



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



In the matter of:)	
)	
)	ADP Case No. 14-04992
)	
Applicant for Public Trust Position)	

Appearances

For Government: Eric Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

07/17/2015

Decision

LYNCH, Noreen A., Administrative Judge:

On December 17, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant listing trustworthiness concerns arising 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); and the adjudicative guidelines (AG), implemented in September 2006.

Applicant timely answered the SOR and requested a decision based on the written record in lieu of a hearing. Department Counsel submitted a File of Relevant Material (FORM), dated May 8, 2015.¹ Applicant received the FORM on May 15, 2015. She did not submit additional information for the record. I received the case assignment on July 13, 2015. Based on a review of the case file, I find Applicant has not mitigated the trustworthiness concerns raised. Eligibility for a position of trust is denied.

¹The Government submitted seven items in support of its case.

Findings of Fact

In her answer to the SOR, Applicant admitted three allegations under Guideline F, and denied two allegations with explanations. (Item 2)

Applicant is 33 years old. She is employed with a health insurance company. Applicant obtained an undergraduate degree in 2005. She continued her education at another university until 2012. She is married and has one child.² (Item 3) She has been employed with her current employer since September 2013. This is her first application for a position of trust, which she completed on August 13, 2013. (Item 3)

The SOR alleges five delinquent debts totaling approximately \$55,000. These debts include charged-off accounts, collection accounts, a judgment, and student loans. (Item 1) Credit reports confirm the debts. (Items 5 and 6) The 2012 judgment in 1.c for \$1,388 was paid in June 2014. (Item 4)

Applicant explained in her Answer that she has was unemployed from May 2004 until February 2009. During that time she attended college and was supported by her husband. She noted that she is striving to achieve a better credit rating, and she knows there is room for improvement. She states that at her current salary, it is not within her means to pay on her debts. (Item 2)

The student loan collection account in SOR 1.a is approximately \$30,266. She admitted this debt and submitted documentation that her wages were garnished in 2014. The evidence shows that from October 2014 through December 2014, a total amount of \$772.34 was paid. The account has been in collection since 2010.

In 2013, during an investigative interview, Applicant explained that she also has another child. She worked about 20 hours a week from 2009 until 2012, before taking the current position. (Item 7) During the interview she was confronted with the various student loans in collection. She noted that she would try to set up payments with the creditors. The record does not reflect that she had addressed those accounts.

As to the remaining three SOR debts, Applicant did not provide any documentation to support that she has paid any accounts or is in a repayment plan for them. She admitted the debts, but thought that some may be duplicate accounts. She claimed that she settled the account in 1.d, but there is no clear documentation to support this claim. She intends to consolidate her student loans. She hopes that in the next year she can begin to address the other accounts.

The record shows that Applicant's annual salary is about \$30,900. Applicant did not list any financial counseling or use of a budget. There is no record of use of a credit counseling organization.

²In the interview Applicant mentioned a son and a daughter. It is not clear from the record which is accurate.

Policies

When evaluating an applicant's suitability for a public trust position, an 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. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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.

The Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." ³ The burden of proof is something less than a preponderance of evidence. ⁴ The ultimate burden of persuasion is on the applicant. ⁵

A person seeking access to sensitive information enters into a fiduciary relationship with the Government based on 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 classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Analysis

Guideline F, Financial Considerations

The trustworthiness concern for Financial Considerations is set out in AG ¶ 18:

³ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

⁴ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁵ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

Failure or an 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.

Applicant's admissions establish her delinquent debts and her credit reports confirm the debts. Consequently, Financial Considerations Disqualifying Conditions (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations) apply. With such conditions raised, it is left to Applicant to overcome the case against her and mitigate trustworthiness concerns.

The nature, frequency, and relative recency of Applicant's financial difficulties make it difficult to conclude that it occurred "so long ago." An unpaid debt is a continuous course of conduct for the purposes of DOHA adjudications. See, ISCR Case No. 10-11083 at 2 (App. Bd. Dec. 17, 2012). Applicant still has unresolved delinquent debt that she intends to pay, but has not provided documentation to support her assertion. She has not provided documentation that three accounts are paid or are in a repayment plan. The delinquent obligations remain. One account is being paid by garnishment, it is not clear if that was voluntary or involuntary. Consequently, Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(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) does not apply.

FC MC AG ¶ 20(b) (the conditions that resulted in the behavior 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) does not apply. Applicant listed information concerning unemployment from 2004 until 2009 when she was attending college. She attended college and was supported by her husband. She did not address any of the delinquent debts until she received the SOR. She has every intention to pay her debts, but to date has not provided documentation that she has addressed three of them. One account is being paid by garnishment. She has a large unresolved amount of debt that she has not provided evidence that she has resolved or is in the process of resolving them. She did not act responsibly. In response to the FORM, Applicant did not present new information presenting more documentation or an update on the status of her debts.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) partially applies. Applicant settled one debt in 2014. She has a garnishment but it is not clear whether it is voluntary. This occurred when her public trust investigation began. She did not present evidence that she received financial counseling. AG ¶ 20(c) (the person has received or is receiving

counseling for the problem) does not apply. She has not addressed the debts in a timely manner. Consequently, I find that there are not clear indications that her financial problems are being resolved and are under control.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a position of trust by considering the totality of an applicant's conduct and all the 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 position of trust must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. As noted above, the ultimate burden of persuasion is on the applicant seeking a public trust position.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors. Applicant is 33 years old. She has worked for her current employer since 2013. She did not provide a nexus to show that this was a circumstance beyond her control, nor that she acted responsibly. She has not taken sufficient steps to mitigate the concern. She has not mitigated the security concerns under the financial considerations guideline.

Because Applicant chose to have this matter handled without a hearing, I am unable to evaluate her credibility. In relying on the written record, she failed to submit sufficient information or evidence to supplement the record with relevant and material facts regarding her circumstances, articulate her position, and fully mitigate the financial considerations concerns.

The clearly consistent standard indicates that trustworthiness determinations should err, if they must, on the side of denials. A denial of her trustworthiness does not necessarily indicate anything adverse about Applicant's character or loyalty. It means that the individual has presented insufficient mitigation to meet the strict standards controlling access to sensitive information.

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.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraphs 1.d-1.e:	Against 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 a position of public trust. Eligibility for a position of public trust is denied.

NOREEN A. LYNCH.
Administrative Judge