



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



In the matter of:)
)
) ADP Case No. 21-02159
)
Applicant for Public Trust Position)

Appearances

For Government: Adrienne Driskill, Esq., Department Counsel
For Applicant: *Pro se*

January 10, 2023

Decision

TUIDER, Robert, Administrative Judge:

Applicant presented sufficient evidence of her efforts to resolve Guideline F (financial considerations) concerns. Eligibility to occupy a public trust position is granted.

Statement of the Case

On August 17, 2020, Applicant submitted a Questionnaire for National Security Positions (SF-86). On February 25, 2022, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to Applicant detailing trustworthiness concerns under Guideline F. The SOR detailed reasons why the CAF was unable to find that it is clearly consistent with the national interest to grant or continue a public trust position for Applicant, which entails access to sensitive information. On March 4, 2022, Applicant submitted her Answer to the SOR, and requested a hearing. On April 20, 2022, Department Counsel was ready to proceed. On April 25, 2022, the Defense Office of Hearings and Appeals (DOHA) assigned the case to me.

On May 12, 2022, DOHA issued a notice scheduling the hearing for June 13, 2022. I convened the hearing as scheduled. I admitted Government Exhibits (GE) 1 through 4 without objection. (Tr. 10-11) Applicant testified and did not call any witnesses. I admitted Applicant Exhibits (AE) A through C without objection. (Tr. 11) I held the record open until August 12, 2022, and extended that deadline to August 26, 2022, to afford Applicant an opportunity to submit additional evidence. (Tr. 43-46) Applicant timely submitted AE D through L, which I admitted without objection. On June 23, 2022, DOHA received the hearing transcript (Tr.).

Findings of Fact

Background Information

Applicant is a 37-year-old licensed vocational nurse (LVN) consult manager, who has been employed by a defense contractor since May 2021. She seeks a public trust position, which is a requirement of her continued employment. (Tr. 12-13, 36; GE 1)

Applicant graduated from high school in 1999. She received an LVN certificate after completing a 13-month course in 2012. (Tr. 14-15; GE 1) She married in 2000 and divorced in 2014. She has two adult children, and provides a limited amount of support to her oldest son. (Tr. 15-18, 34-35) Applicant served in the U.S. Army from August 2000 to November 2001, and was honorably discharged as a private first class (pay grade E-3) (Tr. 18-19; GE 1)

Financial Considerations

Applicant's SOR lists six allegations under this concern. These allegations are established by her August 17, 2020 SF-86; her Office of Personnel Management (OPM) background investigation conducted from September 21, 2020, to September 29, 2020, and from November 18, 2020, to November 24, 2020, which contained her September 23, 2020, September 28, 2020, September 29, 2020, and November 23, 2020 Personal Subject Interviews (PSI); her March 4, 2022 SOR Answer; her August 20, 2020, and June 30, 2021 credit reports; and her hearing testimony. (GE 1 through 4; SOR Answer)

Applicant's financial difficulties began "[a]round the end of 2016" by agreeing to provide financial assistance in the form of four credit union loans, discussed below, on behalf of her former boyfriend. He agreed to pay her back; however, he ceased repaying her after making a "few payments." She terminated her relationship with her former boyfriend in 2019. (Tr. 19-24) She acknowledged using poor judgment by repeatedly incurring debt for her former boyfriend. (GE 2) Applicant was initially repaying these credit union loans until approximately early 2017 when she moved into a new apartment and did not have the financial means to repay these debts. (Tr. 24-25; GE 2)

After her 2020 OPM PSI, Applicant made intermittent payments on her credit union debts in amounts of \$50 to \$100, which given her current living situation and level of income, was the best she could do without overextending herself. (Tr. 25-30; GE 2)

On June 6, 2022, Applicant entered into four separate “formal” agreements with her credit union to document that she was making a good-faith effort to repay the four loans she made to help her former boyfriend. Before her formal agreement in June 2022, she had already begun depositing money into her credit union account to repay these debts since at least April 2022. (Tr. 24-27; AE C) Per her June 6, 2022 payment agreement with her credit union, she had set aside funds to cover her first payment in June 2022. Her total monthly payment per her agreement is \$400 and she pays that by direct debit. Since she began her current job, she has the income to repay her debts. (Tr. 30-31)

The following is a summary of Applicant’s nine SOR allegations and their status:

SOR ¶ 1.a – Collection automobile loan with credit union in the amount of \$25,283. The debt was for an automobile loan Applicant made for her former boyfriend. Applicant is not sure whether the automobile was repossessed. She made payment arrangements with the credit union beginning in June 2022; however, she had been paying this debt intermittently as early as 2017 when she could afford to do so. She provided documentation that she is making payments at the rate of \$100 a month to pay down this debt. (Tr. 40-41; AE A - AE D) **DEBT BEING RESOLVED.**

SOR ¶ 1.b – Collection automobile loan with credit union in the amount \$9,300. The debt was for another automobile loan Applicant made for her former boyfriend. She made payment arrangements with the credit union beginning in June 2022; however, she had been paying this debt intermittently as early as 2017 when she could afford to do so. She provided documentation that she is making payments at the rate of \$100 a month to pay down this debt. (Tr. 41-42; AE A - AE C, AE E) **DEBT BEING RESOLVED.**

SOR ¶ 1.c – Collection unsecured loan with credit union in the amount of \$5,144. The debt was for an unsecured loan Applicant made for her former boyfriend. She made payment arrangements with the credit union beginning in June 2022; however, she had been paying this debt intermittently as early as 2017 when she could afford to do so. She provided documentation that she is making payments at the rate of \$50 a month to pay down this debt. (Tr. 42; AE A - AE C, AE F) **DEBT BEING RESOLVED.**

SOR ¶ 1.d – Collection credit card account with credit union in the amount of \$5,089. The debt was for a credit card loan Applicant made for her former boyfriend. She made payment arrangements with the credit union beginning in June 2022; however, she had been paying this debt intermittently as early as 2017 when she could afford to do so. She provided documentation that she is making payments at the rate of \$50 a month to pay down this debt. (Tr. 42-43; AE A – AE D, AE G) **DEBT BEING RESOLVED.**

SOR ¶ 1.e – Collection bank credit card account in the amount of \$1,783. Per Applicant’s June 8, 2022 credit report, this debt was “Legally paid in full for less than the full balance” in November 2019. (Tr. 31-32, 38-39, 42-43; GE 3, GE 4; AE B, p.13, AE H) **DEBT RESOLVED.**

SOR ¶ 1.f – **Collection bank credit card account in the amount of \$1,893.** Per Applicant’s June 8, 2022 credit report, this debt was “Legally paid in full for less than the full balance” in November 2019. (Tr. 31-32, 39-40, 43; GE 3, GE 4, AE B, p. 14, AE I) **DEBT RESOLVED.**

As noted above, two of the six accounts are resolved, and Applicant has a plan in place to resolve the remaining debts. Applicant’s net monthly income is \$5,557, and her net monthly remainder is \$1,664. She rents an apartment at a monthly rate of \$1,100. She drives a Volkswagen, and her monthly car payment is \$654. Her budget reflects a modest lifestyle and that she is living within her means. (Tr. 32-34; AE J) A “couple of years ago,” Applicant sought financial counseling. However, she explained that the experience ended up costing her more money, and she did not receive meaningful help. This experience deterred her from pursuing additional financial counseling. (Tr. 35) Applicant stated that she has gained an appreciation and better understanding of maintaining financial responsibility from this experience. (Tr. 36)

Character Evidence

Applicant submitted three reference letters to include her supervisor, a co-worker, and her fiancé. Collectively, these letters describe Applicant as hardworking, honest, reliable, trustworthy, a team player, family oriented, and as an asset to her employer. The authors of her reference letters enthusiastically support her application for a public trust position. (Tr.37-38; AE K – AE M)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no one has a ‘right’ to a security clearance [or a public trust position].” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). The Government’s authority to restrict access to classified information applies similarly in the protection of sensitive, unclassified information. As Commander in Chief, the President has the authority to control access to information bearing on national security or other sensitive information and to determine whether an individual is sufficiently trustworthy to have access to such information. *See Id.* at 527.

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. Department of Defense contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination may be made.

When evaluating an applicant’s suitability for a public trust position, an 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. 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.

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 protect or safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of sensitive information.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant which may disqualify the applicant from being eligible for access to sensitive information. 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 security and trustworthiness 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. 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 [or access to sensitive information]." 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 [or trustworthiness] determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

The protection of the national security and sensitive records is of paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to [sensitive] information will be resolved in favor of national security." Section 7 of Executive Order (EO) 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

Analysis

Financial Considerations

AG ¶ 18 articulates the trustworthiness concern for financial problems:

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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

AG ¶ 19 provides two disqualifying conditions that could raise a trustworthiness concern and may be disqualifying in this case: "(a) inability to satisfy debts;" and "(c) a history of not meeting financial obligations." The evidence of record establishes trustworthiness concerns under AG ¶¶ 19(a) and 19(c). Further review is necessary.

AG ¶ 20 lists five potentially applicable mitigating conditions:

(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;

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

(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.

The Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sep. 24, 2013).

Applicant's conduct does not warrant full application of AG ¶ 20(a) because there is more than one delinquent debt and her financial problems are not isolated. Her debt remains a "continuing course of conduct" under the Appeal Board's jurisprudence. See ISCR Case No. 07-11814 at 3 (App. Bd. Aug. 29, 2008) (citing ISCR Case No. 01-03695 (App. Bd. Oct. 16, 2002)).

AG ¶¶ 20(b) is partially applicable, and 20(d) is fully applicable. Although Applicant cannot receive full credit for the debts she incurred on behalf of her former boyfriend, she can receive partial credit for moving costs and the financial fallout following her breakup with her boyfriend. Applicant is, however, able to receive full credit for contacting the credit union holding four of her SOR debts and making payment arrangements with them. She had been making intermittent payments to them as early as 2017 when she could afford to do so. She currently has a structured plan in place albeit somewhat recent, but has shown her commitment to repayment by setting up direct debit payments. As noted, she settled her two other SOR debts in November 2019, well before the CAF issued her February 25, 2022 SOR.

Applicant did make an effort to seek financial counseling, but her efforts to do so did not achieve the desired results. However, she has demonstrated through her actions that she is determined to overcome her indebtedness. She knows that regaining financial responsibility is essential to qualify for a public trust position and has taken reasonable and measured steps to resolve her debts. AG ¶¶ 20(c) and 20(e) are not applicable.

Applicant entered into four separate agreements with her credit union to pay off her four debts with them shortly before her hearing. Given her available financial resources, the records supports the fact that she is doing her level best to pay off her remaining creditor. The Appeal Board has established the following basic guidance in cases such as this:

an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has established a plan to resolve his

financial problems and taken significant actions to implement that plan. The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payments of such debts one at a time.

ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008) (citations and quotation marks omitted).

When taking into account Applicant's financial situation, I view her corrective action to be reasonable. She settled and paid two of her six SOR debts over two years before her hearing and has a plan in place to resolve her remaining four debts. Given the progress Applicant had made and continues to make, she is on a clear path to becoming debt-free

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 the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(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.

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. AG ¶ 2(c). The discussion in the Analysis section under Guideline F is incorporated into this whole-person section. However, further comments are warranted.

Both the mitigating conditions under Guideline F and the whole-person analysis support a favorable decision.

To review, Applicant is a 37-year-old licensed vocational nurse consult manager, who has been employed by a defense contractor since May 2021. As a result of her decision to financially assist her former boyfriend, she fell into debt after he failed to repay her, leaving her with the four remaining unpaid SOR debts. Applicant has taken

reasonable and measured steps to regain financial responsibility. She recognized the importance of regaining financial responsibility, not only for purposes of obtaining a public trust position, but also going forward as a productive member of society. She accepts responsibility that the debts she incurred for her former boyfriend and is committed to doing the right thing by her creditor.

Applicant's approach to resolving her debts is measured and responsible. I was impressed with her demeanor. It is clear from her actions that she is determined to regain financial responsibility. She is well regarded by his employer. She has a job that will provide her with the income to repay her creditors. Applicant understands what she needs to do to maintain financial responsibility. Her efforts at debt resolution have established a "meaningful track record" of debt repayment.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my careful consideration of the whole-person factors and supporting evidence, my application of the pertinent factors under the adjudicative process, and my interpretation of my responsibilities under the adjudicative guidelines.

Formal Findings

The formal findings on the SOR are as follows:

Paragraph 1, Guideline F:	For Applicant
Subparagraphs 1.a – 1.f:	For Applicant

Conclusion

It is clearly consistent with the interests of national security to grant Applicant eligibility for a public trust position. Eligibility for access to sensitive information is granted.

ROBERT TUIDER
Administrative Judge