



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



In the matter of:)	
)	
)	ADP Case No. 14-06456
)	
Applicant for Public Trust Position)	

Appearances

For Government: Adrienne M. Strzelczyk, Esq., Department Counsel
For Applicant: *Pro Se*

10/30/2015

Decision

CREAN, THOMAS M., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, eligibility for a public trust position is granted. Applicant presented sufficient information to mitigate financial trustworthiness concerns.

On July 16, 2013, Applicant submitted Electronic Questionnaires for Investigations Processing (e-QIP) to obtain eligibility for a public trust position with a defense contractor. After an investigation conducted by the Office of Personnel Management (OPM), the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR), dated January 6, 2015, detailing trustworthiness concerns for financial considerations under Guideline F. This action was taken under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended; Department of Defense Regulation 5200.2-R, *Personnel Security Program*, dated Jan. 1987, as amended (Regulation); and the adjudicative guidelines (AG).

Applicant answered the SOR in writing on March 16, 2015. She admitted all of the 47 financial allegations under Guideline F. Department counsel was prepared to proceed on May 27, 2015, and the case was assigned to me on June 8, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on July 1,

2015, scheduling the hearing for July 28, 2015. I convened the hearing as scheduled. Department Counsel submitted six exhibits, which I marked and admitted into the record without objection as Government Exhibits (GX) 1 to 6. Applicant and one witness testified. Applicant submitted one exhibit, which I marked and admitted into the record without objection as Applicant Exhibits (AX) A. I left the record open for Applicant to submit additional documents. Applicant timely submitted two additional documents, which I marked and admitted into the record without objection as AX B and C. (e-mail dated October 18, 2015) I received a copy of the transcript of hearing on August 5, 2015. The record closed on October 18, 2015, on receipt of Applicant's documents.

Findings of Fact

After a thorough review of the pleadings, transcript, and exhibits, I make the following findings of fact.

Applicant is a 34-year-old high school graduate who is single with no children. She has taken some college courses and hopes to receive her bachelor's degree soon. She has been a contract call center representative for a defense contractor for two years. Her performance reviews have been good. Applicant's net monthly income is approximately \$1,600, her recurring monthly expenses are approximately \$1,400, leaving about \$200 monthly in discretionary funds. (Tr. 18-19, 28-32; GX 1, e-QIP, dated July 16, 2013)

The SOR alleges, and court documents (GX 3, dated June 10, 2014; GX 4, dated January 25, 2015), and credit reports (GX 5, dated July 26, 2013; GX 6, dated October 1, 2014) confirm 46 delinquent debts, and a dismissed chapter 13 bankruptcy. The delinquent debts include 32 medical bills, loans, furniture bills, telephone bills, and retail store bills. The total amount of the delinquent debt is approximately \$36,873. She is still attending school, but is paying most of the expenses from her income. She does have student loans she will have to start paying when she completes school, and the student loans are not deferred. (Tr. 32-33)

Applicant attended community college from 2000 to 2004, and helped her mother who was physically disabled. She was considered a fulltime student but she did not receive a degree. She was employed part time as an administrative assistant at the community college. From June 2005 until July 2006, Applicant could not find consistent full time employment and was unemployed. She worked only occasion temporary jobs. From July 2006 until May 2007 Applicant work full time as a customer service specialist for a company supporting a credit card company. Her employer lost their contract and went out of business in May 2007. Applicant found employment and worked full time for a credit card company until the company downsized, and Applicant was laid off in July 2008. She sought employment, but was told she needed either experience or education. She spent her unemployment time looking for employment, caring for her mother, and attending community college. She found employment as an administrative assistant at the community college in April 2009. She was employed at the community college until January 2011, when she was laid off because of downsizing. She was unemployed until

May 2013, when she started employment with her current employer. (Tr. 18-21; GX 1, e-QIP, dated July 26, 2013)

Applicant also experienced a severe illness during the period of her sporadic employment and unemployment. She was diagnosed with lupus and had to make doctor visits and take expensive prescribed medicines. She did not have health insurance, and had to make large co-payments to continue to see her doctors. She used free clinics and other inexpensive medical facilities when she could. In addition to lupus, Applicant, in April 2011, developed a significant blood disorder. Her spleen was removed, and she was required to take additional expensive medications costing over \$3,000 a week. Her doctor told her not to work because of the rigors of her required treatments. Since she could not work, she applied for and received disability payments and other public assistance. She was able to receive some benefit from a public health insurance program. She also received limited financial help from her family. Her present medical condition is fair. She takes a chemotherapy type drug daily that cost \$6,000 for 30 pills. She has health insurance from her current employer, which covers most of her medical expenses. She is no longer incurring medical expenses that are not covered under her health insurance. (Tr. 21-25, 33-35, 37-38)

In addition to medical debts, Applicant was required to use credit cards, loans, and store credit to pay medical debts and purchased needed items. Applicant was unable to make the required payments on her bills because of her unemployment. She attempted to negotiate payment arrangements with the creditors for her debts. However, most of the creditors wanted large payment she could not afford. She filed a Chapter 13 bankruptcy, but the bankruptcy payments were unaffordable when she was employed and definitely unaffordable on the income she received when unemployed. She stopped making payments on the bankruptcy plan in late 2009, and the bankruptcy was dismissed in January 2010. Her attorney recently advised her that her best option to resolve her debts was to file a Chapter 7 bankruptcy. She retained an attorney just prior to the hearing (AX A, Letter, dated July 22, 2015), saved and paid the required attorney fees (AX C, Receipts, September and October 2015), and her attorney is completing the documentation to file the Chapter 7 bankruptcy. She completed the credit counseling course required to file the bankruptcy. In addition, she received financial counseling from her bank on options to budget her limited funds. (Tr. 25-29; AX B, Letter, dated October 14, 2015)

Applicant's friend testified that she has known Applicant for over 13 years. She is aware of Applicant's medical condition of lupus and a blood disorder. The medical conditions caused Applicant to experience rashes, severe headaches, bleeding, and extreme fatigue. She was with Applicant in May 2011, when she was hospitalized for her illnesses and received blood transfusions. She has been with her when she had chemotherapy injections and experienced extreme fatigue from her treatment. She has seen how the illnesses negatively affected Applicant's employment situations. She describes Applicant as very dependable, smart, trustworthy, and a good employee. Applicant has tried to resolve her financial problems, but the medical debts are so large and continuous that it is difficult for her to pay the debts. (Tr. 37-46)

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 common sense 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.

Analysis

Financial Considerations

There is a trustworthiness concern for a failure or inability to live within one's means, satisfy debts, and meet financial obligations indicating 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 (AG ¶ 18). Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligation to protect 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 under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage her finances in such a way as to meet her financial obligations.

Adverse information in credit reports can normally meet the substantial evidence standard to establish financial delinquency. Applicant has significant delinquent debts that she has not resolved. Applicant's delinquent medical, credit card, and other debts as established by credit reports and Applicant's admissions, are a trustworthiness concern raising Financial Consideration Disqualifying Conditions AG ¶19(a) (inability or unwillingness to satisfy debts), and AG ¶ 19(c) (a history of not meeting financial obligations).

I considered the following Financial Considerations Mitigating Conditions under 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;

(b) the conditions that resulted in the financial problems were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce, or separations) 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; and

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

These mitigating conditions apply. Applicant has significant debts, which she incurred because of extensive periods of unemployment and two severe illnesses raising many medical debts. AG ¶¶ 20(a) and (b) apply because unemployment and her medical conditions caused her to incur delinquent debt and limited her ability to meet her financial obligations. These conditions were beyond her control, and are unlikely to recur because she is receiving medical treatment for her illness, is now gainfully employed, and has adequate health insurance enabling her to meet her medical needs. Bankruptcy is a legal and permissible means of resolving delinquent debts. She acted reasonable at first by filing a Chapter 13 bankruptcy in 2008, which was dismissed in January 2010 when she could not afford to continue making payment under the plan because of illness and unemployment. Applicant hired an attorney who advised her that her best course of action to resolve her financial issues was to file a Chapter 7 bankruptcy. Applicant acted reasonably and responsibly under the circumstances of her unemployment and illness issues by saving sufficient funds to hire an attorney to file her Chapter 7 bankruptcy. The filing of the bankruptcy under the circumstances is not a trustworthiness concern. Her efforts to resolve her financial issues show reliability, trustworthiness, and good judgment.

Applicant presented information to show that she received financial counseling through her bank and as part of her bankruptcy. There are sufficient indications that her financial problems are being resolved and are under control. AG 20(c) applies.

Applicant established her good-faith efforts to pay her debts. For a good-faith effort, there must be an ability to repay the debts, the desire to repay, and evidence of a good-faith effort to repay. Good faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty and obligation. A systematic method of handling debts is needed. Applicant must establish a meaningful track record of debt payment. A meaningful track record of debt payment can be established by evidence of actual debt payments or reduction of debt through payment of debts. A promise to pay delinquent debts is not a substitute for a track record of paying debts in a timely manner and acting in a financially responsible manner. Applicant must establish that she has a reasonable plan to resolve financial problems and has taken significant action to implement that plan.

Applicant's plan to file a Chapter 7 bankruptcy to resolve her financial issues is reasonable under the circumstances and shows financial prudence and an honest adherence to financial duties and obligations. Applicant established a meaningful track record of payment of her attorney's bankruptcy fees which shows that she is taken significant action to implement her plan. Applicant's payment of the attorney's fees under the circumstances shows that she is acting reasonably and honestly with regard to her financial duties and obligations. She has established that she is managing her personal financial obligations responsibly, and her financial problems are starting to be behind her. There is ample evidence of responsible behavior, good judgment, and

reliability. Based on all of the financial information, I conclude that Applicant has mitigated security concerns based on financial considerations.

Whole-Person Analysis

Under the whole-person concept, the administrative judge must evaluate an applicant's trustworthiness eligibility by considering the totality of the applicant's conduct and all relevant circumstances. An 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 a trustworthiness 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 is not required, as a matter of law, to establish that she paid off each and every debt listed in the SOR. All that is required is that she has a plan to resolve her financial problems and takes significant action to implement that plan. The entirety of her financial situation and her actions can reasonably be considered in evaluating the extent to which her plan to reduce her outstanding indebtedness is credible and realistic. Available, reliable information about the person's behavior, past and present, favorable and unfavorable, should be considered in reaching a determination.

Applicant hired an attorney, paid his fees, and will file a Chapter 7 bankruptcy. This information shows Applicant's responsible actions to resolve her debts. Applicant presented sufficient information to establish that she acted reasonably and responsibly within her limited finances, and that she will continue to responsibly manage her financial obligations. Overall, the record evidence leaves me without questions or doubts as to Applicant's judgment, reliability, trustworthiness, and eligibility and suitability for a trustworthiness clearance. For all these reasons, I conclude that Applicant has mitigated trustworthiness concerns arising under the financial considerations guideline. Eligibility for a trustworthiness position is granted.

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.uu 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.

THOMAS M. CREAN
Administrative Judge