



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



In the matter of:)	
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)	ADP Case No. 14-00039
Applicant for Public Trust Position)	

Appearances

For Government: Jeff A. Nagel, Esq., Department Counsel
For Applicant: *Pro se*

06/25/2014

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to deny her eligibility for a public trust position. The evidence shows Applicant has a history of financial problems or difficulties consisting of defaulting on loans resulting in foreclosure on two residential properties. Although a single parent raising two minor children, her financial situation is otherwise stable. Given the circumstances here, Applicant presented sufficient evidence to explain and mitigate the concern stemming from her unfavorable financial history. Accordingly, this case is decided for Applicant.

Statement of the Case

On March 12, 2014, the Department of Defense (DOD) sent Applicant a statement of reasons (SOR) detailing a trustworthiness concern under Guideline F for financial considerations. The action was taken under Executive Order 10865, *Safeguarding Classified Information with Industry* (Feb. 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Review*

Program (Jan. 2, 1992), as amended (Directive); Department of Defense Regulation 5200.2-R, *Personnel Security Program* (Jan. 1987), as amended (Regulation); and the adjudicative guidelines (AG)¹ implemented by the DOD on September 1, 2006. The SOR recommended submission of Applicant's case to an administrative judge to determine her eligibility to occupy an automated data processing (ADP) position to support a DOD contract. Applicant answered the SOR on March 26, 2014, and she requested a hearing.

The case was assigned to me April 24, 2014. The hearing was held May 28, 2014. At the hearing, Department Counsel presented Exhibits 1–5, which were admitted. Likewise, Applicant presented Exhibits A–O, which were admitted, she called one witness, and she testified on her own behalf. The transcript (Tr.) was received June 6, 2014.

Findings of Fact

The SOR alleged a history of financial problems or difficulties consisting of two charged-off loans for \$91,574 and \$68,064. Applicant admitted the charged-off loans in her answer to the SOR. She also disclosed the existence of a mortgage loan for about \$151,000, which was past due and pending foreclosure. Her admissions are accepted and adopted and incorporated herein as findings of fact. In addition, the following findings of fact are supported by substantial evidence.

Applicant is a 38-year-old customer service representative for a federal contractor. She has worked in that capacity for the same company since 2003. She earns \$21 per hour, and she estimated her 2013 gross annual income at \$34,000 to \$35,000. (Tr. 35) She has a good record of employment with her company. (Exhibits A at 2–3, M, N, and O) Under consideration here is Applicant's application for eligibility to occupy a position of public trust to perform work in support of a DOD contract.

Applicant is a single parent to two minor daughters, ages 8 and 12. The respective fathers of the children are required to pay child support. Applicant receives \$827 monthly as child support of her oldest daughter on a regular basis. (Tr. 35–36). But the child support for her youngest daughter, about \$1,400 monthly, has not been paid on a regular or consistent basis. (Tr. 36)

The evidence shows that Applicant has two charged-off loans each connected to a separate residential property in the same state. (Exhibits 1–5) The properties are referred to as the first home or the second home throughout this decision. (Tr. 15–16) She disclosed the charged-off loans when completing her application in April 2013. (Exhibit 1) In addition, when answering the SOR, she disclosed the existence of a past-due mortgage loan for about \$151,000 on her first home. She disclosed that information because she thought it was important for the Defense Department to know that she

¹ The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines in Enclosure 2 to the Directive.

defaulted on another loan. (Tr. 40) Foreclosure was completed on the first home in May 2014, which she vacated in late 2013. The surrounding facts and circumstances are discussed below.

Applicant bought the first home in 2004, and she was able to maintain the monthly mortgage loan payments. In about 2005, Applicant was pregnant with her second child, and she and her then boyfriend (and father of the second child) decided to make an investment and buy the second home. The idea was to buy the second home and move into the home before the birth of the second child and thereafter turn the first home into an income-producing rental property and perhaps sell it, as there was an ongoing real-estate boom and high market values. Applicant had money to make a down payment, and the mortgage loan was in her name only because of her boyfriend's credit history.

In late December 2005, shortly after closing on the second home, severe weather resulted in substantial damage to Applicant's first home. She verified that matter with documentation concerning both the windstorm damage claim and water damage claim filed with her insurance company. (Exhibits D and E) She moved into the second home in January 2006, and she struggled to make the mortgage payments for both homes by using about \$20,000 she had set aside for long-term savings. (Tr. 32, 46–47) The next complication was the departure of her boyfriend sometime after moving into the second home. By this time, early 2006, she was on full-disability leave due to pregnancy and unable to make the mortgage payments on both homes. (Tr. 31) She explained that she hired a real estate agent to sell the second home, she was approved for a short sale, and she received offers to buy the second home, but the mortgage lender proceeded with foreclosure to satisfy the first mortgage loan. (Tr. 31–32; Exhibit C). In addition, a second mortgage loan, alleged in SOR ¶ 1.a, was charged off and the account was closed. (Exhibit 2 at 3) When charged off, it was past due \$65,000 and had a balance of \$91,574.

Applicant moved back into the first home in early June 2006, a few weeks before the birth of her second child. She continued making payments on a mortgage loan and a secured line of credit until she was unable to afford the payment on the credit line (Tr. 32) She contacted the lender, but was unable to work out payment arrangements to allow her to catchup. The credit line, alleged in SOR ¶ 1.b, was charged off in about September 2008. (Exhibit 2 at 3) When charged off, it was past due \$1,996 and had a balance of \$68,064.

Applicant continued living in the first home and making payments on the mortgage loan. But since 2006 her time at the first home was not without trouble or concern. She presented documentation from the local police department showing criminal offenses connected to the first home and the high-crime rate in the neighborhood. (Exhibits F and G). The crimes connected to the first home are as follows: (1) burglary of residence without force in 2006; (2) burglary of a vehicle in 2008; (3) petty theft/license plate in 2009; and (4) burglary of residence in August 2013.

Applicant's father, a retired federal employee with substantial experience in the defense industry and security clearance cases, described the first home's neighborhood as "absolutely atrocious" and "entirely too dangerous for [her] to live in." (Tr. 63, 65) His concern for his grandchildren was "paramount" due to the August 2013 incident that involved a perpetrator armed with a pistol. (Tr. 62) He told his daughter that she needed to get away from the neighborhood for the safety of her daughters. In her father's view, walking away from or "sacrificing the residence" was the best decision she could make under the circumstances. (Tr. 63)

Applicant met with a financial advisor in April 2013 to discuss her financial situation and the challenges she was facing at that time. (Exhibit A at 1) They discussed the current mortgage loan, the difficulty she was having making the payment, the lack of options, and the concerns for the safety of her children and herself living in the first home. The financial advisor was impressed that Applicant (unless she had no choice) had no intention to go through with foreclosure because she felt strongly that she had an obligation to pay her mortgage loan.

As of May 2013, Applicant's mortgage loan for the first home was current and in good standing (pays as agreed) with \$0 past due, a high credit of \$168,950, and a balance of \$151,781. (Exhibit 2 at 3) By July 12, 2013, the account was past due \$2,285, and the mortgage lender notified her that she was eligible for home-ownership counseling under federal law. (Exhibit H at 1) Adding to an already difficult situation, the previously mentioned residential burglary took place on August 31, 2013. It occurred while she was on medical leave from work due to a short-term disability from August 26 to September 17, 2013. (Exhibit K) The resulting decrease of pay further aggravated her situation. Several months later in November 2013, the mortgage lender informed her that she was not eligible for mortgage-modification assistance due to untimely trial payments. (Exhibit H at 2) By early April 2014, the mortgage loan was past due more than \$12,000 and had a principal balance of about \$151,000. (Exhibit H at 4) Applicant received notice of the trustee's sale of the first home on May 5, 2014, with a total amount due of \$159,098. (Exhibit I) There is no evidence of a deficiency after the sale of the first home, and Applicant lives in a state with an antideficiency statute.²

Other than the charged-off loans and foreclosures, Applicant's financial situation is stable. A May 2014 credit report notes the adverse accounts previously discussed, one paid collection account, and one 30-day past-due account now current, but otherwise reveals that Applicant's credit accounts are current and paid satisfactorily. (Exhibit B) She also presented documentary evidence that she is living within her means and has a positive net remainder on a monthly basis. (Exhibit L) She contributes to her company's 401(k) account and she has about \$15,000 in a savings account. (Tr. 48). In addition, she recently received a settlement from a car accident case. (Tr. 48-56) She set aside that money for retirement.

² Whether the state's antideficiency statute applies to Applicant is a mixed question of law and fact that is beyond the scope of this proceeding, and I make no findings or reach any conclusions on that question.

Discussion

Under Guideline F for financial considerations,³ the suitability of an applicant may be questioned or put into doubt when that applicant has a history of excessive indebtedness or financial problems or difficulties.⁴ The overall concern under Guideline F is:

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.⁵

Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding sensitive information within the defense industry.

The evidence supports a conclusion that Applicant has a history of financial problems or difficulties. The two charged-off accounts for more than \$150,000 and the surrounding facts and circumstances raise a concern. Those matters indicate inability or unwillingness to satisfy debts⁶ and a history of not meeting financial obligations⁷ within the meaning of Guideline F. The facts are sufficient to establish these two disqualifying conditions. Indeed, any applicant who elects to engage in a strategic default on a mortgage loan justifies close scrutiny.⁸ With that said, this is not a cut-and-dried strategic default case. I am not persuaded that Applicant simply elected to default on the multiple loans as a financial strategy. And concerning the most recent foreclosure, Applicant's primary motivation was the safety of her children as opposed to making a pure financial decision.

³ AG ¶¶ 18, 19, and 20 (setting forth the security concern and the disqualifying and mitigating conditions).

⁴ ISCR Case No. 95-0611 (App. Bd. May 2, 1996) (It is well settled that "the security suitability of an applicant is placed into question when that applicant is shown to have a history of excessive indebtedness or recurring financial difficulties.") (citation omitted); and see ISCR Case No. 07-09966 (App. Bd. Jun. 25, 2008) (In security clearance cases, "the federal government is entitled to consider the facts and circumstances surrounding an applicant's conduct in incurring and failing to satisfy the debt in a timely manner.") (citation omitted).

⁵ AG ¶ 18.

⁶ AG ¶ 19(a).

⁷ AG ¶ 19(c).

⁸ *E.g.*, ISCR Case No. 10-10627 (Jan. 20, 2012) (in a security clearance case, an applicant defaulted on two mortgage loans that he had the financial means to pay after deciding it was in his financial interest to do so).

There are six mitigating conditions to consider under Guideline F.⁹ I have especially considered the following two mitigating conditions as most pertinent to the facts and circumstances of Applicant's case:

AG ¶¶ 20(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; and

AG ¶¶ 20(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.

In reviewing the evidence and thinking about this case, there is no one thing that completely explains Applicant's financial problems or is otherwise conclusive or determinative. Rather, it is apparent that a series of circumstances occurred over a period of years that had a compounding or escalating effect that resulted in Applicant defaulting on multiple loans and losing two homes through foreclosure, the last taking place a few months ago in May 2014. To recount, those circumstances included: (1) severe weather in late 2005 that damaged the first home making it unrentable for a period; (2) separation of Applicant and her boyfriend in 2006 that placed 100% of the financial burden of making the mortgage payments on Applicant; (3) lower pay due to her disability leave for pregnancy in early 2006; (4) attempted but unsuccessful short-sale of the second home; (5) lower pay due to short-term disability in August–September 2013; and (6) the assorted crimes against Applicant's vehicles and home during 2006–2013, the high-crime neighborhood of the first home, and her increasing concerns for her children's safety. Taken together, those circumstances were atypical and are unlikely to recur given Applicant's current living situation, and those circumstances were largely beyond Applicant's control. Given the difficult situation she was in for a period of years, especially considering her concerns for the safety of her children, she did not act irresponsibly under the circumstances. Her financial situation is stable, she has sufficient resources to meet her current financial responsibilities, she has cash savings, and she is not financially overextended.

Moreover, I was impressed with Applicant at the hearing. She was serious and well prepared with documentary exhibits, and she was contrite and remorseful about her situation. It is unlikely that she will put herself in a similar position in the future given her experience in the past. I was also impressed with her candor in disclosing the existence of a pending foreclosure when she answered the SOR, as it was not alleged in the SOR and was not then known by the Defense Department. Her willingness to provide full, frank, and candid information, even when it may not be in her interest to do so, speaks volumes about her suitability to handle and protect sensitive information.

⁹ AG ¶¶ 20(a)–20(f).

To conclude, I have no concern or doubt about Applicant's eligibility and suitability for a public trust position. In reaching this conclusion, I weighed the evidence as a whole and considered if the favorable evidence outweighed the unfavorable evidence or *vice versa*. I gave due consideration to the whole-person concept.¹⁰ For all these reasons, I conclude Applicant sufficiently explained and mitigated the financial considerations concern.

Formal Findings

The formal findings on the SOR allegations are as follows:

Paragraph 1, Guideline F:	For Applicant
Subparagraphs 1.a–1.b:	For Applicant

Conclusion

In light of the record as a whole, it is clearly consistent with the interests of national security to grant Applicant eligibility for an ADP position. Eligibility for access to sensitive information is granted.

Michael H. Leonard
Administrative Judge

¹⁰ AG ¶ 2(a)(1)–(9).