



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



In the matter of:)
)
) ADP Case No. 15-00020
)
)
Applicant for Public Trust Position)

Appearances

For Government: David F. Hayes, Esq., Department Counsel
For Applicant: *Pro se*

11/21/2015

Decision

COACHER, Robert E., Administrative Judge:

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

Statement of the Case

On July 27, 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, and Guideline E, personal conduct. DOD CAF 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 the SOR on August 6, 2015, and elected to have her case decided on the written record in lieu of a hearing. Department Counsel submitted the

Government's File of Relevant Material (FORM)¹ on August 29, 2015. The evidence included in the FORM is identified as Items 2-5 and is admitted into the record. The FORM was mailed to Applicant, who received it on September 14, 2015. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. She submitted exhibits (AE) A-E, which were admitted without objection. The case was assigned to me on October 13, 2015.

Findings of Fact

In Applicant's answer to the SOR, she denied all the debts listed in the SOR and the allegation that she provided false information on her trustworthiness application. After a careful review of the pleadings and evidence, I make the following findings of fact.²

Applicant is 47 years old. She has worked for a federal contractor since April 2014. She worked in the private sector from July 2013 until assuming her current position. She experienced periods of unemployment from May to July 2013, and October 2010 to October 2011. She is single, never married, and has no children. She has a high school diploma. She has no military experience, but held a security clearance when she worked for a federal agency from 1988 to 1997.³

The SOR lists 11 delinquent debts totaling approximately \$15,786.⁴ The debts include eight collection accounts, two charged-off accounts, and a vehicle repossession. The debts are supported by credit reports from May 2014 and August 2015 and by Applicant's statements to a defense investigator in May 2014.⁵

The personal conduct allegation includes deliberately providing false information while completing her trustworthiness application in April 2014 by failing to list the vehicle repossession and her other past-due financial obligations.

Applicant's financial difficulties arose as a result of her unemployment from 2010 to 2011. She has only recently been able to address her financial problems since obtaining her current job. She failed to present evidence of receiving financial

¹ In the FORM, Department Counsel styled this case as an ISCR case when the SOR indicated that it was an ADP trustworthiness determination. My decision is written in the posture of an ADP case.

² Item 1.

³ Items 2-3.

⁴ SOR ¶¶ 1.e and 1.l reflect the same underlying debt. I find in favor of Applicant regarding ¶ 1.l. See Item 4.

⁵ Items 3-5.

counseling. There is no evidence of a current budget or earnings and expense statement.⁶

The status of the debts is as follows:

SOR ¶ 1.a (charged-off account for \$39):

Applicant claims she paid this debt, but failed to supply any supporting documentation. This debt is unresolved.⁷

SOR ¶ 1.b (collection account for \$678):

Applicant disputes this debt, but did not provide documentary proof of the basis of the dispute or actions she has taken to resolve the debt. This debt is unresolved.⁸

SOR ¶ 1.c (repossession for \$2,389):

Applicant disputed this debt. She claims she traded the vehicle and the balance was satisfied. She did not supply documentation supporting her claim that this debt was paid. This debt is unresolved.⁹

SOR ¶ 1.d (collection account for \$935):

Applicant disputes this debt, but did not provide documentary proof of the basis of the dispute or actions she has taken to resolve the debt. This debt is unresolved.¹⁰

SOR ¶ 1.e (collection account for \$3,572):

Applicant claims to have contacted the creditor to set up a payment plan, but failed to provide documentation of such a plan. This debt is unresolved.¹¹

SOR ¶ 1.f (collection account):

Applicant disputes this debt, but did not provide documentary proof of the basis of the dispute or actions she has taken to resolve the debt. She provided documentation

⁶ Items 1, 3; AE A-E.

⁷ Item 1; AE A-E.

⁸ Item 1, AE A-E.

⁹ Item 1; AE A-E.

¹⁰ Item 1, AE A-E.

¹¹ Item 1, AE A-E.

showing she reached a settlement payment plan with the creditor, but did not provide proof of any payments. This debt is unresolved.¹²

SOR ¶¶ 1.g-1.i (medical collection accounts for \$218, \$6,320, \$58):

Applicant disputes these debts claiming that her insurance should have covered these debts, but she did not provide documentary proof of the basis of the dispute or actions she has taken to resolve the debts. These debts are unresolved.¹³

SOR ¶ 1.j (collection account for \$1,259):

Applicant disputes this debt, but did not provide documentary proof of the basis of the dispute or actions she has taken to resolve the debt. This debt is unresolved.¹⁴

SOR ¶ 1.k (collection account for \$317):

Applicant claims she paid this debt, but failed to supply any supporting documentation. This debt is unresolved.¹⁵

On April 25, 2014, Applicant completed her trustworthiness questionnaire. She answered “no” to the question concerning whether she had any property repossessed, whether she had any debts turned over to a collection agency within the last seven years, whether she had defaulted on any loans within the last seven years, and whether she had any account or credit card suspended, charged-off, or cancelled for failure to pay. The answer to all those questions should have been “yes.” Applicant claimed that she misunderstood the questions and had no intent to deceive when she answered as she did.¹⁶

Applicant offered character letters from a coworker, a friend, and her mother. All attest to her work ethic, loyalty, and trustworthiness.¹⁷

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

¹² Item 1, AE B.

¹³ Item 1, AE B.

¹⁴ Item 1, AE A-E.

¹⁵ Item 1; AE A-E.

¹⁶ Items 1.

¹⁷ AE C-E.

. . . 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 The Defense Office of Hearings and Appeals (DOHA) by the Defense Security Service and Office of Personnel Management. DOD 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, 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

AG ¶ 18 expresses the trustworthiness concern for financial considerations:

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. I have considered all of them under AG ¶ 19 and the following potentially apply:

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

Applicant has delinquent debts that remain unpaid or unresolved. I find both the disqualifying conditions are raised.

The guideline also includes conditions that could mitigate trustworthiness concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

- (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 debts 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 and remain unresolved. She did not provide sufficient evidence to show that her financial problems are unlikely to recur. AG ¶ 20(a) does not apply. Applicant presented evidence that the debts were due to circumstances beyond her control, namely her periods of unemployment. For this mitigating condition to apply, she must also show responsible action toward resolving the debts. She failed to show proof of any action to resolve these debts or that she received any financial counseling. AG ¶ 20(b) partially applies, but, ¶ 20(c) and ¶ 20(d) do not apply. She also failed to supply documentation to support her dispute of the debts. AG ¶ 20(e) does not apply.

Guideline E, Personal Conduct

AG ¶ 15 expresses the personal conduct trustworthiness concern:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect sensitive information. Of special interest is any failure to provide truthful and candid answers during the trustworthiness determination process or any other failure to cooperate with the trustworthiness determination process.

AG ¶ 16 describes conditions that could raise a trustworthiness concern and may be disqualifying in this case. The following disqualifying condition is potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant failed to provide accurate delinquent-debt information as she was required to do on her trustworthiness application. She claims her failure to list this information was not deliberate. She claims she misunderstood the nature of the questions. Because this is an administrative determination, I cannot make a credibility finding; however, I find that the questions on the application are not confusing or misleading. This persuades me that she deliberately failed to list her debt information on his trustworthiness application in 2014. AG ¶ 16(a) applies.

The guideline also includes conditions that could mitigate trustworthiness concerns arising from personal conduct. I have considered all of the mitigating conditions under AG ¶ 17 and found the following relevant:

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

I considered all of the facts and circumstances surrounding Applicant's falsifications. Falsifying information on a trustworthiness application is not a minor offense and doing so casts doubt on her trustworthiness, reliability, and good judgment. AG ¶ 17(c) does not apply.

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 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) 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 guideline 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 considered the circumstances that led to Applicant's financial problems. She failed to show a track record of financial stability and provided false information on her trustworthiness application.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for access to sensitive information. For all these reasons, I conclude Applicant failed to mitigate the trustworthiness concerns arising under Guideline F, financial considerations, and Guideline E, personal conduct.

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.k:	Against Applicant
Subparagraph 1.l:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	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 eligibility to occupy a position of trust. Eligibility for access to sensitive information is denied.

Robert E. Coacher
Administrative Judge