



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



In the matter of:)	
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)	ADP Case No. 14-01688
Applicant for Public Trust Position)	

Appearances

For Government: Gregg A. Cervi, Esq., Department Counsel
For Applicant: *Pro se*

01/08/2015

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, which is ongoing and unresolved. Applicant did not present sufficient evidence to explain and mitigate the concern stemming from her unfavorable financial history. Accordingly, this case is decided against Applicant.

Statement of the Case

On August 19, 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 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 contract with the DOD.

Applicant's September 25, 2014 answer to the SOR was a mix of admissions and denials to the various delinquent debts alleged under Guideline F. She also provided an explanation for her financial situation.

The case was assigned to me November 12, 2014. The hearing was held December 10, 2014. At the hearing, Department Counsel presented Exhibits 1–4, which were admitted. Applicant did not present any documentary matters, but the record was kept open until December 23, 2014, to allow her to do so. No post-hearing matters were submitted. The transcript of the hearing (Tr.) was received December 22, 2014.

Findings of Fact

Applicant is a 38-year-old employee of a health care contractor for the Defense Department. She is seeking to obtain eligibility to occupy a position of public trust for her job working in a customer service call center. Eligibility is necessary because her job involves access to sensitive but unclassified information known as personally identifiable information, which is commonly abbreviated as PII.

Applicant has had this job since November 2013. She earns \$13.43 per hour; she does not have a bank or credit union account; she receives her paycheck on a prepaid debit card and manages her money via the card; and, aside from carrying a \$500 to \$1,000 balance on the debit card, she has no significant financial assets.

Applicant married in 2002 and divorced in 2008. She was also involved in relationship that ended in about 2012. She has four children, ages 22, 20, 18, and 16. The three youngest children live with her. In addition, a recently born grandchild is in her household. Applicant's educational background includes a high school diploma and attendance at vocational or technical schools during 2006–2009 and 2010–2011, but she did not receive a degree, diploma, or certificate.

Applicant's employment history includes a period of unemployment from November 2012 to November 2013, when she began her current job. Before that, she worked as a full-time customer service representative for about five years.

The available documentary evidence shows that Applicant has a history of financial problems or difficulties.² She has 13 delinquent accounts ranging in amounts

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.

² Exhibits 2, 3, and 4.

from \$24 to \$1,423 for a total of about \$6,316. They consist of six medical collection accounts and seven collection accounts.

Applicant disputes responsibility for the six medical collection accounts, which total \$2,738.³ She disputes those accounts on the grounds that she has always had medical insurance (private or Medicaid or both). She did not present any documentary evidence in support of her disputes, and she stated that did not dispute the medical collection accounts through the process afforded by the credit bureaus.⁴

Applicant admits responsibility for five of the seven collection accounts, which total \$3,578. She disputes a \$936 collection account in SOR ¶ 1.e, claiming she has no idea of the basis for that debt.⁵ She also disputes a \$160 collection account in SOR ¶ 1.k, claiming that she returned the books to a public library that were the basis for late fees or a fine due to overdue books.⁶ She did not present documentary evidence in support of her disputes. Likewise, she did not present documentary evidence that any of the seven collection accounts were paid, settled, in repayment, forgiven, or otherwise resolved in her favor.

Applicant's plan is to retain a law firm that specializes in helping consumers repair their credit reports and resolve the delinquent debts.⁷

Discussion

Under Guideline F for financial considerations,⁸ 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.⁹ 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

³ Answer to SOR; Tr. 56–57.

⁴ Tr. 51.

⁵ Tr. 58–59.

⁶ Tr. 62–64.

⁷ Tr. 34–35; 65–66.

⁸ AG ¶¶ 18, 19, and 20 (setting forth the concern and the disqualifying and mitigating conditions).

⁹ 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).

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.¹⁰

The concern is broader than the possibility that a person might knowingly compromise sensitive information to obtain money or something else of value. It encompasses concerns about a person's self-control, judgment, and other important qualities. A person 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, which is ongoing and unresolved. The facts indicate inability or unwillingness to satisfy debts¹¹ and a history of not meeting financial obligations¹² within the meaning of Guideline F. The facts are sufficient to establish these two disqualifying conditions, and the facts also suggest a degree of financial irresponsibility.

With that said, I attach minimal security significance to the six medical collection accounts for a total of \$2,738. First, it is probable that those debts should have been covered by insurance and Applicant was billed for them in error or due to a failure on her part to provide the necessary information about her insurance coverage. Second, and more important, Applicant incurred those debts for necessary medical care and they do not indicate poor self-control, questionable judgment, unreliability, or untrustworthiness. On that basis, the debts in SOR ¶¶ 1.a, 1.b, 1.c, 1.i, 1.l, and 1.m are decided for Applicant.

Based on the available evidence, none of the six mitigating conditions under Guideline F are sufficient to fully mitigate the concern stemming from the remaining collection accounts.¹³ Applicant has done virtually nothing to resolve them. For example, the \$160 collection account stems from her failure to timely return books to a public library. Although she stated she returned the books to the library, the collection account, based on late fees or a fine, is still outstanding and she has done nothing to repay it. Likewise, she did not present documentary evidence to support her disputes. Her plan to address the delinquent accounts with the assistance of a law firm is merely speculative at this point. At bottom, her lack of action demonstrates financial irresponsibility, negligence, and apathy, which are traits that militate against eligibility for a position of public trust.

¹⁰ AG ¶ 18.

¹¹ AG ¶ 19(a).

¹² AG ¶ 19(c).

¹³ AG ¶¶ 20(a)–(f).

Of course, the purpose of this case is not aimed at collecting debts.¹⁴ 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.¹⁵

Here, the evidence does not support a conclusion that Applicant has established a plan and taken steps to implement that plan sufficient to mitigate the concern.

To conclude, the evidence leaves me with 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.¹⁶ For all these reasons, I conclude Applicant did not mitigate the financial considerations concern.

Formal Findings

The formal findings on the SOR allegations are as follows:

Paragraph 1, Guideline F:	Against Applicant
Subparagraphs 1.a, 1.b, 1.c, 1.i, 1.l, and 1.m:	For Applicant

¹⁴ ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010).

¹⁵ ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008) (citations and quotations omitted).

¹⁶ AG ¶ 2(a)(1)-(9).

Subparagraphs 1.d, 1.e, 1.f, 1.g, 1.h,
1.j, and 1.k:

Against Applicant

Conclusion

In light of the record as a whole, it is not clearly consistent with the interests of national security to grant Applicant eligibility for an ADP position. Eligibility for access to sensitive information is denied.

Michael H. Leonard
Administrative Judge