



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



In the matter of:)	
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)	ADP Case No. 14-02132
Applicant for Public Trust Position)	

Appearances

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

12/31/2014

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, 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 21, 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.

In her September 10, 2014 answer to the SOR, she agreed with or admitted the various delinquent debts alleged under Guideline F. She also requested a hearing and provided an explanation for her financial situation.

The case was assigned to me November 12, 2014. The hearing was held December 9, 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 to allow her to do so. Those matters were timely received and are admitted without objections as Exhibit A. The transcript of the hearing (Tr.) was received December 17, 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. She has had this job since March 2013. She earns \$14.72 per hour; she has no other sources of income; and, aside from less than \$1,000 in the bank, she has no significant financial assets.

Applicant is married, but has lived separated from her husband for several years.² She anticipates obtaining a divorce in 2015.³ The marriage produced four children who are now 21, 18, 16, and 13 years old. Two of the children reside with each parent who is responsible for their support. In addition, a one-year-old grandchild is living with Applicant, but she anticipates that will be a temporary arrangement.⁴

Applicant's employment history includes two periods of unemployment. She was unemployed from October 2012 to February 2013 and from November 2004 to February 2005.⁵ Otherwise, she has had gainful employment, usually working in customer-service jobs, since at least 2002.

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 Tr. 33–34.

³ Tr. 69–70.

⁴ Tr. 62–64.

⁵ Exhibit 1.

The available documentary evidence shows that Applicant has a history of financial problems or difficulties.⁶ As alleged in the SOR and admitted by Applicant, she has 22 delinquent accounts ranging in amounts from \$22 to \$14,013 for a total of about \$32,391. They consist of collection accounts, charged-off accounts, and medical collection accounts.

Applicant explained that she has struggled financially since the age of 18, when she had her first child, and the delinquent accounts in the SOR were accumulated over a period of years.⁷ She did not provide any documentary information showing that the delinquent accounts were paid, settled, in a repayment agreement, forgiven, or otherwise resolved in her favor. She explained that the largest delinquent debt, a charged-off account for \$14,013, was reduced to approximately \$3,000 after sale of the repossessed car.⁸ She has telephoned and spoken with various creditors, but was unable to reach any repayment agreements as most creditors wanted a lump-sum payment that she could not afford to pay. She considered resolving her delinquent debts through bankruptcy and sought the advice of a bankruptcy attorney, but she could not afford to pay the initial attorney's fees.⁹ Most recently in December 2014, she sought the advice of a credit-counseling organization.¹⁰ They advised Applicant that she lacked sufficient cash flow to make payments on delinquent debt and meet her current obligations, and that she should consider bankruptcy.¹¹ The paperwork from credit-counseling organization shows a monthly income and expense summary with a negative net remainder of \$173.25.¹² That is consistent with Applicant's explanation that it is necessary for her to "juggle" to meet her recurring monthly expenses.¹³

⁶ Exhibits 2, 3, and 4.

⁷ Tr. 38–39.

⁸ Tr. 43–44.

⁹ Tr. 50.

¹⁰ Exhibit A.

¹¹ Tr. 50–51.

¹² Exhibit A.

¹³ Tr. 54–55.

Discussion

Under Guideline F for financial considerations,¹⁴ 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.¹⁵ 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.¹⁶

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 (as opposed to unwillingness) to satisfy debts¹⁷ and a history of not meeting financial obligations¹⁸ 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 seven accounts identified as medical collection accounts for a total of about \$3,286. 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.c, 1.g, 1.j, 1.l, 1.m, 1.n, and 1.o 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

¹⁴ AG ¶¶ 18, 19, and 20 (setting forth the concern and the disqualifying and mitigating conditions).

¹⁵ 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).

¹⁶ AG ¶ 18.

¹⁷ AG ¶ 19(a).

¹⁸ AG ¶ 19(c).

delinquent accounts.¹⁹ Applicant has done little to resolve those delinquent accounts. She has been advised to pursue bankruptcy by a bankruptcy attorney and a credit-counseling organization, and that appears to be a suitable course of action for her to take from a financial perspective. Although perfectly legal, bankruptcy does not qualify as a good-faith effort to resolve one's financial problems in this type of proceeding. Otherwise, she has no plan to resolve her indebtedness at any point in the near future.

Of course, the purpose of this case is not aimed at collecting debts.²⁰ 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.²¹

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.²² For all these reasons, I conclude Applicant did not mitigate the financial considerations concern.

¹⁹ AG ¶¶ 20(a)–(f).

²⁰ ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010).

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

²² AG ¶ 2(a)(1)–(9).

Formal Findings

The formal findings on the SOR allegations are as follows:

Paragraph 1, Guideline F:	Against Applicant
Subparagraphs 1.a–1.b:	Against Applicant
Subparagraphs 1.c, 1.g, 1.j, 1.l, 1.m, 1.n, and 1.o:	For Applicant
Subparagraphs 1.d, 1.e, 1.f, 1.h, 1.i, 1.k, and 1.p–1.v:	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