



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



In the matter of:)	
)	
[Name Redacted])	
)	
)	ADP Case No. 14-05475
)	
Applicant for Position of Trust)	

Appearances

For Government: Stephanie C. Hess, Esq., Department Counsel
For Applicant: *Pro se*

08/18/2015

Decision

HOGAN, Erin C., Administrative Judge:

Applicant mitigated the financial considerations trustworthiness concerns. Eligibility for access to sensitive information is granted.

Statement of the Case

On December 5, 2014, the Department of Defense (DOD) issued a Statement of Reasons (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); DOD Regulation 5200.2-R, *Personnel Security Program* (January 1987), as amended (Regulation); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.

Applicant answered the SOR on December 23, 2014, and requested that her case be decided on the administrative record. On April 30, 2015, Department Counsel prepared a File of Relevant Material (FORM). The FORM was forwarded to Applicant on May 19, 2015. Applicant received the FORM on May 26, 2015. On June 2, 2015,

Applicant responded to the FORM and submitted additional matters. Her response to the FORM is marked and admitted as Item 5. In a memorandum dated July 27, 2015, Department Counsel indicated no objection to Applicant's Response to the FORM. (Department Counsel's memorandum is marked as Hearing Exhibit A (HE A)). The file was forwarded to the DOHA Hearing Office on August 11, 2015. The case was assigned to me on August 13, 2015.

Findings of Fact

Applicant is a 32-year-old employee of a defense contractor. She has worked for her current employer since June 2011. She is applying for eligibility to hold a public trust position. She is single and has no children. She has an associate's degree. (Item 3)

The SOR alleges two delinquent accounts. One debt is a delinquent student loan account placed for collection with a balance of \$18,719. (SOR ¶ 1.a: Item 4 at 1) The second debt is a \$558 delinquent medical account placed for collection. (SOR ¶ 1.b: Item 4 at 2).

In her response to the SOR, Applicant admitted both debts. She contacted the creditor of the student loan account alleged in SOR ¶ 1.a and entered into a loan rehabilitation program. If she makes consistent monthly payments for a year, her loan will no longer be in default status. She has begun payments with the creditor of the debt alleged in SOR ¶ 1.b. She believes she can pay off the account in six to eight months. (Item 2)

In response to the FORM, Applicant provided the terms of her loan rehabilitation agreement. She agreed to pay \$5 a month during the rehabilitation period. She also provided a payment history showing her payments towards the loan rehabilitation agreement during the past six months. She paid a lump sum payment of \$1,005 in April 2015. She re-evaluated her finances and began to pay \$75 a month beginning in May 2015. The balance as of June 1, 2015 was \$16,886.63. (Item 5 at 1 – 9)

Applicant provided a receipt from the creditor in SOR ¶ 1.b, dated February 10, 2015, indicating that the balance was reduced from \$558 to 456.95. On June 1, 2015, Applicant paid this account off using a credit card. (Item 5 at 10 - 11) Applicant has no other delinquent accounts.

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 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 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."

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.

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 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 under AG ¶ 19. Two are potentially applicable in this case:

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

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

Applicant defaulted on her student loan account and failed to pay a medical bill. She was either unable or unwilling to pay her financial obligations. The evidence is sufficient to raise the above disqualifying conditions. AG ¶¶ 19(a) and 19(c) apply to Applicant's case.

Conditions that could mitigate financial considerations trustworthiness concerns are provided under AG ¶ 20. The following are potentially applicable:

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; and

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

Applicant has a history of financial problems. She admits that she has bad credit. The delinquent student loan debt alleged in SOR ¶ 1.a is in the process of being rehabilitated. Applicant has paid more than what was required under the rehabilitation agreement. She resolved the debt alleged in SOR ¶ 1.b, by making some initial payments and then paying off the balance with a credit card on June 1, 2015. While paying off the account with a credit card transfers her delinquent debt to another account, she no longer has any delinquent debts. A review of her September 2014 credit report indicates she is able to meet her financial obligations. Applicant's attempts to resolve her debts shows that she is reliable, trustworthy, and has good judgment. AG ¶ 20(a) applies.

A trustworthiness adjudication is not a debt collection procedure. It is a procedure designed to evaluate an applicant's judgment, reliability, and trustworthiness. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). An applicant is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. An applicant need only establish a plan to resolve the financial problems and take significant actions to implement the plan. There is no requirement that an applicant make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

I find that Applicant made a good-faith effort to pay her debts. She is successfully rehabilitating her delinquent student loan and resolved the delinquent medical account. There are clear indications that her financial problems are being resolved. AG ¶ 20(d) applies.

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(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 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 that guideline, but some warrant additional comment.

I considered Applicant's stable work history, her candor in admitting her financial irresponsibility, and the steps she has taken to remedy those problems. As indicated above, an applicant is not required to establish that she has paid every debt listed in the SOR. All that is required is that applicant establish a plan to resolve the financial problems and take significant actions to implement the plan. I find that Applicant has established a plan to resolve her financial problems and she has taken significant action to implement that plan.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a public trust position. For all these reasons, I conclude Applicant mitigated the financial considerations concerns.

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:	For Applicant
Subparagraphs 1.a-1.b:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant Applicant eligibility for a public trust position. Eligibility for access to sensitive information is granted.

Erin C. Hogan
Administrative Judge