



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



In the matter of:)	
)	
)	ADP Case No. 14-06292
)	
)	
Applicant for Public Trust Position)	

Appearances

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

08/20/2015

Decision

COACHER, Robert E., Administrative Judge:

Applicant did not mitigate the financial considerations trustworthiness concerns. The Government did not prove deliberate falsification by Applicant, therefore personal conduct disqualifying conditions were not established. Eligibility for access to sensitive information is denied.

Statement of the Case

On January 24, 2015, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns under Guideline F, financial considerations. DOD acted under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); DOD Regulation 5200.2-R, *Personnel Security Program*, dated January 1987, as amended (Regulation); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

Applicant answered (Ans.) the SOR on February 23, 2015, and elected to have her case decided on the written record. Department Counsel submitted the

Government's File of Relevant Material (FORM) on April 16, 2015. The FORM was mailed to Applicant and she received it on April 29, 2015. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. She declined to submit any additional information. The Government's evidence (Items 1-5) is admitted into the record. The case was assigned to me on August 5, 2015.

Findings of Fact

In her Answer, Applicant admitted SOR allegations ¶¶ 1.a – 1.f and 1.j – 1.o. She did not recognize three debts (¶¶ 1.g – 1.i) and her responses will be treated as denials. Likewise, her non-response to the Guideline E allegation will also be treated as a denial. Her admissions are incorporated as findings of fact. After a review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is a 28-year-old employee of a government contractor. She works as a data entry clerk and has held that position since January 2013. She is single and has two children, ages eight and three. From September 2010 through July 2012, she was attending school and was unemployed. She has taken some college courses. She has no military background.¹

The SOR alleges 15 delinquent debts (including three judgments) for a total of approximately \$19,626 and that she falsified her trustworthiness application by failing to affirmatively disclose her judgments, debts turned over to collection agencies, charged-off accounts, and debts which have been or are currently 120 days delinquent. The debts were listed in credit reports from April 2014 and November 2014.²

In her April 2014 trustworthiness background interview, Applicant stated that her financial difficulties came about because of her unemployment while going to college. She did not offer evidence of financial counseling. She stated that she was unaware of the full extent of her delinquencies at the time she filled out her trustworthiness application. It was not until she gained access to her credit report after the interview that she was made aware of her debt situation.³

The debt alleged in SOR ¶ 1.a is for unpaid rent on an apartment in the amount of \$4,025. She plans on making payment arrangements, but failed to produce evidence of any arrangements. This debt is unresolved.⁴

The allegations at SOR ¶¶ 1.b, 1.e, 1.f, and 1.k are telecommunication debts in the amounts of \$2,857; \$395; \$285; and \$1,428. Applicant stated she was on a plan with other family members, but she ended up with the debt. She was unable to pay

¹ Item 2.

² Items 4-5.

³ Item 3.

⁴ Item 3; Ans.

these debts. She failed to present evidence of payment or of a proposed settlement plan. These debts are unresolved.⁵

The allegation at SOR ¶ 1.d is a charged-off credit card account in the amount of \$422. She stated she does not make enough money to pay this account. This debt is unresolved.⁶

The debts alleged in SOR ¶¶ 1.g - 1.i are judgments in the amounts of \$682, \$940, and \$1,200. Applicant claimed ignorance of the first two and did not know why there was a judgment on the third, which was a debt for rent where the apartment had been condemned. No evidence of payment was offered on any of the judgments. These accounts are unresolved.⁷

The allegation at SOR ¶ 1.j is a delinquent student loan debt in the amount of \$3,357. No evidence of payment or a repayment plan was offered. This debt is unresolved.⁸

The allegation at SOR ¶ 1.l is a collection for a consumer debt in the amount of \$1,273. No evidence of payment or a repayment plan was offered. This debt is unresolved.⁹

The debts alleged in SOR ¶¶ 1.m - 1.o are overdraft charges in the amounts of \$159, \$95, and \$40. Applicant acknowledged these overdraft charges to her account. No evidence of payment or a repayment plan was offered. These accounts are unresolved.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 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 The Defense Office of Hearings and Appeals (DOHA) by the Defense Security Service and Office of Personnel

⁵ Item 3; Ans.

⁶ Item 3; Ans.

⁷ Item 3; Ans.

⁸ Item 3; Ans.

⁹ Item 3; Ans.

¹⁰ Item 3; Ans.

Management. DOD 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." 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

Guideline F, Financial Considerations

The trustworthiness concern for financial considerations is set out in AG ¶ 18 as follows:

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.

The guideline notes several conditions that could raise trustworthiness 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's numerous delinquent debts alleged remain unpaid. The evidence is sufficient to raise the above disqualifying conditions.

Several financial considerations mitigating conditions under AG ¶ 20 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 debts are recent, multiple, and cast doubt on her reliability, trustworthiness, and good judgment. AG ¶ 20(a) is not applicable. Although some of the debts were incurred during her unemployment, which is a condition beyond her control, she failed to show responsible action on her part to deal with the past-due debts. AG ¶ 20(b) is partially applicable.

There is no evidence of financial counseling, and Applicant has not offered proof that she paid any of the debts or established payment plans for them. AG ¶¶ 20(c) and 20(d) do not apply.

Applicant failed to provide any documentation supporting disputes of any debts. AG ¶ 20(e) does not apply. Applicant's finances remain a security concern.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern for personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect sensitive information. Of special interest is any failure to provide truthful and candid answers during the trustworthiness process or any other failure to cooperate with the trustworthiness process.

AG ¶ 16 describes conditions that could raise a trustworthiness concern and may be disqualifying in this case. The following disqualifying condition is potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire. . . .

Applicant's statement during her trustworthiness interview that she was unaware of the full extent of her debts until she gained access to her credit report after her interview is sufficient to establish lack of intent to deceive when she incorrectly answered the financial-related questions. The Government failed to produce sufficient evidence of such intent. AG ¶ 16(a) does not apply.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a trustworthiness determination 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 trustworthiness determination 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 relevant facts and circumstances surrounding this case. I have incorporated my comments under Guidelines F and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

All of Applicant's debts remain unresolved. Her troublesome financial history causes me to question her ability to resolve her debts.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for access to sensitive information. For all these reasons, I conclude Applicant has not mitigated the financial considerations trustworthiness concerns. However, the Government failed to establish deliberate falsification by Applicant.

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: Subparagraphs: 1.a – 1.o:	AGAINST APPLICANT Against Applicant
Paragraph 2, Guideline E: Subparagraph: 2.a:	FOR APPLICANT For Applicant

Conclusion

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

Robert E. Coacher
Administrative Judge