



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



In the matter of:)	
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XXXXXXXXXXXXXXXXXX)	ADP Case No. 22-02333
)	
Applicant for Public Trust Position)	

Appearances

For Government: Adrienne Driskill, Esq., Department Counsel

For Applicant: *Pro se*

07/10/2023

Decision

KATAUSKAS, Philip J., Administrative Judge:

Applicant has not provided evidence sufficient to mitigate the national security concern arising from her problematic federal and state income tax history. Applicant's eligibility for a public trust position is denied.

Statement of the Case

Applicant submitted her application for a public trust position on June 26, 2020. On November 18, 2022, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) sent her a Statement of Reasons (SOR) alleging trustworthiness concerns under Guideline F, financial considerations. The DCSA CAF acted 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, *National Security Adjudicative Guidelines* (December 10, 2016).

On January 24, 2023, Applicant submitted an answer to the SOR (Answer) and elected a decision on the written record by an administrative judge of the Defense Office of Hearings and Appeals (DOHA). Department Counsel submitted the Government's file of relevant material (FORM) on February 24, 2023, including documents identified as Items 1 through 6. DOHA sent Applicant the FORM on March 2, 2023, and she received it on March 20, 2023. She was afforded 30 days after receiving the FORM to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not respond or object to the FORM. The SOR and the Answer are the pleadings in the case. (Items 1 and 3, respectively.) Items 2 and 4 through 6 are admitted without objection. The case was assigned to me on June 1, 2023.

Evidentiary Matters

Item 5 was not authenticated as required by Directive ¶ E3.1.20. For the following reasons, I conclude that Applicant waived any objection to Item 5. The Government included in the FORM a prominent notice advising Applicant of her right to object to the admissibility of Item 5 on the ground that it was not authenticated. Applicant was also notified that if she did not raise an objection to Item 5 in her response to the FORM, or if she did not respond to the FORM, she could be considered to have waived any such objection, and that Item 5 could be considered as evidence in her case.

Findings of Fact

After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact:

Applicant is 51 years old, never married, and has one son 12 years old. (Item 4.) She earned a bachelor's degree in 1996. (Item 5.) From November 2009 to January 2012, she was unemployed. From August 2011 to October 2011 and from January 2012 to April 2012, she worked full time as a real estate consultant but left when that employer closed. From March 2012 to January 2020, she was self-employed as a part-time technical trainer. Since January 2020, she has worked for a defense contractor. (Item 4.)

Under Guideline F, the SOR alleged that Applicant failed to file federal income tax returns for tax years 2014 through and including 2021 and state income tax returns for tax years 2014 through and including 2021. (Item 1.) Applicant admitted those allegations. She said the accountant she hired "disappeared with [her] money and [her] documents." She "is in the process of finding a new accountant." (Item 3.) Her Answer was similar to the explanation she gave in her application for a public trust position, where she disclosed those failures to file for tax years 2017 and 2018:

I was working on filing and paying. Was living with someone who intimately [*sic*] was diagnosed with Bipolar. Life was a mess for him, my son and me. We no longer live together (as of 8/18). As a result I didn't have enough income needed. I spent the year getting back on my feet. Need money to hire someone to help, steady income will allow that to happen. (Item 4.)

Applicant provided further information in her July 21, 2020 Personal Subject Interview (PSI): “[T]he reason for not filing was because she was working part time and not working a lot. [She] was also having problems with her ex-boyfriend She got her current job and due to COVID-19 has been furloughed, but intended to get this taken care of,” She has no agreement with the IRS and anticipates she will have filed by November 2020 or after returning to work. (Item 5.)

Law and Policies

When evaluating an applicant’s suitability for a public trust position clearance, an administrative judge must consider the adjudicative guidelines. These guidelines are flexible rules of law that apply together with common sense and the general factors of the whole-person concept. An administrative judge must consider all available and 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 ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security.”

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, then 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 in seeking a favorable security decision.

Analysis

Guideline F, Financial Considerations

The trustworthiness concern relating to Guideline F 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. . . .

This concern is broader than the possibility that an individual might knowingly compromise sensitive information in order to raise money. It encompasses concerns

about an individual's self-control, judgment, and other qualities essential to protecting sensitive information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding sensitive information. ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Guideline F notes conditions that could raise trustworthiness concerns under AG ¶ 19. Applicant's failures to file federal and state income tax returns are established by her admissions. The following disqualifying condition under AG ¶ 19(f) is applicable in this case:

- (f) failure to file . . . annual Federal, state or local income tax returns . . . as required.

Guideline F 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., . . . unexpected medical emergency . . .), and the individual acted responsibly under the circumstances); 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.

I have considered mitigating condition AG ¶ 20(a). Applicant's failures to file income tax returns began quite long ago, in 2014. They became, however, an annual feature in her life. Those failures persist to this day. She has yet to do anything concrete to address those failures. AG ¶ 20(a) does not apply.

I have considered mitigating condition AG ¶ 20(b). That mitigating condition has two requirements. First, the circumstances giving rise to the financial problems must be "largely beyond" an applicant's control. Second, the applicant must act responsibly in addressing those circumstances. Here, Applicant has faced problems caused by her then boyfriend who suffered from a mental disease. Having ended that relationship in August 2018, not long after she was furloughed from her job by COVID-19. Before that, she was self-employed but only part-time. Those circumstances were largely beyond her control, thus satisfying the first requirement of AG ¶ 20(b).

The next inquiry is whether Applicant acted responsibly when facing those adverse circumstances. On this point, the record shows no efforts by her to even contact the taxing

authorities about remedying her failures to file (and possibly to arrange to pay any overdue taxes). She has no agreement with the IRS or her state taxing authority. It is now 2023. She failed to respond to the FORM by showing any attempts she might have made to contact the taxing authorities. Doing nothing in the face of years of unfiled income tax returns is not responsible conduct contemplated by AG ¶ 20(b). For the same reasoning, AG ¶ 20(g) does not apply. Applicant’s failures to file federal and state income tax returns have not been mitigated.

I find against Applicant on SOR ¶ 1.

Whole Person Concept

Under AG ¶ 2(a), 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(a) and (d)(1)-(9) (explaining the “whole-person” concept and factors). In my analysis above, I considered the potentially disqualifying and mitigating conditions and the whole-person concept in light of all the facts and circumstances surrounding this case.

Applicant leaves me with questions about her eligibility and suitability for a public trust position. Therefore, I conclude that Applicant has not provided sufficient evidence to mitigate the trustworthiness concerns arising under Guideline F, financial considerations.

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 and b.:	Against Applicant

Conclusion

In light of all of the circumstances presented, it is not clearly consistent with the interests of national security to grant Applicant eligibility for access to sensitive information. Eligibility for assignment to a public trust position is denied.

Philip J. Katauskas
Administrative Judge