



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



In the matter of:)
)
) ADP Case No. 20-01363
)
Applicant for Public Trust Position)

Appearances

For Government: Rhett Petcher, Esq., Department Counsel
For Applicant: *Pro se*

03/08/2022

Decision

Curry, Marc E., Administrative Judge:

Although Applicant has made some progress in resolving her delinquent debts, it is insufficient in relation to the outstanding balance. Consequently, it is too soon to conclude that she has mitigated the financial considerations concern. Also, Applicant failed to mitigate the trustworthiness concerns posed by her delinquent finances and her falsification of her Electronic Questionnaire for Investigations Procession (EQIP). Her application for a public trust position is denied.

Statement of the Case

On April 16, 2021, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the trustworthiness concerns under Guideline F, financial considerations, and Guideline E, personal conduct, explaining why it was unable to conclude that Applicant was eligible to occupy a public trust position. The DOD CAF took the action under Executive Order (EO) 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 National Adjudicative Guidelines (AG). On January 14, 2021, Applicant answered the SOR, admitting

subparagraphs 1.a, 1.b, 1.f, 1.g, 1.j through 1.m, and denying the remainder. She requested a decision without a hearing. On June 24, 2021, Department Counsel prepared a File of Relevant Materials (FORM) setting forth the Government's argument in support of the SOR, together with supporting documentation. Applicant received a copy of the FORM on July 6, 2021, and was instructed to file any objections to this information, or to supplement the file within 30 days of receipt. On August 9, 2021, Applicant filed a reply. The case was assigned to me on October 6, 2021.

Preliminary Ruling

The allegations set forth in subparagraphs 1.c and 1.d allege that Applicant owes debts, but do not identify the respective creditors. "To be legally sufficient, an SOR must place an applicant on reasonable notice of the allegations against him or her so that the applicant has a meaningful opportunity to respond to the allegations and prepare a defense against them." (ISCR Case No. 02-17219 (App. Board, Jan. 7, 2005) at 2). SOR subparagraphs 1.c and 1.d do not meet this threshold. Therefore, in light of Applicant's denials, I resolve subparagraphs 1.c and 1.d in her favor.

Findings of Fact

Applicant is a 31-year-old single woman. She graduated from college in 2011 and has been working as a healthcare consultant for various companies since then. (Item 1 at 5; Item 3 at 5)

Since finishing college in 2011, Applicant has incurred approximately \$50,000 of delinquent debts. Subparagraph 1.a, totaling \$185, is a delinquent health club fee. Applicant satisfied it on May 4, 2021. (Item 1 at 11) Subparagraph 1.b, totaling \$623, is a delinquent car insurance payment. (Item 1 at 6) The delinquent amount is the balance due when she switched car insurance carriers in September 2019. She switched car insurance providers because she could no longer afford the rate after losing her job in 2019. (Item 3 at 9) On May 4, 2021, Applicant contacted the creditor and arranged a payment plan. She paid her first installment, totaling \$124, that day. (Item 1 at 13)

Subparagraphs 1.e through 1.g are allegedly delinquent student loans, totaling approximately \$32,000. Subject originally borrowed \$18,000 to \$20,000. (Item 3 at 8) She deferred paying these loans for three years. (Item 3 at 8) She was unaware that interest would accrue while the loans were in deferral. In May 2021, Applicant retained a credit repair company to help her set up a payment plan. (Item 1 at 7, 24) She provided no evidence of any payments made yet.

SOR subparagraph 1.h alleges that Applicant failed to file her state income tax return for 2018. Applicant performed seasonal work in this state, but did not live there. (Item 1 at 7) Moreover, she never received a W-2 or W-4 form from the state's taxing authority, as her employer failed to withhold income taxes from her salary. (Item 1 at 5) In early 2021, the state garnished her wages. Since then, she has been paying \$250 per pay

period. (Item 1 at 29) The initial balance was approximately \$6,000, as alleged in subparagraph 1.i. Currently, the balance is \$2,000. (Item 1 at 7)

Applicant did not file her federal income tax returns for tax years 2017 and 2018 on time, as alleged in subparagraph 1.j. (Item 1 at 7) Moreover, as of the date of the SOR, Applicant owed back federal income taxes totaling \$3,889 for 2014 (subparagraph 1.k), \$8,554 for 2015 (subparagraph 1.l), and \$13,193 for tax year 2016 (subparagraph 1.m). In April 2021, Applicant paid \$1,500 towards her federal income tax deficiency. The IRS applied the payment to tax years 2014 through 2016 in equal, \$500 amounts. (Item 1 at 32-36) On August 3, 2021, Applicant retained a company that assists people with resolving income tax delinquencies. (Response to FORM at 3)

In September 2020, Applicant began working with her current employer. (Response at 1) This is the first job with consistent, full-time hours that she has had since finishing college. Previously, all of her work was either temporary or seasonal, and her income was sporadic. Between 2014 and 2018, she only worked 40 percent of the year, and between 2018 and Fall of 2019, she was unemployed. (Item 1 at 5, Item 3 at 5)

In January 2018, Applicant went on a tropical vacation out of the country. She took another vacation out of the country in January 2019. (Item 2 at 19-20)

Section 26 of the EQIP requests applicants to disclose whether they have had any accounts or credit cards turned over to a collection agency, suspended, charged off, or cancelled for failing to pay as agreed. (Item 2 at 27) SOR subparagraph 2.a alleges that Applicant falsified this section because she did not list the debts alleged in subparagraphs 1.a through 1.d. When Applicant completed the SOR, she was aware that both subparagraphs 1.a and 1.b were delinquent, but did not know that they had been turned over to collection agencies. (Item 1 at 8-9)

Section 26 of the EQIP also requires applicants to disclose current federal delinquencies, whether they have ever been delinquent on federal or state delinquencies in the past seven years, or whether they have failed to file any federal or state income tax return. (Item 2 at 27) Applicant did not include her delinquent federal student loans, as required. During her subject interview, she admitted taking out several student loans in 2012 and being subsequently unable to satisfy them because of employment instability. (Item 3 at 7) In her answer, she stated that they were "not factual debts." (Item 1 at 9)

Applicant did not include her state income tax delinquencies on her EQIP. At the beginning of Applicant's subject interview, she volunteered that she had not paid state taxes for 2017 and 2018. (Item 3 at 7) She did not mention her federal income tax delinquency. She contends that she did not include the federal tax delinquencies because she was unaware they had been turned over to a collection agency. (Item 1 at 9)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). When evaluating an applicant’s suitability for a public trust position, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to be considered in evaluating an applicant’s eligibility for access to sensitive information. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s overall adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the entire process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 1(d) requires that “[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion to obtain a favorable decision.

Under the whole-person concept, the administrative judge must consider the totality of an applicant’s conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d). They are as follows:

- (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.

Analysis

Guideline F: Financial Considerations

The trustworthiness concerns about financial considerations are set forth in AG ¶ 18, as follows:

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 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 risk of having to engage in illegal acts to generate funds.

Applicant did not live in the state where she worked. Her employer neither withheld money from the state she lived, nor withheld state income taxes from the state where she worked. Consequently, although she is responsible for the delinquent state tax debt, her failure to file state income tax returns has no negative security consequences. I resolve subparagraph 1.h in her favor.

Nevertheless, Applicant is responsible for the delinquent state tax debts. These debts, together with the other debts in the SOR, generate security concerns under AG ¶ 19(a), "inability to satisfy debts," and AG ¶ 19(c), "a history of not meeting financial obligations." Her failure to file her tax years 2017 and 2018 federal income tax returns, and her federal and state income tax delinquencies trigger the application of 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 mitigating conditions are potentially applicable under 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;

(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;

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

(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; and

(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.

Applicant was unable to keep current with her debts because she was either underemployed or unemployed for much of the period between 2014 and 2019. Now that she is fully employed, she has satisfied subparagraph 1.a, and has been satisfying her car insurance delinquency, and her income tax delinquencies through payment plans. In addition, she has contacted a credit counseling company to assist in resolving the remaining debts. Conversely, she took two vacations out of the country between 2018 and 2019. Given her financial problems, this was not responsible. Consequently, AG ¶ 20(b) applies, but has limited probative value.

Applicant's work with the credit counseling company and her initiation of payment plans triggers the application of AG ¶ 20(d). The arrangements she initiated to satisfy her income tax delinquencies triggers the application of AG ¶ 20(g).

Although Applicant has retained a credit repair company, and has begun making plans towards the resolution of her delinquencies, her progress is minimal in relation to the amount due. Moreover, she has yet to begin making payments towards the resolution of her student loans. Under these circumstances, although Applicant has made some progress, it is insufficient to conclude that she has mitigated the trustworthiness concern.

Guideline E: Personal Conduct

Under this guideline, "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." (AG ¶ 15) Moreover, "of special interest is any failure to cooperate or provide truthful or candid answers during security investigative or adjudicative processes." (*Id.*)

Applicant's responses on Section 26 of the EQIP raise the issue of whether 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." Applicant was aware that she was delinquent on the bills set forth in subparagraphs 1.a and 1.b, but was unaware that they had been turned over to credit collection agencies. Applicant was unaware of the debts alleged in subparagraphs 1.c and 1.d, and the creditors remain unidentified. I conclude that Applicant did not falsify subparagraph 2.a, and did not intend to conceal these accounts during her subject interview in 2019, as alleged in subparagraph 2.d.

During Applicant’s subject interview, she admitted taking out several student loans in 2012 and being subsequently unable to satisfy them because of employment instability. In response to SOR subparagraph 2.b, which alleged that she deliberately omitted them from her EQIP, Applicant replied that the student loans were invalid. Given the conflicting explanations about the student loans, I conclude that her omission was an intentional falsification.

Although Applicant did not list her state tax delinquencies on the EQIP, she volunteered them to the investigator before being confronted at her interview. AG ¶ 17(a), “the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts,” applies. I conclude that the omission of the state tax delinquencies and her failure to note that she had not filed them on time do not constitute intentional falsifications.

The EQIP unequivocally requires applicants to include any failure to file or pay taxes. Consequently, Applicant’s contention that she did not include her federal delinquencies on the EQIP because they had not been referred to a collection agent is not credible. I conclude that her failure to list her federal income tax delinquencies on her EQIP was an intentional omission.

In sum, given the intentional omissions, as alleged in subparagraphs 2.b and 2.c, I conclude Applicant failed to mitigate the personal conduct trustworthiness concern.

Whole-Person Concept

I considered the whole-person concept factors when I evaluated the disqualifying and mitigating conditions under Guideline F, and they do not warrant a favorable conclusion.

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:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraphs 1.c – 1.d:	For Applicant
Subparagraphs 1.e – 1.m:	Against Applicant

Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraphs 2.b-2.c:	Against Applicant
Subparagraph 2.d:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant access to public trust information. Eligibility for access to public trust information is denied.

Marc E. Curry
Administrative Judge