



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



In the matter of:)	
)	
XXXXXXXX, Xxxxxx Xxxxxxx)	ADP Case No. 14-06295
)	
Applicant for Public Trust Position)	

Appearances

For Government: Bryan J. Olmos, Esquire, Department Counsel
 Julie R. Mendez, Esquire, Department Counssel
 For Applicant: *Pro se*

09/11/2015

Decision

METZ, John Grattan, Jr., Administrative Judge:

Based on the record in this case,¹ I deny Applicant’s eligibility for a public trust position.

On 15 January 2015, the Department of Defense (DoD) sent Applicant a Statement of Reasons (SOR) raising trustworthiness concerns under Guideline F, Financial Considerations.² Applicant timely answered the SOR, requesting a hearing before the Defense Office of Hearings and Appeals (DOHA). DOHA assigned the case

¹Consisting of the transcript (Tr), Government exhibits (GE 1-2), hearing exhibit (HE) I, and Applicant exhibits (AE) 1-2.

²DoD conducts trustworthiness determinations for contractor personnel employed in Information Systems Positions defined in DoD Regulation 5200.2-R, *Personnel Security Program* (Regulation), dated January 1987, as amended, pursuant to DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the adjudicative guidelines (AG) effective within the DoD for SORs issued after September 1, 2006.

to me 17 July 2015 and I convened a hearing 17 August 2015. DOHA received the transcript 25 August 2015.

Findings of Fact

Applicant admitted the SOR financial allegations. She is a 33-year-old provider relations representative employed by a defense contractor since July 2014.³ She has been employed full time in a variety of positions since December 2002, with some varying periods of unemployment. She was unemployed for over a year from February 2004 to May 2005, for a month in 2010, and for seven months from November 2011 to May 2012. She has not previously had a trustworthiness determination.

The SOR alleges, Government exhibits (GE 1-2) substantiate, and Applicant admits seven delinquent debts totaling over \$27,000. The debts comprise four traffic tickets totaling \$900, a delinquent medical account for \$700, and delinquent automobile loans totaling over \$26,000. Applicant disclosed six of the seven accounts on her clearance application (GE 1). She acknowledged all seven accounts during a July 2014 subject interview with a Government investigator (Tr. 64-65), when she stated her intent to resolve the debts.

Applicant attributes her debts to her unemployment in 2011-2012, and her lower pay when she first became re-employed in June 2012. Her husband was also out of work until about June 2012. The record is not clear whether his unemployment, during which time he cared for his ill mother, started voluntarily or involuntarily. She died in June 2011. Applicant also acknowledges that her 2004-2005 unemployment hurt her finances (Tr. 44).

Applicant claimed, without corroboration, to have paid the traffic ticket at SOR 1.g. in March 2015 (Answer). She also claims one other \$100 payment in March 2015, on SOR 1.a.

Applicant provided a partial budget in her Answer, showing \$535 positive monthly cash flow, along with a budget plan that would have paid all of the SOR debts except the two automobile loans by August 2015, a total of about \$1,600. She claimed, without corroboration, to have entered a repayment agreement with the creditor at SOR 1.a to pay \$100 by the end of March 2015, with five monthly payments to satisfy the debt by August 2015. She also claimed, without proof, to have made the first payment. However, she did not make the remaining payments, but has ostensibly reentered the payment plan this month (Tr. 46). She has not contacted any of her other creditors.

Applicant did not make any of her payments as planned. Instead, she and her husband paid \$6,800 to their prospective mortgage lender in early August 2015 (AE A-B). Applicant described these payments as a deposit, but it is unclear what the

³Applicant was originally employed through a temporary employment agency beginning in June 2012, but her employer made her a direct employee in June 2014 (Tr. 43).

payments were actually for, except that they were related to transferring title to her mother-in-law's house to her husband. Applicant and her husband have an initial monthly mortgage payment of \$1,500, but the amount will go up in November (Tr. 54).

Apart from a partial budget in her Answer, Applicant provided no budget or personal financial statement indicating her family's current financial situation. She has not documented any credit or financial counseling. She provided no work or character references, or evidence of civic or community involvement.

Policies

The adjudicative guidelines (AG) list factors to evaluate a person's suitability for access to sensitive information. Administrative judges must assess disqualifying and mitigating conditions under each issue fairly raised by the facts and situation presented. Each decision must also show a fair, impartial, and commonsense consideration of the factors listed in AG ¶ 2(a). The applicability of a disqualifying or mitigating condition is not, by itself, conclusive. However, specific guidelines should be followed when a case can be measured against them, as they are policy guidance governing the grant or denial of a clearance. Considering the SOR allegations and the evidence as a whole, the relevant adjudicative guideline is Guideline F (Financial Considerations).

Trustworthiness decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's public trust position. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to applicant to refute, extenuate, or mitigate the Government's case. Because no one has a right to a public trust position, the applicant bears a heavy burden of persuasion.

Persons with access to sensitive information enter into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring each applicant possesses the required judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels deciding any reasonable doubt about an Applicant's suitability for access in favor of the Government.⁴

Analysis

The Government established a case for disqualification under Guideline F, and Applicant did not mitigate the trustworthiness concerns. Applicant describes financial issues dating back to 2004-2005. While some of Applicant's financial difficulties may be reasonably attributable to her period of unemployment between November 2011 and May 2012, she has not provided a chronology that fully establishes that claim, and she submitted insufficient information to determine she acted responsibly under the circumstances. She documented little efforts to resolve her debts, and did not provide a

⁴See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

proposed plan to address them.⁵ Moreover, the funds that would have been available to make the payments she promised in her Answer were apparently diverted to help accomplish the transfer her deceased mother-in-law's home to her husband.

Applicant potentially meets only one of the mitigating factors for financial considerations. Her financial difficulties are both recent and multiple.⁶ While her periods of unemployment may be circumstances beyond her control, she has documented very few efforts dealing with the debts alleged in the SOR, or documenting any efforts to resolve them.⁷ Applicant provided no evidence to show that the claimed, uncorroborated payments were initiated before she received the SOR. She had known since at least July 2014 of the potential trustworthiness significance of her debts. In addition, there is no evidence that she has sought credit counseling or otherwise brought the problem under control.⁸ There is little documentary evidence of any good-faith effort to satisfy the debts alleged in the SOR.⁹ Finally, given her failure to seek or use financial counseling, there is nothing in the record to suggest that Applicant will put her financial problems behind her. Moreover, there is insufficient evidence to support a favorable whole-person analysis. I conclude Guideline F against Applicant.

Formal Findings

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraphs a-g: Against Applicant

Conclusion

Under the circumstances presented by the record in this case, it is not clearly consistent with the interest of national security to grant or continue eligibility for a public trust position for Applicant. Eligibility for a public trust position denied.

JOHN GRATTAN METZ, JR
Administrative Judge

⁵¶ 19 (a) inability or unwillingness to satisfy debts; (c) a history of not meeting financial obligations.

⁶¶ 20 (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur.

⁷¶ 20 (b) the conditions that resulted in the financial problem were largely beyond the person's control . . . and the individual acted responsibly under the circumstances.

⁸¶ 20 (c) the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control.

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