



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



In the matter of:)	
)	
)	ADP Case No. 14-04112
)	
Applicant for Security Clearance)	

Appearances

For Government: Robert J. Kilmartin, Esq., Department Counsel
For Applicant: *Pro se*

05/27/2015

Decision

COACHER, Robert E., Administrative Judge:

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

Statement of the Case

On November 19, 2014, 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 January 5, 2015, and requested a hearing before an administrative judge. The case was assigned to me on April 22, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 4, 2015, and the hearing was convened as scheduled on May 19, 2015. The

Government offered exhibits (GE) 1 through 5, which were admitted into evidence without objection. Applicant testified, but offered no exhibits at the hearing. The record was held open for Applicant to submit additional information. Applicant submitted AE A.1 to A.25, which were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on May 27, 2015.

Findings of Fact

Applicant admitted the following SOR allegations: ¶¶ 1.c - 1.d, 1.f, 1.i, 1.l, and 1.r. She denied ¶¶ 1.a - 1.b, 1.e, 1.g - 1.h, 1.j -1.k, and 1.m – 1.q. The 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 41-year-old employee of a federal contractor. She has worked for this employer since February 2013. She has completed the coursework for a bachelor's degree and two associate degrees, but she has not received them because she owes the respective schools money. She has no military service and this is her first time seeking a trustworthiness determination. She is married, has a son, and has adopted five nieces and nephews. She receives \$3,100 from the state to support the adopted children.¹

The SOR alleges 18 delinquent debts (including three judgments) for a total amount of debt in excess of \$36,500. The debts were listed in credit reports from March 2013, April 2014, and March 2015.²

Applicant's financial problems arose because of periods of unemployment; the most recent was from February to April 2010. She also claims that some of the debt was incurred as a result of identity theft. She claims that at various times her two half-sisters used her name and personal information to secure credit. She did not produce evidence to support this claim of identity theft. She was asked directly if she ever filed police reports or sought charges against her half-sisters for identity theft and she responded in the negative. She also paid some of the amounts that resulted from the claimed identity theft. Her husband does not work, but stays at home looking after the children to avoid child care expenses. She admitted that their budget was very tight causing them to live "paycheck to paycheck." She stated that she hired a debt resolution law firm to help with her debts. She further stated that the firm was unable to resolve nine debts. She failed to produce documentary evidence showing the nature of assistance that she received or the terms of their agreement. The status of the SOR-related debts is as follows.³

¹ Tr. at 6, 21-22, 24, 26, 37; GE 1.

² GE 2-4.

³ Tr. at 20, 22, 26, 28-29, 33-35.

SOR ¶ 1.a (judgment- \$4,658):

This judgment resulted from a repossessed car debt. Applicant's wages were garnished over a period of time and documentation shows the judgment was satisfied in May 2009. This debt is resolved.⁴

SOR ¶¶ 1.b, 1.g, 1.i, 1.k, and 1.n (medical accounts \$227; \$924; \$301; \$142; \$549):

Applicant provided some bank statements showing payments that she characterized as medical payments. The amounts of payments do not correspond with the amount of debt. She claimed to be making payments on the debt listed at SOR ¶ 1.i and to have paid the debt listed at SOR ¶ 1.n. Her documents support those payments. SOR ¶¶ 1.i and 1.n are resolved in her favor, the rest are unresolved.⁵

SOR ¶¶ 1.c - 1.d, 1.r (consumer accounts \$1,764; \$860; judgment \$1,301):

Applicant claims that these three accounts are all related. The two debts are owed to the same creditor and the judgment is in favor of the same creditor. Applicant also claimed that these were two of the debts that were incurred as a result of identity theft. She offered no proof of the theft and the judgment was paid through garnishment of her wages. A release was obtained in September 2013. These debts are resolved.⁶

SOR ¶ 1.e (telecommunications account \$273):

Applicant cosigned on this account with her son. He failed to make the required payments. She provided documentation that she paid \$100 toward this debt in October 2013. There is no additional proof of payments or terms of a settlement agreement. This debt is unresolved.⁷

SOR ¶ 1.f (utilities account \$293):

Applicant provided documentation showing that her husband paid this utility account in May 2014. This debt is resolved.⁸

⁴ Tr. at 52; GE 5; Ans.

⁵ Tr. at 53, 55, 56, 58, 61; GE 2; AE A.2, A.3, A.8.

⁶ Tr. at 53, 64; GE 2; Ans.

⁷ Tr. at 54; GE 2; AE A.7.

⁸ Tr. at 54; GE 2; Ans.

SOR ¶ 1.h (car account \$5,041):

Applicant admitted she obtained this car loan account. The car was stolen and was recovered in a state of total loss. Her insurance company was supposed to pay the remaining amount of the loan. She did not offer proof of payment, but the debt does not appear on her latest two credit reports. This debt is resolved.⁹

SOR ¶ 1.j (car account \$8,394):

Applicant admitted that this car account resulted in a voluntary repossession. She further claims that she set up a payment plan to pay this account. She did not provide proof of these payments. This debt is unresolved.¹⁰

SOR ¶ 1.i (telecommunications account \$731):

Applicant admitted that she had this satellite TV service and discontinued its use. She claims to have settled this account for \$457, but did not provide proof of the settlement. This debt is unresolved.¹¹

SOR ¶ 1.m (telecommunications account \$85):

Applicant admitted this debt, but stated that this account has been written off since 1999. She also stated that her current TV service is through this provider. This debt is unresolved.¹²

SOR ¶ 1.o (apartment debt \$9,942):

Applicant stated that she did not live in this apartment, but believes her half-sister used her identity to rent this apartment. She did not supply any proof of identity theft. This debt is unresolved.¹³

SOR ¶ 1.p (consumer account \$200):

This was a joint debt with her son for some exercise equipment. She paid the initial \$100 and her son was supposed to pay the balance. He did not pay his share and the account went into collection status. Applicant claims she paid the balance, but did not provide proof of such payment. This debt is unresolved.¹⁴

⁹ Tr. at 56; GE 2-4.

¹⁰ Tr. at 57; GE 2.

¹¹ Tr. at 58; GE 2, 5.

¹² Tr. at 60; GE 2, 5.

¹³ Tr. at 62; GE 2, 5.

¹⁴ Tr. at 63; GE 2, 5.

SOR ¶ 1.g (rental account \$825):

Applicant denied this account and the Government's evidence does not support that Applicant owed this amount. This debt is resolved.

Applicant is current on her student loan payments. She is not delinquent on either her federal or state taxes. She did not provide any information on her current finances, other than to say she is living paycheck to paycheck. Other than hiring the debt resolution law firm, she has not received financial counseling.¹⁵

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 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,

¹⁵ Tr. at 22, 70.

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 has numerous delinquent debts. 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. Although several debts were paid through involuntary garnishment actions, many of them remain unpaid. AG ¶ 20(a) is not applicable.

Applicant voluntarily chose to adopt her nephews and nieces. This was within her control. Moreover, she receives \$3,100 monthly from the state to support those children. She was unemployed for periods of time, most recently from February to April 2010. This is a condition beyond her control. Both judgments that were satisfied were done through garnishment actions rather than by voluntary payments by her. Overall, the record evidence does not support that Applicant's actions were responsible under the circumstances. AG ¶ 20(b) is partially applicable.

Although Applicant apparently sought the services of a debt resolution law firm. The result of that service was not made available. No other evidence of counseling was offered. Given the unpaid status of the SOR debts, there are not clear indications that Applicant's financial problems are under control. Although she paid several debts, through garnishment and otherwise, evidence of good-faith efforts to pay or resolve the remaining debts is lacking. AG ¶ 20(c) does not apply and ¶ 20(d) partially applies.

Applicant failed to supply documentary evidence to support her dispute of certain debts or to support her claim of identity theft. AG ¶ 20(e) does not apply. The debts that were paid are found in favor of Applicant.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for access to sensitive information 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 access to sensitive 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 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.

I considered the circumstances by which Applicant became indebted. However, I also considered that she has taken very little action to resolve her financial situation. She has not established a meaningful track record of financial responsibility, which 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.

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
Subparagraph: 1.a:	For Applicant
Subparagraph: 1.b:	Against Applicant
Subparagraphs: 1.c – 1.d:	For Applicant
Subparagraph: 1.e:	Against Applicant
Subparagraph: 1.f:	For Applicant
Subparagraph: 1.g:	Against Applicant
Subparagraphs: 1.h – 1.i:	For Applicant
Subparagraphs: 1.j – 1.m:	Against Applicant
Subparagraph: 1.n:	For Applicant
Subparagraphs: 1.o – 1.p:	Against Applicant
Subparagraphs: 1.q – 1.r:	For Applicant

Conclusion

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

Robert E. Coacher
Administrative Judge