



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



In the matter of:)	
)	
[Redacted])	ADP Case No. 20-03154
)	
Applicant for Public Trust Position)	

Appearances

For Government: Tara R. Karoian, Esq., Department Counsel
For Applicant: *Pro se*

08/19/2021

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves trustworthiness concerns raised under Guideline F (Financial Consideration). Eligibility for assignment to a public trust position is denied.

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on March 27, 2019, seeking eligibility for a public trust position. On December 21, 2020, 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 (SEAD 4), *National Security Adjudicative Guidelines* (December 10, 2016), for all adjudicative decisions on or after June 8, 2017.

Applicant answered the SOR on December 23, 2020, and requested a decision on the written record without a hearing. (FORM Item 2.) Department Counsel submitted the Government’s written case on April 14, 2021. On April 27, 2021, 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 9, 2021, and submitted a response, which was

received on June 10, 2021. It consists of a cover letter (Applicant's Exhibit (AX) A) and six documents (AX B through G), which have been included in the record without objection. The case was assigned to me on July 16, 2021.

Evidentiary Issue

The FORM included summaries of two personal subject interviews (PSI) conducted on June 4, 2019, and August 8, 2019. (FORM Item 8.) The PSI summaries were not authenticated as required by Directive ¶ E3.1.20. Department Counsel informed Applicant that she was entitled to comment on the accuracy of the PSI summaries; make any corrections, additions, deletions or updates; or object to consideration of the PSI summaries on the ground that they were not authenticated. Applicant submitted a detailed response to the FORM but did not comment on the accuracy or completeness of the PSI summaries, nor did she object to them. I conclude that she waived any objections to the PSI summaries. Although *pro se* applicants are not expected to act like lawyers, they are expected to take timely and reasonable steps to protect their rights under the Directive. ISCR Case No. 12-10810 at 2 (App. Bd. Jul. 12, 2016). See ADP Case No. 17-03252 (App. Bd. Aug. 13, 2018) (holding that it was reasonable for the administrative judge to conclude that any objection had been waived by an applicant's failure to object after being notified of the right to object).

Findings of Fact

Applicant is a 59-year-old self-employed health-care recruiter. She has worked for a federal contractor since March 2019. She married in September 1997 and has an adult stepdaughter. She has lived in a home that she owns since October 2003. She earned a bachelor's degree in December 2001 and a master's degree in December 2004. She has never held a security clearance or been cleared for a public trust position.

Applicant's financial problems began when her business declined and she used credit cards to cover business expenses and to pay for uninsured medical expenses to treat a knee injury. She is working to revive her business while working for a federal contractor and two other part-time jobs, one as a "backroom associate" for a clothing store and the other as a licensed realtor. (FORM Item 8 at 4.)

In Applicant's response to the FORM, she submitted evidence that on June 7, 2021, after she had received the FORM, she had resolved four credit-card debts not alleged in the SOR. (AX A.) The SOR alleges ten delinquent debts totaling about \$33,525, of which about \$21,847 is unresolved. The delinquent debts are reflected in credit reports from April 2021, August 2020, January 2020, and April 2019. (FORM Items 4-7.) The evidence concerning these debts is summarized below

SOR ¶ 1.a: line of credit charged off for \$8,971. This account was opened in June 1998 to pay the costs of Applicant's business. It became delinquent in December 2017 when her business declined. (FORM Item 4 at 2.) This debt is not resolved.

SOR ¶ 1.b: credit-card account charged off for \$7,724. This account was opened in March 2013 and became delinquent in May 2018. (FORM Item 4 at 3.) This debt is not resolved.

SOR ¶ 1.c: credit-card account referred for collection of \$5,417. This account became delinquent in January 2018. In Applicant's response to the FORM, she provided documentation that this creditor had obtained a judgment for the amount of the debt and was garnishing her pay. (AX H.) She stated that she was in the process of settling this debt by agreeing to pay it in five installments of \$700, but she provided no documentary evidence of payments or a payment agreement. However, the April 2021 credit report reflects that Applicant is making payments under a partial-payment agreement and the balance has been reduced to \$4,871. (FORM Item 4 at 1.) The credit report indicates that this debt is being resolved.

SOR ¶ 1.d: credit-card account charged off for \$4,831. This account was opened in December 2012 and became delinquent in December 2018. (FORM Item 4 at 5.) This debt is not resolved.

SOR ¶ 1.e: collection account for \$2,030. This collection account was opened by a factoring company in June 2019. The April 2021 credit report reflects that the last payment was in March 2021 and that the balance due is \$707. (FORM Item 4 at 3-4.) The credit report indicates that Applicant has been making payments on this debt, and it is being resolved.

SOR ¶ 1.f: credit-card account charged off for \$1,342. This account was opened in December 2012 and became delinquent in September 2014. The April 2021 credit report reflects that the last payment was in March 2021 and the balance has been reduced to \$1,117. (FORM Item 4 at 4.) In Applicant's answer to the SOR, she stated that she had settled this debt for \$450 and was making monthly \$75 payments on it. The documentary evidence in her response to FORM reflects multiple \$75 payments to several creditors. The credit report indicates that this debt is being resolved.

SOR ¶ 1.g: credit-card account charged off for \$1,327. In Applicant's response to the FORM, she provided documentary evidence that this debt has been settled. (AX B.)

SOR ¶ 1.h: credit-card account charged off for \$1,279. This account was opened in September 2009 and became delinquent in December 2017. In Applicant's answer to the SOR, she stated that she had settled this debt for \$450 and was making monthly \$75 payments on it. The documentary evidence in her response to FORM reflects multiple \$75 payments to several creditors. The April 2021 credit report reflects that the last payment was in March 2021 and the balance was reduced to \$1,054. (FORM Item 4 at 4.) The credit report indicates that this debt is being resolved.

SOR ¶ 1.i: credit-card account charged off for \$321. This account was opened in November 2009 and became delinquent in May 2018. The April 2021 credit report reflects that the last payment was in April 2018, the charged-off amount was \$44, and the

account was closed. (FORM Item 4 at 3.) In Applicant's response to the FORM, she admitted that this debt is not resolved because she has not determined which collection agency currently holds the debt. She provided no evidence that she has attempted to contact the original creditor.

SOR ¶ 1.j: credit-union debt past due for \$283, with a total balance of \$2,448.

The April 2021 reflects that this account is current, with a balance of \$1,807. (FORM Item 4 at 3; AX F.) The debt is resolved.

In Applicant's response to the FORM, she stated that after she makes the five payments required by the payment agreement for the debt alleged in SOR ¶ 1.g, she will seek payment agreements for the debts alleged in SOR ¶¶ 1.a and 1.b, and then resolve the other debts one at a time. (AX A.) She provided no evidence that she has contacted the creditors or the collection agencies for the debts alleged in SOR ¶¶ 1.a, 1.b, 1.d, or 1.i.

During Applicant's interview with a security investigator, she admitted that her financial records were not organized and that she was unable to provide detailed information about her delinquent debts. She told the investigator that she believed she had about \$40,000 in debts, of which about \$15,000 was delinquent. She told the investigator that she had not received any financial counseling or any assistance from a debt consolidation service. (FORM Item 8 at 5.)

The April 2021 credit report reflects that the payments on Applicant's home mortgage loan are current. (FORM Item 4 at 6.) She has not provided any information about her income, expenses, or assets.

Policies

The standard set out in 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. SEAD 4, ¶ E.4. 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 adjudicative guidelines. 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), any doubt 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 assignment to a public trust position.

Analysis

Guideline F, Financial Considerations

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

Applicant's admissions and the evidence in the FORM establish the following disqualifying conditions under this guideline: AG ¶ 19(a): ("inability to satisfy debts") and AG ¶ 19(c): ("a history of not meeting financial obligations"). The following mitigating conditions are potentially relevant:

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; and

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

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 partially established. The decline in Applicant's business and her uninsured medical expenses were conditions largely beyond her control. She has acted responsibly by working two part-time jobs in addition to working to revive her business and working for a federal contractor. She has resolved several debts not alleged in the SOR and the two debts alleged in the SOR ¶¶ 1.g and 1.j. She is making payments on the debts alleged in SOR ¶¶ 1.c, 1.e, 1.f, and 1.h. However, she submitted no evidence of responsible conduct regarding the debts alleged in SOR ¶¶ 1.a, 1.b, 1.d, and 1.i.

AG ¶ 20(c) is not established. Applicant presented no evidence that she has sought or received financial counseling.

AG ¶ 20(d) is established for the debts alleged in SOR ¶¶ 1.c, 1.e, 1.f, 1.g, 1.h, 1.j, and 1.g. It is not established for the debts alleged in SOR ¶¶ 1.a, 1.b, 1.d, and 1.i. In Applicant's response to the FORM, she declared her intention to resolve these four debts. However, "[p]romises to pay or otherwise resolve delinquent debts in the future are not a substitute for a track record of paying debts in a timely manner or otherwise acting in a financially responsible manner." ISCR Case No. 17-04110 (App. Bd. Sep. 26, 2019) *citing* ISCR Case No. 14-04565 at 2 (App. Bd. Sep. 18, 2015). An important element of good faith and responsible conduct is maintaining contact with creditors. Applicant presented no evidence that she has contacted the creditors alleged in SOR ¶¶ 1.a, 1.b, 1.d, and 1.i. The debts alleged in SOR ¶¶ 1.a, 1.b, 1.c and 1.d are Applicant's largest debts, and she has resolved only the debt alleged in SOR ¶ 1.c.

The adjudicative guidelines do not require that an individual make payments on all delinquent debts simultaneously, pay the debts alleged in the SOR first, or establish resolution of every debt alleged in the SOR. He or she need only establish a plan to resolve financial problems and take significant actions to implement the plan. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). Applicant has good intentions, but her good intentions have not yet evolved into a reasonable and credible plan that includes the debts alleged in SOR ¶¶ 1.a, 1.b, 1.d, and 1.i.

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. I have considered that Applicant's financial problems were caused in large part by circumstances beyond her control, and that she has acted responsibly regarding some of her debts. However, she has not yet reached the point where the potential for pressure, coercion, exploitation, or duress has been sufficiently diminished. Delinquent debts totaling \$21,847 are unresolved, and she submitted no evidence of steps to resolve them.

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 based on financial considerations. Accordingly, I conclude that she has not carried her burden of showing that it is clearly consistent with national security to grant her eligibility for a public trust position.

Formal Findings

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

Subparagraphs 1.a, 1.b, 1.d, and 1.i: **Against Applicant**

Subparagraphs 1.c, 1.e-1.h, and 1.j: **For 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 a public trust position is denied.

LeRoy F. Foreman
Administrative Judge