



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



In the matter of:)	
)	
[Redacted])	ADP Case No. 17-03763
)	
Applicant for Public Trust Position)	

Appearances

For Government: Andre M. Gregorian, Esq., Department Counsel
For Applicant: *Pro se*

01/04/2019

Decision on Remand

FOREMAN, LeRoy F., Administrative Judge:

This case involves trustworthiness concerns 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 June 10, 2016. On November 20, 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), for all adjudicative decisions on or after June 8, 2017.

Applicant answered the SOR on February 16, 2018, and requested a decision on the written record without a hearing. Department Counsel submitted the Government's written case on March 30, 2018. On May 15, 2018, a complete copy of the file of relevant material (FORM) was sent to Applicant, who was given an opportunity to file

objections and submit material to refute, extenuate, or mitigate the Government's evidence. She received the FORM on May 31, 2018, and submitted Applicant's Exhibit (AX) A. The case was assigned to me on September 6, 2018. On September 20, 2018, I issued a decision denying eligibility for a public trust position.

Applicant appealed my adverse decision, and the Appeal Board remanded my decision on December 14, 2018. The Board determined that my statement that Applicant "submitted no documentary evidence of payments, payment plans, disputes, or other resolution of any of the debts alleged in the SOR" was erroneous. The Board noted that Applicant's response to the File of Relevant Material (FORM) included a credit report reflecting a number of debts that were currently under dispute. It also noted that Applicant's answer to the SOR included a document (Attachment to Answer) reflecting that the two student loans alleged in SOR ¶¶ 1.d and 1.i were not delinquent. The Board concluded that my findings regarding the absence of documentation were erroneous, and it remanded the case "for correction of the errors and issuance of a new decision in accordance with the Directive."

Findings of Fact¹

In Applicant's answer to the SOR, she admitted all the allegations. Her admissions are incorporated in my findings of fact.

Applicant is a 36-year-old licensed practical nurse (LPN) employed by a federal contractor since July 2016. She was licensed after completing school in June 2009. She was employed in the private sector from December 2009 to October 2014. She worked part time from December 2009 to March 2010, was unemployed from March to June 2010, worked full time from June 2010 to February 2013, left by mutual agreement, and was unemployed from February 2013 to August 2013. She was employed by a medical doctor from August 2013 to October 2014 and left by mutual agreement. She was unemployed for two months and then worked for a federal contractor from November 2014 to March 2016, when she was fired for tardiness and absenteeism. She was unemployed until she was hired for her current position. (FORM Item 2 at 11-17; FORM Item 3 at 2, 12.) She has never married and has no children. She has never held a security clearance or eligibility for a public trust position.

The SOR alleges 18 delinquent debts, totaling about \$37,366. The debts are reflected in credit reports from June 2016 and September 2017 and the summary of a personal subject interview (PSI) conducted in March 2017. (FORM Items 3, 4 and 5.) The debts are a \$10,209 indebtedness to the U.S. government related to disability payments, a delinquent car loan, three delinquent student loans, three delinquent medical bills, and ten miscellaneous consumer debts. In the March 2017 PSI, Applicant admitted the delinquent student loans alleged in SOR ¶¶ 1.d and 1.i and promised to bring them up to date by January 2018. (FORM Item 5 at 9-10.)

¹ 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.

In Applicant's answer to the SOR, she admitted all the debts and stated that payment plans were in place for two student loans (SOR ¶¶ 1.d and 1.i). She also stated that a telecommunications bill had been paid (SOR ¶ 1.p), and that she had payment plans in place or was trying to negotiate settlements for the rest of the debts alleged in the SOR. She attached a document to her answer, reflecting that the student loans alleged in SOR ¶¶ 1.d and 1.i are "in repayment," and that the accounts were not delinquent as of January 25, 2018. (Attachment to Answer.)

Both student loans were delinquent when Applicant was interviewed by a security investigator in March 2017. (FORM Item 3 at 10-11.) The credit report from September 2017 reflected that both loans were still delinquent and that the date of last activity on both loans was in November 2013, when they were assigned to the government. (FORM Item 5 at 2.) The Attachment to Answer reflects a disbursement date of September 19, 2017 for both loans. It does not reflect when the loans became current, nor does it indicate whether they became current through voluntary payments or involuntary action such as garnishment or diversion of tax refunds. Although the loan servicer reflected in the Attachment to Answer was different from the loan servicer alleged in the SOR, the amounts were almost identical. Accordingly, I find that the debts in SOR ¶¶ 1.d and 1.i were not delinquent as of January 25, 2018.

Applicant's answer to the SOR did dispute any of the debts. The credit report from September 2017 (FORM Item 5) did not reflect any disputed accounts. In her response to the FORM, she submitted documentary evidence that two student loans not alleged in the SOR were current. She also submitted a credit report from June 2018, reflecting that the debts alleged in SOR ¶¶ 1.a-1.b, 1.d-1.h, and 1.j-1.n were currently under dispute, but the credit report does not reflect the basis for the disputes or the dates when they were disputed. (AX A.)

Policies

I adhere to and incorporate by reference the statement of policies in my original decision.

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 sensitive or classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting sensitive or classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding sensitive or classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's admissions and the documentary evidence in the FORM establish the following potentially disqualifying conditions:

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 applicable:

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;

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

AG ¶ 20(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.

AG ¶¶ 20(a), 20(b), and 20(c) are not established. Applicant's delinquent debts are numerous and recent. She presented no evidence of circumstances making

recurrence of her financial problems unlikely. Her underemployment from December 2009 to March 2010 and unemployment from March to June 2010 were conditions beyond her control. She submitted no evidence of the circumstances under which she left jobs by mutual agreement in February 2013 and October 2014. Her unemployment from March to July 2016 was due to her tardiness and absenteeism. Except for the evidence pertaining to the student loans alleged in SOR ¶¶ 1.d and 1.i, she presented no documentary evidence of payments, contacts with creditors, or attempts to resolve her delinquent debts. She submitted no evidence showing when or by what means the student loans alleged in SOR ¶¶ 1.d and 1.i became current. She submitted no evidence of financial counseling.

AG ¶ 20(d) is not established. Applicant submitted no evidence of payment agreements, payments, or disputes regarding the debts alleged in SOR ¶¶ 1.a-1.c, 1.e-1.h, and 1.j-1.r. The Attachment to Answer reflects that the two student loans alleged in SOR ¶¶ 1.d and 1.i were current as of January 25, 2018, but she submitted no evidence showing how or when the loans became current. Whatever voluntary action she may have taken to resolve them occurred after she was confronted with them by a security investigator in March 2017 and realized that they were an impediment to obtaining a public trust position. Evidence of past irresponsibility is not mitigated by payment of debts only under pressure of qualifying for a public trust position. See ISCR Case No. 16-01211 (App. Bd. May 30, 2018) *citing* ISCR Case No. 15-03208 at 5 (App. Bd. Mar. 7, 2017).

AG ¶ 20(e) is not established. Applicant did not deny any of the debts alleged in the SOR when she responded to it. To the contrary, she admitted every debt alleged. AX A reflects that Applicant recently disputed every debt alleged in the SOR, except the delinquent car loan alleged in SOR ¶¶ 1.c and the two student loans alleged in SOR ¶¶ 1.d and 1.i, but she provided no documentary evidence establishing the basis for her disputes.

Whole-Person Analysis

I adhere to and incorporate by reference the whole-person analysis set out in my original decision. 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.

Formal Findings

I have reconsidered my formal findings in accordance with the Appeal Board remand. My findings on the allegations in the SOR are as follows:

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

Subparagraphs 1.a-1.n:

Against Applicant

Conclusion

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

LeRoy F. Foreman
Administrative Judge