



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



In the matter of:)	
)	
)	ADP Case No. 14-03886
)	
Applicant for Public Trust Position)	

Appearances

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

09/15/2015

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Applicant failed to submit sufficient documentary evidence to mitigate Guideline F trustworthiness concerns. Applicant’s eligibility to occupy a position of trust is denied.

Statement of the Case

On August 21, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing concerns under Guideline F (Financial Considerations) regarding her eligibility to occupy an automated data processing (ADP) position designated ADP-I/II/III. 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 adjudicative guidelines (AG) effective within the DOD on September 1, 2006. Applicant timely responded to the SOR on September 16, 2014, and requested a determination based on the written record.

On May 14, 2015, the Government issued a File of Relevant Material (FORM) with nine attachments. Applicant responded to the FORM with a packet of documents. The case was assigned to me on September 3, 2015. Based on my review of the file and submissions, I find Applicant failed to mitigate financial considerations trustworthiness concerns.

Findings of Fact

Applicant is a 42-year-old specialist working for a defense contractor. She has earned a bachelor's degree. She is married with two children. Applicant was unemployed from August 2005 to December 2005 and from December 2012 to February 2013. At issue in the SOR are 11 delinquent debts and a bankruptcy.

Applicant has had delinquent debt issues since before 2010, when she filed for Chapter 7 bankruptcy. She was discharged from her debts later that year. Since that time, she has acquired between \$130,000 and \$132,858 in new delinquent debt. This includes student loan-related debt. Applicant denied the debts at 1.e, 1.g, and 1.i (\$249, \$109, and \$53,140, respectively). She denies the first two debts, noting that she has not been contacted by those creditors. Her denial of the third debt appears to be based on two payments she made on a student loan, in June 2014 (\$178) and July 2014 (\$178), respectively. She failed, however, to provide evidence of other payments or shown that the account had been resolved or in rehabilitation. Her only other evidence of debt payment is a \$25 receipt from a medical provider. A bill from a telecommunications provider with a handwritten notation of "\$50" fails to prove such a payment was made.

Although Applicant received financial counseling, she failed to show how or if she benefitted from it. She claims that her delinquent debts are related to her periods of unemployment, lack of sufficient income, and surgeries. However, there is no documentation supporting these claims, showing her problems were beyond her control, or demonstrating that she acted responsibly regarding her debts. There is no evidence any debts were disputed with a creditor or a credit reporting agency. Her credit reports show her delinquent debts include accounts which reflect no activity for several years.

At work, Applicant is highly valued as an employee. She has received multiple certificates and awards. Her personal and professional references are positive.

Policies

When evaluating an applicant's suitability for a position of trust, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to sensitive information.

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. Under 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and has the ultimate burden of persuasion to obtain a favorable decision.”

A person who seeks a public trust position 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 information. 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.”

Analysis

Guideline F, Financial Considerations

Under Guideline F, AG ¶ 18 sets forth the applicable trustworthiness concern: 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.

Here, the Government introduced credible evidence showing Applicant had earlier debts discharged through Chapter 7 bankruptcy in 2010. It also showed she is presently delinquent on multiple accounts, amounting to approximately \$132,858 in delinquent debt. Such facts raise financial considerations disqualifying conditions:

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

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

Five conditions could mitigate these financial concerns:

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;

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(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.

Multiple delinquent debts remain unpaid. Applicant attributes many of her delinquent debts to her periods of unemployment. Given the fact Applicant's previous delinquent debts were discharged in bankruptcy in 2010, it may be assumed the period of unemployment to which she attributes her present delinquent debts was from December 2012 to February 2013. Insufficient facts, however, were presented to link her debts with that or any breaks in employment. Insufficient facts also undermine an analysis of whether her behavior and conduct at the time were reasonable.

Moreover, there is no evidence any medical care received was on an emergency basis. There is evidence of financial counseling, but no indication she benefitted from it or that progress is being made on her debts. No documentation was submitted that any of her debts are formally in dispute. With the exception of evidence that two payments of \$178 were paid last year, presumably to her student loan lender, and \$25 was paid on a medical account this year, there is no evidence of progress on the debts at issue. In light of these facts, as based on the scant record evidence, none of the financial considerations mitigating considerations apply.

Whole-Person Concept

Under the whole-person concept, the 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. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I incorporated my comments under the guideline at issue in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is a 42-year-old specialist working for a defense contractor. She has earned a bachelor's degree. She was unemployed from August 2005 to December

2005, before her 2010 Chapter 7 bankruptcy discharge, and from December 2012 through February 2013. She is married with two children. Although filing for bankruptcy is a legitimate method for addressing debt, it highlights Applicant's history of financial difficulty and her recent acquisition of \$132,858 in delinquent debt.

In this case, Applicant relied on the scant written record. As noted in the analysis above, Applicant presented vague information regarding her acquisition of these debts and virtually no evidence demonstrating how she handled her debts at the time. Evidence of only two payments of \$178 each toward what she wrote was for her student loans, and a recent \$25 medical payment, were submitted. Her documentary evidence failed to give rise to any of the available financial considerations mitigating conditions.

This process does not require an applicant to address all debts at issue. It does, however, expect that an applicant articulate a workable plan to address their delinquent debts, show that their plan has been successfully implemented, and document that their financial outlook has improved. Here, Applicant provided insufficient documentary evidence to establish that progress is being made on her delinquent debts. Lacking such proof, the financial considerations concerns remain.

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.k	Against Applicant
Subparagraph 1.l	For 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 permit Applicant to maintain a public trust position. Eligibility for a public trust position is denied.

Arthur E. Marshall, Jr.
Administrative Judge