



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



In the matter of:)
)
) ADP Case No. 15-02153
)
)
Applicant for Public Trust Position)

Appearances

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

06/09/2016

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant has not mitigated the financial considerations trustworthiness concerns. Eligibility for access to sensitive information is denied.

Statement of the Case

On September 22, 2015, 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 November 2, 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 and B, which were admitted without objection. DOHA received the hearing transcript (Tr.) on May 23, 2016.

Findings of Fact

Applicant admitted the allegations in SOR except for ¶ 1.x, which she denied. Her admissions were 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 42 years old. She has an associate's degree earned in 2006. She was married from 2005 to 2012. She has children from her ex-husband whose ages are 20, 18, 17, and 14. The two youngest children reside with her. She has an informal child support agreement that her ex-husband provides money when she needs it. She remarried in 2013. There are two stepchildren that reside with her and her spouse, ages 19 and 17. The elder works and the younger is in school. Applicant has been employed by a federal contractor since February 2014.¹

Applicant attributed her financial difficulties to being a young single parent with four children. Her mother passed away in 1998. She was living paycheck to paycheck. Her husband was not reliable. She was paying student loans at one time, but did not recall how long she paid them. She stated the student loan alleged in SOR ¶ 1.t (\$4,102) is in forbearance. She disputed the student loan debt in SOR ¶ 1.x (\$5,932) believing it is a duplicate. She did not provide corroborating information to show the debt is a duplicate. Credit reports from May 2014 and January 2015 substantiate the alleged debts and the two student loans. Applicant also attributed her financial problems to being unemployed and underemployed. She estimated that her annual income in 2015 was approximately \$22,000. Her spouse's annual income is not known. Applicant was unemployed from August 2011 to April 2013. She was employed from 2007 to 2011. She relocated to a new state when her spouse moved and had difficulty finding a job. They file their tax returns separately.²

Applicant testified that she and her spouse filed a Chapter 13 bankruptcy case in November 2015. She provided a letter dated January 14, 2016, from the bankruptcy court that is titled: "Notice Concerning Your 2015 Tax Return and Potential Motion to Dismiss Your Case." The Trustee requested a copy of Applicant's 2015 federal income tax return including all supporting schedules within 30 days of filing the return, but not later than April 30, 2016.³ Applicant testified that she filed her 2015 federal income tax return in February 2015 and received a refund. She believed her spouse provided a copy of the tax return. Because they file their tax returns separately and filed their bankruptcy jointly, it is unclear if both parties provided copies of their tax returns. The letter also indicated that the terms of the Chapter 13 may require Applicant to pay the federal tax refund to the Chapter 13 Trustee to be distributed to the creditors. Applicant

¹ Tr. 19-25, 38.

² Tr. 26, 32-35, 38-43; GE 2, 3.

³ AE A.

did not provide the Trustee with the refund she received. She stated she was “working on it.”⁴

Applicant testified she has not paid any of the delinquent debts alleged in the SOR and that they are all included in her Chapter 13 bankruptcy plan. She indicated her student loan is in forbearance due to the bankruptcy. She does not have any credit cards. She completed the mandated financial counseling required to file bankruptcy. She does not have a written budget, but stated she knows where the money is going. She plans on continuing making the Chapter 13 bankruptcy payments through completion of the plan.⁵

Applicant did not know the amount of total liabilities she and her spouse listed in the bankruptcy or the amount for secured debts, unsecured debts, assets, and other information included in the filings. Her spouse makes a payment of \$184 every two weeks to the bankruptcy trustee that began in December 2015. The payments come directly out of her spouse’s paycheck. She provided proof that a payment was withdrawn in December 2015, and two payments were withdrawn in April 2016. She was not certain how long the Chapter 13 plan will run, but thought it was five years.⁶

Applicant testified that some of her delinquent debts are old from when she was a single mother. She could not identify which debts alleged fall into that category. The SOR alleges 25 delinquent debts totaling approximately \$20,015.

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 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

⁴ Tr. 27, 43-50; AE A. The letter also advised Applicant to review the requirements with her bankruptcy attorney.

⁵ Tr. 50-58.

⁶ Tr. 27-32, 47; AE B.

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.⁷

⁷ See ISCR Case No. 11-05365 at 3 (App.Bd. May 1, 2012).

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 25 delinquent debts totaling approximately \$20,015. Applicant is unable or unwilling to pay or resolve her delinquent debts. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate financial considerations trustworthiness 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.

Applicant recently filed bankruptcy with her spouse to resolve her delinquent debts. Her spouse is making payments. She does not know the amount of liabilities claimed in the bankruptcy. It is unknown if all of the debts alleged in the SOR are included in the bankruptcy. Applicant was required to comply with an order from the bankruptcy trustee to provide her refund by a certain date. It is unknown if both her and her spouse's tax returns were submitted to the trustee. Applicant did not provide the refund. There is insufficient evidence to conclude that future financial problems are unlikely to recur. Her behavior casts doubt on her current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

Applicant attributed her financial problems to being a young single mother at one time. She testified that she receives child support from her ex-husband when she needs money. Therefore, this is not a condition beyond her control. She was married to her ex-husband from 2005 to 2012 and was employed from 2007 to 2011. She also attributed her financial problems to unemployment and underemployment. These were conditions beyond her control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. She did not provide evidence of other actions she may have taken before filing bankruptcy to resolve her debts. She did not comply with the bankruptcy trustee's order to provide her tax refund to the court. AG ¶ 20(b) partially applies.

Applicant testified she completed the mandated financial counseling for the bankruptcy case. She indicated she knew where her money was being spent, but she did not know the specifics about her bankruptcy and did not have a written budget. Bankruptcy is a legal means to resolve debts. The payments being made under the Chapter 13 plan show some effort to resolve her debts. Applicant has only been participating in the Chapter 13 bankruptcy plan for several months. She failed to timely comply with the bankruptcy trustee's order and the current status of her bankruptcy is unknown. There is an insufficient financial track record at this time to conclude Applicant's financial problems are under control. AG ¶¶ 20(c) and 20(d) partially apply.

Applicant disputed the student loan debt in SOR ¶ 1.x indicating it is a duplicate. Her credit reports reflect two different loan amounts and account numbers. She did not provide documented proof to substantiate her dispute or any efforts she made to resolve it. 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 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 has numerous delinquent debts. She filed a Chapter 13 bankruptcy case in November 2015, but was uncertain about the specifics of it. She had not complied with an order from the bankruptcy trustee, which may put her bankruptcy in jeopardy. It also raises questions about her willingness to comply with the requirements of the Chapter 13 case. It is unknown what debts are included in the Chapter 13 payment plan, and her total liabilities. Applicant is making an effort to resolve her debts, but at this time, she does not have a sufficient track record of fiscal responsibility and her financial issues remain a concern.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a public trust position. For all these reasons, I conclude Applicant has not 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:	AGAINST APPLICANT
Subparagraphs 1.a-1.y:	Against Applicant

Conclusion

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

Carol G. Ricciardello
Administrative Judge