



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



In the matter of:)	
)	
)	ADP Case No. 12-06714
)	
Applicant for Public Trust Position)	

Appearances

For Government: Christopher Morin, Esq., Department Counsel
For Applicant: *Pro se*

03/21/2014

Decision

O'BRIEN, Rita C., Administrative Judge:

Based on a review of the pleadings, the Government's File of Relevant Material (FORM), and Applicant's Response, I conclude that Applicant failed to mitigate concerns raised under the guideline for financial considerations. Her request for access to sensitive information is denied.

Statement of the Case

On September 30, 2011, Applicant completed a Questionnaire for Public Trust Positions (SF-85P). On November 19, 2013, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) citing trustworthiness concerns under Guideline F (financial considerations) of the Adjudicative Guidelines (AG).¹ In her Answer to the SOR, notarized on December 23, 2013, Applicant admitted six SOR

¹ Adjudication of the case is controlled by DOD Regulation 5200.2-R, *Personnel Security Program* (January 1987), as amended (Regulation); DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines (AG) implemented by DOD on September 1, 2006.

debts, and denied the remaining four. She also requested a decision without a hearing. (Item 4)

Department Counsel for the Defense Office of Hearings and Appeals (DOHA) prepared a presentation of the Government's case in a File of Relevant Material (FORM) dated January 17, 2014. It contained the Government's argument and documents to support its preliminary decision to deny Applicant's request for a public trust position.² Applicant received the FORM on January 31, 2014 and was given 30 days to respond. She submitted a timely response (Response). The case was assigned to me on March 10, 2014.

Findings of Fact

Applicant's admissions to the SOR allegations are incorporated as findings of fact. After a thorough review of the record evidence, I make the following additional findings of fact.

Applicant is 52 years old. She married in 1987 and has two adult children. Between 1991 and 1995, she completed all but one course for a bachelor's degree. She financed her education through student loans. She has worked primarily as a computer programmer/analyst since 2001. She started her current employment in 2011, and applied for a public trust position. (Items 5, 6)

Applicant had several periods of unemployment. She was unemployed for two months in 2007, and was supported by her husband. She was also unemployed from October 2009 to May 2010, but her husband was employed. During her 2012 personal subject interview (PSI), she stated she left her position to begin traveling in her recreational vehicle (RV). Following a layoff, she was again unemployed from December 2010 to July 2011. She received \$1,300 monthly unemployment compensation during this period. She stated during her PSI that she did not experience financial difficulties during any of these three periods of unemployment.³ It appears from the evidence that Applicant's husband was also unemployed for a number of years; the extent of his unemployment is unclear, but he was employed as of October 2013, when Applicant completed her personal financial statement (PFS). Although Applicant stated in her PSI that she did not experience difficulties during her periods of unemployment, she stated in her Answer and her Response that her financial difficulties occurred because she was involuntarily laid off. She said in her Response, "[I]n the past I have lost my job due to out-sourcing and other reasons out of my control that resulted in

² See Directive, Enclosure 3, Section E3.1.7. The FORM included nine documents (Items 1 - 9) proffered in support of the Government's case.

³ DOHA provided Applicant with the opportunity to review the report of her PSI, and correct any inaccuracies. She signed a statement that the report accurately reflected the information she provided during her PSI. (Item 6)

layoffs which caused my family hardships since I bring in the majority of income.” (Items 5, 6)

In November 2001, after Applicant was laid off and unemployed for six months, she filed for Chapter 7 bankruptcy protection. Her debts were successfully discharged in March 2002. The SOR alleges the bankruptcy, as well as nine subsequent delinquent debts, which total \$250,832. The debts appear in her credit reports dated April 2012 and September 2013, and in court documents of August 2009 through August 2010. (Items 4, 7, 8, 9)

Five of the SOR debts relate to mortgage loans. Two of Applicant’s residences in State A (in City 1 and City 2) were foreclosed. (Item 6)

1.c - \$9,430, home equity line of credit (HELOC), June 2005. Applicant sought a line of credit in order to remodel her home in City 1. She was employed, but her husband was not. Applicant stated in her Answer that after being laid off she was unable to meet the payments. The lender obtained a default judgment and foreclosure against Applicant in 2009. (Items 4, 7, 8; Answer [2013 credit report])

1.f - \$31,872, mortgage loan, June 2004. This mortgage loan also relates to Applicant's home in City 1. She provided the same information for this loan as described under allegation 1.c. The lender obtained a default judgment and foreclosure against Applicant in 2009. (Items 4, 7, 8; Answer [2013 credit report])

1.g - \$16,758, second-mortgage loan, January 2006. Applicant sought this loan on the home in City 1 in order to consolidate her debts. Her December 2013 credit report shows her last payment was in May 2009, and the creditor had charged off the delinquent balance as uncollectible. The record contains no evidence of payment on this debt. (Items 4, 6, 7, 8; Answer [2013 credit report])

1.h - \$135,429, mortgage loan, April 2008. Applicant denies this debt. After moving to City 2, she obtained this loan. The property was ultimately foreclosed and short-sold. Applicant stated in her Answer that she was told she owed nothing further. The Internal Revenue Service (IRS) subsequently informed Applicant she owed tax on \$1,000 related to the sale, indicating that a deficiency balance of \$1,000 may have been forgiven. Applicant stated that she paid the tax, although she did not receive the \$1,000 because it was “[P]aid to us but taken back in fees of some sort” However, Applicant provided no supporting documentation to show the IRS correspondence or any tax she paid. She stated in her interrogatory response that she had no relevant documentation. (Items 4, 6, 7, 8; Answer [2013 credit report])

1.j - \$25,346, default judgment of foreclosure. Applicant denies knowledge of this debt, stating that she has not been contacted about it. The Government provided evidence that the debt relates to the court-ordered default judgment on Applicant's 2004 mortgage loan (allegation 1.f) and 2005 HELOC (allegation 1.c) on the home in

City 1. Applicant accepted notice of the suit in September 2009. The court issued a decree for foreclosure and sale in October 2009. As this allegation duplicates the debts at SOR ¶¶ 1.c and 1.f, I find for the Applicant on this allegation.⁴ (Item 9)

Applicant's SOR alleges the following additional debts.

1.b - \$5,067, federal credit union. UNRESOLVED. Applicant opened this account in January 2008, and it became delinquent in June 2009. She stated in her Answer that at the time she opened it, she was supporting five people, including two children in college and her father-in-law, and she used the funds to help pay bills. There is no record evidence Applicant has established a payment plan or made recent payments on this account. (Items 4, 7)

1.d - \$3,300, credit card. UNRESOLVED. Applicant made timely payments until she was laid off in 2009. She stated in her Answer that she stopped using credit cards at that time. In her 2011 public trust application, she stated, "Once I get a job I will work on getting this paid." She provided no documentation showing a payment plan or recent payments on the account. (Items 4, 5)

1.e - \$4,906, collection account. UNRESOLVED. Applicant denies this account. It appears in her June and December 2013 credit reports. The December 2013 credit report lists the original creditor, and shows the account was opened in 2007. The last payment was made in 2009, and the creditor charged off the balance as uncollectible. The creditor that appears in the SOR is the collection agency to which the original creditor sold the debt. Applicant stated in her Answer that when she contacted the collection agency, the company did not have an account in her name. She believes it is not her account because she has not opened credit accounts since 2009; however, the account was opened in 2007. She did not provide documentation showing her contact with the creditor, and her credit report does not indicate that she formally disputed the account. (Items 4, 7, 8; Answer [2013 credit report])

1.i - \$18,641, student loan. RESOLVED. Applicant denies this debt, noting that her 2013 credit report shows it was paid in full in 2012 under the name of a different creditor. The Government, in the FORM, contends that the two accounts are not the same, as they have two different account numbers. The 2012 credit report shows the account status as "paid as agreed," until it was transferred to another company in 2003. It shows that the account went to collections in 2010, but the balance was subsequently paid through insurance, and the account was closed with a zero balance. (Item 7) The 2013 credit report states, "A claim has been filed with the Government, balance paid or being paid by insurance company." I find that the account may have two different numbers because the two creditors assigned it different numbers. I also

⁴ When the same information is alleged twice in the SOR under the same guideline, the duplicative allegation should be resolved in Applicant's favor. See ISCR Case No. 03-04704 (App. Bd. Sep. 21, 2005) at 3.

conclude that the zero balance shown on the 2012 and 2013 credit reports constitute sufficient evidence to show the debt is paid or resolved. (Items 4, 6, 7, 8)

Applicant's October 2013 PFS shows she earns a net monthly income of \$2,125. With her spouse's income of \$1,404, the family has a net monthly income of \$3,530. She listed monthly expenses of \$2,679, leaving her with a monthly net remainder (MNR) of \$851.⁵ She listed assets of \$15,000 (savings, car, and \$12,000 recreational vehicle [RV]). Her PFS did not show payments on any debts, including those listed in the SOR. (Item 6)

In her Answer and her Response to the FORM, Applicant provided the following information about her financial and personal history. In 2009, she and her husband moved into their RV. Because of their financial difficulties, they also stopped using credit cards, and have purchased only items for which they have cash available. Applicant stated, "This has worked well for us." In 2012, they rented an apartment. As of December 2013, she was planning to move back into the RV in February 2014 to cut living expenses and save for retirement.⁶ They pay their rent and household expenses timely, and pay \$1,500 to \$2,000 into savings for retirement. Her husband served in the U.S. Marines for six years. She has had access to customers' personal information for many years, without incident. Applicant also stated, "I do not believe I owe anyone any money that I am not paying. I do not receive any mail, email or phone calls regarding any debt with anyone." (Item 4; Response)

Policies

Each decision regarding a public trust position must be a fair, commonsense determination based on all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the Adjudicative Guidelines (AG).⁷ Decisions must also reflect consideration of the "whole-person" factors listed in ¶ 2(a) of the guidelines. The presence or absence of a disqualifying or mitigating condition does not determine a conclusion for or against an applicant. However, specific applicable guidelines are followed when a case can be measured against them because they represent policy guidance governing the grant or denial of access to sensitive information. In this case, the pleadings and the information presented by the parties require consideration of the adjudicative factors addressed under Guideline F.

⁵ Applicant listed her monthly net income as \$5,560, resulting in a monthly net remainder of \$2,881. However, it appears Applicant miscalculated her income by adding her deductions instead of subtracting them. (Item 6)

⁶ Applicant's file shows she was living in an apartment as of January 31, 2014. (Response)

⁷ Directive. 6.3.

A trustworthiness decision is intended only to resolve the questions of whether it is clearly consistent with the interests of national security⁸ for an applicant to either receive or continue to have access to sensitive information. The Government bears the initial burden of producing admissible information on which it based the decision to deny or revoke access to sensitive information for an applicant. Additionally, the Government must prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the Government's case. Because no one has a "right" to a sensitive position, an applicant bears a heavy burden of persuasion.⁹ A person who has access to sensitive information enters into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness to protect the national interest as her or his own. The standard of "clearly consistent with the interests of national security" compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government.¹⁰

Analysis

Guideline F (Financial Considerations)

AG ¶18 expresses the trustworthiness concern pertaining to financial considerations:

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 classified information. An individual who is financially over-extended is at risk of having to engage in illegal acts to generate funds.

The concern under Guideline F is broader than the possibility that an applicant might knowingly compromise sensitive information in order to obtain money. It encompasses concerns about an individual's reliability, judgment, and other qualities essential to protecting sensitive information. One who is financially irresponsible might also be irresponsible, negligent, or unconcerned in handling and safeguarding sensitive information.¹¹

⁸ See DOD Regulation 5200.2-R, ¶ C2.1.1 and ¶ C6.1.1.

⁹ See *Egan*, 484 U.S. at 528, 531.

¹⁰ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

¹¹ ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

The SOR lists eight delinquent debts, totaling approximately \$250,832. As I find for the Applicant on two allegations, totaling \$43,987, Applicant is responsible for six delinquent debts totaling \$206,845. She provided no documentation showing she has paid or established payment plans for these debts. She has failed to establish a record of meeting her financial obligations. The following disqualifying conditions apply under AG ¶19:

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

The financial considerations guideline also contains factors that can mitigate trustworthiness concerns. I have considered the mitigating factors under AG ¶ 20, especially the following:

- (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), and the individual acted responsibly under the circumstances;
- (c) 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;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant accrued numerous debts that have been delinquent for several years. The delinquencies are recent because they are still unpaid. Applicant's lack of substantial efforts to pay these debts casts doubt on her judgment and reliability. AG ¶ 20(a) cannot be applied.

AG ¶ 20(b) applies where an individual experiences events over which she had no control, and which affected her finances. Here, Applicant receives some mitigation

because she stated that her financial problems stemmed from three periods of unemployment between 2007 and 2011. However, the mitigation is limited because Applicant stated in her PSI that the unemployment did not affect her finances. In addition, an applicant must act responsibly under the circumstances. Applicant stated she contacted one creditor, but she provided no supporting documentation. The record contains no evidence she contacted other creditors, or made efforts to establish payment plans or otherwise resolve the debts. She did not act responsibly toward the debts listed in the SOR, and receives only limited mitigation under AG ¶ 20(b).

Applicant has not brought her delinquent debts under control. Her current debt load is more than \$200,000. She has made no payments, and has no payment plans in place. Despite the evidence in her credit reports that she owes substantial debts, she appears unwilling to accept that they are her obligations. She has not shown a good-faith effort or a track record of meeting her obligations. AG ¶¶ 20(c) and (d) do not apply. She disputes that she owes the delinquency alleged at SOR ¶ 1.e. However, her rationale that it was opened in 2010, after she stopped using credit, is not supported by her credit reports, which show it was opened in 2007. She did not provide documentation showing her contact with the creditor, and her credit report does not show she lodged a formal dispute. AG ¶ 20(e) does not apply.

Whole-Person Analysis

Under the whole-person concept, an administrative judge must evaluate the applicant's eligibility for a public trust position by considering the totality of the applicant's conduct and all the circumstances. an 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.

AG ¶ 2(c) requires that the ultimate determination of whether to grant access to sensitive information must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Under the cited guideline, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

Applicant's history includes positive factors, such as her education, her strength of character in being the sole support of her family her husband's unemployment, and her work experience. Applicant has taken positive financial steps by saving for

retirement, living in her RV to cut expenses, and using cash rather than credit for purchases. There is no evidence that Applicant fails to timely pay her living expenses such as rent, utilities, or other monthly bills. Her debts are not related to gambling, or abuse of alcohol or drugs. Applicant lives within her means.

However, the negative factors are more substantial. The process of applying for a public trust position began in 2011, almost three years ago, but Applicant has not taken steps to pay her delinquent debts, set up payment plans, or to mount a serious investigation of any debts that she believes are not her legitimate responsibility. Applicant has had sufficient funds available to start the process of resolving her debts, because her PFS shows a monthly net remainder of more than \$800. However, it may be that Applicant believes she is no longer responsible for any debt that has been “charged off.” As Applicant chose to have her case decided based on the written record, rather than through a personal appearance, I cannot determine the basis for her belief that she is not responsible for her delinquent debts.

Finally, Applicant's credibility is undermined because she gave conflicting information about the effect of her unemployment on her financial situation—reporting in her PSI that she was unaffected by the unemployment, but stating in her Answer and Response that her financial difficulties stemmed from her periods of unemployment.

Doubts remain about Applicant's reliability and judgment based on her failure to take substantial steps to meet her financial obligations. Overall, the evidence fails to satisfy the doubts raised about Applicant's suitability for a public trust position. For all these reasons, I conclude Applicant has not mitigated the trustworthiness concerns raised by the financial considerations guideline.

Formal Findings

Paragraph 1, Guideline F	AGAINST APPLICANT
Subparagraphs 1.a – 1.h	Against Applicant
Subparagraphs 1.i, 1.j	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to allow Applicant access to sensitive information. Applicant's request for a public trust position is denied.

RITA C. O'BRIEN
Administrative Judge