



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



In the matter of:)
)
 [REDACTED]) ADP Case No. 19-03678
)
 Applicant for Public Trust Position)

Appearances

For Government: Moira Modzelewski, Esq., Department Counsel
For Applicant: *Pro se*
10/27/2020

Decision

MARINE, Gina L., Administrative Judge:

This case involves trustworthiness concerns raised under Guideline F (Financial Considerations). Eligibility for access to sensitive information is denied.

Statement of the Case

Applicant submitted an electronic questionnaire for investigations processing for a public trust position on January 3, 2019. On April 10, 2020, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DOD CAF) sent her a Statement of Reasons (SOR) alleging trustworthiness concerns under Guideline F. The DOD CAF acted under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on June 8, 2017.

Applicant answered the SOR on a date not specified in the record, and requested a decision on the written record in lieu of a hearing. On July 16, 2020, the Government sent Applicant a complete copy of its written case, a file of relevant material (FORM), including pleadings and evidentiary documents identified as Items 1 through 7. She was given an opportunity to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation to the Government’s evidence. She received the

FORM on August 13, 2020, and timely submitted her response, to which the Government did not object. Applicant did not object to any of the Items included in the FORM. Items 1 and 2 are the pleadings in the case. Items 3 through 7 are admitted into evidence. Applicant's SOR answer included a document that is admitted into evidence as Applicant Exhibit (AE) A. The case was assigned to me on September 15, 2020.

Findings of Fact

Applicant, age 55, divorced in 2005. She has two adult children. She earned a bachelor's degree in 1987. She was granted a DOD security clearance in 2005. Although the record does not mention when or why that clearance lapsed, there is no indication that it was terminated for cause. This is her first application for a public trust position. While she is currently unemployed, her application is being sponsored by a prospective employer. (Items 2, 3; FORM Response)

Applicant admitted each of the delinquent debts alleged in the SOR totaling \$58,960, including a \$369 utility account; a \$2,199 auto-loan account; nine credit-card accounts totaling \$45,748; and delinquent federal taxes totaling \$10,644. These debts remain unresolved. She has not sought any financial counseling. After consulting with an attorney in 2015 to discuss her bankruptcy options, she decided not to file. Instead she plans to "chip away" at her SOR debts, which will become a priority, once she becomes gainfully employed again. She expects that she will be "out of debt . . . in no time" with the income she expects to receive from her prospective employer. (Item 2; Item 4 at 9; FORM response)

Applicant attributed her indebtedness to extended periods of unemployment and underemployment that began in about 2014. During these times, she withdrew funds from her retirement account and used credit cards to "keep afloat" and pay bills. She prioritized paying her current expenses, resolving her home mortgage debt to avoid foreclosure twice, and financially supporting her children through college, over repaying her SOR debts. (Item 2; Item 4 at 17; FORM Response)

Prior to a March 2012 layoff, Applicant was gainfully employed in the same position for almost eight years. She was unemployed for two months between March 2012 and May 2012, 11 months between March 2013 and February 2014 (after she was fired for performance issues), and 10 months between March 2018 and January 2019 (after another layoff). She has been unemployed since November 2019 for reasons not specified in the record. Applicant reported that, between February 2014 and June 2017, her salary was \$25,000 less than what she earned from her two prior employers. Despite the substantial salary differential, she stayed in that position, in part, because she loved the job so much. She did not otherwise detail her income history in the record. (Item 2; Item 4 at 8, 14; FORM Response)

Applicant also did not enumerate her expense history in the record. However, her credit reports revealed that she has neither incurred any new debts nor opened any new accounts since 2017, and is managing her current finances responsibly without the use of credit cards. She has owned her home since 2005. As of January 2020, both her first

and second mortgage-loan accounts were in good standing with the help of a “large sum of money” that she borrowed from her father and a lender-approved loan modification. Her combined monthly payment was \$894, and the remaining balances were \$137,335 and \$29,344, respectively. Applicant opened five federal student-loan accounts between 2013 and 2017, totaling \$21,550, which were in deferment status in January 2020. The record suggests that the student loans were opened for the benefit of at least one of her children. In January 2020, Applicant had one auto-loan account (opened in 2014) that was in good standing, with a \$284 monthly payment and a \$2,142 remaining balance. (Item 2 at 4; Item 4 at 12; Items 6-8)

During her unemployment period in 2012, Applicant was financially supported by funds withdrawn from her retirement account. Between March 2013 and February 2014, she was supported by unemployment benefits and retirement funds. Between March 2019 and December 2018, she was supported by unemployment benefits. From September or October 2018 through at least February 2019, Applicant earned income working for a ride-sharing company on the weekends. Since November 2019, she has been supported by unemployment benefits and “a little bit of help” from her family. When she withdrew funds at various times from her retirement account, she incurred taxes and early withdrawal fees. The record did not specify the amounts of her retirement account withdrawals and associated fees, unemployment benefits, part-time income, or family support. (Item 2 at 4; Item 4 at 8, 16)

Applicant is indebted to the IRS in the amount of \$10,644 for delinquent federal income taxes for tax years (TY) 2014 through 2016. In her SOR answer, she claimed that her TY 2019 refund was applied to reduce the balance to \$9,002. In her FORM response, she claimed that the balance had been further reduced to \$5,823 for reasons not specified. She did not provide any documents to corroborate her claims. Applicant plans to make monthly payments to resolve her tax debts as soon as she begins working again. (Item 2; Item 4 at 28-30)

Applicant experienced issues paying her federal income taxes beginning in TY 2012 and initiated efforts to resolve her delinquencies at various times since then. She established an installment agreement with the IRS to repay her TY 2012 debt in August 2013. She made four payments totaling \$1,395 in 2013. She paid \$200 in 2014 and \$100 in 2015. In September 2015, her first agreement lapsed and a tax lien was issued. She established a second installment agreement in October 2015, which lapsed in November 2016. After a tax lien was issued, she established a third installment agreement in June 2017. She made four payments totaling \$719 in 2017. She made \$200 monthly payments between January and August 2018. Refunds from federal taxes she paid in TY 2013 and 2017 totaling \$2,755 were applied to her TY 2012 debt, which was resolved in August 2018. (Item 4 at 18-20, 30-31)

Applicant established an installment agreement with the IRS to repay her TY 2014 debt in October 2015. She paid \$30 to the IRS in July 2016. Her first agreement lapsed in November 2016. After a tax lien was issued in May 2017, Applicant established a second installment agreement in June 2017. Refunds totaling \$4,948, from federal taxes she paid in TY 2012, 2017, and 2018, were applied to her TY 2014 debt in April 2018,

August 2018, and April 2019. For a period between August 2018 and October 2019, her TY 2014 account was in “not collectible” status. The TY 2014 account has been considered collectible since October 2019. (Item 4 at 21-22, 30-31)

Neither direct payments to the IRS nor refunds from other tax years were applied towards Applicant’s TY 2015 and 2016 debts. After a tax lien was issued in May 2017, she established an installment agreement for TY 2015. That agreement lapsed in August 2018. For a period between August 2018 and October 2019, her TY 2015 account was in “not collectible” status. The TY 2015 account has been considered collectible since October 2019. She has not established any installment agreements for TY 2016. (Item 4 at 23-24).

Applicant did not timely file her federal or state income tax returns for TY 2016 through 2018. She did not timely file in TY 2016 because she knew that she would owe extra money due to having withdrawn funds from her retirement account. She did not specify the reasons that she failed to timely file in TY 2017 and 2018. She filed her TY 2017 returns in July 2018, and her TY 2016 and 2018 returns in November 2019. Because her failure to timely file her returns was not alleged in the SOR, I will consider it only to evaluate mitigation and the whole person concept. (Item 4 at 2-3, 9, 25-27)

Applicant’s paycheck was garnished by State A in 2015 for delinquent state income taxes for TY 2014. State A also garnished her paycheck in 2017 for delinquent taxes for TY 2015 through 2016. As of January 2020, she owed no taxes to State A for TY 2012 through 2018. The record did not specify the amount of delinquent state taxes that were paid by Applicant either directly or via the garnishments. (Item 4 at 10, 15, 32-38)

Applicant has spent more than half of her career working for various defense contractors in support of the U.S. Navy. She proffered that she is “very loyal and trustworthy” and has a “top notch work ethic.” She described herself as “dependable, determined, passionate, and honest.” She asserted that she is “wholeheartedly” committed to making a difference by continuing to serve the federal government. (Item 2; FORM response)

Policies

Positions designated as ADP I and ADP II are classified as sensitive positions. The standard that must be met for assignment to sensitive duties is that, based on all available information, 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. (Directive, § 3.2)

When evaluating an applicant’s eligibility for a position of trust to support a DOD contract, an administrative judge must consider the disqualifying and mitigating conditions in the AG. (Directive, Enclosure 2). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies the guidelines in a commonsense manner, considering all available and reliable information, in arriving at a fair and impartial decision.

In addition to the guidelines, the Directive sets forth procedures that must be followed in trustworthiness adjudications. The Government must present evidence to establish controverted facts alleged in the SOR. Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. An applicant has the ultimate burden of persuasion to establish his or her eligibility for a public trust position. (Directive, Enclosure 3, ¶¶ E3.1.14, E3.1.15). The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to national security eligibility will be resolved in favor of the national security.” The applicant has the ultimate burden of persuasion to obtain a favorable trustworthiness decision.

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. The government reposes a high degree of trust and confidence in individuals to whom it grants access to sensitive information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of 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. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel 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

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

Applicant's admissions and her credit reports establish the following disqualifying conditions: AG ¶ 19(a) (inability to satisfy debts); 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).

The following are potentially applicable factors that could mitigate the security concerns raised in the SOR:

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(g): the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

AG ¶ 20(a) is not established. Applicant has a significant amount of debt that remains unresolved, including unpaid federal taxes.

AG ¶ 20(b) is not fully established. Applicant did not meet her burden to establish that the SOR debts were accrued (and have persisted) largely due to circumstances beyond her control. Her March 2012 and March 2018 layoffs were circumstances beyond her control. However, her March 2013 firing was not. Not only did she fail to proffer a reason for her November 2019 job loss, but receipt of unemployment benefits does not unequivocally demonstrate that her separation was involuntary. Thus, I am unable to conclude that it was a circumstance beyond her control. Since she stayed in the position, in part, because she loved the job so much, I am also unable to conclude that her February 2014 through June 2017 period of underemployment was a circumstance largely beyond her control.

Even if the evidence was sufficient for me to conclude that Applicant's financial situation is largely due to circumstances beyond her control, there is a paucity of evidence in the record demonstrating that she acted responsibly given her circumstances. She did

not provide a complete picture of her income and expense history. On one hand, she cited her mortgage debt as an issue that prevented her from addressing her debt. On the other hand, the record did not specify whether or how much she paid to her mortgage lender from her own funds. The amounts of any lingering liability to repay the loans from her retirement account, father, and other family are unknown. There was also no evidence in the record about how much money she borrowed from her retirement account, and to what expenses or debts those retirement funds were applied. Although she paid a total of \$4,044 between 2013 and 2018 towards her unpaid federal taxes, there was no evidence in the record of how much she paid to resolve her state taxes either directly or via garnishment. Finally, she admitted to prioritizing supporting her children through college over paying her delinquent debts.

AG ¶ 20(c) is not established. Applicant has not sought any financial counseling. Even if she received such counseling during her consultation with the attorney about filing bankruptcy (which was not specified in the record), she did not establish that her indebtedness is under control at this time.

AG ¶ 20(d) is not fully established. The extent to which Applicant's taxes were resolved either via garnishment or the application of refunds from other tax years cannot be considered good-faith effort. However, she is credited with resolving her mortgage debt, the efforts and direct payments she made towards resolving her federal tax debt, and managing her current finances responsibly without the use of credit cards. She is also credited with consulting with an attorney to consider whether to file bankruptcy.

AG ¶ 20(g) is not fully established. Applicant communicated with the IRS about her financial situation, established installment agreements to repay her federal taxes, and made direct payments to the IRS. While she was required to timely file her tax returns regardless of whether she could afford to pay her taxes, she responsibly filed her delinquent tax returns well before the issuance of the SOR. She resolved her TY 2012 tax debt similarly. However, significant federal tax debt remains unresolved. The record did not specify why she never established an installment agreement to repay her TY 2016 federal tax debt. Applicant did not prove that her TY 2014 through 2016 federal tax debts were reduced as claimed.

I considered the progress that Applicant made in addressing her delinquent mortgage and tax debts, and the fact that she is not required to be debt-free in order to merit a favorable determination about her eligibility for a position of trust. I also considered that her current unemployment status impacts her ability to make payments towards her debts, particularly amid the economic uncertainties associated with the pandemic. However, due to the lack of specific information and corroborating documents in several key areas of mitigation, Applicant has failed to meet her burden to overcome the concerns surrounding the substantial debts, including unpaid federal taxes, which remain unresolved.

There is insufficient evidence for me to conclude that Applicant will be able to follow through with her plan for repaying her SOR debts once she is gainfully employed; and that her indebtedness is not likely to recur. However sincere she may be in her

determination to resolve her delinquent debts without filing bankruptcy, in light of the record before me, I cannot conclude that Applicant has mitigated the Guideline F concerns at this time.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall common sense judgment based upon careful consideration of the adjudicative guidelines, each of which is to be evaluated in the context of the whole person. In evaluating the relevance of an individual's conduct, 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 that Applicant has not mitigated trustworthiness concerns raised by her indebtedness. Accordingly, Applicant has not carried her burden of showing that it is clearly consistent with the interests of national security to grant her eligibility for a public trust position.

Formal Findings

Formal findings 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.l:	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 for access to sensitive information is denied.

Gina L. Marine
Administrative Judge