



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



In the matter of:)
)
-----) ADP Case No. 20-00241
)
Applicant for Security Clearance)

Appearances

For Government: Erin Thompson, Esq., Department Counsel
For Applicant: *Pro se*

01/21/2021

Decision

WESLEY, ROGER C., Administrative Judge

Based upon a review of the case file, pleadings, exhibits, and testimony, Applicant mitigated financial considerations. Eligibility to hold a public trust position is granted.

Statement of the Case

On May 7, 2020, the Department of Defense (DoD) Consolidated Adjudications Facility (CAF) issued a statement of reasons (SOR) to Applicant detailing reasons why under the financial considerations guideline it could not make the preliminary affirmative determination of eligibility for holding a public trust position, and recommended referral to an administrative judge to determine whether eligibility to hold a public position should be granted, continued, denied, or revoked. The action was taken under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960); DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992; and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017.

Applicant timely responded to the SOR on June 30, 2020 with the aid of an extension granted to her prior counsel, and requested a hearing. A hearing was scheduled for November 17, 2020. The case was heard on the scheduled date. At the hearing, the Government's case consisted of three exhibits (GE 1 through 3). Applicant relied on 17 exhibits and one witness (herself). The transcript (Tr.) was received on December 14, 2020.

Summary of Pleadings

Under Guideline F, Applicant allegedly accumulated 15 delinquent debts that exceed \$63,000. Allegedly, these debts remain unresolved and outstanding.

In her response to the SOR, Applicant admitted the alleged debts covered by SOR ¶¶ 1.a through 1.p with explanations. She claimed that each of the debts listed in the SOR have either been paid or are covered by payment plans. She claimed full responsibility for her debts and explained that her financial difficulties were due to circumstances beyond her control after losing her job in March 2017 and then committing to becoming a full-time caregiver for her recovering mother and cancer-stricken grandmother.

Applicant claimed that her grandmother has since passed away and her mother is improved and can now walk without a walker. She further claimed that now that now that she has returned to work with a good-paying job she can afford to start making payments on her debts, which she has done.

Findings of Fact

Applicant is a 40-year-old executive assistant for a defense contractor who seeks eligibility to hold a public trust position. The allegations covered in SOR ¶¶ 1.a through 1.p and admitted by Applicant are incorporated and adopted as relevant and material findings. Additional findings follow.

Background

Applicant never married and has no children. (GE 1) Applicant attended college between 2005 and 2010 and earned a bachelor's degree in May 2010. (GE 1 and AE B; Tr. 42, 60) She started graduate school classes in 2011, but had to withdraw from school in 2012 due to her increased domestic responsibilities and limited finances. (Tr. 43) Applicant reported no military service. (GE 1 and AE B)

Since January 2019, Applicant has been employed by her current employer. Between January 2009 and January 2019, she worked for other non-defense contractors in various capacities. (GE 1) From June 2017 to January 2019, she worked as an unpaid volunteer for a non-defense employer while living with her mother and serving as a full-time care giver to her recovering mother and cancer-stricken grandmother. (GE 1; Tr. 40-41)

Applicant's finances

Between 2016 and 2019, Applicant accumulated student loan and other delinquent debts exceeding \$63,000. She attributed these debts to being out of work while helping her ill mother and ailing grandmother. She has since addressed all of the debts (save for a medical debt for \$282 covered by SOR ¶ 1.k). Reportedly, SOR creditor 1.k is no longer in business and could not be reached to resolve the debt.

Since returning to full-time employment in 2019, she has paid off five of the listed debts in full: SOR ¶¶ 1.i (\$808), 1.j (\$565), 1.l (\$ 241), 1.o (\$454), and 1.p (\$420). (AEs F-L; Tr. 51-56) Addressing the remaining debts, she has entered into payment plans with all but one (SOR ¶ 1.k) of the named creditors in the SOR. Her documented payment plans are summarized as follows:

SOR ¶ 1.a: This delinquent debt of \$10,672 is an auto account that was charged off in 2017. (GEs 2-3) Applicant entered into a payment plan with this creditor in July 2020 that calls for monthly payments of \$150. (AE L; Tr. 48-49) To date, she has reduced the principal amount of the debt to \$9,322 with \$600 worth of payments and is current with her payment plan. (AEs L and R; Tr. 48-49)

SOR ¶¶ 1.b-1.g: These are reported delinquent student loans that are comprised of six separate loans exceeding \$43,000. (GEs 2-3 and AE M; Tr. 46-47) Applicant entered into a payment plan with the assigned student loan lender in October 2020. (AE M; Tr. 47-48) Under the terms of her loan rehabilitation agreement with this assigned lender, Applicant is obligated to make monthly payments of \$5 through July 2021, after which she will be eligible to consolidate her loans. (AEs M and R; Tr. 46-48)

SOR ¶ 1.h: This is a reported delinquent credit card debt that was charged off in 2017 in the amount of \$3,263. (GEs 2-3) Applicant entered into a payment plan with this creditor July 2020. (AE N). Payment terms are \$200 a month, and to date she has made conforming payments that have lowered the principal balance to \$2,500. (AEs N and R; Tr. 50)

SOR ¶ 1.m: This is a reported delinquent private school loan in the amount of \$6,080. (GEs 2-3) Applicant took out this loan to cover her graduate studies that she has not completed. She entered into a payment agreement with this creditor in November 2020 that calls for monthly payments of \$100 a month and documented her first payment in November 2020. (AEs O and R; Tr. 48-49)

SOR ¶ 1.n: This is a reported delinquent medical debt for \$1,335 that Applicant addressed with a payment plan with the creditor that provided for monthly payments of \$150 a month. (GEs and AEs P and R; Tr. 55) Applicant is compliant with the terms of her payment plan with this creditor.

In her documented financial statement, Applicant reported gross monthly earnings of \$6,182 and assets of \$3,475 (inclusive of her car and 401k retirement account). (AEs D and Q; Tr. 57-58) She listed personal liabilities of \$200 a month and

monthly expenses of \$2,443. And, she reported a monthly remainder of \$2,034, which she employs to meet her monthly necessities. (AEs D and Q; Tr. 57-58) She successfully completed a financial credit counseling course in April 2020 to help her in her budgeting efforts and regularly maintains a monthly budget. (AE O; Tr. 56, 60) She is current with her remaining debts. (GEs 2-3)

Character references, awards, and performance evaluations

Applicant is well-regarded by her manager and colleagues who know her well, have worked with her, and are aware of the financial circumstances that impacted her ability to address her debts. (AE C) Uniformly, they credit her with good character traits: honesty, caring for her colleagues and customers, and exceptional enthusiasm for her work. (AE C) They characterize her as a colleague with excellent leadership and communication skills and with a heart full of passion for helping others. (AE C) Her program and task manager with daily interaction with her credited her with being honest, trustworthy, and diligent in providing quality services for her government clients and reliable handling of sensitive information. (AE C)

Applicant has received solid performance evaluations from her employer. (AE A) Her 2019-2020 performance ratings credit her with meeting expectations in most of the rated categories. Only in the areas of adaptability and results were improvement needs noted. (AE A) In these two later rating areas, her rating manager urged her to continue accepting and learning from constructive criticism, continue to assist her team in managing the daily workload, become a subject-matter expert on all administrative functions, and continue to provide excellent customer service. (AE A)

Policies

By virtue of the jurisprudential principles recognized by the U.S. Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988), “no one has a ‘right’ to a security clearance.” As Commander in Chief, “the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. Eligibility for access to classified and sensitive information may only be granted “upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information (and implicitly sensitive information) within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for holding a public trust position is predicated upon the applicant meeting the criteria contained 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. An 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 AGs list guidelines to be considered by judges in the decision-making process covering DOHA cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information. These guidelines include conditions that could raise a security concern and may be disqualifying (disqualifying conditions), if any, and all of the conditions that could mitigate security concerns, if any.

The AGs must be considered before deciding whether or not eligibility for holding a public trust position should be granted, continued, or denied. Although, the guidelines do not require judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision.

In addition to the relevant AGs, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in ¶ 2(a) of the AGs, which are intended to assist the judges in reaching a fair and impartial, commonsense decision based on a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk.

When evaluating an applicant's conduct, the relevant guidelines are to be considered together with the following ¶ 2(a) factors: (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 of the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Viewing the issues raised and evidence as a whole, the following individual guidelines are pertinent herein:

Financial Considerations

The Concern: 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 or regulations, all of which can raise questions about an applicant'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 acts or otherwise questionable acts to generate funds. . . . AG ¶ 18.

Burdens of Proof

The Government reposes a high degree of trust and confidence in persons with access to both classified and sensitive information. 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 classified or sensitive information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Public trust eligibility decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. See *also* Exec. Or. 12968 (Aug. 2, 1995), § 3.1.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access classified or sensitive information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s public trust position suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

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 ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his [or her] security clearance” (implicitly public trust position eligibility as well). ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance (and implicitly public trust eligibility) determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Trustworthiness concerns are raised over Applicant’s history of accumulating delinquent debts. Most of the debts involve delinquent student loans. Other debts include delinquent consumer accounts.

Jurisdictional issues

Holding a public trust position involves the exercise of important fiducial responsibilities, among which is the expectancy of consistent trust and candor in protecting and guarding personally identifiable information (PII). DoD Manual 5200.02,

which incorporated and canceled DoD Regulation 5200.2-R, covers both critical-sensitive and non-critical sensitive national security positions for civilian personnel. See 5200.02, ¶ 4.1a (3)(c).

Definitions for critical-sensitive and non-critical sensitive positions provided in 5200.02, ¶ 4.1a (3)(c) contain descriptions similar to those used to define ADP I and II positions under DoD regulation 5200.2-R (32 C.F.R. § 154.13 and Part 154, App. J). ADP positions are broken down as follows in 32 C.F.R. § 154.13 and Part 154, App. J: ADP I (critical-sensitive positions covering the direction, design, and planning of computer systems) and ADP II (non-critical-sensitive positions covering the design, operation, and maintenance of computer systems. Considered together, the ADP I and II positions covered in DoD Regulation 5200.02 refine and explain the same critical-sensitive and non-critical-sensitive positions covered in DoD Manual 5200.02, ¶ 4.1.a (3)(c) and are reconcilable as included positions in 5200.02.

So, while ADP trustworthiness positions are not expressly identified in DoD Manual 5200-.02, they are implicitly covered as non-critical sensitive positions that require “access to automated systems that contain active duty, guard, or personally identifiable information or information pertaining to Service members that is otherwise protected from disclosure by DoD 5400.11-R . . .” DoD 5200.02, Sec. 4.1, ¶ 3(c). See Directive 5220.6 ¶¶ D5(d) and D8. By virtue of the implied retention of ADP definitions in DoD manual 5200.02, ADP cases continue to be covered by the process afforded by DoD 5220.6, pursuant to the guidelines afforded by Exec. Or. 10865.

Financial concerns

Applicant’s accumulation of 15 delinquent debts (including six student loans exceeding \$42,000) between 2016 and 2019 warrants the application of two disqualifying conditions (DCs) of the financial considerations guideline. DC ¶¶ 19(a), “inability to satisfy debts,” and 19(c), “a history of not meeting financial obligations,” apply to Applicant’s situation.

Applicant’s admitted debts negate the need for any independent proof. See Directive 5220-6 at E3. 1.1.14; *McCormick on Evidence*, § 262 (6th ed. 2006). Her admitted debt delinquencies are fully documented and create some initial judgment issues. See ISCR Case No. 03-01059 at 3 App. Bd. Sept. 24, 2004).

Financial stability in a person cleared to hold a sensitive public trust position is required precisely to inspire trust and confidence in the holder of a public trust position that entitles the person to access sensitive information. While the principal concern of a trust holder’s demonstrated financial difficulties is vulnerability to coercion and influence, judgment and trust concerns are implicit in cases involving debt delinquencies.

Historically, the timing of addressing and resolving debt delinquencies are critical to a fair assessment of an applicant’s trustworthiness, reliability, and good judgment in following rules and guidelines necessary for those seeking eligibility to hold a public

trust position. See ISCR case No. 14-06808 at 3 (App. Bd. Nov. 23, 2016); ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 18, 2015)

Since returning to gainful employment in 2019, Applicant has made considerable progress in resolving her account delinquencies with documented payoffs and payment plans. Her concerted initiatives enable her to take advantage of four mitigating conditions (MCs): MC ¶¶ 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”; 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, an unexpected medical emergency, a death, a divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances”; 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 20(d), “the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts” apply to Applicant’s situation.

In evaluating Guideline F cases, the Appeal Board has stressed the importance of a “meaningful track record” that includes evidence of actual debt reduction through the voluntary payment of debts, and implicitly where applicable the timely resolution of such debts. ISCR Case No. 07-06482 (App. Bd. May 21, 2008). In Applicant’s case, she has exercised significant responsibility in addressing her debts in issue with the financial resources available to her following her return to full-time employment in 2019.

Whole-person assessment

Whole-person assessment of Applicant’s clearance eligibility requires consideration of whether her accumulated delinquent debts between 2016 and 2019 reflect material breaches of the trust, reliability, and good judgment criteria that are required for eligibility to hold a position of public trust. Applicant has made considerable progress in addressing her debt delinquencies since returning to gainful employment in January 2019. Important also to establishing a favorable whole-person evaluation is the high regard in which she is held by her manager and colleagues. Overall public trust eligibility assessment of Applicant based on the compiled documentation and corroborating testimony enables her to establish judgment and reliability levels sufficient to overcome trust concerns associated with her accumulation of delinquent debts over a three-year period.

Taking into account all of the documented facts and circumstances surrounding Applicant’s delinquent debt accruals and ensuing probative efforts to pay off and resolve them, conclusions are warranted that her finances are sufficiently stabilized to warrant favorable conclusions about her eligibility to hold a public trust position. I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude that financial concerns with respect to the allegations

covered by SOR ¶¶ 1.a-1.p are mitigated. Eligibility for holding a public trust position is granted.

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: FOR APPLICANT

Subparagraphs 1.a through 1.p: 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 or continue Applicant's eligibility to hold a public trust position. Eligibility to hold a public trust position is granted.

Roger C. Wesley
Administrative Judge