



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



In the matter of:)
)
) ADP Case No. 15-00525
)
Applicant for a Public Trust Position)

Appearances

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

03/30/2016

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Defense Department’s intent to deny her eligibility for a public trust position to work in the defense industry. Although Applicant has filed for Chapter 13 bankruptcy protection to resolve the \$65,500 in delinquent debt alleged in the Statement of Reasons, this is not enough to mitigate the security concerns raised by her history of financial problems. Accordingly, her eligibility to occupy a position of trust is denied.

Statement of the Case

On July 24, 2015, the Department of Defense (DOD) issued a Statement of Reasons SOR detailing trustworthiness concerns under the financial guideline.¹ DOD adjudicators were unable to find that it is clearly consistent with national security to grant or continue Applicant’s access to sensitive information and recommended that the

¹ This case is adjudicated under DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). The *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply to this case. The AG replace the guidelines in Enclosure 2 to the Directive.

case be submitted to an administrative judge for a determination whether to revoke or deny Applicant's eligibility to occupy a public trust position.

Applicant answered the SOR and requested a decision without a hearing.² The Government submitted its written case on September 24, 2015. A complete copy of the file of relevant material (FORM) and the Directive were provided to Applicant. She received the FORM on October 7, 2015, and did not respond. The case was assigned to me on December 1, 2015. The documents appended to the FORM are admitted as Government's Exhibits (GE) 1 through 3 and 5 through 7, without objection. GE 4 is omitted for the reasons explained below.

Procedural Issues

GE 4 is a report of investigation (ROI) summarizing the interview Applicant had with a background investigator during her October 2013 investigation. The interview is not authenticated as required under ¶ E3.1.20 of the Directive. Footnote 1 of the FORM advises Applicant of that fact and further cautions Applicant that if she fails to object to the admission of the interview summary in her response to the FORM that her failure may be taken as a waiver of the authentication requirement. Applicant's failure to respond to the FORM does not demonstrate that she understands the concepts of authentication, or waiver and admissibility. It also does not establish that she understands the implications of waiving an objection to the admissibility of the interview. Accordingly, GE 4 is inadmissible and I have not considered it.

Findings of Fact

Applicant, 36, has worked for a federal contractor since February 2012. Her position requires access to personally identifiable information (PII), and requires her to obtain eligibility to occupy a public trust position. Based on the disclosures in her September 2014 eligibility application and information discovered during her background investigation, the SOR alleges that Applicant has a history of financial problems, including one foreclosure, six charged-off accounts, and \$65,500 in delinquent debt.³

Applicant blames her financial problems on living beyond her means between 2008 and 2012, after she received a large inheritance from her grandparents' estate. Her financial problems became acute in 2011, after she was laid off from a job. She began to rely on credit cards to pay for food and other necessities. She also claims to have lost \$75,000 in investments as a result of a stock market crash. Applicant began to have difficulty paying her bills and eventually lost her home of seven years to foreclosure in August 2012. After Applicant returned to work in February 2012, she learned she was pregnant. Her pregnancy was difficult, and her son was born premature in 2013. He remained in the neo-natal intensive care unit for a month after

² GE 2.

³ GE 1, 3.

his birth. As a result, she incurred at least \$7,500 in medical bills, which she could not afford to pay.⁴

Applicant filed for Chapter 13 bankruptcy protection in August 2015, seeking to a plan to repay \$113,000 in debt. The debts alleged in the SOR are included in her petition. Applicant has not provided any current information on the status of her bankruptcy petition, the plan payment schedule, or any information about her current finances.⁵

Policies

Positions designated as ADP I and ADP II are classified as “sensitive positions.”⁶ “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.”⁷ 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.⁸ An administrative judge’s objective is a fair, impartial, and commonsense decision that embraces all available, reliable information about the person, past and present, favorable and unfavorable.

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 the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain a favorable decision.

A person who seeks access to 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. 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.

⁴ GE 2, 5-6.

⁵ GE 7.

⁶ DOD Regulation 5200.2-R, *Personnel Security Program* (January 1987), as amended (Regulation) ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3.

⁷ Regulation ¶ C6.1.1.1.

⁸ See Regulation ¶ C8.2.1.

Analysis

Guideline F, Financial Considerations

Unresolved delinquent debt is a serious security concern because failure to “satisfy debts [or] 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.”⁹

The SOR alleges that Applicant has five charged-off accounts and owes approximately \$65,500 in delinquent debt. She also filed Chapter 13 bankruptcy protection seeking relief from \$113,000 in debt in August 2015. The record supports a *prima facie* case that Applicant has a history of not meeting her financial obligations and that she has demonstrated an inability to do so.¹⁰ Applicant’s financial problems were not entirely beyond her control. Applicant admits that she incurred the debt during a four-year period of living beyond her means after receiving a substantial windfall. However, her debt became delinquent as a result of events beyond her control, a layoff in 2011 and the accumulation of medical debt related to the birth of her child. Her decision to file for Chapter 13 bankruptcy protection is reasonable given her amount of total debt. While bankruptcy is a legitimate method of resolving debt, it does not mitigate the concerns alleged in the SOR.

Applicant did not provide any information about her current finances or the status of the bankruptcy’s payment plan. As a result, I have no way to determine if she is in compliance with the terms of her bankruptcy payment plan or even if she has the means to comply. Furthermore, I cannot determine if she has reformed her financial habits and will avoid similar financial problems in the future. Accordingly, doubts remain about Applicant’s security worthiness. In reaching this decision, I have considered the whole-person factors at AG ¶ 2. Ultimately, Applicant failed to meet her burdens of production and persuasion. Because the security concerns raised in the SOR remain, following *Egan*¹¹ and the clearly-consistent standard, I resolve these doubts in favor of protecting national security.

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.gg:	Against Applicant

⁹ AG ¶ 18.

¹⁰ AG ¶¶ 19(a) and (c).

¹¹ *Navy v. Egan*, 484 U.S. 518 (1988).

Conclusion

In light of all of the circumstances presented, it is not clearly consistent with the interests of national security to grant Applicant access to sensitive information. Applicant's eligibility to occupy a position of trust is denied.

Nichole L. Noel
Administrative Judge