



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



In the matter of:)	
)	
[Redacted] ¹)	ADP Case No. 15-03696
)	
Applicant for Public Trust Position)	

Appearances

For Government: Michelle Tilford, Esq., Department Counsel
For Applicant: *Pro se*

01/30/2019

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves trustworthiness concerns raised under Guideline F (Financial Considerations). Eligibility for a public trust position is denied.

Statement of the Case

Applicant submitted an application for a public trust position on September 29, 2014. On September 17, 2017, the Department of Defense (DOD) sent her a Statement of Reasons (SOR), citing trustworthiness concerns under Guideline F. DOD acted under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016).

Applicant answered the SOR on October 17, 2017, and requested a hearing before an administrative judge. Applicant was separated from employment on April 19, 2018, and processing of the case was terminated for lack of jurisdiction.

¹ Applicant married after the Statement of Reasons (SOR) was issued. This decision is captioned with her married name instead of the name reflected in the SOR.

Applicant was employed by another defense contractor on November 7, 2018, and the case was reopened and assigned to me on November 15, 2018. The Defense Office of Hearings and Appeals (DOHA) sent her a notice of hearing on November 26, 2018, scheduling the hearing for December 19, 2018. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 5 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibit (AX) A, which was admitted without objection. I kept the record open until January 11, 2019, to enable her to submit additional documentary evidence. She timely submitted AX B through I, which were admitted without objection. DOHA received the transcript (Tr.) on January 4, 2019.

Findings of Fact²

In Applicant's answer to the SOR, she admitted the allegations in SOR ¶¶ 1.a-1.f. She did not admit or deny the delinquent debt alleged in SOR ¶ 1.g. Her admissions have been incorporated in my findings of fact.

Applicant is a 37-year-old employee of a federal contractor. She has worked for her current employer since November 2018. She has never held a security clearance or eligibility for a public trust position.

Applicant attended college from October 2000 to September 2001 and received a certificate of completion for training as a legal office assistant. She attended college from January 2006 to August 2007 and October 2009 to September 2011 but did not receive a degree. She has student loans totaling about \$74,000, on which deferment ended in December 2018. (Tr. 69.) The student loans are not alleged in the SOR.

Applicant married in July 2011. (GX 1 at 6.) Around December 2011, her husband left her. She filed for divorce in 2012, and the divorce was final in May 2014. She has an 11-year-old daughter from her previous marriage, for whom she receives child-support payments of \$800 per month. She also has a 15-year-old son from a previous relationship, for whom she receives child support of \$147 per month. She remarried in 2017 and has a 19-month-old daughter from this marriage. (GX 2 at 2-3; Tr. 30-31.)

Applicant has worked for federal contractors since at least February 2002 as a receptionist, technical assistant, executive assistant, administrative specialist, human-resources specialist, performance-management analyst, and payroll time-and-attendance specialist. She was unemployed from June to November 2011, when her employer's contract ended. Her previous jobs did not offer medical insurance, and she incurred debts for medical care. She had a full-time day job and worked at full-time night jobs at fast-food restaurants during the summer of 2012. She worked part time at a fast-food restaurant for three months in 2012 or 2013. (GX 2 at 2.) In each case, she quit her night job because she was physically unable to work two jobs.

Applicant purchased a home in 2005 with an adjustable-rate mortgage. Her husband's pay was reduced when he was moved from a supervisory position to a lower-

² Applicant's personal information is extracted from her application for a public trust position (GX 1) unless otherwise indicated by a parenthetical citation to the record.

paying non-supervisory position. (Tr. 46.) They filed for Chapter 7 bankruptcy in September 2007 because they could not afford to pay the mortgage loan and could not obtain a loan modification. The bankruptcy also included her then husband's car loan, medical bills, and her then husband's credit-card debt. They received a discharge in June 2009. About \$259,000-\$280,000 was discharged. (GX 2 at 5; Tr. 32.)

After Applicant's first husband left her, she remained in the marital home, which she had purchased in July 2010. Her mother, who has since passed away, also was living with and supported by her. Applicant stayed in the marital home for about two months, moved in with a friend, and then sold the marital home in a short sale. The credit report from April 2017 reflects that the mortgage loan was paid. (GX 4 at 1.) Her friend was retired military and employed full time. They agreed to split their living expenses, but Applicant found herself paying most of the expenses. She could not afford to move out, and so she continued to live with her friend for about two years. (Tr. 37-39.)

Around 2015, Applicant began living with a co-worker, and they married in 2017. (Tr. 30.) Her current husband is retired military and she is entitled to military medical benefits as a military family member. Her current husband has given her financial guidance and has joined her in managing the family finances. (Tr. 40-41.) She testified that her husband has prepared a spreadsheet for her, setting out a plan to resolve her delinquent debts. It lists specific creditors and specific payment amounts to each creditor. She did not submit the spreadsheet at the hearing. She promised to submit a copy of it, but it was not included in her post-hearing submission. (Tr. 75-76.)

The SOR alleges the Chapter 7 bankruptcy (SOR ¶ 1.a), a delinquent car loan (SOR ¶ 1.b), and five medical debts (SOR ¶¶ 1.c-1.g). The bankruptcy and delinquent debts are reflected in credit reports from November 2018 (GX 3), April 2017 (GX 4), and October 2014 (GX 5.)

The allegations of delinquent medical debts in SOR ¶¶ 1.d-1.g do not comply with the requirement for specificity in Directive ¶ E3.1.3, which requires that the SOR "shall be as detailed and comprehensive as the national security permits." The SOR does not identify the creditors or collection agents and provides no account numbers. The April 2017 credit report on which they are based lists only the date each account was opened. However, Applicant was able to track down each of these medical debts. The evidence concerning the delinquent debts is summarized below.

SOR ¶ 1.b: delinquent car loan charged off for \$10,375. Applicant testified that this debt was jointly incurred during her previous marriage. (Tr. 47.) The account was opened in December 2011, and the debt was charged off in June 2014. (GX 3 at 5; GX 5 at 3.) In a personal subject interview (PSI) in November 2014, Applicant told an investigator that she was negotiating with this creditor. She admitted this debt in her answer to the SOR and stated that she would resolve it after she resolved other smaller debts. At the hearing, she testified that she contacted the creditor and was offered a settlement for \$8,000, but she could not afford to accept it. (Tr. 47-48.) She did not provide any documentary evidence of the settlement offer. In her post-hearing submission, she asserted that this creditor informed her that it would not attempt to collect this debt

because it is barred by the statute of limitations. (AX D.) She provided no documentary evidence to support her assertion regarding the statute of limitations.

SOR ¶ 1.c: medical debt for eye surgery, past due for \$172. This debt was incurred in December 2014, and the last payment was in March 2015. (GX 3 at 6; GX 4 at 2.) The total amount due on this debt is \$2,826. (GX 4 at 2.) Applicant underwent laser surgery after her vision declined and she began wearing glasses. She decided that the surgery made more financial sense than paying for new glasses whenever her vision changed. (Tr. 51.) Applicant has promised to make biweekly \$75 payments beginning on January 19, 2019. (AX I.) As of the date the record closed, she had not made any payments.

SOR ¶¶ 1.d: medical debt for \$651. This debt was incurred when Applicant went to an emergency room after an automobile accident in 2013. She testified that she disputed the amount of the debt because she left the emergency room for an unspecified personal emergency before being treated. She settled the debt for a lesser amount on November 30, 2018, after she received the SOR. (AX A; Tr. 53-54.)

SOR ¶ 1.e: medical debt for \$331. This debt was paid in full on September 28, 2017, after Applicant received the SOR. (AX H.)

SOR ¶ 1.f: medical debt for \$156. This debt was paid in full in March 2016. (AX G.)

SOR ¶ 1.g: medical debt for \$47. This debt was paid in full on January 9, 2017. (AX F.)

Applicant's annual pay is about \$96,000, which is a substantial increase from her previous job, which paid \$65,000 per year. Her take-home pay ranges from about \$2,000 to \$2,300. She has no savings. (Tr. 80.) Her husband is retired military, and his annual pay is about \$104,000. (Tr. 80.) Applicant does not know how much he receives in military retired pay. Her husband has four children from his previous marriage and pays child support for two of them. He also is still jointly liable for the mortgage payments on his previous marital home. (Tr. 88.) Applicant's rent is \$2,700. She pays \$1,700, and her husband pays \$1,000, plus the utilities. They have a monthly car payment of \$554. (Tr. 67.) She did not provide any other information about her monthly living expenses.

Applicant testified that she did not contact the various creditors alleged in the SOR until recently, because she did not have sufficient income to make payments, and she did not want to make a payment agreement that she would be unable to afford. (Tr. 86.) Her current employment contract is for three years, and she is confident that her income will not decrease during the duration of the contract and may increase. (Tr. 83.)

Policies

ADP positions are sensitive positions, and applicants for ADP positions are entitled to the procedural protections in the Directive before any final unfavorable access

determination may be made. The standard for assignment to sensitive duties is that 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.

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. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard sensitive information.

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 an evaluation of the whole person. The administrative judge's overarching adjudicative goal is a fair, impartial and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The protection of the national security is the paramount consideration. Under AG ¶ 2(b), "[a]ny doubt concerning personnel being considered for access to [sensitive] information will be resolved in favor of national security." The Government must present substantial evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). An applicant has the ultimate burden of demonstrating that it is clearly consistent with national security to grant or continue eligibility for access to sensitive information.

Analysis

Guideline F, Financial Considerations

The concern under this guideline is set out in AG ¶ 18:

Failure 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 or sensitive information. . . . An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

This concern is broader than the possibility that a person might knowingly compromise classified or sensitive information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting

classified or sensitive information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified or sensitive information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's admissions and the documentary evidence submitted at the hearing establish the following disqualifying conditions under this guideline: AG ¶ 19(a) ("inability to satisfy debts"); AG ¶ 19(b) ("unwillingness to satisfy debts regardless of the ability to do so"); and AG ¶ 19(c) ("a history of not meeting financial obligations").

The following mitigating conditions are potentially relevant:

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;

AG ¶ 20(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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

AG ¶ 20(c): the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; and

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

AG ¶ 20(a) is not fully established. Applicant's delinquent debts are numerous and recent, and the debts alleged in SOR ¶¶ 1.b and 1.c were not incurred under circumstances making them unlikely to recur. The medical debts alleged in SOR ¶¶ 1.d-1.g are less likely to recur, because Applicant's recent marriage entitles her to military medical benefits.

AG ¶ 20(b) is established for Applicant's Chapter 7 bankruptcy. It was caused by her then husband's pay reduction and upward adjustment in her mortgage-loan payments, which were conditions largely beyond her control. Under the circumstances, filing a Chapter 7 bankruptcy petition was a prudent decision.

AG ¶ 20(b) is not established for the debts incurred after Applicant's bankruptcy. Her marital breakup and the resulting income reduction, unemployment from June to November 2011, unemployment from April to November 2018, and uninsured medical debts alleged in SOR ¶¶ 1.d-1.g were conditions largely beyond her control. However, her medical debt for laser surgery alleged in SOR ¶ 1.c was voluntarily incurred. The

record does not reflect why her employment was terminated in April 2018, but there is no evidence that it was voluntary or due to any misconduct.

However, Applicant has not acted responsibly regarding the debts alleged in SOR ¶¶ 1.b, 1.d, and 1.e. The car loan in SOR ¶ 1.b was incurred in December 2011, while she was employed, and she acted responsibly for a while by working second jobs in 2012 and 2013. However, she stopped making payments in June or July 2014, well before she lost her job in April 2018. She has provided no documentary evidence of any efforts to resolve the debt, except for her reliance on a statute of limitations. She provided no evidence of efforts to resolve the debt in SOR ¶ 1.c until after the hearing, and she has made no payments on the debt. She did not resolve the medical debts alleged in SOR ¶¶ 1.d and 1.e until after she received the SOR.

AG ¶ 20(c) is not established. Other than the financial counseling required by the bankruptcy court in 2008, she presented no evidence of financial counseling, and her financial situation is not under control.

AG ¶ 20(d) is established for the medical debts alleged in SOR ¶¶ 1.f and 1.g, which Applicant resolved before she received the SOR. She claimed that the creditor alleged in SOR ¶ 1.b told her that it would not attempt to collect the debt because it was barred by the statute of limitations, but she submitted no evidence to support her claim. Furthermore, reliance on the non-collectability because of a statute of limitations does not constitute a good-faith effort to resolve that debt. ISCR Case No. 11-08274 (App. Bd. May 2, 2013).

Applicant submitted a specific plan to resolve the debt in SOR ¶ 1.c, but she submitted no evidence that the creditor had agreed to the plan and no evidence of any payments under the plan. Her resolution of the medical debts alleged in SOR ¶¶ 1.d and 1.e after she received the SOR does not amount to a good-faith effort. Evidence of past irresponsibility is not mitigated by payment of debts only under pressure of qualifying for a public trust position. An applicant who does not resolve debts until an application for a public trust position is in jeopardy may lack the good judgment expected of those with access to sensitive information. See ISCR Case No. 16-01211 (App. Bd. May 30, 2018) *citing* ISCR Case No. 15-03208 at 5 (App. Bd. Mar. 7, 2017).

Applicant has made some progress in attaining financial stability, tracking down and resolving several medical debts. However, she has not established a track record of financial responsibility. She testified that she had a plan to resolve all her debts and that the plan was laid out in a detailed spreadsheet, but she did not submit it at the hearing or in her post-hearing submission.

AG ¶ 20(e) is not established. Applicant claimed that she disputed the amount of the medical debt alleged in SOR ¶ 1.d, but she provided no documentation to support her claim. However, she eventually settled the debt. She has not disputed any of the other debts alleged in the SOR.

Whole-Person Concept

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. In applying the whole-person concept, an 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 and applying the adjudicative factors in AG ¶ 2(d).³

I have incorporated my comments under Guideline F in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the trustworthiness concerns raised by her delinquent debts. Accordingly, I conclude she has not carried her burden of showing that it is clearly consistent with national security to grant her eligibility for a public trust position.

Formal Findings

Paragraph 1, Guideline F (Financial Considerations): AGAINST APPLICANT

Subparagraph 1.a: For Applicant

Subparagraphs 1.b-1.e: Against Applicant

Subparagraphs 1.f and 1.g: For Applicant

Conclusion

I conclude that it is not clearly consistent with the interests of national security to grant Applicant eligibility for a public trust position. Eligibility for a public trust position is denied.

LeRoy F. Foreman
Administrative Judge

³ The factors are: (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.