



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



In the matter of:)	
)	
)	ADP Case No. 15-01215
)	
)	
Applicant for Public Trust Position)	

Appearances

For Government: Braden Murphy, Esq., Department Counsel
For Applicant: *Pro se*

06/08/2016

Decision

RICCIARDELLO, Carol G., Administrative Judge:

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

Statement of the Case

On August 27, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) 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.

On September 18, 2015, Applicant submitted an answer to the SOR and requested a hearing before an administrative judge. The case was assigned to me on March 31, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on April 21, 2016, and the hearing was convened as scheduled on May 11, 2016. Government Exhibits (GE) 1 through 3 were admitted in evidence without

objection. Applicant testified and submitted Applicant Exhibits (AE) A through E, which were admitted without objection. The record remained opened to allow Applicant to submit additional documents, which she did. They were marked AE F and G, and they were admitted without objection.¹ The record closed on May 25, 2016. DOHA received the hearing transcript (Tr.) on May 23, 2016.

Findings of Fact

Applicant admitted the allegations in SOR ¶¶ 1.b through 1.h. She denied the allegations in SOR ¶¶ 1.a and 1.i. Her admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 34 years old. She graduated from high school in 1999. She married in 2001 and divorced in 2005. She has two children from the marriage, ages 15 and 13. She has custody of the children. She is to receive \$310 monthly in child support, but her ex-husband is \$6,000 in arrears and does not provide consistent payments. The last payment she received was in May 2015 for \$210. The two previous months she received \$29 (April) and \$81 (March). She has been employed since August 2014 by a federal contractor.²

Applicant worked for the same federal contractor from 2005 to 2008. In 2008, she relocated to a different state so she could be close to her mother who was available to help her with her children. She was unable to find full-time steady employment when she relocated. She was able to work two or three part-time jobs. From 2009 to 2012, she was employed by a bank, but was terminated due to failing to comply with a transaction rule. The bank had a zero tolerance policy. She resumed part-time employment until she relocated again and began working for her current employer. A credit report from September 2014 substantiates the debts alleged.³

Applicant acknowledged a judgment was entered against her for the debt in SOR ¶ 1.a (\$1,962). It was for furniture she purchased when she was employed in 2011. After she lost her job she could not afford to make the payments. She made payments toward the debt and then used a tax refund to satisfy the balance. The judgment was satisfied in February 2015.⁴

The debt in SOR ¶ 1.b (\$7,955) is for a repossessed vehicle. Applicant received an Internal Revenue Form 1099c (cancellation of debt) for the debt. The form shows the \$8,999 debt was canceled in 2010. She did not file the form with her 2010 tax returns

¹ Hearing Exhibit I is Department Counsel's memorandum.

² Tr. 17-21; GE 1; AE D.

³ Tr. 21-26.

⁴ Tr. 27-28; AE A.

because she did not know what to do with the form. She intends to file an amended return and include the form.⁵

The debt in SOR ¶ 1.c (\$907) was for a broken lease. Applicant is making payments to resolve the debt. She provided proof of her last two payments. The current balance as of May 2016 is \$757.⁶

Applicant testified that she contacted the creditors for the debts in SOR ¶ 1.d (\$319), 1.e (\$202), 1.f (\$200), 1.g (\$181), and 1.h (\$100). She made two small payments on the debt in SOR ¶ 1.d, but still owes a balance. She is unable to meet the terms of the creditors' payment requirements with her limited resources at this time. She stated these debts were accumulated when she was underemployed and unemployed. She intends on paying them in 2016. They are currently unresolved.⁷

Applicant disputed the cable debt in SOR ¶ 1.i (\$70) because the company did not shut off the cable when she moved. She testified that she contacted the credit bureau and formally disputed it.⁸

Applicant has a disabled son. Most of his medical needs are provided for, but she does have some out-of-pocket expenses. After she received her 2015 federal income tax refund she was notified by the IRS that she had a balance owed from a prior year. Applicant has made payment arrangements with the IRS to resolve the balance. She fell behind on some of her expenses over the holiday season in December 2015. Her plan is to continue to resolve the debt in SOR ¶ 1.c and then she will use the available money to pay the remaining small debts in the SOR. Applicant has not participated in budgeting or financial counseling. She is confident with her current income and steady employment she will resolve the remaining debts.⁹

Applicant provided her performance review evaluation showing she met or exceeded the expectation of her supervisor.¹⁰

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

⁵ Tr. 28-31; AE B.

⁶ Tr. 31-33; GE 2; AE G.

⁷ Tr. 34-39.

⁸ Tr. 39-40.

⁹ Tr. 41, 45-64.

¹⁰ AE C.

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 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 security 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 classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

This concern is broader than the possibility that an individual might knowingly compromise sensitive information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting sensitive information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding sensitive information.¹¹

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

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

Applicant has numerous delinquent debts that she has been unable to pay or resolve. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate financial considerations security 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.

¹¹ See ISCR Case No. 11-05365 at 3 (App.Bd. May 1, 2012).

Applicant fell behind on her bills when she lost her full-time job and could only find part-time employment. She has been slowly resolving some of her delinquent debts and has a plan for paying the remaining ones. AG ¶ 20(a) does not apply because Applicant is still resolving her delinquent debts.

Applicant receives inconsistent child support payments and her ex-husband is \$6,000 in arrears. She has a special-needs child and has some out-of-pocket expenses associated with him. She was unemployed and underemployed for a period. She worked two to three part-time jobs at one point. These were conditions beyond Applicant's control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. With her limited resources, Applicant paid a judgment and is making payments on another debt. She also made two small payments on another debt. Although all of her debts are not being paid at once, she is slowly resolving them. I find Applicant is acting responsibly under the circumstances. AG ¶ 20(b) applies.

There is insufficient evidence Applicant has received financial or budget counseling. There is evidence that Applicant is resolving her financial problems. I found her testimony credible that she will file an amended tax return for 2010 to address the cancellation of debt. She paid the judgment and is paying the debt for her broken lease, along with making small payments toward another SOR debt. She is also addressing a tax bill she was unaware she owed that she received after she received a refund from the IRS. She has a plan to resolve that debt and has made payments. Applicant is resolving her financial problems and has made efforts to repay overdue creditors. AG ¶ 20(c) and 20(d) apply.

Applicant disputed the debt in SOR ¶ 1.i (\$70) and testified she disputed it with the credit bureau. She did not provide supporting documentation, but I found her testimony credible.

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.

Applicant is slowly resolving her delinquent debts. She has not ignored her financial responsibility to pay the overdue creditors. She used her limited resources to systematically pay the judgment. She is making payments to resolve the debt for a broken lease and intends to file an amended tax return for the cancellation of debt. Her financial picture is far from perfect, but she is making a bona-fide attempt to address her past financial problems. She has custody of her two children, whose father fails to pay consistent child support and is \$6,000 in arrears. Applicant lost her full-time job and worked part-time jobs. She then moved so she could obtain more reliable employment. Applicant understands her obligation to pay her creditors and the potential effect it could have on her employment if she fails to do so. I am confident that she will continue to resolve the remaining delinquent debts. Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility and suitability for a public trust position. For all these reasons, I conclude Applicant has mitigated 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.i: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant Applicant eligibility for a public trust position. Eligibility for access to sensitive information is granted.

Carol G. Ricciardello
Administrative Judge