



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



In the matter of:)	
)	
[Redacted])	ADP Case No. 18-02107
)	
Applicant for Public Trust Position)	

Appearances

For Government: Moira Modzelewski, Esq., Department Counsel
For Applicant: *Pro se*

04/26/2019

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 Electronic Questionnaire for Investigations Processing (e-QIP) on April 4, 2017. On August 17, 2018, 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); DOD Manual 5200.02, *Procedures for the DoD Personnel Security Program (PSP)*, (April 3, 2017) (Manual);¹ 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.

¹ DOD Manual 5200.02 cancelled and incorporated DOD Regulation 5200.2-R, *Personnel Security Program* (January 1987) (Regulation). The Manual covers sensitive positions but it did not include the specific provisions in the Regulation for ADP cases. ADP cases continue to be adjudicated in accordance with the Deputy Under Secretary of Defense’s Memorandum for the Director, Defense Office of Hearings and Appeals, dated November 19, 2004.

Applicant answered the SOR on October 5, 2018, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on January 24, 2019, and the case was assigned to me on February 26, 2019. The Defense Office of Hearings and Appeals (DOHA) sent Applicant a notice of hearing on March 4, 2019, scheduling the hearing for March 28, 2019. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 5 were admitted in evidence without objection. Applicant testified but did not present the testimony of any other witnesses or any documentary evidence. I kept the record open until April 5, 2019, to enable her to present documentary evidence. She timely submitted Applicant's Exhibit (AX) A, consisting of a cover letter and a credit report dated March 4, 2019, which were admitted without objection. DOHA received the transcript (Tr.) on April 11, 2019.

Findings of Fact²

In Applicant's answer to the SOR, she admitted the allegations in SOR ¶¶ 1.a, 1.b, 1.d-1.t, and 1.ii. She denied the allegations in SOR ¶¶ 1.c and 1.u-1.kk. She stated that the state tax lien alleged in SOR ¶ 1.c had been paid, and that the medical debts alleged in SOR ¶¶ 1.u-1.kk were disputed and removed from her credit record. At the hearing, Department Counsel conceded that the debt alleged in SOR ¶ 1.c had been paid and withdrew that allegation. (Tr. 9.) Applicant's admissions in her answer to the SOR and at the hearing are incorporated in my findings of fact.

Applicant is a 39-year-old customer-service auditor employed by a defense contractor since March 2017. She married in July 2004 and divorced in October 2011. She has two children, ages 15 and 10. (Tr. 20.) She has been employed continuously in various jobs since at least January 2007, the period covered in her e-QIP. She has never held a security clearance or eligibility for a public trust position.

Applicant filed a petition for Chapter 13 bankruptcy in May 2015. It was dismissed in February 2016 for failure to make the required payments. (Tr. 23.) When the petition was dismissed, \$400 had been disbursed to creditors and \$689 had been disbursed for administrative expenses. (GX 4; GX 5.)

SOR ¶ 1.a alleges the Chapter 13 bankruptcy. SOR ¶¶ 1.b-1.ii allege debts reflected in Applicant's credit reports from April 2017 (GX 2) and June 2018 (GX 3) and totaling about \$40,000. The debts alleged in SOR ¶¶ 1.i through 1.kk are medical debts totaling about \$2,000. The evidence pertaining to the debts alleged in the SOR is summarized below.

SOR ¶ 1.b: judgment for \$1,710 filed in July 2017. This judgment was for unpaid rent. Applicant has taken no action to resolve this debt. (Tr. 24.)

SOR ¶ 1.d: deficiency after repossession of a car, placed for collection of \$9,528. Applicant has taken no action to resolve this debt. (Tr. 27.)

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

SOR ¶ 1.e: student loan placed for collection of \$3,801. Applicant incurred this loan when she attended college from August 1997 to May 1998. She has made no payments on this debt. (GX 1 at 14; Tr. 27.)

SOR ¶ 1.f: credit-card account past due for \$2,692. The last activity on this account was in October 2013. (GX 2 at 5.) Applicant has made no payments since that date and has taken no action to resolve this debt. (Tr. 28.)

SOR ¶ 1.g: telecommunications bill placed for collection of \$453. Applicant has taken no action to resolve this debt. (Tr. 28.)

SOR ¶ 1.h: past-due rent placed for collection of \$3,554. Applicant incurred this debt in January through July 2016. She has taken no action to resolve it. (Tr. 29.)

SOR ¶¶ 1.i-1.n, 1.p, 1.s, and 1.t: medical bills in various amounts. Applicant testified that she believed these bills were covered by Medicaid. She contacted the creditors and gave them her Medicaid account number, but she did not know whether the creditors submitted any of the bills to Medicaid. She has not contacted these creditors since March 2017, has not made any payments on these bills, and has not filed disputes with the credit bureaus or taken any other action to resolve them. (Tr. 32-34.)

SOR ¶ 1.o: gym membership account placed for collection of \$947. Applicant was uncertain when she incurred this debt, but she believed it was in 2014. She has taken no action to resolve it. (Tr. 33.)

SOR ¶¶ 1.q and 1.r: cellphone bills placed for collection of \$520 and \$416. These bills were incurred at the same time for two different lines. Applicant has taken no action to resolve them. (Tr. 33-34.)

SOR ¶¶ 1.u-1.kk: various medical bills placed for collection. Applicant testified that she disputed the debts online on the ground that the bills should have been covered by Medicaid. (Tr. 35.) The debts are not reflected in her March 2019 credit report. (AX A.) They are resolved.

SOR ¶ 1.ll: past-due rent placed for collection of \$4,478. Applicant testified that she contacted the creditor in early 2018 and disputed the amount due. She testified that she owed rent for two months, totaling \$1,600, but the creditor claimed that she owed more because of trash in the apartment. (Tr. 49.) She testified that the creditor would not accept less than the full amount. (Tr. 49-50.) Applicant lived in this apartment until June 2018, when she moved into a house that she inherited from her father. (Tr. 38-39.) She has not made any payments, established a payment plan, filed a dispute with the credit bureaus, or taken any other action to resolve this debt.

Applicant earns between \$1,000 and \$1,200 per month, depending on how many hours she works. Her son receives \$140 per month because his father is disabled. She has no savings or investment accounts. Her medical expenses are now covered by

Medicaid. She receives no child support from the fathers of her two children. She has never sought or received financial counseling, other than what was required for her Chapter 13 bankruptcy. She suffers from diabetes and chronic migraines, which are sometimes severe enough to keep her from going to work. (Tr. 39-46)

Policies

The Under Secretary of Defense's Memorandum of November 19, 2004, treats ADP positions as sensitive positions, and it entitles applicants for ADP positions to the procedural protections in the Directive before any final unfavorable access determination may be made. The standard set out in the Manual and the adjudicative guidelines 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. AG ¶ 2.b.

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

Applicant's admissions and the documentary evidence in the record establishes 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 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) is not established. Applicant's delinquent debts are numerous, recent, and were not incurred under circumstances making recurrence unlikely.

AG ¶ 20(b) is not established. Applicant's diabetes and chronic migraines are conditions largely beyond her control, but she has not acted responsibly. She has not taken any action to resolve the debts alleged in SOR ¶¶ 1.b-1.h, 1.o-1.r, and 1.ii. She initially disputed the medical bills alleged in SOR ¶¶ 1.i-1.n, 1.p, 1.s, and 1.t, but she has taken no further follow-up action since March 2017.

AG ¶ 20(c) is not established. Applicant has not sought or received any financial counseling except the financial counseling required in connection with her Chapter 13 bankruptcy petition. Her financial problems are not under control.

AG ¶ 20(d) is not established. Applicant submitted no evidence of payments or payment agreements for her delinquent debts.

AG ¶ 20(e) is established for the medical debts alleged in SOR ¶¶ 1.u-1.kk. It is not established for the other debts alleged in the SOR. She has not submitted documentary evidence showing the basis for disputes of the medical debts alleged in SOR ¶¶ 1.i-1.n, 1.p, 1.s, and 1.t, and she has not followed up on her contacts with the creditors since March 2017. She testified that she disputed the amount of the debt alleged in SOR ¶ 1.ii, but she submitted no documentary evidence of the basis for the dispute, and it has not been resolved. She has not disputed the debts alleged in SOR ¶¶ 1.b-1.h and 1.o-1.r. Although she disputed some of the non-medical debts with the original creditors, she submitted no evidence that she filed disputes with the credit bureaus.

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. An 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; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

I have incorporated my comments under Guideline F in my whole-person analysis, and I have considered the 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.

Formal Findings

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

Subparagraphs 1.a and 1.b:	Against Applicant
Subparagraph 1.c:	Withdrawn
Subparagraphs 1.d-1.r:	Against Applicant
Subparagraphs 1.u-1.kk:	For Applicant
Subparagraph 1.ll:	Against 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 is denied.

LeRoy F. Foreman
Administrative Judge