



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



In the matter of:

Applicant for Public Trust Position

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ADP Case No. 17-03773

Appearances

For Government: Adrienne Driskill, Esquire, Department Counsel

For Applicant: *Pro se*

February 11, 2019

Decision

ROSS, Wilford H., Administrative Judge:

Statement of the Case

Applicant submitted her Electronic Questionnaire for Investigations Processing (e-QIP) on November 30, 2016. (Government Exhibit 1.) On November 16, 2017, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing trustworthiness concerns under Guideline F (Financial Considerations). The action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *National Security Adjudication Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position*, effective within the Department of Defense after June 8, 2017.

Applicant answered the SOR in writing (Answer) on December 14, 2017, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on January 30, 2018. The case was assigned to me on February 6, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on March 8, 2018. I convened the hearing as scheduled on April 30, 2018. The Government offered Government Exhibits 1 through 4, which were admitted without objection. Applicant offered Applicant Exhibits A through I, which were admitted without objection, and testified on her own behalf. I granted Applicant's request to leave the record open to permit her to submit additional evidence. DOHA received the transcript of the hearing on May 8, 2018. Applicant submitted Applicant Exhibit J in a timely manner. Department Counsel had no objection and the exhibit was admitted into evidence. The record then closed.

Findings of Fact

Applicant is 50 years old and employed by a defense contractor as a clinical analyst. She is separated from her husband, and has two children. Applicant is seeking to obtain national security eligibility for access to sensitive information in connection with her employment.

Applicant's financial difficulties began in about 2010, when she separated from her abusive husband and gained custody of her youngest child. She initially struggled financially while working in the nursing field in her home state, since she only had an associate's degree. Determined to better herself professionally, and monetarily, Applicant both worked and attended school online over several years. By 2016 she had obtained a bachelor's degree and a master's degree. At this point in time she accepted a new job in a new state, and moved across the country. Applicant is now working to obtain a doctorate degree, which will again make her more marketable and increase her income. Starting in 2016 Applicant began working on a five-year plan to resolve her debts, with results as shown below. (Government Exhibit 1 at Section 12; Applicant Exhibits A, G, H, I, and J at 8; Tr. 25, 31-41, 66-70.)

Paragraph 1 (Guideline F, Financial Considerations)

The Government alleges in this paragraph that Applicant is ineligible for national security eligibility because she is financially overextended and therefore potentially unreliable, untrustworthy, or at risk of having to engage in illegal acts to generate funds. Applicant admitted SOR allegations 1.b, 1.c, 1.d, 1.f, and 1.j. She denied allegations 1.a, 1.e, 1.g, 1.h, and 1.i.

The SOR alleged that Applicant owed approximately \$38,350 in past-due indebtedness to various creditors. The existence and amount of the debts is supported by admissions of the Applicant, and credit reports submitted by the Government dated January 27, 2017; and January 30, 2018. (Government Exhibits 2, 3, and 4.) Applicant

submitted a credit report dated December 14, 2017, with her Answer. (Attachment One.) She submitted an additional credit report dated March 30, 2018. (Applicant Exhibit E.)

The current status of the debts is as follows:

1.a. Applicant denied that she owed a judgment in the amount of \$4,397. Applicant testified that she had no knowledge of this debt. When Applicant got her job in 2016 she began educating herself on how to resolve her debts. One of the things she learned was to dispute debts she did not recognize. Accordingly, Applicant disputed this debt with the credit reporting agencies. (Applicant Exhibit I; Tr. 41-47.) This debt appeared on the government's 2017 credit report (Government Exhibit 4), but does not appear on the latest credit reports in the record. (Government Exhibit 3; Attachment One; Applicant Exhibit G.) Applicant has successfully disputed this debt.

1.b. Applicant admitted owing \$375 for a mobile telephone bill. Applicant had acquired the cell phone for her then-boyfriend in about 2012. He was an abusive person who also stole from Applicant during their relationship. She intends to pay this debt as others are paid off. This debt is not resolved. (Tr. 47-48.)

1.c. Applicant admitted that she owed \$876 for a past-due credit card debt. Applicant was unable to pay anything on this debt for several years, until she obtained her current employment. Starting in 2016 she has been making consistent payments on this account and has paid it down considerably. This debt is being resolved. (Applicant Exhibit J at 6; Tr. 48-56.)

1.d. Applicant admitted that she owed \$1,095 for a past-due credit card debt. Applicant was unable to pay anything on this debt for several years, until she obtained her current employment. Starting in 2016 she has been making consistent payments on this account and has paid it down considerably. This debt is being resolved. (Applicant Exhibit J at 5; Tr. 48-56.)

1.e. Applicant denied that she owed \$14,605 for a repossessed automobile that belonged to Applicant's daughter. Applicant filed a dispute concerning this debt. (Applicant Exhibit J at 8; Tr. 56-57.) This debt appeared on the government's 2017 credit report (Government Exhibit 4), but does not appear on the latest credit reports in the record. (Government Exhibit 3; Attachment One; Applicant Exhibit G.) Applicant successfully disputed this debt.

1.f. Applicant admitted that she owed \$282 to a creditor for a past-due cable debt. Applicant supplied documentation showing that she began paying this debt off after being employed in her current job. This debt has now been paid in full and is resolved. (Applicant Exhibit J at 6-7; Tr. 57-59.)

1.g. Applicant denied owing a creditor \$246 for a past-due debt. Applicant stated that she had no knowledge of the account and had never purchased anything from the

creditor. Applicant filed an unsuccessful dispute concerning this debt. Applicant stated that she will pay this debt, even though she adamantly denied owing it. This debt is not resolved. (Tr. 59.)

1.h. Applicant denied owing a past-due debt in the amount of \$5,790 for a bank card. Applicant stated that she had only one credit card with this bank, yet the debt is being collected by two different collection agencies. This one and one stated in allegation 1.i, below. When contacted, the bank could not find a record of Applicant's account. Applicant filed a dispute concerning this debt. (Applicant Exhibit J at 7-8; Tr. 60-63.) This debt appeared on the government's 2017 credit report (Government Exhibit 4), but does not appear on the latest credit reports in the record. (Government Exhibit 3; Attachment One; Applicant Exhibit G.) Applicant successfully disputed this debt.

1.i. Applicant denied owing a past-due debt in the amount of \$7,534 for a bank card. Applicant stated that she had only one credit card with this bank, yet the debt is being collected by two different collection agencies. This one and one stated in allegation 1.h, above. When contacted, the bank could not find a record of Applicant's account. Applicant filed a dispute concerning this debt. (Applicant Exhibit J at 7-8; Tr. 60-63.) This debt appeared on the government's 2017 credit report (Government Exhibit 4), but does not appear on the latest credit reports in the record. (Government Exhibit 3; Attachment One; Applicant Exhibit G.) Applicant successfully disputed this debt.

1.j. Applicant admitted owing a creditor \$3,150. Applicant intends to begin paying this debt after paying off the debts in allegations 1.c and 1.d. She has reached out to the creditor and they may be willing to accept a one-time payment. (Applicant Exhibit J at 7; Tr. 63.) This debt is not resolved.

Applicant's current financial situation is stable. She has a budget and sticks to it. She lives very frugally, while supporting her mother and her daughter. She has worked hard over the last several years to get her financial house in order, and has a plan to pay the rest of her debts in the future. Applicant understands the importance of resolving her past-due debts and remaining fiscally secure into the future. (Applicant Exhibits A, B, F, and J at 8; Tr. 28-31, 65-66, 70-83.)

Mitigation

Applicant's current supervisor submitted a letter on her behalf. The writer hired Applicant for her current position in 2016. Applicant had been open and honest about her financial situation and how she planned to resolve it. The supervisor stated, "I find her [Applicant] to be an honorable person who exercises sound judgment on a daily basis." The writer recommends Applicant for a position of trust. (Applicant Exhibit J at 9.)

Applicant provided two letters of recommendation from people who know her at work. One coworker stated, "She [Applicant] has a great deal of integrity." A senior training

and development specialist stated, “[Applicant] is a responsible, honest and hardworking individual.” (Applicant Exhibits C and D.)

Policies

Positions designated as ADP I, ADP II, and ADP III are classified as “noncritical-sensitive.” (See DoD Manual 5200.02, April 3, 2017 (Manual) ¶¶ 4.1.a.(3)(c) and 7.a.) The Deputy Under Secretary of Defense (Counterintelligence and Security) Memorandum, dated November 19, 20014, indicates trustworthiness adjudications will apply to cases forwarded to the DoD and 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 national security eligibility decision may be made. (See Manual ¶ 10.3.)

When evaluating an applicant’s suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant’s national security eligibility.

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 AG ¶ 2 describing the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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, “Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.”

A person who seeks national security eligibility 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 national security eligibility. 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 classified or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, "Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See also Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Paragraph 1 (Guideline F, Financial Considerations)

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personal security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds.

AG ¶ 19 describes two conditions that could raise security concerns and may be disqualifying in this case:

- (a) inability to satisfy debts; and

- (c) a history of not meeting financial obligations.

Applicant had approximately \$38,000 in past-due debts that she had not paid or resolved as of the time the SOR was issued. These facts establish prima facie support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate those concerns.

The guideline includes four conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's alleged financial difficulties:

- (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, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (d) the individual initiated and is adhering to 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 had a difficult time financially starting around 2010 to 2016. She left her abusive husband, was involved in a second abusive relationship, and had insufficient education to make financial ends meet with the jobs she could get. She went back to school and eventually received her master's degree. In 2016 she found a new job in a new state, moved, and began preparing and fulfilling a five-year plan to resolve her debts. As shown above, Applicant has paid one debt in full, and is paying two other old credit card debts, while maintaining payments on her current indebtedness. It is not easy, and Applicant has had to make some difficult choices, but she is succeeding in paying down her debt and there is light at the end of the tunnel. She has shown herself to be responsible in resolving her indebtedness, beginning payments before the SOR was issued. AG ¶ 20(b) applies because much of the debt, and Applicant's inability to pay it, was related to her separation from her husband.

Applicant has made a good-faith effort to resolve her financial situation, as shown by the voluntary payments to several creditors. As the DOHA Appeal Board has said, "An applicant is not required to show that she has completely paid off her indebtedness, only that she has established a reasonable plan to resolve her debts and has taken significant actions to implement that plan."¹ AG ¶¶ 20(a) and 20(d) apply.

¹ISCR Case No. 06-12930 at 2 (App. Bd. Mar. 17, 2008) (quoting ISCR Case No. 04-09684 at 2-3 (App. Bd. Jul. 6, 2006)).

As part of her five-year plan, Applicant pro-actively disputed questionable debts that she found on her credit report. Those debts have been removed. I find that AG ¶ 20(e) applies.

The Appeal Board has stated:

In evaluating Guideline F cases, the Board has previously noted that the concept of “‘meaningful track record’ necessarily includes evidence of actual debt reduction through payment of debts.” However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrates that he has “. . . established a plan to resolve his financial problems and taken significant actions to implement that plan.” The Judge can reasonably consider the entirety of an applicant’s financial situation and his actions in evaluating the extent to which that applicant’s plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) (‘Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.’) There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.²

Applicant’s current financial status is stable, and she evinces a credible intent and ability to maintain that stability into the future. Applicant has made substantial lifestyle changes that will assist her in staying on a proper financial footing. She has fully mitigated all the allegations in the SOR. Paragraph 1 is found for Applicant.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant’s eligibility for a national security eligibility 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(d):

- (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;

² ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

(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 national security eligibility for a security clearance 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 pertinent facts and circumstances surrounding this case. Applicant has mitigated the concerns regarding her financial situation. Her actions have minimized the potential for coercion or duress, and make recurrence of financial issues unlikely. Overall, the record evidence does not create substantial doubt as to Applicant's present suitability for national security eligibility, and access to sensitive information.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraphs 1.a through 1.j: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's national security eligibility to occupy a designated ADP I/II/III sensitive position. Eligibility for access to sensitive information is granted.

WILFORD H. ROSS
Administrative Judge