



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



In the matter of:)	
)	
)	ADP Case No. 19-02602
)	
Applicant for Public Trust Position)	

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: Melissa L. Watkins, Esq.

03/11/2021

Decision

GARCIA, Candace Le'i, Administrative Judge:

Applicant mitigated the financial considerations and personal conduct trustworthiness concerns. Eligibility for access to sensitive information is granted.

Statement of the Case

On October 2, 2019, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing trustworthiness concerns under Guideline F (financial considerations) and Guideline E (personal conduct). The action was taken under Executive Order (Exec. Or.) 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) implemented by DOD on June 8, 2017.

Applicant responded to the SOR on November 8, 2019, and requested a decision based on the administrative record. On January 28, 2020, she requested a conversion to a hearing before an administrative judge. The case was assigned to me on February 21, 2020. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing (NOH) on February 27, 2020, scheduling the hearing for March 31, 2020.

DOHA canceled that hearing due to DOD restrictions resulting from COVID-19 and issued another NOH on July 10, 2020, rescheduling the hearing for August 18, 2020. I convened the hearing as rescheduled.

Government Exhibits (GE) 1 through 5 and Applicant's Exhibits (AE) A through T were admitted in evidence without objection. Applicant testified and called one witness. At Applicant's request, I kept the record open until August 31, 2020, to allow her to submit additional evidence. By that date, Applicant submitted additional documentation, which I marked collectively as AE U and admitted in evidence without objection. DOHA received the hearing transcript (Tr.) on August 28, 2020. (Tr. at 127-128)

Findings of Fact

Applicant admitted all of the SOR allegations. She is 34 years old, single, and has a minor child. (Tr. at 87; GE 1)

Applicant graduated from high school in 2005. She earned a bachelor's degree in 2011 and a master's degree in 2020. She worked as an administrative assistant for a state government until February 2011, when funding for her position ceased and she was unemployed until January 2012. She then worked for two previous DOD contractors until December 2018, when she began working for her current employer as of the date of the hearing, another DOD contractor. She was first granted access to sensitive information in 2013. (Tr. at 5-6, 38-40, 72-73, 97-99, 115; GE 1, 2; AE O)

The SOR alleges seven delinquent consumer debts totaling \$29,674 (SOR ¶¶ 1.a-1.b, 1.d-1.h) and two delinquent medical debts totaling \$1,141 (SOR ¶¶ 1.c, 1.i). The debts are established by credit reports from 2018, 2019, and 2020. She also discussed them during her 2019 background interview. The SOR also alleges that Applicant falsified her November 2018 security clearance application (SCA) by deliberately failing to disclose, in response to section 26, her delinquent debts in SOR ¶¶ 1.a to 1.i. (GE 1-5; AE A)

Applicant attributed her delinquent debts to her youth, financial illiteracy, and limited income. She earned between \$45,000 and \$52,000 from 2012 to 2014, and \$65,000 to \$68,000 from 2014 to 2018. She started regaining control of her finances in 2016. As of the date of the hearing, she paid SOR ¶¶ 1.a, 1.c, 1.d, 1.e, 1.f, 1.g, and 1.i and she was in the process of resolving SOR ¶¶ 1.b and 1.h. (Answer; Tr. at 37-103, 115-122; GE 2)

SOR ¶ 1.a is for a \$15,630 charged-off auto account for a car Applicant bought in 2008 and timely paid until the car was stolen in 2013. She bought another car believing the account for the stolen car would be written off as a total loss. The stolen car was found shortly thereafter and she became delinquent on the account for the stolen car because she could not afford to pay for two cars. A lien was placed against her. She remained in contact with the creditor and made minimal payments that she could afford. She received approximately \$45,000 from her father's estate in September 2019, and

she used \$3,000 to settle and pay this account in October. The lien was subsequently released. (Tr. at 41-43, 103-106, 113-115; GE 2; AE A, B, D, U)

SOR ¶ 1.b is for a \$4,533 charged-off furniture rental account for a bedroom set Applicant rented in 2014, with the expectation that she would eventually own it. She made 10 to 11 payments of approximately \$128 monthly. She returned the furniture in 2015 after several pieces broke, and she assumed she was no longer required to pay the account. She did not learn about the delinquency until an unrecalled date when it appeared on her credit report. She obtained a store return receipt in January 2020 and believed she no longer had an outstanding balance. Her efforts to verify her zero balance with the store were unsuccessful, due to the store's limited hours as a result of the COVID-19 pandemic. She intends to continue to contact the store to verify that this account is resolved; if she has an outstanding balance, she intends to pay it. (Tr. at 43-50, 106-109; GE 4; AE A, B, E, U)

SOR ¶ 1.c is for a \$724 dental bill in collection. Applicant believed her health insurance paid for this bill. She did not learn that it was outstanding until after she received the SOR. She called the dentist's office and was told that the bill was due to a submitting code error. After the dentist's office resubmitted the bill with the proper code, her insurance paid the outstanding balance. She disputed this debt in June 2020 because she believed it was paid. Her credit report from August 2020 reflects that the account has a zero balance. (Tr. at 50-52, 110, 115; AE A, B)

SOR ¶ 1.d is for a \$544 charged-off credit card. Applicant became delinquent due to her limited income. She contacted the creditor in 2017 to try to resolve it and the creditor offered to transfer her outstanding balance to another credit card. When she realized that the high interest rate on the new credit card would require higher monthly payments, she instead elected to pay the account in full. Documentation from the creditor reflects that she settled and paid this account in October 2019. (Tr. at 53-54, 111-113, 115; AE A, B, F)

SOR ¶ 1.e is for a \$488 debt in collection for costs Applicant incurred when she vacated an apartment rental. Applicant incorrectly believed that her security deposit would cover these costs. Documentation from the creditor reflects that Applicant paid this debt in October 2019. (Answer; Tr. at 54-56, 110-111; AE G)

SOR ¶ 1.f is for a \$453 outstanding electric bill from Applicant's previous apartment. She learned about it when she activated her utility account with the same provider for the apartment in which she lived as of the date of the hearing. Documentation from the creditor reflects that she paid this debt as of May 2020. (Tr. at 56-59; AE A, B, H)

SOR ¶ 1.g is for a \$7,317 charged-off auto account, for another car that belonged to Applicant. The car was primarily driven by her sister and it was stolen while parked in approximately 2018. Applicant's gap insurance notified her that it would pay the outstanding balance on the account. When she subsequently learned that her gap insurance did not pay the full outstanding balance, she unsuccessfully tried to reach an

affordable monthly payment with the creditor. In March 2020, she settled and paid this account for \$7,000 with money she received from her father's estate. (Tr. at 59-65, 111-112; AE B, I)

SOR ¶ 1.h is for a \$709 cable and internet account in collection. Applicant was unable to pay the outstanding balance on the account when she switched providers. She settled this account and made the first payment of \$170 in early August 2020; the remaining balance of \$516 was scheduled to be auto-debited from her banking account later that month. (Tr. at 65-66; AE J, U)

SOR ¶ 1.i is for a \$417 medical account in collection. She settled this account for \$275 and paid it in October 2019. (Tr. at 66-8; AE K, U)

When Applicant learned of another delinquent cable account after she pulled her credit report in 2020, she set up a payment plan of \$150 monthly to resolve it. The creditor suspended the payment due to the COVID-19 pandemic, but Applicant continued to make payments of \$50 to \$80 monthly. As of the date of the hearing, her remaining balance was \$200, which she intended to continue to resolve. She also contacted a student loan resolution program in January 2020 to consolidate her federal student loans, scheduled to become due since the completion of her graduate degree. (Tr. at 68-78; AE A, L, P)

Applicant enrolled in a credit counseling program in August 2019, through which she has met with a credit counselor monthly, developed a budget, and learned how to manage her finances. She earned \$75,000 annually from 2018 to 2019, when she began working for her employer as of the date of the hearing. She received a performance-based raise in October 2019 and earned \$78,124 annually as of the date of the hearing. Of the \$45,000 she received from her father's estate, she applied \$28,000 towards resolving her delinquent debts and placed the remaining \$16,800 in her savings account; she does not intend to use this money. She has saved an additional \$3,000, also in her savings account, and she contributes to her employer-matched retirement savings plan. She has a monthly net remainder of approximately \$800, which provides her with sufficient disposable income to meet her financial obligations. (Answer; Tr. at 63-64, 70-92, 111-113, 115-125; AE C, K, M, N, Q, R, U)

Applicant mistakenly believed that section 26 of her SCA required her to only list financial delinquencies related to gambling, drug use, alcoholism, and other illegal activities. Though she acknowledged that she was embarrassed about the poor state of her finances, she misread the question and believed she was only required to disclose delinquencies that stemmed from the above-mentioned factors. She did not seek help with completing her SCA. (Answer; Tr. at 92-94, 102-103, 122-123)

As of the date of the hearing, Applicant's witness had served in the U.S. military for 28 years, during which time he has held a security clearance. He was Applicant's on-site supervisor from approximately 2012 to 2014, when they both worked for a previous DOD contractor and had access to sensitive information. He testified that while Applicant began as a temporary employee, he quickly observed her proficiency and

eagerness to learn so he recommended that their employer hire her full time. He rated her performance favorably during this period. He testified that she was an honest and trustworthy individual. He was aware of Applicant's delinquent debts and had no doubts that Applicant would make necessary life changes and resolve them. Applicant's supervisor as of the date of the hearing rated Applicant favorably on her most recent performance review from 2019. She also described Applicant as a trusted and valued employee. Applicant's character references, which include a friend, a former co-worker, and a fellow volunteer, also attested to her trustworthiness and reliability. She has also volunteered as the president and treasurer for her daughter's parent-teacher association. (Answer; Tr. at 16-37, 39-40, 94-; GE 1; AE S, T)

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 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 trustworthiness concern for financial considerations 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

The guideline notes several conditions that could raise trustworthiness concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant was unable to pay her debts. The evidence is sufficient to raise AG ¶¶ 19(a) and 19(c) as disqualifying conditions.

Conditions that could mitigate the financial considerations trustworthiness concerns are provided under AG ¶ 20. The following are potentially applicable:

- (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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (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

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

Conditions beyond Applicant's control, as previously discussed, contributed to her financial problems. Thus, the first prong of AG ¶ 20(b) applies. For the full application of AG ¶ 20(b), she must provide evidence that she acted responsibly under her circumstances. She began to regain control of her finances in 2016. She enrolled in a credit counseling program in August 2019, before she received the SOR. She paid SOR ¶¶ 1.a, 1.c, 1.d, 1.e, 1.f, 1.g, and 1.i and she was in the process of resolving SOR ¶¶ 1.b and 1.h. I find that AG ¶¶ 20(a), 20(b), 20(c) and 20(d) apply.

Guideline E: Personal Conduct

The trustworthiness concern for financial considerations is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. . . .

The guideline notes the following potentially applicable condition that could raise trustworthiness concerns under AG ¶ 16:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

I considered Applicant's demeanor at hearing, and find that she credibly testified that she misunderstood section 26 of her SCA. She did not deliberately omit her delinquent debts, as she believed she was only required to list them if they stemmed from gambling, drug use, alcoholism, and other illegal activities. She discussed her delinquent debts during her subsequent background interview. AG ¶ 16(a) is not established.

Whole-Person Concept

Under the whole-person concept, the 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. 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; (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 eligibility for a public trust position 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 the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines F and E in my whole-person analysis. Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility for access to sensitive information. I conclude Applicant mitigated the financial considerations trustworthiness 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: Subparagraphs 1.a - 1.i:	FOR APPLICANT For Applicant
Paragraph 2, Guideline E: Subparagraph 2.a:	FOR APPLICANT 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 Applicant's eligibility for a public trust position. Eligibility for access to sensitive information is granted.

Candace Le'i Garcia
Administrative Judge