



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



In the matter of:)	
)	
-----)	ADP Case No. 23-02460
)	
Applicant for Public Trust Position)	
)	

Appearances

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

08/30/2024

Decision

ROSS, Wilford H., Administrative Judge:

On December 15, 2022, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). (Item 2.) On January 11, 2024, the Department of Defense (DoD) issued Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns under Guideline F, Financial Considerations. (Item 1.) The action was taken under DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DoD on June 8, 2017.

Applicant answered the SOR in writing (Answer) on February 8, 2024. She requested her case be decided on the written record in lieu of a hearing. (Item 1.) On February 26, 2024, Department Counsel submitted the Department’s written case. A complete copy of the file of relevant material (FORM), consisting of Items 1 to 7, was provided to Applicant, who received the file on March 5, 2024.

Applicant was given 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. She elected not to submit any

additional information. The case was assigned to me on June 24, 2024. Based upon a review of the pleadings and exhibits, national security eligibility for access to sensitive information is denied.

Findings of Fact

Applicant is 45 years old, single, and has a high school education. She began work with her current employer in October 2019. She requires access to sensitive personal information in connection with her employment. (Item 2 at Sections 12, 13A, and 17.)

The SOR contained fourteen allegations under Guideline F, Financial Considerations (1.a to 1.n). Subparagraphs 1.a to 1.l concern unpaid consumer debts amounting to approximately \$25,259. Subparagraph 1.m alleges Applicant owes State A \$5,173 in delinquent taxes. Subparagraph 1.n alleges she has not filed, as required, Federal income tax returns for at least tax year 2017. Applicant admitted allegations 1.a through 1.l in the SOR under this paragraph. She denied allegations 1.m and 1.n with explanations.

Evidence for the existence of the debts set forth in the SOR is found in credit reports of Applicant dated January 19, 2023; September 25, 2023; and February 26, 2024. (Items 5, 6, and 7.) Evidentiary support for the existence of the debts is also found in her e-QIP. (Item 2 at Section 26.) Additional supporting evidence is found in her responses to interrogatories dated September 18, 2023. (Item 4.)

Paragraph 1 (Guideline F - Financial Considerations)

1.a. Applicant admitted that this automobile loan in the amount of \$12,768 had been charged off. She stated in her e-QIP that the financial issue was due to, "Financial hardship." She also stated, "Debt was cancelled or at least I have never received any further information on actions taken that I can recall/locate." No other evidence has been submitted showing that this debt was paid or otherwise settled. Based on the state of the record, this debt is not resolved. (Item 2 at Section 26.)

1.b. Applicant admitted owing a past-due medical debt in the amount of \$2,963. No evidence has been submitted showing that this debt has been paid or otherwise settled. It is not resolved.

1.c. Applicant admitted that she owed a charged-off account in the amount of \$2,678. No evidence has been submitted showing that this debt has been paid or otherwise settled. It is not resolved.

1.d. Applicant admitted owing a past-due medical debt in the amount of \$1,286. No evidence has been submitted showing that this debt has been paid or otherwise settled. It is not resolved.

1.e. Applicant admitted owing a past-due wireless debt in the amount of \$1,027. No evidence has been submitted showing that this debt has been paid or otherwise settled. It is not resolved.

1.f. Applicant admitted owing a past-due debt in the amount of \$635. No evidence has been submitted showing that this debt has been paid or otherwise settled. It is not resolved.

1.g. Applicant admitted owing a past-due debt in the amount of \$632. No evidence has been submitted showing that this debt has been paid or otherwise settled. It is not resolved.

1.h. Applicant admitted owing a past-due medical debt in the amount of \$608. No evidence has been submitted showing that this debt has been paid or otherwise settled. It is not resolved.

1.i. Applicant admitted owing a past-due debt in the amount of \$543. No evidence has been submitted showing that this debt has been paid or otherwise settled. It is not resolved.

1.j. Applicant admitted owing a past-due debt in the amount of \$209. She stated in her interrogatory responses that this debt has been paid. (Item 4 at page 6.) No other evidence has been introduced to show that this debt has been paid or otherwise settled. It is not resolved.

1.k. Applicant admitted owing a past-due debt in the amount of \$180. She stated in her interrogatory responses that this debt has been paid. (Item 4 at page 7.) No other evidence has been introduced to show that this debt has been paid or otherwise settled. It is not resolved.

1.l. Applicant admitted owing a past-due debt in the amount of \$730. No evidence has been introduced to show that this debt has been paid or otherwise settled. It is not resolved.

With regard to the delinquent debts set forth above Applicant stated that she had retained a credit repair law firm on or before September 2023, "to help contact all debt collectors and consolidate." Records from the law firm are found in Item 4 at pages 63-69.

1.m. Applicant denied owing delinquent taxes in the amount of approximately \$5,172 to State A, stating that she had paid this debt on August 21, 2023. (Item 1.) She submitted tax information from State A that supported her statement. A Taxpayer Statement from State A dated August 18, 2023, stated she owed \$5,172 for tax years 2017 through 2022. (Item 4 at page 38.) However, she also submitted online documentation from State A's tax authority for tax years 2016 through 2021 dated September 13, 2023, that stated she had no balance owing. (Item 4 at 14, 32-37.)

Based on the state of the record, I find there is insufficient evidence to support the current validity of this debt. This allegation is found for Applicant.

1.n. Applicant admitted that she failed to timely file Federal income tax returns for at least the tax year 2017, but claimed that her 2017 return was filed on April 7, 2023, “along with the previous years returns.” (Item 1.) She submitted her IRS transcripts with her interrogatory responses. (Item 4 at 21-31.) Those transcripts confirm that her 2017 return had not been filed as of September 18, 2023. However, they also show that all of her subject tax returns from 2016, and 2018 through 2021 had been filed.

With regard to her late filing for tax returns Applicant stated:

I filed an extension in 2018 for 2017 taxes and then forgot to file by October. I did the same thing in 2019 and then just procrastinated until it became overwhelming with the late files and no files and potential amounts owed. 2017 Federal taxes have been filed but I have not had a letter of determination of balance so I will probably need to re-file those. All other taxes have been repaid and have \$0 balance for State/Federal 2016, State 2017, State/Federal 2018, State/Federal 2019, State/Federal 2020, State /Federal 2021, State/Federal 2022. (Item 4 at 13)

Based on the state of the record, I find that Applicant has made a good-faith effort to file her 2017 Federal tax returns. This allegation is found for Applicant.

Policies

Positions designated as ADP I/II/III are classified as “sensitive positions.” The Deputy Under Secretary of Defense (Counterintelligence and Security) Memorandum, dated November 19, 2004, indicates trustworthiness adjudications will apply to cases forwarded to the DoD and DOHA by the Defense Security Service and Office of Personnel Management. DoD 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 national security eligibility for a public trust position, the administrative judge must consider the disqualifying and mitigating conditions in the AGs. 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 AG ¶ 2(d), describing the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), 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 ¶ 2(b) 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to 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 the applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion as to obtaining a favorable national security eligibility decision.

A person who applies for access to sensitive information seeks to enter 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.

Analysis

Paragraph 1 (Guideline F - Financial Considerations)

The trustworthiness concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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 personal 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.

AG ¶ 19 describes three conditions that could raise trustworthiness concerns and may be disqualifying in this case:

- (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 Federal, state, or local income tax as required.

Applicant has a history of being unable to fully satisfy all of her debts. At one point she owed State A delinquent taxes and there was evidence she had not timely filed her 2017 Federal income tax return. The evidence raises all three trustworthiness concerns, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes three conditions in AG ¶ 20 that could mitigate trustworthiness concerns arising from Applicant's financial difficulties:

- (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, or a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), 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.

The evidence does not support application of AG ¶¶ 20(a) and (b) in this case. Applicant submitted no evidence that she has paid or otherwise resolved any of the admittedly delinquent consumer debts set forth in subparagraphs 1.a through 1.l. However, under the particular circumstances of this case, AG ¶ 20(g) does apply to subparagraphs 1.m and 1.n for the reasons stated in Findings of Fact, above. Those subparagraphs are found for Applicant. With those exceptions, the remaining subparagraphs and Paragraph 1 of the SOR are found against Applicant.

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 relevant 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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility for a trustworthiness determination must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of the facts and circumstances surrounding this case. Applicant did not submit sufficient information from which to conclude that her financial obligations are being responsibly managed or that similar problems are unlikely to recur. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a public trust position. For these reasons, I conclude Applicant did not meet her burden to mitigate the trustworthiness concerns arising from her financial problems.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a through 1.l:	Against Applicant
Subparagraphs 1.m and 1.n:	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 national security eligibility for a public trust position. Eligibility for access to sensitive ADP information is denied.

WILFORD H. ROSS
Administrative Judge