



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



In the matter of:

Applicant for Public Trust Position

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ADP Case No. 15-00830

Appearances

For Government: Pamela C. Benson, Esquire, Department Counsel
For Applicant: *Pro se*

03/07/2016

Decision

HOWE, Philip S., Administrative Judge:

Applicant submitted her Electronic Questionnaires for Investigations Processing (e-QIP), on September 12, 2012. On August 3, 2015, the Department of Defense (DoD) issued a Statement of Reasons (SOR) detailing the trustworthiness concerns under Guideline F (Financial Considerations) for Applicant. The action was taken under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program*, dated Jan. 1987, as amended (Regulation), and the adjudicative guidelines (AG) effective within the Department of Defense on September 1, 2006.

Applicant acknowledged receipt of the SOR on August 10, 2015. She answered the SOR in writing on August 27, 2015, and requested a hearing before an Administrative Judge. Department Counsel was prepared to proceed on October 7, 2015, and I received the case assignment on October 15, 2015.

DOHA issued a notice of hearing on October 27, 2015, and I convened the hearing as scheduled on November 17, 2015. The government offered Exhibits (Ex.) 1

through 5, which were received without objection. Applicant testified and submitted Exhibits A through G, without objection.

DOHA received the transcript of the hearing (Tr.) on November 25, 2015. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to sensitive information is denied.

Findings of Fact

In her Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a, 1.b, 1.c, 1.e, and 1.f of the SOR, with explanations. She denied the factual allegations in ¶ 1.d of the SOR. She also provided additional information to support her request for eligibility for a public trust position.

Applicant is 43 years old, married, has one child, and works for a defense contractor in the health insurance business. She is a project manager earning \$97,000 annually. She is attempting to obtain her bachelor's degree using an internet course of instruction from a university. She has a federal education loan to pay for that instruction. Her student loan debt amount is \$47,000. Applicant testified it is deferred from repayment until she completes her college degree. (Tr. 22-25, 33, 38, 58)

The SOR lists six delinquent debts totaling \$22,602. The debts date from 2009 to 2014. (Exhibits 3-5)

Applicant owes \$18,306 on a student loan for her husband's computer technician classes (Subparagraph 1.a). This debt dates from 2009. Her husband was working at the time they borrowed the money for the classes, but then lost his job and had medical problems. On her income alone they could not repay the loan on a monthly basis at \$480. The finance charges on the loan increased the amount to be repaid and Applicant testified the lender would not negotiate a reduction in finance charges. She ceased trying to make an arrangement with the lender and the loan remains unresolved. Applicant does not intend to repay the loan and instead will wait for it to be removed through the passage of time from her credit report. It is not resolved. (Tr. 16, 17, 40, 47, 56, 57; Exhibits 4 and 5)

Applicant owes \$581 to a bank on a credit card (Subparagraph 1.b). She was paying other debts and so has not repaid this debt. She intends to pay it in the near future. It is currently unresolved. (Tr. 17, 18, 41; Exhibits 4 and D)

Applicant owes \$352 to a retail merchant (Subparagraph 1.c). Applicant testified she paid this debt and submitted an exhibit to verify her assertion. The Department conceded this debt was paid. (Tr. 18, 41; Exhibits 4 and A)

Applicant owes \$840 to a debt collector on an account originally owed to a telephone company (Subparagraph 1.d). Applicant is not certain what the origin of this

debt is or that she owes it. She claims she never received a bill for this account and does not intend to pay it. It is not resolved. (Tr. 18, 41, 42; Exhibit 4)

Applicant owes \$80 on a water bill that remains unpaid (Subparagraph 1.e). She testified that she contacted the water company, which could not find any information about the debt. Applicant contends the debt arose before 2000. She thinks it should have been removed from her credit report by now because of the passage of time. She does not intend to pay the debt unless the water company can show her proof that she owes the debt. This debt is unresolved. (Tr. 18, 19, 42, 43; Exhibit 4)

The final delinquent debt is owed to a bank (Subparagraph 1.f). The amount is not specified in the SOR, but Exhibit 4 shows the amount charged off as \$2,543. Applicant testified it was for a lease on a motor vehicle. They moved to their current location in 2007 and leased the vehicle. Then her husband's medical conditions got worse and they were not able to afford the car after he lost his job as a butcher. The vehicle was repossessed. She has not contacted the bank and the loan has been resold to collectors. It has not been resolved. (Tr. 19, 20, 44; Exhibit 4)

Applicant introduced exhibits showing she is trying to rehabilitate a current auto loan for another car she purchased in 2014. This debt was not listed in the SOR. In October 2015, \$933 was past due and owing. The account is now current because the payments are deducted from her checking account. (Tr. 47, 48; Exhibit C)

Applicant owed money on a second used car she and her husband own for which she arranged an installment payment plan to pay the balance due of \$1,049. She pays \$113 every week on the car loan. The loan payments are current. (Tr. 48, 49; Exhibits 4, B)

Applicant owes \$1,089 to a sleep clinic for a study done about her difficulty in getting to sleep. She disagreed with the diagnosis and refused to pay the debt. This debt is not alleged in the SOR, but is unresolved. The latest credit report from October 2015 states Applicant disputes this debt. (Tr. 45, 46; Exhibit 4)

Applicant also was unemployed from May to September 2010, when she was laid off from the marketing department of the same company for which she now works. She was rehired later. In the meantime, she worked as a contractor for two companies. She did not have medical insurance as a contractor and paid her bills from her income at the time. She was also unemployed from August to September 2012. In 2012, she obtained her current employment that could continue until 2022 because that is the term of the contract that was awarded to her employer. (Tr. 19, 20, 27, 28; Exhibits 4 and 5)

Applicant does not have any credit cards. She uses cash or her debit card. Her last financial counselling was 2008 and 2009. Applicant's net paychecks each month total \$4,600, and about \$60,000 annually in disposable income. From that amount, she pays about \$2,700 for all her monthly expenses. Applicant stated she does not have any extra money to save, having to balance her monthly bills and her income. She testified she also has finance charges on her accounts when she does not pay them

timely or in the full amount, increasing her costs. She also has about \$160 monthly in overdraft fees from using her debit card on her checking account. She admitted at the hearing that her husband has an alcohol consumption problem that costs them \$300 monthly and that is shown in the budget she submitted. Applicant submitted a monthly budget showing her income and expenses with a \$398.26 balance at the end of each month. (Tr. 50-55, 59, 61, 67, 68; Exhibit G)

Policies

Positions designated as ADP I/II/III 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.

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

The trustworthiness concern relating to the guideline 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(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Applicant accumulated six delinquent debts as listed in the SOR. She was unable to pay these debts for a variety of financial reasons. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

The guideline also includes six examples of conditions that could mitigate trustworthiness concerns arising from financial difficulties. Four conditions may apply.

Under AG ¶ 20(b), it may be mitigating where “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. ” As noted above, some of the financial problems arose from her husband’s medical problems which twice

caused him to stop working after Applicant incurred the education debt and the lease obligation for the automobile. Applicant also was laid off from work and had several temporary positions since 2009. She has taken action on only one debt and contests the other debts for various reasons. She has not acted responsibly in identifying and resolving these debts. I find her husband's illnesses and her periods of unemployment or under employment as partially applicable as factor for consideration in this case.

Evidence that "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" is potentially mitigating under AG ¶ 20(c). Applicant last had any financial counseling in 2009 so it is not a mitigating condition.

Similarly, AG ¶ 20(d) applies where the evidence shows "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." Applicant paid one \$352 debt to a retail store. She testified she would pay the \$581 debt owed on a credit card in the future. She does not intend to pay the \$840 debt to a telephone company, nor the \$80 water bill because the creditors could not show her proof she owed those debts. She cannot afford to repay her husband's education loan listed in Subparagraph 1.a of the SOR. She has not contacted the auto lease lender about repayment and the debt remains unresolved. She does not have to start repaying her \$47,000 education loan for her college degree until she graduates. She has brought current her present auto loans. However, even with the net income of about \$60,000 Applicant has to calculate which monthly bills to pay, deferring some, underpaying others, while incurring overdraft fees monthly on her checking account and debit card. Applicant cannot manage her money in a logical and productive way. She does not have the income to repay her husband's education loan nor the car lease from her income. The four other debts in the SOR total \$1,853 and she has only repaid one of them. I conclude these potentially mitigating conditions apply only partially to the one debt repaid.

Mitigating condition AG ¶ 20 (e) applies if "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 disputes the \$840 owed to a telephone company and the \$80 owed to a water company. She did not submit any written dispute to the creditors or at the hearing. She also disputes the \$1,089 sleep study debt because she considers the diagnosis of her sleep problems incorrect. She does not intend to repay that debt. She has not submitted a written dispute for that debt. This mitigating condition applies only partially because of the lack of written dispute documents prepared by Applicant.

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 the 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) 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. Applicant was an adult when she incurred the six delinquent debts listed in the SOR. The additional delinquent debts not listed she also incurred as an adult. She entered into these debts voluntarily. She added a \$47,000 education loan to her debt burden to obtain a bachelor's degree. Her motivation on the larger education loans and car lease was to improve her and her husband's employment opportunities, which is a valid reason. She repaid one debt, may pay a second one, and demands proof of a financial obligation on three other debts, one not included on the SOR. She has not repaid her husband's education debt and the 2009 car lease, claiming she does not have the funds to do so and the lenders will not make satisfactory arrangements with her.

Examining Applicant's budget, the credit reports in the file, and her six debts listed in the SOR, it appears she has not incurred any other long-term debt and is paying her monthly bills out of her income alone. Her husband is unemployed. She has valid explanations for all her debts and their history. But she also ignored several debts because she could not afford to pay them.

Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a public trust position. For all these reasons, I conclude Applicant did not mitigate the trustworthiness concerns arising from her financial considerations.

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

Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a public trust position. Eligibility for access to sensitive information is denied.

PHILIP S. HOWE
Administrative Judge