts. She enclosed zero balance letters with her Answer. The letters do not contain amounts paid or the same account

number as listed in the SOR. The zero balance letters each have different account numbers. However, Applicant did include her August 2014 bank statement showing \$201.85 was paid on one account and \$108.98 paid on another account to this collector. Her August 2015 document submission includes the same letters with her markings of the amounts paid on each account. These debts are resolved. (Items 1, 2, 5, 6; Exhibits A, I)

Applicant owes a bank \$59 from 2011 (Subparagraph 1.h). Applicant's Answer claims she agreed to pay the amount and would do so in October 2014 at a bank branch. She expected to receive a payoff letter in October 2014. No such letter is included with her Answer or subsequently in her August 2015 additional exhibits. That document states Applicant is still waiting for a payoff letter. This minor debt is unresolved. (Items 1, 2, 5, 6; Exhibit A)

Applicant owed another cable television provider \$21 since 2009 (Subparagraph 1.i). Applicant's banking statement shows \$20.93 paid to the provider on August 15, 2014. Her Answer states she arranged to pay this amount then and awaited a zero balance letter. The August 2015 document submission states a zero balance letter is attached but it is not. However, this debt is resolved based on her banking statement and her August 2015 document. (Items 1, 2, 5, 6)

Applicant owed a telephone company \$465 (Subparagraph 1.i). Her Answer asserts she contacted the collection agency and settled the case for \$241.72 to be paid September 29, 2014. Applicant did not submit any documents to show that amount was paid on time. She did submit a IC System letter showing the balance of \$241.72 was paid since the collector received the debt to collect. This debt is resolved. (Items 1, 2, 5, 6; Exhibits A, K)

Applicant submitted a response to a Department of Defense Consolidated Adjudications Facility (DOD CAF) adjudicator on October 14, 2014 clarifying her Answer to the SOR. She stated also that she "put everything down on my Electronic Questionnaire that I could remember at the time I was filling out the form . . ." The SOR alleges Applicant did not disclose in Section 26 of the e-QIP that she had debts turned over to a collection agency, had a foreclosure, and that she was over 120 days delinquent on any debt, when in fact these types of financial problems occurred. With the list of delinquent debts and her mortgage problems it is unlikely Applicant did not remember and know of those debts, certainly the foreclosure. She deliberately failed to disclose the debts on her e-QIP. (Items 1, 2, 5, 6; Exhibit A)

In the latest document submission Applicant states she did not have her credit report with her when she completed the job application. Her timeline for completion of

the application was stringent, she stated, and she relied on her memory to list her delinquent debts. She also stated she could not remember some accounts and when she tried to resolve them she could not find an organization to which she could make payment. (Exhibit A)

Applicant did not submit any documentation that she has participated in credit counseling or budget education. She provided no evidence concerning the quality of her job performance. She submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability. I was unable to evaluate her credibility, demeanor, or character in person since she elected to have her case decided without a hearing.

Department Counsel submitted eight Items in support of the SOR allegations. Item 8 is inadmissible. It will not be considered or cited as evidence in this case. It is the summary of an unsworn interview of Applicant conducted by an interviewer from the Office of Personnel Management on May 14, 2013. Applicant did not adopt it as her own statement, or otherwise certify it to be accurate. Under Directive ¶ E3.1.20, this Report of Investigation summary is inadmissible in the absence of an authenticating witness. In light of Applicant's admissions, it is also cumulative.

Policies

Positions designated as ADP I/II/III 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 AG (AG ¶ 2(a)). 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 (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.” 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.

Section 7 of Executive Order (EO) 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.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or 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 at AG ¶ 19 contains nine disqualifying conditions that could raise trustworthiness concerns. From these nine conditions, two conditions are applicable to the facts found in this case:

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

From 2008 to the present, Applicant accumulated 10 delinquent debts, totaling \$24,002. These were unpaid or unresolved at the start of the trustworthiness determination review. These two disqualifying conditions are established.

The guideline in AG ¶ 20 contains six conditions that could mitigate trustworthiness concerns arising from financial difficulties. Only two mitigating conditions might have partial applicability:

- (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; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolved.

AG ¶ 20(c) requires financial counseling and/or resolution of the financial problems. Applicant has not had any financial counseling so that component is not present.

The debts, but for two, are resolved. The first debt regarding Applicant's mortgage foreclosure is not explained by her IRS offer in compromise documents when the allegation is that she has a past-due balance on her mortgage. If her debt was forgiven and she received a benefit from that action that was taxable income, then the IRS compromise offer would be relevant. With no further explanation the current status it is unclear. For eight of the ten debts she resolved them and these two mitigating conditions apply to them. They do not pertain to the remaining two debts. AG ¶ 20 (d) partially applies.

Guideline E, Personal Conduct

AG ¶ 15 expresses the trustworthiness concern pertaining to personal conduct:

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 following will normally result in an unfavorable clearance action or administrative termination of further processing for trustworthiness eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, and cooperation with medical or psychological evaluation; and,

(b) refusal to provide full, frank and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

AG ¶ 16 describes a condition that could raise a trustworthiness concern and may be disqualifying:

(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 did not disclose her financial delinquencies as alleged in SOR Paragraph 2. She did not list her mortgage foreclosure, which must have been present in her mind because it resulted in a move from one city and state where that house existed, to another city and state, and she then became a renter. The other debts are telephone bills and cable television debts, plus a few other debts of uncertain origin. Applicant waited so long to pay them that she then claimed she could not remember

them or could not contact her creditor to pay them. Prompt debt payments would have alleviated that excuse. Also, disclosure of any delinquent debt under “Additional Comments” at the end of the e-QIP might have mitigated her failure to be specific in Section 26 of the e-QIP. AG ¶ 16(a) is established.

There are seven mitigating conditions listed in Guideline E. None of them apply to Applicant’s situation with her debts.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant’s eligibility for a trustworthiness determination 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(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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a trustworthiness determination 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 facts and circumstances surrounding this case. Applicant was an adult when she incurred the debts. She had not taken any action to resolve all her delinquent debts until the SOR was issued. This inaction leaves her vulnerable to pressure, coercion, exploitation, or duress based on the magnitude of her financial obligation Applicant displayed a lack of good judgment incurring the debts. Next, she exhibited a continued lack of appropriate judgment by failing to make payments on any of her delinquent debts during the past seven years until she received the SOR.

Overall, the record evidence leaves me with questions or substantial doubts as to Applicant’s eligibility and suitability for a position of trust. For all these reasons, I conclude Applicant did not mitigate the concerns arising under the guideline for

Financial Considerations. She did not mitigate the concerns under the guideline for Personal Conduct. I conclude the whole-person concept against Applicant.

Formal Findings

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraphs 1.b to 1.g:	For Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, 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.

PHILIP S. HOWE
Administrative Judge