



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



In the matter of:)
)
) ADP Case No. 21-01885
)
Applicant for Public Trust Position)

Appearances

For Government: Mark Lawton, Esq., Department Counsel
For Applicant: *Pro se*

05/02/2023

Decision

PRICE, Eric C., Administrative Judge:

Applicant failed to mitigate the trustworthiness concerns under Guideline F (financial considerations). Eligibility for assignment to a position of public trust is denied.

Statement of the Case

On November 25, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility issued to Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns under Guideline F, financial considerations. The action was taken under Department of Defense (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 (SOR Response) on December 17, 2021, and requested a hearing before an administrative judge. The case was assigned to me on August 25, 2022. On February 13, 2023, the Defense Office of Hearings and Appeals

(DOHA) issued a notice of hearing scheduling the hearing via video teleconference. I convened the hearing as scheduled on March 1, 2023. Department Counsel offered eight exhibits marked as Government Exhibits (GE) 1 through 8. The Government's exhibit list and pre-hearing disclosure letter are marked as Hearing Exhibits (HE) I and II. Applicant testified and offered no documentary evidence. The record was held open until April 5, 2023, to permit Applicant to submit documentary evidence, which she did. Those documents were marked as Applicant's Exhibits A through I. Applicant objected to GE 4, I overruled her objection and there were no other objections to the proffered exhibits. GE 1 through 8, and AE A through I are admitted in evidence. DOHA received the hearing transcript (Tr.) on March 9, 2023.

Findings of Fact

Applicant is a 68-year-old registered nurse and clinic manager employed by a federal contractor since September 2019. She served in the Navy from March 1987 to September 2007, was honorably discharged and retired as an E-7. She honorably served in the Army Reserve, National Guard, and Navy Reserve prior to commencing active duty in the Navy. She held a security clearance while on active duty in the Navy. She was employed in various nursing positions from December 2007 to September 2017, except during periods of unemployment from January 2016 to July 2016, January 2017 to July 2017, and October 2017 to August 2019. (GE 1, GE 2; AE G, H; Tr. 33-44)

Applicant earned associate and bachelor's degrees in nursing in 1997 and 2015, respectively. She married for a fifth time in June 2021 and has no children. Her fourth husband died from cancer in November 2017 after 29 years of marriage; three previous marriages ended in divorce. (GE 1, GE 2; Tr. 33-43, 75)

The SOR alleges a failure to timely file federal income tax returns for tax years 2012 through 2019 (SOR ¶ 1.a); a federal tax debt of \$4,267 for tax year 2012 (SOR ¶ 1.b), and nine delinquent credit accounts totaling \$10,262. (SOR ¶¶ 1.c through 1.k). In Applicant's answer to the SOR (SOR Response), she admitted SOR ¶¶ 1.b to 1.k with explanation and, admitted in part and denied in part SOR ¶ 1.a with explanation.

Applicant attributes her failure to timely file federal tax returns and other financial problems to unstable employment, unemployment, depression, medical issues, custody issues regarding her nephews, and forgetfulness. (GE 2 at 42, GE 3 at 6-7; Tr. 27-28, 41-42, 47, 54-55) She noted that from October 2017 to August 2019 she was unemployed because she had to care for her terminally ill husband, that he and two other family members died during that timeframe, and that she experienced medical issues that prevented her from returning to work. (Tr. 27-28, 41-42) She said that her former husband's abuse prior to his illness caused her emotional instability, that his death in November 2017 resolved "the issue causing [her] depression," and that in 2018 she decided to get her finances in order. (SOR Response; GE 3 at 6-7; Tr. 54-55)

The evidence concerning the specific SOR allegations is summarized below.

SOR ¶ 1.a: failure to timely file federal income tax returns for tax years 2012 through 2019. Applicant admitted that she failed to timely file federal income tax returns for tax years 2012 through 2017 but said that she had filed returns for tax years 2017 to 2019 and was working with a tax-resolution service to file delinquent returns. (SOR Response) She submitted federal income tax account transcripts reflecting that she had timely filed a return for tax year 2018, but had not timely filed returns for tax years 2012, 2014 through 2017, and 2019. (GE 3 at 32-40) The IRS prepared substitute returns for tax years 2012 and 2014, and Applicant's subsequent claims resulted in adjustments to her account for both tax years in 2021. (GE 3 at 32-35). She filed returns for tax years 2015 through 2017 in 2021 and filed a return for tax year 2019 on October 26, 2020, 11 days after a six-month extension to file expired. (GE 3 at 36-41) She testified that she filed a federal income tax return for tax year 2013 but could not locate a copy of the return and had not received an account transcript from the IRS. (Tr. 44-45) Her tax account transcript reflected that she had not filed a return for tax year 2020 as of October 26, 2021, 11 days after her six-month filing extension expired. (GE 3 at 41)

SOR ¶ 1.b: delinquent federal income tax debt of \$4,267 for tax year 2012. Applicant admitted the tax debt and entered into a payment agreement with the IRS in September 2021. (SOR Response; GE 3 at 11, 13-25, 32-33) She testified that she had paid off the debt in mid-2022. (Tr. 27) She provided evidence of payments on the tax debt totaling \$1,713 after she entered into the payment agreement. She submitted evidence that she made payments from October 2021 to June 2021 totaling \$1,631. (GE 3 at 33; AE D at 2-3) She also provided evidence that \$82 was applied to the debt from an overpayment for tax year 2016 in June 2022. (AE D at 1)

SOR ¶ 1.c: auto loan past due for \$2,104 with balance of \$24,648 for repossessed vehicle. Applicant admitted the allegation, noting that the vehicle was sold after being repossessed and noted that the delinquency was not reflected in a December 2021 credit report. (SOR Response) September 2019 and April 2020 credit reports show the auto loan account was opened in June 2017 with the last account activity in 2018, and as an involuntary repossession with a past-due amount of \$2,104 and balance of \$24,648. (GE 5 at 3, GE 6 at 1) Applicant testified that she contacted the creditor in 2017 because she could not afford to pay the loan due to her husband's funeral costs. (Tr. 27-28, 58-59) She said that she settled the debt for approximately \$2,104 after the repossessed vehicle was sold and would look for documentation. (Tr. 60) She subsequently reported that she had not received documentary evidence of payment from the creditor. (AE A, AE F)

SOR ¶ 1.d: credit collection account for \$1,178. Applicant admitted the allegation, stated that she was making payments to a collection agency and that the debt would be resolved in January 2022. (SOR Response at 2) An April 2020 credit report shows the loan account was opened or placed for collection in September 2019 with a balance of \$1,178. (GE 6 at 2) She submitted evidence that she made a \$294 payment

in December 2021. (SOR Response at Enclosure 2, page 29; Enclosure 3) She testified that she made four payments, paid the account in full, and would check her bank statements. (Tr. 60-62) She subsequently reported that the creditor had not provided documentary evidence of payment. (AE A, AE F)

SOR ¶ 1.e: collection account for \$1,011. Applicant admitted the allegation, noting that the account had been resolved and was not reflected in a December 2021 credit report. (SOR Response) An April 2020 credit report shows the collection account was opened or placed for collection in February 2020 with a balance of \$1,011. (GE 6 at 2) Applicant reported that she contacted and identified a creditor's representative who confirmed the account had no outstanding balance on March 3, 2023, and said the representative declined to forward a letter in confirmation. (AE A) I resolve this debt in Applicant's favor because her report that an identified creditor's representative confirmed the debt had been resolved is corroborated, in part, by recent credit reports. (SOR Response at Enclosure 2; GE 7-8) This debt is resolved.

SOR ¶ 1.f: credit account charged off for \$684. Applicant admitted the allegation and submitted evidence the debt was resolved. (SOR Response at Enclosure 2, page 24; AE B) This debt is resolved.

SOR ¶ 1.g: collection account for \$618. Applicant admitted the allegation and submitted evidence the debt was resolved in May 2020. (SOR Response at 2; AE C) This debt is resolved.

SOR ¶ 1.h: credit account charged off for \$361. Applicant admitted the allegation and submitted evidence the account was charged off in August 2019 and settled in March 2020. (SOR Response at Enclosure 2, page 22; GE 8 at 10) This debt is resolved.

SOR ¶ 1.i: credit collection account for \$714. Applicant admitted the allegation and submitted evidence the account was charged off in April 2018, and paid in full in January 2022. (SOR Response at 2, Enclosure 2 at 13; AE E) This debt is resolved.

SOR ¶ 1.j: credit collection account for \$3,109. Applicant admitted the allegation, noting that the account had been resolved and was not reflected in a December 2021 credit report. (SOR Response at 2, Enclosure 2)

SOR ¶ 1.k: collection account for \$483. Applicant admitted the allegation, noting that the account had been resolved and was not reflected in a December 2021 credit report. (SOR Response at 2, Enclosure 2) She subsequently reported that the creditor had not provided documentary evidence of payment. (AE A, AE F)

Applicant held a security clearance while in the Navy and has handled sensitive personal information for more than 46 years without reported incident. (Tr. 28) She received multiple personal awards and other commendations during her military service

and favorable civilian employee evaluations and been rated “excellent.” (AE G-I) She was diagnosed with depression while in the Navy and has managed her depression through medication prescribed by her doctor since 2000. (Tr. 76-78) She has not sought financial counseling since receiving the SOR. (Tr. 72) She provides housing and financial support for her disabled brother and nephew. (Tr. 71, 81-83) She reported net monthly income of about \$7,422 including \$4,102 from her job, and about \$3,320 in Navy retirement pay. She also receives approximately \$2,485 monthly from the Department of Veterans Affairs (VA) for a 90% service-connected disability and Social Security benefits. (Tr. 79- 82; GE 3 at 44, 46)

Any derogatory information not alleged in the SOR will not be considered for disqualifying purposes; however, it may be considered in the application of mitigating conditions and in a whole-person analysis.

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. 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.

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).

AG ¶ 19 provides conditions that could raise trustworthiness concerns. The following are potentially applicable:

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

Applicant's admissions and record evidence establish that she has a history of failing to file federal income tax returns, as required, and other financial problems dating back to 2012. AG ¶¶ 19(a), 19(c) and 19(f) apply.

The guideline also includes conditions that could mitigate trustworthiness concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 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;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; 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 failed to timely file federal income tax returns for tax years 2012 through 2017 and 2019 (SOR ¶ 1.a). She subsequently filed past-due returns for each of those tax years except tax year 2013. She has provided no evidence that she has filed a federal income tax return for tax year 2013. Though not alleged in the SOR, Applicant also failed to timely file a federal income tax return for tax year 2020.

Applicant entered into a payment agreement for her \$4,267 federal tax debt for tax year 2012 in September 2021, made payments until June 2022 totaling \$1,631, and an \$82 overpayment was applied to the tax debt in June 2022 (SOR ¶ 1.b). She has provided no evidence of payment on the remaining federal tax debt, or of any voluntary payments under the payment agreement since June 2022.

Applicant has resolved the credit account debts alleged in SOR ¶¶ 1.e through 1.i totaling \$3,388. She has not provided sufficient evidence that she has resolved the debts alleged in SOR ¶¶ 1.c, 1.d, 1.j, and 1.k totaling \$6,874. She submitted a credit report from December 2021 that did not reflect the delinquent debts alleged in SOR ¶¶ 1.c, 1.j and 1.k. However, evidence that some debts have dropped off recent credit reports is not meaningful evidence of debt resolution. See ISCR Case No. 14-05803 at 3 (App. Bd. July 7, 2016) (citation omitted). The absence of unsatisfied debts from an applicant's credit report does not extenuate or mitigate a history of financial difficulties or constitute evidence of financial reform or rehabilitation. See ISCR Case No. 15-02957 at 3 (App. Bd. Feb. 17, 2017).

AG ¶ 20(a) is not fully established. Although the debts alleged in SOR ¶¶ 1.e through 1.i have been resolved, the debts alleged in SOR ¶¶ 1.b through 1.d, 1.j, and 1.k are ongoing. These debts were not incurred under circumstances making recurrence unlikely, and Applicant's conduct casts doubt on her current reliability, trustworthiness, and good judgment.

AG ¶ 20(b) is not fully established. Applicant's periods of unemployment, unstable employment, medical issues that inhibited her ability to work, depression, emotional issues exacerbated by an abusive spouse, his lengthy illness and death, and custody issues were conditions beyond her control. However, she did not provide sufficient evidence that she acted responsibly under the circumstances.

AG ¶ 20(c) is established for past-due federal income tax returns filed with the assistance of a tax-resolution service (tax years 2012, 2014 through 2017, and 2019). It is not established for tax year 2013 or her federal tax debt. Applicant submitted no evidence of financial counseling for her consumer debt and acknowledged that she had not sought financial counseling since receiving the SOR.

AG ¶ 20(d) is established for the debts alleged at SOR ¶¶ 1.e through 1.i. It is not fully established for the debts alleged in SOR ¶¶ 1.b and 1.d. Applicant established a payment plan with the IRS in September 2021 and made voluntary payments in excess of the required amounts through June 2021 but has not provided evidence that she resolved the debt or made voluntary payments after June 2022. She also made a \$294 payment on the debt alleged in SOR ¶ 1.d in December 2021, but has not provided documentary evidence of additional payments or resolution of that debt. It is not established for the debts alleged in SOR ¶¶ 1.c, 1.j, and 1.k because she provided insufficient documentary evidence of a good-faith effort to repay those creditors or otherwise resolve those debts.

AG ¶ 20(g) is established for past-due federal income tax returns, which have been filed for tax years 2012, 2014 through 2017, and 2019. It is not established for her past-due federal income tax return for tax year 2013 (SOR ¶ 1.a) or her federal tax debt (SOR ¶ 1.b). Applicant provided insufficient evidence that she filed a return for tax year 2013 and that she made payments on her delinquent tax debt since June 2022. Applicant's eventual compliance with most of her tax obligations does not end the inquiry. A public trust adjudication is not a tax-enforcement procedure. It is an evaluation of an individual's judgment, reliability, and trustworthiness. The fact that Applicant has filed most past-due federal returns "does not preclude careful consideration of her [trustworthiness] based on longstanding prior behavior evidencing irresponsibility." ISCR Case No. 12-05053 (App. Bd. Oct. 30, 2014). Her long-term procrastination regarding her federal income tax returns, lack of evidence that she filed a return for tax year 2013, untimely filing of her tax year 2019 return, and evidence that she did not timely file a return for tax year 2020 indicate that she lacks the good judgment and reliability required of persons granted eligibility for public trust positions. See ISCR Case No. 14-04159 (App. Bd. Aug. 1, 2016).

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(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 and applied the adjudicative factors in AG ¶ 2(d). I considered Applicant's age, military service, work history, family history, medical and mental health issues, improvements in her credit records and the entire record. I also considered that she timely filed her tax year 2018 federal income tax return, has filed most delinquent federal income tax returns, made payments on her tax debt, and resolved several delinquent accounts totaling \$3,388. However, Applicant's delinquent tax filing issues and tax debt persist with no evidence of voluntary payments on her tax debt since June 2022. She has also not provided sufficient evidence that she has resolved the debts alleged in SOR ¶¶ 1.c, 1.d, 1.j, 1.k totaling \$6,874 or has a reasonable plan to do so.

A public trust adjudication is an evaluation of an individual's judgment, reliability, and trustworthiness. It is not a debt-collection procedure. ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). An applicant is not held to a standard of perfection in her debt-resolution efforts or required to be debt-free. "Rather, all that is required is that an [she] act responsibly given [her] circumstances and develop a reasonable plan for repayment, accompanied by 'concomitant conduct,' that is, actions which evidence a serious intent to effectuate the plan." ISCR Case No. 15-02903 at 3 (App. Bd. Mar. 9, 2017). Applicant's good intentions have not yet evolved into a reasonable and credible plan that includes timely filing of her federal income tax returns and the satisfaction of debts alleged in SOR ¶¶ 1.b through 1.d, 1.j, and 1.k.

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

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
Subparagraphs 1.a-1.d, 1j, 1.k:	Against Applicant
Subparagraphs 1.e-1.i:	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.

Eric C. Price
Administrative Judge