



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS and APPEALS**



In the matter of:)
)
) ADP Case No. 14-05493
)
Applicant for Public Trust Position)

Appearances

For Government: Gina L. Marine, Esq., Department Counsel
For Applicant: *Pro se*

11/15/2015

Decision

HEINY, Claude R., Administrative Judge:

Applicant contests the Department of Defense’s (DoD) intent to deny her eligibility for a public trust position to work in the defense industry. Applicant failed to mitigate the trustworthiness concerns arising from her finances. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to sensitive information is denied.

History of the Case

On February 7, 2015, acting under the relevant Executive Order and DoD Directive,¹ the DoD issued a Statement of Reasons (SOR) detailing the trustworthiness concerns under financial considerations. DoD adjudicators could not find that it is clearly consistent with the national interest to grant or continue Applicant’s public trust position.

¹ Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; 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 September 1, 2006.

On March 5, 2015, Applicant answered the SOR and elected to have the matter decided without a hearing. Defense Office of Hearings and Appeals (DOHA) Department Counsel (DC) submitted the Government's case in a File of Relevant Material (FORM), dated June 26, 2015. The FORM contained six attachments (Items).

On July 13, 2015, Applicant received a copy of the FORM, along with notice of her opportunity to file objections and submit material to refute, extenuate, or mitigate the potentially disqualifying conditions. She was informed she could submit any material she wished to be considered. Her response was due August 14, 2015. No material was received. On October 8, 2015, I was assigned the case.

Findings of Fact

In Applicant's Answer to the SOR, she admitted all of the factual allegations. When initially interviewed about her delinquent accounts, she indicated she intended to take care of the issue by year's end. However, the birth of a grandchild in August 2014 prevented her from having money to address her delinquent obligations. Her admissions are incorporated herein. After a thorough review of the pleadings and exhibits, I make the following findings of fact.

Applicant is a 47-year-old service representative who has worked for a healthcare service company since March 2014 and seeks to obtain access to sensitive information. (Item 4) Applicant is married and has two daughters ages 30 and 25. In 2009, her youngest daughter was diagnosed with bipolar schizophrenia disorder. In August 2014, her youngest daughter gave birth to Applicant's grandson. Applicant and her daughter were estranged at some point. (Item 4)

The SOR indicates Applicant had delinquent debts of approximately \$21,500. In March 2014, Applicant had a Personal Subject Interview (PSI) during which her delinquent accounts were discussed. Four delinquent SOR debts (SOR 1.a, \$66; SOR 1.b, \$168; SOR 1.e, \$1,588; and SOR 1.k, \$585), which total approximately \$2,400. (Item 3, 4)

Applicant's largest debt was the result of a truck repossession. (Item 4) When her daughter was diagnosed with bipolar schizophrenia disorder, Applicant and her husband decided their number one financial priority was medical care for their daughter and used all of their available resources to pay the medical bills. Loan payments were not made for four or five months resulting in the truck being repossessed. The truck was sold and the creditor demanded \$11,774. In her PSI, she stated she does not intend to pay this debt because the truck was resold. (Item 4)

During Applicant's PSI, she recognized some, but not all, of her delinquent accounts. It was her intention, at that time, to contact the creditors and determine the validity of the claims. If the debts were valid, she intended to negotiate a settlement agreement and establish a repayment plan. (Item 4) In response to the SOR, she said she had no funds to make payment to her creditors due to the expenses incurred following the birth of her grandson. (Item 2)

Applicant is attempting to obtain custody of her grandson because her daughter cannot be left alone with the child. (Item 2) Accompanying her SOR answer, she listed all the expenses she has incurred for the child since the child's birth. (Item 2) Her expenses include \$652 in monthly child care.

Applicant stated she would like to pay her delinquent accounts, but does not have the funds to do so. (Item 2) She asserts she is responsible and trustworthy. She also stated she needs her job.

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 over-arching 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

Adjudicative Guideline (AG) ¶ 18 articulates the trustworthiness concerns relating to financial problems:

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.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding sensitive information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts as agreed. Absent substantial evidence of extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a public trust position. An applicant is not required to be debt free, but is required to manage her finances to meet her financial obligations.

Applicant has a history of financial problems starting in 2009. Applicant has unresolved delinquent, charged-off, and collection accounts, which total approximately \$21,500. Disqualifying Conditions AG ¶ 19(a), “inability or unwillingness to satisfy debts” and AG ¶ 19(c), “a history of not meeting financial obligations,” apply.

Five Financial Considerations 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, 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; 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.

In 2009, Applicant's daughter was diagnosed with bipolar schizophrenia. At that time, Applicant and her husband decided to use all of their available resources to pay their daughter's medical bills. This resulted in their truck being repossessed. In March 2014, she said she hoped to have her delinquent accounts paid by the end of the year. The birth of a grandson, in August 2014, resulted in her having no funds to pay her delinquent debts.

None of the mitigating factors for financial considerations extenuate the concerns. Applicant's financial difficulties are both recent and multiple. She has been employed with her current employer since March 2014. In March 2014, she was made aware of the Government's concerns about her delinquent debts. She indicated she intended to pay her debts, but has not done so. By failing to document the payment of delinquent debts she has failed to act responsibly under the circumstances.

In February 2015, Applicant received the FORM and was informed she could submit documentation as to the status of her delinquent accounts. No documents were received. Applicant was given sufficient opportunity to address her financial delinquencies. Failing to pay the debts casts doubt on her current reliability, trustworthiness, and good judgment. She has not acted responsibly in addressing her debts. She provided no evidence she has received credit or financial counseling. She has not demonstrated that her financial problems are under control or that she has a plan to bring them under control. The mitigating conditions listed in AG ¶ 20(c) do not apply. There is no showing of a good-faith effort to satisfy debts or a showing that

payments have been made in accord with a repayment agreement. The mitigating conditions listed in AG ¶ 20(d) do not apply because Applicant has failed to document payment on her delinquent obligations.

In 2009, six years ago, Applicant's daughter was diagnosed with bipolar schizophrenia. In 2014, Applicant's grandson was born. These are events beyond her control, however, the delinquent obligations, even the two that were less than \$100 each, remain unpaid. AG ¶ 20(b) does not apply.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance 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 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 has failed to document any payment on her delinquent accounts. She has been aware of the Government's concern about her delinquent debts since her March 2014 interview, which was reinforced by the February 2015 SOR, and June 2015 FORM. There is no documentation of payment.

In requesting an administrative determination, Applicant chose to rely on the written record. However, she failed to submit sufficient information or evidence to supplement the record with relevant and material facts regarding her circumstances and facts that would mitigate the financial considerations security concerns. She failed to offer evidence of financial counseling or provide documentation regarding her past efforts to address her delinquent debt. She failed to provide such information, and by relying solely on scant explanation in her response to the SOR, she failed to mitigate the trustworthiness concerns arising from her financial problems.

The issue is not simply whether all Applicant's debts are paid—it is whether her financial circumstances raise concerns about eligibility and suitability for a public trust position. (See AG ¶ 2 (a)(1).)

This decision should not be construed as a determination that Applicant cannot or will not attain the state of true reform and rehabilitation necessary to be eligible for a public trust position. The determination of an individual's eligibility and suitability for a public trust position is not a once in a lifetime occurrence, but is based on applying the factors, both disqualifying and mitigating, to the evidence presented. Under Applicant's current circumstances, a public trust position is not recommended. In the future, if Applicant has paid her delinquent obligations, established compliance with a repayment plan, or otherwise substantially addressed her past-due obligations, she may well demonstrate persuasive evidence of her public trust worthiness.

Overall, the record evidence leaves me with questions or doubts about Applicant's eligibility and suitability for a public trust position. For all these reasons, I conclude Applicant failed to mitigate the trustworthiness concerns arising from her financial problems.

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, Financial Considerations: AGAINST APPLICANT

Subparagraphs 1.a – 1.n: 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.

CLAUDE R. HEINY II
Administrative Judge