



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



In the matter of:)
)
-----) ADP Case No. 18-00025
)
Applicant for Public Trust Position)

Appearances

For Government: Daniel F. Crowley, Esquire, Department Counsel
For Applicant: *Pro se*
03/25/2019

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Statement of the Case

The Applicant seeks eligibility to occupy an automated data processing (ADP) position designated ADP-I/II/III. On April 20, 2018, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued to her a Statement of Reasons (SOR) detailing concerns under Guideline F (Financial Considerations).¹ In a response dated January 22, 2018, she admitted seven of 16 allegations and requested a determination based on the written record. On April 20, 2018, the Government issued a File of Relevant Material (FORM) with eight attachments (“Items”). The case was assigned to me on July 26, 2018. Based on my review of the record as a whole, I find Applicant failed to mitigate financial considerations trustworthiness concerns.

Findings of Fact

Applicant is a 53-year-old administrative assistant and consultant. Married for the third time, she is the mother of four adult children and two adult stepchildren. At issue are 16 delinquent debts totaling about \$80,000, as gleaned from her security clearance application (SCA) and credit reports submitted as Items 4 and 6 of the FORM. The

¹ The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on or after June 8, 2017.

overwhelming majority of these debts, about \$68,558, consist of federal and state taxes owed (SOR allegations 1.c-1.f) Applicant cites the origin of many of these delinquent debts to a failed home remodeling business run by her second husband when she lived with him in about 2009, as well as to medical debts accumulated when she had no health insurance coverage.

At issue in the SOR are the following delinquent debts:

1.a – Collection account (\$552) – *Addressed*. This balance and those noted below at 1.h (\$1,160) and 1.j (\$335) are related, consisting of the underlying debt and two collection efforts. While it is unclear how or when they were combined, Applicant provided a November 2017 receipt reflecting both entity names, payments of \$1,381.48, and a showing the balance due is now zero. (FORM, Ex. A)

1.b – Collection account (\$286) – *Addressed*. This account was settled by payment of \$184.69 in February 2018. (FORM, Ex. B)

1.c-1.d – State tax liens (\$28,291, \$4,490) – *In repayment*. Applicant wrote that these 2009 business taxes were “rolled in” with personal income taxes from 2010 and 2012. (FORM Response Narrative) Applicant explained that her portion of this debt, as opposed to that owed by her second husband, is \$10,667.38. She provided a copy of a payment schedule and evidence of \$446 debit payments since July 2017.

1.e-1.f – Federal tax liens (\$3,209, \$32,568) – *No progress shown*. On some unspecified date, Applicant was told by a representative at the Internal Revenue Service (IRS) that as of October 2014, these 2007, 2009, and 2010 personal income taxes were no longer collectible. She wrote: “They could accept voluntary payments but would not create a payment agreement and would not track any payments.” She also wrote that the IRS’ “only solution . . . would be to create a ‘mirror’ account which would separate my-ex-husband and myself and allow me to pay toward the total, showing my payments. A mirror account would take 90 days to create.” Applicant provided no documentary evidence substantiating where the status of these liens last was. (SOR Response Narrative) A February 2018 IRS letter shows the unpaid balances for 2007, 2009, and 2010 uncollectable because Applicant “can’t pay the money you owe at this time. . . .” (Supplemental FORM Response) It reflects \$34,370.71 remains at issue.

1.g – Medical collection (\$2,553) – *No documentary evidence*. The balance is owed to a periodontist. Applicant ceased making payments on the balance in early 2013. Applicant wrote she would commence making payments on the balance until paid, but provided no documentary evidence to that effect. (Ex. D)

1.h – see 1.a above.

1.i – Medical collection (\$400) – *Addressed*. Applicant satisfied this debt by payment of the settlement amount of \$133.64 in December 2016. (Ex. E) A second receipt from that date shows the balance as paid in full on deposit of \$724. (Supplemental FORM Response) This account appears to be merged with the one below at 1.p.

1.j - see 1.a

1.k – Medical collection (\$300) – *Status unclear*. Applicant provided a copy of an acknowledgement to debit \$100 from Applicant's account toward this surgical practice in December 2016. A handwritten notation indicates "pd in full 12/16," but it is unclear if this is a settlement offer or even whether the \$100 was drawn. An accompanying bank statement from April 2016 provides little insight.

1.l – Medical collection (\$3,805) - *No documentary evidence*. Applicant wrote that this delinquent balance was sufficiently old that she had to request it be put back on the provider's books. It is unclear when or if this action transpired. She further conveyed she does not have to make monthly payments, currently owes \$3,5479, and plans to pay the balance within the next two years.

1.m – Medical collection (\$485) – *Addressed*. Applicant offered a page from an Experian credit report showing: this account with an original balance of \$485, payments made between September 2016 through January 2017, a handwritten notation stating "paid 12/15/16," and no past due amount owed. The account was opened in 2014. Based on the payments made and lack of outstanding balance, it is probable this debt was paid.

1.n – Medical collection (\$1,047) *Unaddressed* – No documentary evidenced of progress by Applicant.

1.o – Medical collection (\$228) *Unaddressed* – No documentary evidenced of progress by Applicant.

1.p – Medical collection (\$668) – see 1.i above.

Policies

In this matter, The Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines* (AG), effective June 8, 2017, is controlling. The DOD considers ADP positions to be "sensitive positions." For a person to be eligible for sensitive duties, the person's loyalty, reliability, and trustworthiness must be such that assigning the person to a sensitive position is clearly consistent with the national security interests of the United States. AG ¶ 2.c. Applicants for ADP positions are entitled to the procedural protections in the Directive before any final unfavorable access determination is made. (Under Secretary of Defense's Memorandum for the Director, Defense Office of Hearings and Appeals, dated November 19, 2004)

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 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.

A public trust position decision resolves whether it is clearly consistent with the interests of national security to grant or continue an applicant's access to sensitive information. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national security interest of the United States to grant or continue his or her access to sensitive information.

Persons with access to sensitive information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national security as their own. The "clearly consistent with the interests of national security" standard requires that "any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." AG ¶ 2(b). An eligibility for a public trust position decision is not a determination of the loyalty of the applicant concerned. It is merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing access to sensitive information.

Analysis

Under Guideline F, AG ¶ 18 sets forth that the security concern under this guideline is that 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 classified or sensitive information.

Applicant has numerous delinquent debts and both Federal and state tax-related liens. This is sufficient to invoke financial considerations disqualifying conditions:

AG ¶ 19(a): inability to satisfy debts;

AG ¶ 19(b): unwillingness to satisfy debts regardless of the inability to do so;

AG ¶ 19(c): a history of not meeting financial obligations; and

AG ¶ 19(f): failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

Five conditions could mitigate the finance related security concerns posed:

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 person has received or is receiving counseling for the problem from a legitimate and credible source, such as a non-profit 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.

As a threshold issue, it is noted that Applicant's second husband had business problems that seem to have adversely affected Applicant's finances. It is also noted that multiple debts were incurred because Applicant lacked medical insurance. However, insufficient information and documentary evidence was introduced to show she acted responsibly at the time the debts were incurred. At best, AG ¶ 20(b) applies in part regarding the creation of the debts at issue.

There is documentary evidence reflecting attempts to address those debts over a three-year period. Between 2016 and 2018, Applicant addressed in varying degrees the delinquent debts at 1.a, 1.b, 1.h, 1.i, 1.j., 1.m, and 1.p. She also instituted a repayment plan for the state lien obligations noted at 1.c-1.d. The rest, including about \$35,000 in unaddressed federal tax liens, either remain unpaid or lack documentary evidence reflecting effort on the part of Applicant. Applicant's current financial condition is unclear, but it is shown that the IRS determined Applicant is presently unable to make payments on her tax balance. Further, there is no documentary evidence reflecting she has received financial counseling. Under these circumstances, it is difficult to surmise that Applicant is adhering to a holistic debt resolution or financial rehabilitation plan, has her debts currently under control, or has the present ability to do more to address her delinquent obligations. At best, I find AG ¶ 20(d) applies in part. Lacking evidence of financial counseling or that Applicant is adhering to an organized plan for addressing the debts at issue, none of the other conditions apply.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the adjudicative process factors listed in the AG. Under AG ¶ 2(a), the need to utilize a "whole-person" evaluation is set forth. I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I incorporated my comments under the guideline at issue in my whole-person analysis.

Applicant is a 53-year-old administrative assistant and consultant. She is the married mother of four adult children and two adult stepchildren. At issue are 16 delinquent debts totaling \$80,377. Of that sum, Applicant has shown progress or payment on nearly half of the debts in the past three years. State tax obligations in the amount of about \$52,000 from about a decade ago are now in repayment with highly reasonable monthly payments of less than \$500.

What remains worrisome is how Applicant is to proceed with the rest of her delinquent debts. Applicant's present finances and ability to make payment toward old debts is unclear. Her delinquent obligations include a debt to the IRS for over \$40,000 upon which the IRS states she cannot at presently pay. Applicant failed to describe her methodology or approach for addressing her debts in the past, and no strategy is expressed for resolving her remaining outstanding accounts in the future. This process does not expect an applicant to satisfy or address all of her obligations; indeed, Applicant's demonstrated progress is commended. What is needed, however, is some description of a coherent and appropriate plan to address the remaining debts at issue going forward. Without such a scheme, her likelihood of success cannot be surmised. In light of the foregoing, I find that Applicant failed to mitigate financial considerations security concerns.

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.d:	For Applicant
Subparagraphs 1.e-1.g:	Against Applicant
Subparagraphs 1.h-1.j:	For Applicant
Subparagraphs 1.k-1.l:	Against Applicant
Subparagraph 1.m:	For Applicant
Subparagraphs 1.n-1.o:	Against Applicant
Subparagraph 1.p:	For 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 security clearance. Eligibility for access to classified information is denied.

Arthur E. Marshall, Jr.
Administrative Judge