



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



In the matter of:)
)
) ADP Case No. 14-00195
)
)
Applicant for Public Trust Position)

Appearances

For Government: Chris Morin, Esquire, Department Counsel
For Applicant: *Pro se*

08/22/2014

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings and exhibits, I conclude that Applicant's eligibility for access to sensitive information is granted.

Applicant completed and signed an electronic Questionnaires for Investigations Processing (e-QIP) on August 15, 2013. The Department of Defense Consolidated Adjudications Facility, Division A (DOD CAF) issued a Statement of Reasons (SOR) detailing trustworthiness concerns under Guideline F, financial considerations, on March 10, 2014. The action was taken under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); Department of Defense Regulation 5200.2-R, *Personnel Security Program*, dated January 1987, as amended (Regulation); and the *Adjudicative Guidelines For Determining Eligibility for Access to Classified Information* (AG) implemented on September 1, 2006.

Applicant received the SOR on March 25, 2014. She submitted a notarized, written response to the SOR allegations dated April 9, 2014, and she requested a decision on the written record in lieu of a hearing.

Department Counsel prepared a file of relevant material (FORM) and mailed Applicant a complete copy on June 12, 2014. Applicant received the FORM on July 7, 2014. She had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. She submitted a response with attachments dated August 1, 2014. DOHA assigned this case to me on August 14, 2014. The Government submitted nine exhibits, which have been marked as Items 1-9 and admitted into the record. Applicant's response to the SOR has been marked and admitted as Item 4, and the SOR has been marked as Item 1. Her written response to the FORM is admitted into the record as Applicant Exhibit (AE) A.

Findings of Fact

In her Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a - 1.d, and 1.f of the SOR, with explanations. She denied the factual allegations in ¶ 1.e of the SOR. She also provided additional information to support her request for eligibility for a public trust position.

Applicant, who is 33 years old, works as a lead claims processor for a DOD contractor. She began working for her employer in 1999. She left her job with her employer in January 2006. She worked for another company between January 2006 and July 2008 before returning to work for her employer in July 2008. She has no disciplinary actions at work.¹

Applicant graduated from high school in 1999. She married in June 2000, and she divorced in December 2009. She has a daughter, age 12, and a son, age 8. She has primary custody of her children. The divorce decree directs that her former husband pay her approximately \$720 a month in child support. The record does not contain any information as to whether Applicant is receiving child support from her former husband. He failed to appear in court or otherwise participate in the divorce proceedings. He also failed to pay his share of the telephone bill and the mortgage on the family home after Applicant moved out of the marital home. Applicant incurred \$1,700 in attorney fees, which the court directed her former husband to pay. It is unknown if he paid her.²

In January 2009, Applicant purchased a mobile home for \$12,000. She paid this debt in four years, as verified by the seller. She also purchased a car in June 2009 for approximately \$19,600. She has paid and continues to pay the \$325 monthly payment. This debt will be paid by the summer of June 2015. The August 2013 credit report

¹Item 5; Item 7.

²Item 4; Item 5; Item 7.

reflects that she does not have credit cards or personal loans. She does not use credit to fund her lifestyle.³

During her marriage, Applicant and her former husband purchased a home in 2002 for approximately \$65,000. The first mortgage on the home was in Applicant's name only. In 2006, Applicant and her former husband signed a second mortgage loan on their home in the amount of \$55,800 to purchase equipment for her husband's business. She paid the first mortgage until she and her husband separated, and she moved out of the home. He did not continue making the payments on this mortgage, causing the lender to foreclose on the property in 2009. The second mortgage was not eliminated by the foreclosure, and her husband did not continue paying it. She believes the lender repossessed his business equipment. The lender filed suit against Applicant and her husband and obtained a judgment by default in the amount of \$76,622 in November 2008 against both. Under the terms of their divorce decree, Applicant and her former husband were each responsible for their own debts. The divorce decree does not spell out which debts each will pay. Since the second mortgage purchased equipment for her former husband's business, Applicant believes this debt is his to pay. This debt is SOR allegation 1.a.⁴

The SOR lists five debts belonging to Applicant. She contacted the credit collection company for the \$589 telephone debt in allegation 1.b. The creditor accepted a settlement offer of \$236, which Applicant paid on March 26, 2014. She contacted the medical provider for allegations 1.c (\$184) and 1.d (\$111). They agreed that she would pay \$266 to resolve both debts, which she did on April 1, 2014. Applicant contacted the credit collection company identified in allegation 1.e (\$889) and reached an agreement to resolve the debt for \$700. She made several payment between March 2014 and June 2014, which fully resolved the debt.⁵

In her response to the SOR, Applicant denied the \$926 communication bill in allegation 1.e because she had paid the debt in January 2014, and the debt was no longer on her credit report. A more current credit report is not in the file. Applicant requested a credit report, but had not received it by the time she submitted her response to the FORM.⁶

When she completed the e-QIP, Applicant provided detailed information about her finances, listing her foreclosure, the debts in SOR allegations 1.a - 1.d and 1.f. She also listed two other small debts, which are not on the SOR, but resolved. She acknowledged a state income tax debt for the tax year 2006. She paid this debt by January 2008, and the state released its lien as shown on the August 2013 credit report.

³Item 4; Item 6; Item 7; AE A.

⁴Item 1; Item 4; Items 7-9; AE A.

⁵Item 1; Item 4; AE A.

⁶Item 4.

Applicant also listed some old tickets and fines for open alcohol containers and short cruise ship trips. When she met with the Office of Personnel Management (OPM) investigator, she provided candid answers to the questions and detailed information about her debts.⁷

Applicant has not received financial counseling. She did talk with a credit counselor about resolving the judgment debt. She advises that she is taking steps to remove her name from the judgment, although she did not specify these steps. The credit reports reflect that most of Applicant's debts arose between 2007 and 2009.⁸

Applicant did not submit a financial statement showing her expenses or an earnings statement showing her income. The 2009 divorce decree reflected that Applicant earned approximately \$35,000 a year in income. Her expenses include ground rent, gasoline, food, car insurance, cell phone, medical, cable, haircuts, utilities, and other miscellaneous items. The amount of these customary monthly expenses is unknown.⁹

Policies

Positions designated as ADP I and ADP II are classified as "sensitive positions." (See Regulation ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3.) "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." (See Regulation ¶ C6.1.1.1.) The Deputy Under Secretary of Defense (Counterintelligence and Security) Memorandum, dated November 19, 2004, indicates trustworthiness adjudications will apply to cases forwarded to DOHA by the Defense Security Service and Office of Personnel Management. 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. (See Regulation ¶ C8.2.1.)

When evaluating an applicant's suitability for a public trust position, the 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 the factors listed in the adjudicative process. The administrative judge's over-arching 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.

⁷Item 5; Item 7.

⁸Item 6; AE A.

⁹AE A.

The protection of the national security is the 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.” 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.

Under Directive ¶ E3.1.14, the Government must 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 applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion to obtain a favorable trustworthiness decision.

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.

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.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The trustworthiness concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

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 and regulations, all of which can raise questions about an individual’s reliability, trustworthiness and ability to protect [sensitive] information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise trustworthiness concerns. Under AG ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially

disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Applicant accumulated some delinquent debt and was unable to pay some obligations for a period of time. A judgment entered against her and her former husband is not resolved. The evidence is sufficient to raise these disqualifying conditions.

Under AG ¶ 20(b), it may be mitigating where “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), and the individual acted responsibly under the circumstances.” Applicant and her husband separated in 2008 and divorced in 2009. Her financial problems arose because of her divorce. Her former husband failed to comply with the requirements that he pay certain household bills, creating additional financial burdens for Applicant. She lacked income to pay all their debts incurred during her marriage. She acted responsibly when she paid the smaller debts from her marriage. She has managed her monthly income and expenses appropriately since she separated from her husband. This mitigating condition is a factor for consideration in this case.

Evidence that “the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control” is potentially mitigating under AG ¶ 20(c). Applicant manages her monthly income and expenses. She is not incurring unnecessary debts, thus she does not need financial counseling. She, however, spoke with a credit counselor, who gave her advice on how to address the unpaid judgment. She is working towards a resolution of her liability on this debt. This mitigating condition is partially applicable.

Similarly, AG ¶ 20(d) applies where the evidence shows “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” Applicant contacted the creditors for her small debts and made arrangements to pay these debt. She paid them as agreed as shown by the evidence. She acted in good faith to resolve the debts in SOR ¶¶ 1.b, 1.c, 1.d, and 1.f. She also paid two other small debts, and she paid a tax debt in the past as reflected in the August 2013 credit report. Her efforts on resolving all the smaller debts supports her statement that she resolved the \$926 debt in allegation 1.e. She is financially sound and able to pay her customary and usual monthly living expenses. This mitigating condition applies to allegations 1.b to 1.f.

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) 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."

Under AG ¶ 2(c), 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. The decision to grant or deny a trustworthiness determination requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a trustworthiness concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a public trust position should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate trustworthiness concern.

In assessing whether an Applicant has established mitigation under Guideline F, the Appeal Board provided the following guidance in ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008):

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts." See, e.g., ISCR Case No. 05-01920 at 5 (App. Bd. Mar. 1, 2007). However, 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. See, e.g., ISCR Case No. 02-25499 at 2 (App. Bd. Jun. 5, 2006). 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." See, e.g., ISCR Case No. 04-09684 at 2 (App. Bd. Jul. 6, 2006). 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. See Directive ¶ E2.2(a) ("Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.") 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 payment of such debts one at a time. See, e.g., ISCR Case No. 06-25584 at 4 (App. Bd. Apr. 4, 2008). Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

The evidence in support of granting a security clearance to Applicant under the whole-person concept is more substantial than the evidence in support of denial. In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant married at a young age. She has worked continuously since she graduated from high school and while raising her family. Except for two and one-half years, she has worked for the same employer. Her marriage ended, creating financial difficulties for her. She paid her smaller debts and purchased a mobile home for her and her children since separating from her husband. She faithfully pays her monthly car payment and her normal monthly household expenses. She is responsible about her finances. She has shown a track record for paying her bills and resolving her past-due debts. She lives simply and within her income, not extravagantly. She has focused her attention on providing a stable domestic environment for her family. Most significantly, she has taken affirmative action to pay or resolve most of her delinquent debts raising security concerns. She has not been able to resolve the \$76,622 judgment. Although she believes that her former husband is solely responsible for this debt, she cosigned the mortgage note, which makes her legally responsible. She talked with a credit counselor who provided guidance on how to resolve this debt. She has a plan to address this debt and is working towards its resolution. Her exact current income is unknown. Her income a few years ago reflects sufficient income to cover her monthly expenses, but not enough income to pay the large judgment now or any time in the future. Recognizing that this is a significant debt, I nonetheless conclude that this debt cannot be a source of improper pressure or duress. Applicant has been forthright about her debts, the problems in her life in recent years, and her tickets for open containers. She has not hidden the negative events in her past. Because she has been honest and clear throughout this process, there is little likelihood that she can be coerced or pressured because of the judgment. The issue is not simply whether all her debts are paid: it is whether her financial circumstances raise concerns about her fitness to hold a security clearance. Given her present circumstances, she is unlikely to pay the large judgment. However, this debt is insufficient to raise security concerns. (See AG ¶ 2(a)(1).) She is an honest and forthright individual who would not compromise protected information.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from her finances under Guideline F.

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:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant

Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

MARY E. HENRY
Administrative Judge