



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



In the matter of:)
)
) ADP Case No. 14-05848
)
Applicant for Public Trust Position)

Appearances

For Government: Robert J. Kilmartin, Esq., Department Counsel
For Applicant: *Pro se*

09/28/2015

Decision

LOUGHRAN, Edward W., Administrative Judge:

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

Statement of the Case

On February 15, 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 responded to the SOR on March 4, 2015, and requested a hearing before an administrative judge. The case was assigned to another administrative judge on June 8, 2015, and reassigned to me on June 23, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on July 2, 2015, scheduling the hearing for July 23, 2015. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 5 were admitted in evidence without objection. Applicant

testified and submitted Applicant's Exhibits (AE) A through D, which were admitted without objection. The record was held open for Applicant to submit additional information. She submitted documents that were marked AE E and F and admitted without objection. DOHA received the hearing transcript (Tr.) on July 30, 2015.

Findings of Fact

Applicant is a 38-year-old employee of a defense contractor. She is applying for eligibility to hold a public trust position. She attended college for a period, but she did not earn a degree. She is married with two children, ages five and one.¹

Applicant had periods of unemployment, underemployment, and being a stay-at-home mother before she started her current job in March 2013. She had an expensive surgery and gave birth to two children. Her medical insurance did not cover all of the costs of the surgery and the childbirths. Her sister passed away in 2012, and Applicant took in her sister's two teenage children. Applicant was unable to pay all her bills and a number of debts became delinquent.²

The SOR alleges 22 delinquent debts. Applicant admitted owing all the debts with the exception of the \$13,239 medical debt alleged in SOR ¶ 1.h. Each debt is also listed on at least one credit report. Medical debts comprise 13 SOR allegations: the \$13,239 medical debt and 12 additional debts with balances totaling about \$8,670. There are nine miscellaneous delinquent debts with balances totaling about \$3,400.

Applicant disputed owing the \$13,239 medical debt alleged in SOR ¶ 1.h. She stated her medical insurance made a billing error but eventually paid the debt. It was removed from her credit report and does not appear on the two most recent credit reports in evidence. None of the 12 remaining medical debts identify who provided the medical services. Six of the medical debts and two other debts do not appear on the two most recent credit reports.³

Applicant paid five debts totaling \$258 (SOR ¶¶ 1.r-1.v). Applicant also paid several accounts that were not listed in the SOR. She owed the IRS between \$3,000 to \$4,000 for back taxes from 2010 and 2011. She instituted a repayment plan with the IRS, which she has completed. She had about \$10,000 in student loans that were in default. She brought the student loans out of default and is making regular monthly payments. Her current balance is about \$6,000. Following the advice of a nationally recognized financial expert, her initial plan was to aggressively pay her student loans before attacking her other debts. She realized that plan might mean that her other debts would not be addressed for an extended period. Her current plan is to make her monthly

¹ Tr. at 25-26, 55; Applicant's response to SOR; GE 1, 2.

² Tr. at 28-30, 45-46, 55; Applicant's response to SOR; GE 1, 2.

³ Applicant's response to SOR; GE 1-5; AE A.

student loan payments while paying her smallest delinquent debt before moving on to the next smallest debt.⁴

Applicant's niece and nephew are now adults and moved out of Applicant's house. She credibly testified that her finances have improved, and that she will continue to pay the remaining debts. She has not received formal financial counseling, but she has a budget, she reads financial experts' advice, and she listens to their broadcasts.⁵

Applicant submitted numerous letters and documents attesting to her excellent job performance, honesty, work ethic, leadership, professionalism, responsibility, dependability, honor, trustworthiness, dedication, and integrity.⁶

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

⁴ Tr. at 20-23, 32-35, 56-58; Applicant's response to SOR; GE 1-5; AE E, F.

⁵ Tr. at 22, 29-38, 46-47, 60-61; Applicant's response to SOR; AE C.

⁶ AE B, D.

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 [sensitive] 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. The following are potentially applicable:

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

Applicant accumulated delinquent debts and was unable or unwilling to pay her financial obligations. The above disqualifying conditions are applicable.

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

Applicant's unemployment, underemployment, surgery, and sister's death were events beyond her control. She paid the IRS her back taxes; she brought her student loans out of default and is making regular monthly payments; and she paid five of the debts alleged in the SOR. She successfully disputed the largest medical debt, and a number of the other debts no longer appear on her credit report. She has a budget and has been following the advice of a national recognized financial expert. She credibly testified that she will continue with her student loan payments and address her delinquent debts one at a time until they are all resolved.

A public trust position 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 established a plan to resolve her financial problems, and she has taken significant action to implement that plan. She acted responsibly and made a good-faith effort to pay her debts. There are clear indications that her financial problems are being resolved. They occurred under circumstances that are unlikely to recur and do not cast doubt on her current reliability, trustworthiness, and good judgment. AG ¶¶ 20(c) and 20(d) are applicable. AG ¶ 20(a) is not yet completely applicable because Applicant is still in the process of paying her debts. AG ¶ 20(b) is not completely applicable because some of Applicant's financial issues were within her control. AG ¶ 20(e) is applicable to the successfully disputed medical debt.

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 favorable character evidence, the factors that led to her financial problems, and the steps she has taken to remedy those problems. Her finances are not perfect, but I am convinced she will continue her efforts to remedy her financial issues.

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 trustworthiness 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.v:	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.

Edward W. Loughran
Administrative Judge