



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



In the matter of:)	
)	
-----)	ADP Case No. 14-00124
)	
Applicant for Public Trust Position)	

Appearances

For Government: Braden M. Murphy, Esq., Department Counsel
For Applicant: *Pro se*

10/14/2014

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to deny her eligibility for a public trust position. Applicant presented sufficient evidence to explain and mitigate the trustworthiness concern stemming from her financial difficulties. Accordingly, this case is decided for Applicant.

Statement of the Case

Applicant completed and submitted an application for a position of public trust on July 30, 2013.¹ After reviewing the application and information gathered during a background investigation, the Department of Defense (DOD), on March 20, 2014, sent Applicant a statement of reasons (SOR) detailing a trustworthiness concern under Guideline F for financial considerations. The action was taken under 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,

¹ Exhibit 1.

Personnel Security Program (Jan. 1987), as amended (Regulation); and the adjudicative guidelines (AG)² 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 contract with the DOD.

Applicant answered the SOR on April 20, 2014. Her answer was mixed; she admitted many of the delinquent debts; she was unaware of others; and she stated she had made payments on some of the debts.

The case was assigned to me July 30, 2014, to conduct the hearing requested by Applicant. The hearing was held as scheduled on August 27, 2014. Department Counsel presented Exhibits 1–3, which were admitted. Applicant presented Exhibits A–G, which were admitted.

The record was kept open to allow Applicant an opportunity to present additional documentary information. Initially, the deadline was September 10, 2014, but then it was extended and eventually closed on October 9, 2014. Applicant's additional documentary information is admitted as Exhibits H and I.

Findings of Fact

Applicant is a 27-year-old employee who is seeking to obtain eligibility to occupy a position of public trust for her employment with a health care company that has a contract with the DOD. She has had this job since September 2013. She previously worked for the same employer during 2012–2013, but left due to personal illness. She earns \$15.50 per hour in her current job and works a full-time schedule. Her employment history in her application shows she has had a variety of jobs, and she has had multiple periods of unemployment.³

In addition to her current job, Applicant has worked a second full-time job since July 2014 in which she earns about \$13 per hour.⁴ She took the second job to earn extra income to repay her debts, and she intends to maintain the second job for as long as necessary.⁵

Applicant's educational background consists of earning a high school diploma and attending some college. She has never married. She has two children in her

² 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.

³ Exhibit 1 at 12–25.

⁴ Tr. 45–47; Exhibit F.

⁵ Tr. 70–71.

custody, ages six and seven. She does not receive any child-support payments on her children's behalf.

The available documentary evidence shows that Applicant has a history of financial problems or difficulties.⁶ As alleged by the SOR and confirmed by credit reports, that history consists of the 17 delinquent accounts for a total of about \$29,410. The delinquent accounts include an unpaid judgment as well as collection and charged-off accounts.

Applicant explained that her financial difficulties stem from the decision she made to end an unacceptable relationship when she separated from her son's father.⁷ The result was Applicant was basically homeless for two years or so until early 2014.

Applicant presented documentary information showing she entered into a debt-repayment agreement for the \$6,130 delinquent account in SOR ¶ 1.c.⁸ She did so in September 2013, and the agreement calls for biweekly payments of \$65.

Applicant presented documentary information showing she paid in full the \$185 collection account in SOR ¶ 1.g.⁹ She did so in April 2014.

Applicant presented documentary information showing she entered into a promissory note for the \$3,013 collection account in SOR ¶ 1.m.¹⁰ She did so in April 2014, and she agreed to pay \$50 down and \$50 every two weeks thereafter.

Applicant presented documentary information showing that a garnishment action was begun in 2014 to satisfy the unpaid judgment of \$2,117 in SOR ¶ 1.a.¹¹

Applicant presented documentary information showing she retained the services of a credit-repair firm to help her resolve her financial difficulties and improve her credit profile.¹² She retained the firm in August 2014.

⁶ Exhibits 2 and 3.

⁷ Tr. 43–45.

⁸ Exhibit A.

⁹ Exhibits B and D.

¹⁰ Exhibit C.

¹¹ Exhibits E and E-1.

¹² Exhibit G.

Law and Policies

This case involves an adjudication of Applicant's eligibility to occupy an ADP position, not an adjudication of eligibility for a security clearance. In deciding ADP cases, we follow the procedures contained in the Directive, and we apply the 2006 adjudicative guidelines. The standard that must be met for assignment to sensitive duties is that 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." Regulation ¶ C6.1.1.1. Contractor personnel are entitled to the procedural protections in the Directive before any final unfavorable access determination is made. Regulation ¶ C8.2.1. And in all cases, the protection of the national security is the paramount consideration.

Discussion

Under Guideline F for financial considerations,¹³ 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.¹⁴ The overall concern 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.¹⁵

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

The evidence supports a conclusion that Applicant has a history of financial problems or difficulties. The evidence is also sufficient to indicate inability or unwillingness to satisfy debts¹⁶ and a history of not meeting financial obligations¹⁷ within the meaning of Guideline F. The facts are sufficient to establish these two disqualifying conditions.

¹³ AG ¶¶ 18, 19, and 20 (setting forth the concern and the disqualifying and mitigating conditions).

¹⁴ 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).

¹⁵ AG ¶ 18.

¹⁶ AG ¶ 19(a).

¹⁷ AG ¶ 19(c).

There are six mitigating conditions to consider under Guideline F.¹⁸ I have especially considered the following mitigating conditions as most pertinent to the facts and circumstances of Applicant's case:

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;

AG ¶ 20(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; and

AG ¶ 20(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

In addition to the mitigating conditions, I note that the purpose of this case is not aimed at collecting debts.¹⁹ Rather, the purpose is to evaluate an applicant's judgment, reliability, and trustworthiness consistent with the guidelines in the Directive. In evaluating Guideline F cases, the Appeal Board has established the following standard:

The Board has previously noted that the concept of a meaningful track record necessarily includes evidence of actual debt reduction through payment of debts. 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. 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. 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. 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 payments of such debts one at a time. 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.²⁰

Here, Applicant explained the central reasons for her financial problems, and she presented documentary information showing her good-faith effort to repay her delinquent debts. She also presented documentary information showing she is seeking

¹⁸ AG ¶¶ 20(a)–20(f).

¹⁹ ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010).

²⁰ ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008) (citations and quotations omitted).

professional assistance to help her in this endeavor. Further, she is working a second full-time job to increase her ability to repay creditors. Without a doubt, Applicant's overall financial situation is still messy and largely unresolved. Nevertheless, I am persuaded that she is doing all she can with limited financial means to clean up her financial house as a single parent with two young children. Doing so will take time. And doing so will not necessarily be without set backs. But this case is a reminder that life is often difficult and does not play out like an article in a personal finance magazine.

Moreover, I was impressed with Applicant at the hearing. She was serious, she accepted responsibility for her situation, and she expressed a firm resolve to address it.

To conclude, I have no concern 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.²¹ 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.q:	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

²¹ AG ¶ 2(a)(1)–(9).