



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



In the matter of:)
)
-----) ADP Case No. 23-00547
)
Applicant for Public Trust Position)

Appearances

For Government: Andrew Henderson, Esq., Department Counsel
For Applicant: *Pro se*

02/15/2024

Decision

WESLEY, ROGER C. Administrative Judge

Based upon a review of the case file, pleadings, exhibits, and testimony, Applicant did not mitigate financial consideration concerns. Eligibility for holding a public trust position is denied.

Statement of the Case

On July 12, 2023, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudications Services (CAS) issued a statement of reasons (SOR) to Applicant detailing reasons why under the financial considerations guideline the DCSA CAS could not make the preliminary affirmative determination of eligibility for granting a security clearance, and recommended referral to an administrative judge to determine whether a security clearance 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); Department of Defense (DoD) Directive 5220.6 *Defense Industrial Personnel Security Clearance Review Program*, (January 2, 1992) (Directive); 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 responded to the SOR on August 1, 2023, and requested a hearing. This case was assigned to me on October 24, 2023. A hearing was scheduled for December 21, 2023, and was heard on the scheduled date. At the hearing, the Government's case consisted of seven exhibits. (GEs 1-7) Applicant relied on one witness (herself) and 24 exhibits. The transcript (Tr.) was received on January 2, 2024.

Procedural Issues

Before the close of hearing, Applicant requested the record be kept open to permit her the opportunity to supplement the record with payments on her SOR-listed debts. For good cause shown, Applicant was granted 30 days to supplement the record. Department Counsel was afforded two days to respond. Within the time permitted, Applicant supplemented the record with a closing summary, updated payments, and a list of SOR creditors she is responsible for. Applicant's supplemental submissions were admitted without objections as AEs Y-DD.,

Summary of Pleadings

Under Guideline F, Applicant allegedly accumulated 26 delinquent debts exceeding \$30,000. Allegedly, Applicant's delinquent debts remain unresolved and outstanding.

In Applicant's response to the SOR, she denied most of the allegations covered by Guideline F with explanations. She claimed she paid off several of the debts and could not identify the others covered by SOR ¶¶ 1.a-1.c, 1.e, 1.g-1.h, 1.j-1.k and 1.m. For the debts she admitted (SOR ¶¶ 1.d, 1.f, 1.i, 1.l, and 1.n) she claimed she was looking into them and would be making arrangements to pay them. She further claimed that she is making more money now and is very dependable and dedicated to her job.

Findings of Fact

Applicant is a 49-year-old employee of a defense contractor who seeks eligibility to hold a public trust position. Allegations covered in the SOR and admitted by Applicant are incorporated and adopted as relevant and material findings. Additional findings follow.

Background

Applicant married in May 1995 and divorced her husband (since deceased) in May 1999. (GEs 1-2) She has two adult children from this marriage, ages 27 and 29. (GEs 1-2; Tr. 26-27) She remarried in March 2002 and separated in 2018 after nursing her husband back to health following three massive strokes in 2016. (GE 2 and AEs A-1) Applicant earned a bachelor's degree in January 2011 and master's degrees in March 2013, February 2015, and September 2016. (GE 1) She attended other graduate programs between October 2019 and July 2021 without earning diplomas or degrees. (GE 1). Applicant reported no military service.

Since August 2022, Applicant has been employed as a referral specialist for her current health services employer. (GEs 1-2) Previously, she worked for other employers (including her current employer) between July 2017 and October 2021) in various jobs. (GEs 1-2) She reported unemployment between November 2021 and February 2022. (GE 1; Tr. 23) Applicant has never held a public trust position. (GEs 1-2)

Applicant's finances

Applicant struggled with the management of her finances for many years. In November 1992, she petitioned for Chapter 13 bankruptcy relief. (GE 5) Her petition was dismissed. Bankruptcy records confirm that she petitioned for Chapter 7 bankruptcy relief in May 1997; she attributed this petition to the medical expenses associated with the birth of her two children. (GE 6; Tr. 27) Applicant petitioned again for Chapter 7 relief in December 2007. (GE 7; Tr. 28) She attributed this filing to the joint desires of herself and her husband to clean up their debts. (Tr.29) In her petition, she scheduled personal property valued at \$18,581 and claimed no real property. (GE 7) For claims of creditors, she scheduled \$13,906 in secured claims, \$725 in unsecured priority claims (i.e., state income taxes owed), and \$86,130 in unsecured non-priority claims. (GE 7)

Following each of her bankruptcy petitions, Applicant returned to accumulating debt beyond her ability manage and control. (Tr. 55-56) In 2016, her husband suffered three strokes, which prevented him from working for over two years. With only her income to cover her family's expenses, she encountered major difficulties, and setbacks, in managing her family's finances. (GE 2 and AE Y; Tr. 29) Strains from her increased financial responsibilities impacted her marriage and her own finances and contributed to their 2018 marital separation. (GEs 1-2; Tr 28-29)

More recently, Applicant has experienced further financial stress associated with her father's failing health. In 2023, health issues involving her father's diagnosed lung cancer necessitated her devotion of more time and resources to providing financial assistance and travel support to her parents. (AE Y; Tr. 22, 56) Pressures on her finances increased following her three-month layoff from her non-profit employer in 2021. (GE 2 and AE Y; Tr. 22) While her father is a military veteran with a pension and social security benefits, he requires her help with household expenses and transportation to his medical appointments. (AE Y; Tr. 63)

Between 2010 and 2021, Applicant accumulated 26 SOR-listed delinquent accounts exceeding \$30,000. (GEs 2-4) She is also of record in accumulating delinquent accounts exceeding \$10,000 that are not included in the SOR. (GE 4; Tr. 49-51) To date, Applicant has provided no documentation of addressing most of the listed SOR debts.

One of the listed SOR debts (SOR ¶ 1.a) covers a \$3,070 delinquency balance on a medical vet bill, for which she claims to have made some payments (undocumented) to the assigned collection agent. (GEs 2-4 and AE BB; Tr. 32-33) To address this debt and others listed in the SOR, she engaged post-SOR debt counselors, neither of whom have been able to help her with documented payments to

the creditors on the plans they set up for her. (AE V; Tr. 35) Another debt (SOR ¶ 1.b) covered a mobile loan she took out to tide her over after she lost her job in 2021. (GEs 2-4; Tr. 36) To date, she has not taken any documented steps to address this debt. (Tr. 36) .

Other unaddressed delinquent debts that Applicant is checking on include the following: SOR ¶¶ 1.c (an unsecured loan for \$2,239, for which Applicant received a settlement offer for monthly payments beginning in January 2024, but which lacks payment documentation (GEs 2-4; Tr. 37); 1.d (a \$1,962 delinquent debt with no documented payment action; (GEs 2-4; Tr. 38); 1.e-1.f (two \$1,934 charged-off credit card accounts that have not been addressed) (GEs 2-4; Tr. 38); 1.g-1.j (credit card and other delinquent accounts that have not been addressed (GEs 2-4; Tr. 39-40); and 1.k (a delinquent consumer account for \$1,577 that Applicant has discussed with the creditor, but taken no action on the account). (GEs 2-4; Tr. 40)

Additional delinquent debts are comprised of the following: 1.l (a \$1,477 a delinquent short-term loan account that was initially covered by a documented payment plan with a former debt counselor, but which lacks any payment documentation); 1.m (a delinquent credit card account for \$1,396 that has not been addressed) (GEs 2-4; Tr. 42-43); 1.p-1.q (two credit card accounts with the same creditor for \$923 and \$883, respectively, with documented action taken on SOR ¶ 1.p, but nothing on SOR ¶1.q to date) (GEs 2-4 and AEs Z and CC; Tr. 44-45); 1.r-1.t (charged off consumer debts with no reported actions taken on the debts to date) (GEs 2-4; Tr. 45-46); 1.u (a delinquent consumer account for \$405 that is covered by a payment plan. (GEs 2-4 and AEs BB and DD; Tr. 47-48); and 1.v-1.z (collection accounts that have not been addressed by Applicant to date). (GEs 2-4; Tr. 47-49)

Delinquent non-SOR debts covered in Applicant's credit reports total five in number and exceed \$10,000 in the aggregate. (GE 4; Tr. 50-55) While she expects to have more time now to devote to resolving these admitted debts, she has taken no actions to date to either work out payment arrangements or explain why she could not reach any positive settlements with these creditors. (GE 4; Tr. 54-57)

Applicant's post-SOR attempts to enlist debt counselors to help her resolve her delinquent accounts never achieved the positive results she hoped for. (AE V; Tr. 59) Neither of these debt service firms were successful in helping her to successfully resolve any of her delinquent SOR accounts or the non-SOR accounts covered in her latest credit report. (GE 4; Tr. 59-61)

Endorsements and performance evaluations

Applicant is well-regarded by her friends and family. (AE T) Each of her references credit her with honesty and trustworthiness. Although, none of her references expressed any detailed knowledge of her financial history. (AE T) Applicant received exceeds expectations performance evaluations for the documented rated years (2017-2020 and 2022) and credit for being a top performer. (AE U)

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” [and implicitly positions of trust]. 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 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 within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance, or for a position of trust, 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, or to hold a position of trust. 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 trust concerns, if any. These guidelines must be considered before deciding whether or not a security clearance, or eligibility to hold 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 trust risk.

When evaluating an applicant’s conduct, the relevant guidelines are to be considered together with the following ¶ 2(d) 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 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 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 classified information, or who hold public trust positions. 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 information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information [and implicitly privacy information]. 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 holding a public trust position. 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 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. 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 [or public trust position eligibility]." 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 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 accumulation of delinquent debts (26 in all) exceeding \$30,000. The Government's concerns raise questions over Applicant's trust and reliability in protecting protected privacy information.

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 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 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 5200.2-R refine and explain the same critical-sensitive positions covered in DoD Manual 5200.02, ¶ 4.1a(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, ¶ 4.1a(3)(c) See DoD 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.

Financial concerns

Applicant's delinquent debts (26 in all) exceeding \$30,000, warrant the application of two disqualifying conditions of the Adjudicative Guidelines (DCs) for financial considerations: DC ¶¶ 19(a), "inability to satisfy debts," and 19(c), "a history of

not meeting financial obligations” apply to Applicant’s situation. Financial stability in a person cleared to hold a 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 to privacy-protected information. While the principal concern of a public trust holder’s demonstrated financial difficulties is vulnerability to coercion, pressure, and influence to produce protected privacy information, judgment and trust concerns are implicit in cases involving delinquent debts.

Historically, the timing of addressing and resolving debt delinquencies are critical to an 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); ISCR Case No. 14-00221 at 2-5 (App. Bd. June 29, 2016).

Addressing Applicant’s delinquent accounts, all of the listed debts in the SOR are supported by Applicant’s credit reports and acknowledgements in her PSI. Credit reports are business records that generally are sufficient to meet the Government’s evidentiary obligations under Directive ¶ E3.1.14 for pertinent allegations (financial in this case). See ISCR Case No. 08-12184 at 5 (App. Bd. Jan 7, 2010).

To date, Applicant has not addressed most of the listed SOR debts with credible documentation. Of the listed SOR debts in this case, she has favorably resolved only two (and with very modest payment plans): SORs ¶¶ 1.p and 1.u. For the most part, she has never documented any follow-up initiatives on the debts she acknowledged as her own in her 2022 PSI interview. Applicant’s commitments (both in her PSI and SOR response) to address her still unresolved SOR debts that she can verify, while encouraging, represent no more than promises to resolve her still outstanding accounts with promised payments and payment plans and are not viable substitutes for a track record of paying debts in a timely manner and otherwise acting in a responsible way. See ISCR Case No. 17-04110 at 4 (App. Bd. Sept. 26, 2019)

To be sure, Applicant has had her share of personal struggles in her life with raising her children and caring for her second husband who suffered multiple strokes and could not help her with managing their finances for almost two years before their separation. More recently, she has been burdened with physical and financial demands imposed on her by her parents to help with her parents’ household expenses with helping her father and mother with their household expenses and transportation needs following her father’s cancer diagnosis.

Still, more concerted debt payment initiatives could be expected of her with the income resources available to her from her full-time employment. She acknowledged overspending as a source of her past financial troubles in her own testimony and has failed to document any payment initiatives with the bulk of her creditors. Without more to show for addressing her delinquent debts, none of the potentially available mitigating conditions can be applied to her situation at this time.

Whole-person assessment

Whole-person assessment of Applicant's public trust eligibility requires consideration of whether her debt delinquencies are fully compatible with minimum standards for holding a public trust position. While Applicant is entitled to credit for her work in the defense health industry and for the devotion she has shown in caring for her husband and parents, her employment contributions and caretaking contributions are not enough at this time to overcome her repeated failures or inability to address her payment responsibilities and exercise good financial judgment over the course of many years.

Overall trustworthiness, reliability, and good judgment have not been established. Based on a consideration of all of the facts and circumstances considered in this case, it is too soon to make safe predictions that Applicant will be able to undertake reasoned, good-faith efforts to mitigate the Government's financial concerns within the foreseeable future. More time is needed for her to establish the requisite levels of stability with her finances and restoration of trust, reliability, and good judgment necessary to establish 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 financial considerations public trust position concerns are not mitigated. Eligibility for holding a public trust position is denied.

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:

GUIDELINE (FINANCIAL CONSIDERATIONS): AGAINST APPLICANT

Subparagraphs 1.a-1.o, 1.q-1.t, 1.v-1.z:	Against Applicant
Subparagraphs 1.p and 1.u:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for holding a public trust position. Eligibility for holding a public trust position is denied.

Roger C. Wesley
Administrative Judge