



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



In the matter of:)	
)	
)	ADP Case No. 14-02338
)	
Applicant for Public Trust Position)	

Appearances

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

07/10/2015

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

After she was discharged from legal repayment liability for debts covered by a 2006 bankruptcy, Applicant incurred delinquent debt in excess of \$31,628. She had periods of unemployment that likely contributed to her financial problems. As of December 2014, Applicant had resolved two of the debts in the SOR. It is too soon to conclude that her financial difficulties are behind her, given she still owes more than \$30,000 in delinquent debt. Position of trust is denied.

Statement of the Case

On July 23, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR), detailing the trustworthiness concerns under Guideline F, Financial Considerations, as to why it could not grant her eligibility for a public trust position. The DOD CAF took action under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); Department of Defense Regulation 5200.2-R, *Personnel Security Program* (January 1987) as amended; and the

adjudicative guidelines (AG) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR allegations on September 2, 2014. She indicated at that time that she wanted a Defense Office of Hearings and Appeals (DOHA) administrative judge to issue a decision in her case. In response to a DOD request for clarification about whether she wanted the judge to issue a decision after a hearing or on the written record, Applicant indicated on September 22, 2014, that she did not want a hearing.

On December 9, 2014, the Government submitted a File of Relevant Material (FORM) consisting of eight documents (Items 1-8). On December 15, 2014, DOHA forwarded a copy of the FORM to Applicant and instructed her to respond within 30 days of receipt. Applicant received the FORM on January 8, 2015. She did not submit a response by the February 7, 2015 due date. On March 10, 2015, the case was assigned to me to consider whether it is clearly consistent with the national interest to grant a public trust position for Applicant.

Summary of SOR Allegations

The SOR alleges under Guideline F that as of July 23, 2014, Applicant owed delinquent debt totaling \$31,628 on 11 accounts (SOR 1.a-1.k) following a February 2006 Chapter 7 bankruptcy discharge (SOR 1.l). (Item 1.) When Applicant answered the SOR, she admitted the bankruptcy discharge and the past-due debts in SOR 1.a-1.f and 1.h-1.i. Applicant denied the debts in SOR 1.g, 1.j, and 1.k because she had paid them. Applicant added that she had paid seven debts in all, including a student loan. She expressed intent to pay the rest of her debts in the following priority: 1.d, 1.e, 1.j, 1.h, 1.f, 1.c, 1.b, and then 1.a. (Item 3.)

Findings of Fact

After considering the FORM, which includes some payment records from Applicant (Item 5), I make the following findings of fact:

Applicant is a 51-year-old high school graduate with two associate degrees awarded in May 1993. In January 2004, she earned a certificate from a technical institute in information technology. Since March 2013, Applicant has been employed as an intake agent for a healthcare company under a DOD contract. She also works as a tutor part time. (Item 6.)

Applicant was married from November 1984 to January 1999. She has two adult children: a son age 32 and a daughter age 30. As of January 2015, Applicant was living with her son in military housing. (Item 6; FORM receipt.)

Applicant lived in her hometown until April 2005 when she moved to her present area. She was unemployed until July 2005, when she began working as a certified nurse

assistant in the home setting for a private homecare company. She had previous experience as a home health aide for the two years immediately preceding her relocation. (Item 6.) On October 15, 2005, Applicant filed a Chapter 7 bankruptcy petition. The record before me for review contains no information about the nature or extent of her debts covered by the bankruptcy. Available credit records show that she was granted a discharge of her legal liability to repay the covered debts on February 16, 2006. (Items 7, 8.)

In April 2008, Applicant's job ended. After a couple of months being unemployed, she worked for the state as a program service evaluator from June 2008 to January 2009, when she was laid off. From February 2009 to October 2010, Applicant worked part time from her locale as a customer service representative for a staffing agency located in her home state. The company ceased business operations, and Applicant was without work from October 2010 to March 2011. From March 2011 to September 2011 she held seasonal, part-time employment as a sales and reservation representative for a moving truck rental company. Apart from self-employed income as a tutor, she had no work from September 2011 to March 2013, when she began her current job. (Item 6.) The evidentiary record before me for review is silent about Applicant's income for any of her jobs. Likewise, it is unclear whether she collected unemployment at any time.

On March 7, 2013, Applicant completed and certified to the accuracy of the information provided on an Electronic Questionnaire for Investigations Processing (e-QIP). Applicant responded affirmatively on her e-QIP to the financial record inquiries concerning any possessions or property repossessed in the past seven years; any loan defaults in the past seven years; any bills or debts turned over for collection in the past seven years; and any debts currently over 120 days delinquent. She disclosed two auto loan debts of \$9,300 and \$6,000. She explained that the \$6,000 debt was for a car for her daughter. The vehicle had been stolen, and her daughter could not afford the payments after she lost her job. Applicant added that once she had steady employment, she would make arrangement to pay the loan balances. (Item 6.)

A check of Applicant's credit on March 15, 2013, revealed several additional delinquencies on her credit record. (Item 7.) There is no evidence that Applicant was ever interviewed about her past-due debts, but she provided DOHA with evidence of some payments before the FORM was prepared. (Item 5.) Her delinquent accounts and any payments to resolve them are set forth in the following table.

Debt in SOR	Delinquency history	Payment status
1.a. \$10,752 student loan in collection	\$7,485 high credit; last payment Aug. 2007, for collection Oct. 2007; \$10,755 balance Jan. 2014. (Items 6-8.)	No payments as of Sep. 2014. (Item 3.)
1.b. \$9,856 auto loan in collection	\$12,689 auto loan opened Oct. 2006, to be repaid at \$314 monthly; last activity Nov. 2008; \$9,856 collection	No payments as of Sep. 2014. (Item 3.)

	balance Mar. 2010; account closed and sold. (Items 6-8.)	
1.c. \$6,072 auto loan charged off	\$12,029 auto loan opened Oct. 2006, to be repaid at \$307 per month; last payment Apr. 2010; \$6,072 charged off Aug. 2010; unpaid as of Feb. 2014. (Items 6-8.)	No payments as of Sep. 2014. (Item 3.)
1.d. \$264 in collection	Revolving charge opened Jul. 2007, last payment Apr. 2008; \$264 charged off Sep. 2008; unpaid as of Mar. 2013. (Items 7, 8.)	No payments as of Sep. 2014. (Item 3.)
1.e. \$233 retail account in collection	Revolving charge opened May 2006, high credit \$249; \$233 charged off; unpaid as of Oct. 2013. (Items 7, 8.)	No payments as of Sep. 2014. (Item 3.)
1.f. \$2,544 apartment debt in collection	\$2,544 balance in collection as of Sep. 2008. (Item 7.)	No payments as of Sep. 2014. (Item 3.)
1.g. \$681 apartment debt in collection	\$681 for collection Feb. 2012; unpaid as of Mar. 2013 (Item 7); \$693.07 balance; \$176.55 balance as of Jul. 22, 2013. (Item 5.)	Paid off by post-dated check for \$177.62 Jul. 23, 2013. (Item 5.)
1.h. \$496 cash loan in collection	\$496 for collection Jul. 2008; unpaid as of Mar. 2014. (Items 7-8.)	No payments as of Sep. 2014. (Item 3.)
1.i. \$346 cable debt in collection	\$346 cable debt for collection Jan. 2012; unpaid as of Mar. 2012. (Item 7.)	No payments as of Sep. 2014. (Item 3.)
1.j. \$288 debt in collection	\$288 in collection as of Aug. 2012. (Item 7.)	Claims paid (Item 3) but no clear evidence of payment.
1.k. \$96 satellite television debt in collection	Opened Jul. 2008; \$96 for collection Aug. 2010; unpaid as of May 2012. (Items 7, 8.)	Paid Apr. 19, 2013. (Items 5, 8.)
\$215 charged-off retail debt (not alleged)	Opened Aug. 2006, \$374 high credit; last activity Jul. 2008; \$215 charged off Mar. 2009. (Items 7, 8.)	Paid Jun. 2013. (Items 5, 8.)
\$683 wireless phone debt in collection (not alleged)	Last activity Jun. 2011, \$683 for collection Sep. 2012; unpaid as of Feb. 2013. (Items 7, 8.)	Settled for \$341, last payment \$170.84 Sep. 2013. (Items 5, 8.)

On July 23, 2014, the DOD CAF issued an SOR to Applicant, alleging \$31,628 in delinquent debt. Information in the FORM shows that in 2013, Applicant had paid off the debts in SOR 1.g and 1.k, and four other accounts not alleged in the SOR.¹ (Item 5.) Applicant indicated in response to the SOR in September 2014 that she had paid seven debts on her credit record, including a student loan (not alleged) and the debts in SOR 1.g, 1.j, and 1.k. However, about the \$288 debt in SOR 1.j, she discrepantly expressed intent to pay the debt after she resolved the debts in SOR 1.d and 1.e, which she reportedly had “faxed to negotiate amount and make payment arrangements.” She planned to pay off her smaller debts first. (Item 3.)

Applicant was advised in the FORM of the Government’s concerns about her holding a public trust position or being granted access to sensitive information because of her unresolved delinquent debts. She was provided an opportunity to supplement the record with evidence of additional debt payments, and she filed no response.

Policies

Positions designated as ADP I and ADP II are classified as “sensitive positions.” (See Regulation ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3.) The standard that must be met for assignment to sensitive duties is that, based on all available information, the person’s loyalty, reliability, and trustworthiness are such that assigning the person to sensitive duties is clearly consistent with national security. (See Regulation ¶ C8.2.1.) The Deputy Under Secretary of Defense (Counterintelligence and Security) Memorandum, dated November 19, 2004, indicates trustworthiness adjudications will apply to cases forwarded to DOHA by the Defense Security Service and Office of Personnel Management. Department of Defense contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination may be made.

When evaluating an Applicant’s suitability for a public trust position, the administrative judge must consider the disqualifying and mitigating conditions in the Adjudicative Guidelines (AG). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s overall adjudicative goal is a fair, impartial and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” The administrative judge must consider all available reliable information about the person, past and present, favorable and unfavorable. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

¹ In addition to the delinquent wireless phone and retail debts included in the table, Applicant indicated that she paid off a retail account and a student loan account. The retailer had initiated a credit inquiry in September 2011, but the account does not appear on Applicant’s credit record. Information about the balance and its status (i.e., whether current or delinquent) is not in evidence. Applicant’s credit report shows that a \$5,500 student loan, opened in August 1999, was reported as a zero balance but also with a history of delinquency of 90 days. The account was rated as current with the following notation: “customer says account paid/being paid by insurance.” (Item 7.)

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the Applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The Applicant has the ultimate burden of persuasion to obtain a favorable trustworthiness decision.

A person who seeks access to sensitive information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The government reposes a high degree of trust and confidence in individuals to whom it grants access to sensitive information. Decisions include, by necessity, consideration of the possible risk the Applicant may deliberately or inadvertently fail to safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of sensitive information. See Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The trustworthiness concerns about financial considerations are set out in AG ¶ 18:

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 overextended is at risk of having to engage in illegal acts to generate funds.

The evidence establishes the financial considerations concerns. Applicant had paid two of the alleged debts before the SOR was issued. Even so, as of July 2014, she owed approximately \$30,617 in past-due debt incurred after she had been afforded a financial fresh start in bankruptcy. Disqualifying conditions AG ¶ 19(a), “inability or unwillingness to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations,” apply because of Applicant’s record of financial delinquency.

Mitigating condition AG ¶ 20(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,” is satisfied as to the alleged debts in SOR 1.g and 1.k because they were paid before the SOR was issued. AG ¶ 20(e) does not apply to the delinquencies that are still unpaid (SOR 1.a-1.f and 1.h-1.j).

Several of Applicant’s debts have been delinquent for some time with no effort to address them. Applicant defaulted on her student loan in SOR 1.a in 2007. She stopped

paying on her auto loan (SOR 1.b) in November 2008. The apartment debt in SOR 1.f has been in collection since September 2008. The retail charge card debt in SOR 1.d and the cash loan debt in SOR 1.h have been owed since 2008. AG ¶ 20(a), “the behavior happened so long ago, was so infrequent, or occurred under circumstances that it is unlikely to recur and does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment,” cannot reasonably apply.

In the three years preceding her bankruptcy filing, Applicant either worked in home health care or was unemployed. After her job in private duty homecare ended in April 2008, Applicant had full-time employment only from June 2008 to January 2009, when she worked for the state. She held part-time jobs or was unemployed until March 2013, when she began her current employment with a DOD contractor. AG ¶ 20(b) is implicated when debts are incurred largely because of unemployment or low income due to factors beyond the person’s control:

(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.

However, Applicant has not presented sufficient information about her finances, including information about her income and debt expenses, to enable me to conclude that she has acted reasonably with regard to managing her personal finances. Available information suggests that she may have taken on more debt than she could afford. She took on two auto loans in October 2006 with car payments of \$314 and \$307 per month. She was granted credit despite her relatively recent bankruptcy discharge in February 2006, probably because she had a full-time job as certified nursing assistant since July 2005. The second car loan (SOR 1.c) was for her daughter’s vehicle, and her daughter apparently paid on the loan through April 2010. However, Applicant was legally liable on the loan, so she assumed the financial risk. Little is known about the \$2,544 apartment debt (SOR 1.f) apart from it being in collection as of September 2008. According to the e-QIP, Applicant had been unemployed between April 2008 and June 2008, and she moved in June 2008 to a new address. Assuming that the debt in SOR 1.f covers missed rent from when she was unemployed, she worked full time from June 2008 to January 2009 as a state employee, and there is no evidence that she tried to arrange for repayment of the debt. Likewise, Applicant’s student loan in SOR 1.a has been in collection for years without any effort on her part to address it.

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,” have some applicability in that Applicant paid the debts in SOR 1.g and 1.k in July 2013 and April 2013, respectively. She also resolved some debts not alleged in the SOR. Applicant’s satisfaction of these debts before the issuance of the SOR is certainly evidence of good faith on her part. However, even considering the debts not alleged in the SOR, she still owes more than \$30,000 in delinquent debt. Furthermore, she

has not adequately explained the absence of any payments in 2014 toward her past-due debts. It is too soon to conclude that her financial problems are behind her and not likely to recur. The financial considerations concerns are not sufficiently mitigated.

Whole-Person Concept

Under the whole-person concept, the administrative judge must consider the totality of an applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(a).²

Applicant chose the legal remedy of bankruptcy to alleviate an unknown debt burden. It is unclear whether financial mismanagement or other factors, such as low income and the cost of raising her two children after her divorce, led to the bankruptcy filing. Considerable doubts are raised about Applicant's financial judgment after the bankruptcy in the absence of evidence that could reasonably excuse or mitigate her failure to maintain her debt payments. In making the whole-person assessment required under the Directive, the DOHA Appeal Board has held that an applicant is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. An applicant need only establish a plan to resolve financial problems and take significant actions to implement the plan. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). Nor is she required to pay the debts in the SOR before other debts. Applicant indicated in response to the SOR that she had paid seven debts, although there is no proof of her claimed satisfaction of the debt in SOR 1.j. She admitted no progress toward resolving her sizeable student loan and car loan debts. Applicant indicated in response to the SOR that she would be satisfying her remaining debts, starting with the lowest. She had an opportunity in response to the FORM to show that she has established repayment arrangements in accord with her stated intent. She elected to file no response. There are inadequate assurances that she can be counted on to follow through on her stated intent to resolve her debts, given the absence of any documented progress in 2014 toward resolving her more than \$30,000 in remaining delinquent debt. After considering all the facts and circumstances, I conclude that it is not clearly consistent with national security to grant Applicant access to sensitive information at this time.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

² The factors under AG ¶ 2(a) are as follows:

- (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) the 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.

Paragraph 1, Guideline F: AGAINST APPLICANT

Subparagraph 1.a-1.f: Against Applicant
Subparagraph 1.g: For Applicant
Subparagraph 1.h-1.j: Against Applicant
Subparagraph 1.k: For Applicant
Subparagraph 1.j: Against Applicant

Conclusion

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

Elizabeth M. Matchinski
Administrative Judge