



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



In the matter of:)
)
) ADP Case No. 14-03869
)
)
Applicant for Public Trust Position)

Appearances

For Government: Caroline Heintzelman, Esquire, Department Counsel
For Applicant: *Pro se*

10/16/2015

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, I conclude that Applicant's eligibility to occupy a public trust position is granted.

Statement of the Case

Applicant completed and signed an Electronic Questionnaires for Investigative Processing (e-QIP) on February 28, 2013. The Department of Defense (DOD) Consolidated Adjudications Facility, (CAF) issued a Statement of Reasons (SOR) detailing the trustworthiness concerns under Guideline F, financial considerations on January 15, 2015. The action was taken under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *Adjudicative Guidelines For Determining Eligibility for Access to Classified Information* (AG) implemented on September 1, 2006.

Applicant acknowledged receipt of the SOR on January 22, 2015. She answered the SOR in writing on January 30, 2015, and she requested a hearing before an administrative judge with the Defense Office of Hearings and Appeals (DOHA). Department Counsel was prepared to proceed on June 9, 2015, and I received the case assignment on June 15, 2015. DOHA issued a notice of hearing on June 25, 2015, and I convened the hearing as scheduled on July 15, 2015. The Government offered six exhibits (GE), 1 through 6, which were received, marked, and admitted into evidence without objection. Applicant testified. Applicant submitted 10 exhibits (AE), A through J, which were received, marked, and admitted into evidence without objection. DOHA received the transcript of the hearing (Tr.) on July 22, 2015. I held the record open until July 29, 2015, for the submission of additional matters. On July 28, 2015, she submitted AE K (budget) and AE L (bankruptcy petition), which were received, marked, and admitted without objection. Applicant was given additional time to submit one additional document, which she did. It has been marked as AE M (discharge order). The record closed on August 31, 2015.

Findings of Fact

In her Answer to the SOR, Applicant admitted all the factual allegations in the SOR. She also provided additional information to support her request for eligibility for a public trust position.

Applicant, who is 61 years old, works as a benefits specialist for a DOD contractor. She began working for her employer through a temporary agency position in February 2013. Her employer converted her to a permanent position in March 2015. Applicant advised now that she has a permanent position, she has health insurance and a 401(k) account.

Applicant graduated from high school. Applicant married in October 1974. Her husband died unexpectedly in October 2001. She has five daughters, who are 34, 32, 31, 28, and 26 years old. None are dependent upon her.¹

Applicant, her husband, and their family moved from State A to State B in 1989, where she lived until 2007. After her husband's death, Applicant attended a local community college, where she earned a certificate in medical transcription. She was unable to find work in this field. She moved from State B to State C in 2007, where she now lives and works. She obtained a "good" job with a silicon company. When the economic downturn began, she lost this job in December 2008. Her financial problems began. Between December 2008 and February 2013, Applicant experienced periods of unemployment ranging from approximately two months to about one year. She received unemployment benefits when she was not working. During this same period of time, she worked various temporary jobs, including school bus driver, cashier, clerk, janitor, clean room technician, and warehouse worker. In 2011, she returned to school to learn

¹GE 1; Tr. 30, 35.

medical billing and coding. She received a certificate when she completed the program. She is now working and saving money to test to become a certified coder.²

Applicant is under medical care for high blood pressure and diabetes. In 2008 or 2009, she experienced increased problems with her high blood pressure. She did not have medical insurance, which contributed to her financial problems, as she did not have money to pay her increasing medical bills. She tried to pay some of her bills with her unemployment benefits, but was unable to resolve most of her bills. Her high blood pressure problems are now managed. She is working with a dietician to help control her blood sugar and triglycerides.³

Applicant currently earns \$16 an hour for regular time and \$24 an hour for overtime. Applicant relies upon overtime earnings to help pay her monthly expenses. Her gross regular biweekly pay is \$1,280 plus overtime. Her actual biweekly earnings varies. In the five pay periods prior to the hearing, her gross biweekly income ranged between \$1,472 and \$2,048, and her net biweekly pay ranged from \$706 to \$1,250 due to overtime earnings and a wage garnishment.⁴ Applicant also receives \$203 a month in a pension benefit from her husband. Her monthly expenses include \$576 for rent, \$168 for utilities, \$80 for phone, \$87 for car insurance, \$425 for groceries, \$100 for pets, \$25 for medication, \$75 for diabetic supplies, \$86 for student loan, \$125 for car loan, and \$50 for savings.⁵ Applicant's expenses total \$1,896.⁶

The SOR identifies 16 debts totaling \$26,865. Nine debts relate to medical care, when Applicant lacked medical insurance. These bills total \$15,946. Five other debts concern telecommunications bills and total \$1,512. The remaining two bills are a charged-off car account for \$6,607 and a collection account for \$2,800. There is no evidence that Applicant paid any of these bills.⁷

On the advice of her bankruptcy attorney, Applicant filed a Chapter 7 bankruptcy petition on June 23, 2015, seeking discharge of her debts. Applicant and her attorney met with her creditors as directed by the court. Applicant completed the credit counseling education required by the court on June 25, 2015. All creditors listed in the SOR, except the creditors in SOR allegations 1.m (\$4,996) and 1.o (\$345), and the

²GE 1; Tr. 31-32, 36.

³GE 6; Tr. 31-33, 54-55.

⁴Applicant advised that her wages are being garnished by a former landlord for unpaid rent. Her roommate was unable to pay her share of the rent, which led to their eviction from the property. She has paid approximately \$1,400 on a debt of around \$3,000. AE F; Tr.37-39.

⁵Applicant is saving to pay for her coding certification examination and for an emergency fund. Tr. 52-53, 59.

⁶AE F; AE K ; Tr. 44-51.

⁷GE 2- GE 5; Record.

garnishment debt are listed in her bankruptcy petition.⁸ These two SOR debts are also not listed on any credit report after 2013.⁹ After a meeting of her creditors, the court discharged Applicant's debts by Order dated August 31, 2015. Applicant reaffirmed one debt, which she is paying monthly. Applicant filed her income tax returns each year. She does not owe any past due taxes.¹⁰

Policies

Positions designated as ADP I and ADP II are classified as "sensitive positions." 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 national interests. 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.

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 over-arching 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. 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 to obtain a favorable trustworthiness decision.

⁸These accounts may have been included in her bankruptcy, but the information on the credit reports is unclear. The accounts may have been transferred, reassigned, or sold to other creditors or collection agents, resulting in a possible change in account number or creditor name.

⁹GE 3 - GE 5.

¹⁰AE G - AE J; AE L ; AE M; Tr. 34-35, 53.

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 relating to the guideline 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 [sensitive] 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(a), an "inability or unwillingness to satisfy debts" is potentially disqualifying. Similarly under AG ¶ 19(c), "a history of not meeting financial obligations" may raise security concerns. Applicant accumulated delinquent debt. She was unable to pay her obligations. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

The Financial Considerations guideline also includes examples of conditions that can mitigate trustworthiness concerns. I have considered mitigating factors AG ¶ 20(a) through ¶ 20(f), and the following are potentially applicable:

(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; and

(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.

Applicant's financial problems began when she lost her technology job in December 2008. The economic downturn not only impacted her job, it impacted her ability to find other work. For several years, she relied on unemployment benefits and part-time employment to pay her basic bills. During this same time, she experienced increased problems with her blood pressure, necessitating sometimes expensive and ongoing medical treatment when she lacked health insurance and the ability to pay for her care. She tried to pay something towards her medical bills with her unemployment benefits, but she was unable to pay most of her debts. She returned to school to obtain skills that would enhance her ability to find steady employment. She made a good decision by returning to school and improving her skills. Applicant's current position provides her with health insurance, but not enough income to pay her past-due debts. She contacted a bankruptcy attorney, and with the assistance of the attorney, she filed a Chapter 7 bankruptcy petition. She completed a financial counseling course. Her nonpriority, unsecured debts are now resolved as the court discharged her debts. She has mitigated the trustworthiness concerns under AG ¶¶ 20(b) and 20(c).

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 the 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) 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. The decision to grant or deny a trustworthiness determination requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a trustworthiness concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a public trust position should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate trustworthiness concern.

The evidence in support of granting a trustworthiness determination to Applicant under the whole-person concept is more substantial than the evidence in support of

