



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



In the matter of:)
)
) ADP Case No. 15-00415
)
Applicant for Public Trust Position)

Appearances

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

04/28/2016

Decision

DAM, Shari, Administrative Judge:

Applicant has a history of financial problems, predating the filing of a Chapter 13 bankruptcy in 2009. Prior to the final discharge of debts in 2013, she accumulated delinquent medical debts, primarily because she did not have medical insurance. She presented sufficient evidence to mitigate the financial trustworthiness concerns. Based upon a thorough review of the pleadings, exhibits, and testimony, eligibility for access to ADP I/II/III sensitive information is granted.

Statement of the Case

On April 9, 1993, the Composite Health Care Systems Program Office (CHCSPO), the Defense Office of Hearings and Appeals (DOHA), and the Assistant Secretary of Defense for Command, Control, Communications and Intelligence (ASD C3I), entered into a memorandum of agreement for DOHA to provide trustworthiness determinations for contractor personnel employed in Sensitive Information Systems Positions (ADP I/II/III), as defined in Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program* (January 1987), as amended (Regulation).

On May 5, 2014, Applicant submitted a Public Trust Position Application (SF 85P). On September 1, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns under Guideline F, (Financial Considerations). The action was

taken under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); the Regulation (*supra*); and the adjudicative guidelines (AG) effective within the DOD for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on September 25, 2015 (Answer), and requested a hearing before an administrative judge. DOHA assigned the case to me on February 12, 2016, and issued a Notice of Hearing on the same day. I convened the hearing as scheduled on February 29, 2016. Department Counsel offered Government Exhibits (GE) 1 through 4 into evidence, and they were admitted without objection. Applicant testified and offered Applicant Exhibit (AE) A into evidence, which was admitted without objection. DOHA received the transcript of the hearing (Tr.) on March 10, 2016. The record remained open until March 18, 2016, to give Applicant an opportunity to submit other exhibits. That date was subsequently extended to April 1, 2016. She timely submitted an exhibit that I marked as Applicant's Exhibit (AE) B and entered into the record without objection. On April 12, 2016, she submitted another exhibit to which Department Counsel did not object, including on the basis that it was outside of the time extension for submissions. I marked that exhibit as AE C and admitted it into the record.

Findings of Fact

In her Answer, Applicant denied 13 allegations contained in the SOR referencing delinquent debts (SOR ¶¶1.a to 1.l, and 1.n), on the basis that she thought they were discharged in a Chapter 13 bankruptcy in 2013. She admitted the allegation referencing her bankruptcy (SOR ¶1.m).

Applicant is 54 years old and divorced since 1995. She has two adult children, ages 24 and 26. She earned one year of college credits. From September 1979 until January 2006, she worked as a supervisor for a local newspaper. She then was unemployed until November 2008, when she started temporary positions. She worked until July 2009, and then was unemployed until October 2009. She worked a couple months, was unemployed in February 2010, and in March 2010 began working for the federal government helping with the 2010 census. After completing that job in June 2010, she was unemployed until November 2010 when she obtained a position with an insurance company handling veterans' benefits. In August 2011 she started another position with an insurance company administering a government medical program. She did not have health insurance from January 2006 until August 2011. (Tr. 15-21; GE 1.)

Applicant's history of financial difficulties began after she lost her position in 2006, along with her medical insurance. She subsequently incurred medical debts and experienced periods of unemployment. In April 2009 she filed a Chapter 13 bankruptcy and completed payments to the trustee in December 2013. The court discharged about \$56,000 of delinquent debts, which included a mortgage, credit cards, and utility bills. (Tr. 27-28, 50-51; GE 2.)

Applicant earns \$16 an hour, which is about \$1,900 net a month. Her expenses are about \$1,450. (Tr. 25-26.) She also spends money on her grandchildren when they need something. She is saving money for some large house repairs. She does not have a written budget, but knows that she has four monthly bills that she regularly pays. All other expenses are automatically deducted from her checking account. (Tr. 43.) She does not use credit cards. (Tr. 41.) She took a short online counseling session as a requirement for bankruptcy. (Tr. 41-44.)

While testifying, Applicant acknowledged that she thought all of the medical debts listed on the SOR were resolved through the bankruptcy because her lawyer told her she was “debt free” when she completed payments on the Chapter 13 bankruptcy. (Tr. 29, 45.) When she received the SOR along with the Department’s discovery, she was surprised to discover that none of her medical debts, which were incurred in July 2009, and subsequently in 2010 and 2013, were incorporated into the bankruptcy. (Tr. 30, 37.) When asked if she had a plan to resolve the debts, she said she would have one if she knew who to pay. After receiving said information, she telephoned the hospital where the bills originated and was told that her account did not list outstanding bills. She asked if they had a collection agency handling the matter, but the hospital was unable to assist her. (Tr. 33.) She said that after filing bankruptcy she had not heard from the medical creditors listed on the SOR. (Tr. 37, 46.)

Based on credit bureau reports (CBR) from July 2014 and January 2016, the SOR alleged 13 delinquent debts totaling \$26,461. Nine of those debts arose from a medical emergency in July 2009, and two are from a 2010 medical encounter, at which time she did not have medical insurance. One debt arose in 2013 after a medical procedure, during which time she had insurance that did not cover the procedure. The SOR also alleged that Applicant filed a Chapter 13 bankruptcy in 2009, which was completed in 2013. One of the debts, a utility bill, was resolved through the Chapter 13 bankruptcy (SOR ¶ 1.j).

After the hearing, Applicant submitted evidence that she made a payment of \$3,375.91 to CLA on SOR-listed medical bills owed to one creditor.¹ (AE C.) In summary, Applicant resolved 8 of the 13 SOR-alleged debts, which total \$3,557. The remaining 5 medical debts total \$22,904. The largest one, \$15,163, is owed to a hospital for the July 2009 hospitalization.

Applicant submitted a letter of recommendation from her supervisor, who has known Applicant since August 2011. The supervisor stated that Applicant “exceeds set metrics and consistently qualified for our incentive program.” (AE B.) She is aware of Applicant’s financial issues. (Tr. 16.)

¹This exhibit does not identify which SOR-listed debts are included in said payment. However, based on information gleaned from GE 3, the following debts total the \$3,375 payment: SOR ¶¶ 1.e (\$742); 1.f (\$583); 1.g (\$488); 1.h (\$400); 1.i (\$400); 1.l (\$132); and 1.n (\$630.). GE 4 does not list any identifying information pertinent to the medical debts included in the CBR.

Policies

Positions designated as ADP I, II, and III are classified as “sensitive positions.” (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.” (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. (Regulation ¶ C8.2.1.)

When evaluating an applicant’s suitability for a public trust position, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant’s eligibility for access to sensitive information.

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 AG ¶ 2 describing the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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. Directive ¶ E3.1.15 states that, “[t]he 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.”

A person applying for access to sensitive information seeks to enter 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 protected 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 concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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 classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.²

AG ¶ 19 describes two conditions that could raise trustworthiness concerns and may be disqualifying in this case:

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

Applicant has a history of financial problems that predates the filing of her April 2009 Chapter 13 bankruptcy. Subsequent to that filing and while making payments to the bankruptcy court, she accumulated medical debts that she has been unable or unwilling to satisfy. The evidence raises both of the above trustworthiness concerns, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate trustworthiness concerns arising from Applicant's financial difficulties:

- (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

² See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

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.

Some of Applicant's financial problems began prior to her filing a Chapter 13 bankruptcy in April 2009, which was discharged in December 2013. However, in July 2009 she accumulated medical bills that she did not begin to address until the initiation of this security clearance investigation because she thought that all of her debts had been included in said bankruptcy. The evidence establishes some mitigation under AG ¶ 20(a), as the debts accumulated under circumstances that are unlikely to recur, now that she has health insurance.

Applicant provided evidence that eleven of the delinquent medical debts arose during a period of time when she was unemployed and/or as a consequence of experiencing medical problems while she did not have insurance. Those circumstances were beyond her control. However, in order to merit full mitigation under AG ¶ 20(b), Applicant needed to provide evidence that she acted responsibly under the circumstances. According to her testimony, she believed that all of her medical bills were included in the Chapter 13 bankruptcy because when she completed her payments in December 2013 her lawyer told her she no longer had debts. Upon learning of the debts during this investigation, she called the hospital to inquire about outstanding bills, but was not given sufficient information to resolve them. Thus, the evidence establishes some mitigation for the medical debts.

Applicant participated in a short credit-counseling course as a requirement for filing bankruptcy in 2009. Although she did not submit a budget, she is aware of her monthly expenses and income. She paid, albeit recently, seven of the outstanding debts, indicating a good-faith effort to resolve them and demonstrating that the debts are slowly coming under control. AG ¶ 20(c) and AG ¶ 20(d) have some application. There is no evidence that Applicant successfully disputed any debts. AG ¶ 20(e) does not apply.

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 relevant circumstances. 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. 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.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant is an intelligent 54-year-old woman, who held a steady job from 1979 until 2006. Subsequently, she experienced periods of unemployment and the loss of health insurance. Since August 2011 she has successfully worked for a federal contractor and obtained insurance. In April 2009 she filed a Chapter 13 bankruptcy. During the pendency of said bankruptcy, she incurred delinquent medical debts that were not incorporated into the plan. At the time she completed her payments into the bankruptcy plan in December 2013, she assumed all outstanding delinquent debts were resolved based on her lawyer's comments. Obviously that was an incorrect assumption. At this time, she has not resolved five of the 13 SOR-alleged delinquent medical debts that total almost \$23,000, with the largest debt being \$15,000. Based on the facts that she satisfactorily completed a Chapter 13 bankruptcy in 2013; is a valued employee; has recently resolved seven of the delinquent debts; and now clearly appreciates the importance of resolving delinquent medical debts, I believe she will promptly initiate the necessary steps to address those remaining five debts, which could include financial and budgetary counseling.

After weighing the disqualifying and mitigating conditions, and all facts and circumstances in the context of the whole-person, the record evidence leaves me without doubt as to Applicant's eligibility and suitability for a position of trust. For these reasons, I conclude that Applicant mitigated the trustworthiness concerns arising under the guidelines for 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

Subparagraphs 1.a through 1.n: 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 ADP I/II/III sensitive information is granted.

Shari Dam
Administrative Judge