



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



In the matter of:)	
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)	ADP Case No. 14-02481
Applicant for Public Trust Position)	

Appearances

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

01/14/2015

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. But 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 August 26, 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 27, 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 answer and stated that she did not desire a hearing. Department Counsel exercised their right under the Directive to request a hearing.² And shortly thereafter, Applicant changed her mind and requested a hearing.³

The case was assigned to me November 20, 2014. The hearing was held December 11, 2014. At the hearing, Department Counsel presented Exhibits 1–4, which were admitted. Applicant presented Exhibits A–C, which were admitted. The record was kept open until January 2, 2015, to allow Applicant an opportunity to submit a record of payments on her ongoing Chapter 13 bankruptcy case, which was timely submitted and admitted without objections as Exhibit D. 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 married in 2002, and she and her husband have three children, ages 4, 6, and 12. Their marriage was recently under stress and strain with Applicant and her husband essentially separated while living together, but they reconciled in mid-2014.⁴ Applicant is responsible for managing the household finances, and she stated that the recent marital troubles caused a setback with their finances from which they are now recovering.⁵ Based on the household income, Applicant should have a positive net remainder of about \$900 per month, but current spending consumes most of the

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 Appellate Exhibit I.

³ Appellate Exhibit II.

⁴ Tr. 35–36.

⁵ Tr. 36–37.

income.⁶ Applicant is currently taking steps to involve her husband with the finances as well as teaching her children about household finances.⁷

Applicant's husband has been employed by a local sheriff's office for the last six years, he is paid a salary, and he has stable employment. Applicant's employment history includes lengthy periods of unemployment when she was a stay-at-home mother; she was unemployed during 2002–2005, 2006–2007, and 2008–2013.⁸ She started looking for a job in 2012 when she became concerned about her marriage. She began her current job in early 2013; she earns \$13.24 per hour; and she finds the customer-service work rewarding because it allows her to assist servicemembers and veterans and their families.⁹

The available documentary evidence shows that Applicant has a history of financial problems or difficulties.¹⁰ In general, that history, as alleged in the SOR, includes the following: (1) a Chapter 7 bankruptcy case in 2003; (2) a Chapter 13 bankruptcy case that was filed in 2010 and has an ongoing payment plan; (3) two unpaid judgments; (4) a \$121 collection account for a consumer debt; and (5) six medical collection accounts for a total of less than \$1,500. Those matters are addressed below.

(1) In 2003, when Applicant was unemployed due to the birth of her first child in December 2002, she and her husband obtained relief via a Chapter 7 bankruptcy case that discharged their liability from their then existing indebtedness.¹¹ She does not recall the amount of debt in the bankruptcy. She attributed the bankruptcy to her husband being laid off from work, medical bills, and credit card bills.

(2) About seven years later in 2010, Applicant and her husband again sought relief via bankruptcy, this time under Chapter 13.¹² The bankruptcy court approved a 60-month payment plan that requires monthly payments of \$91 until about October 2015. According to Schedule F, the bankruptcy includes about \$90,353 in unsecured debt.¹³ Their record of payments is regular, but not perfect, and delinquencies had to be cured

⁶ Tr. 44-45, 56.

⁷ Tr. 77–78.

⁸ Exhibit 1; Tr. 33, 49–50.

⁹ Tr. 33–34.

¹⁰ Exhibits 2, 3, and 4.

¹¹ Tr. 56–58.

¹² Tr. 37–40.

¹³ Exhibit A at 3.

from time to time.¹⁴ For example, they recently made a payment of \$273 (three payments of \$91) on December 16, 2014, to cure a delinquency. Applicant explained that they missed payments in 2014 because she was more focused on their marriage as compared with finances.

(3) The two unpaid judgments for \$696 and \$4,728 are resolved or in the process of being resolved. The \$696 judgment was filed in 2008 and stems from a credit card debt. It is included in the ongoing Chapter 13 bankruptcy case as a \$1,858 credit card debt (the increase is due to interest, no doubt) with the same creditor.¹⁵ The \$4,728 judgment, which was filed in 2007, was satisfied by garnishment of her husband's salary.¹⁶

(4) Applicant disputes the \$121 collection account for a consumer debt because she is currently receiving services from the original creditor.¹⁷ She contacted the original creditor, as opposed to the collection agency, and there was no record of a delinquent account. She had no documentation in support of her dispute.

(5) Five of the six medical collection accounts are included in the ongoing Chapter 13 bankruptcy case for a total of about \$3,911.¹⁸ They are the same five medical collection accounts as reported in the March 2013 credit report.¹⁹ Applicant disputes the remaining collection account for \$162, as reported in the March 2014 credit report,²⁰ because of a billing error between the medical provider and the insurance company.²¹ She submitted documentation in support of the dispute.²²

At the hearing, Applicant was serious and respectful, she answered questions candidly, and she was knowledgeable about her family's financial situation. I had no concerns about her credibility.

¹⁴ Exhibit D.

¹⁵ Exhibit A at 1.

¹⁶ Exhibit C; Tr. 29–30, 67.

¹⁷ Answer to SOR; Tr. 65–67.

¹⁸ Exhibit A at 2–3.

¹⁹ Exhibit 2.

²⁰ Exhibit 3.

²¹ Tr. 63–65.

²² Exhibit B.

Discussion

Under Guideline F for financial considerations,²³ 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.²⁴ 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.²⁵

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 debts²⁶ and a history of not meeting financial obligations²⁷ 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.

I have considered the six mitigating conditions under Guideline F, and the following are most pertinent to Applicant's case.²⁸

AG ¶¶ 20(b) the conditions that resulted in the financial problems 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 [person] acted responsibly under the circumstances;

²³ AG ¶¶ 18, 19, and 20 (setting forth the concern and the disqualifying and mitigating conditions).

²⁴ 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).

²⁵ AG ¶ 18.

²⁶ AG ¶ 19(a).

²⁷ AG ¶ 19(c).

²⁸ AG ¶¶ 20(a)–(f).

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;

AG ¶ 20(d) the [person] initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(e) the [person] 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 substantial the basis of the dispute or provides evidence of actions to resolve the issue.

The mitigating condition in AG ¶ 20(b) applies based on Applicant's recent marital troubles, which was a probable causative factor in the less than perfect bankruptcy payment record. She acted responsibly under the circumstances by reconciling with her husband and curing the delinquent bankruptcy payments.

The mitigating condition in AG ¶ 20(c) applies based on the totality of evidence that shows Applicant and her husband are resolving their financial problems through the court-approved Chapter 13 payment plan, and there is less than 12 months left on the 60-month plan. The Chapter 13 payment plan covers five of the six medical collection accounts and one of the judgments while the other judgment was paid years ago. I am also persuaded that (1) Applicant has a good handle on her family finances, and (2) she and her husband will complete the Chapter 13 payment plan later this year.

The mitigating condition in AG ¶ 20(d) applies under essentially the same rationale for AG ¶ 20(c).

The mitigating condition in AG ¶ 20(e) applies to the \$162 medical collection account because a billing error between a medical provider and an insurance company is a reasonable basis to dispute a medical bill, and Applicant provided sufficient documentation to support the dispute.

Of course, the purpose of this case is not aimed at collecting debts.²⁹ 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

²⁹ ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010).

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.³⁰

Here, the evidence supports a conclusion that Applicant has established a plan (namely, the Chapter 13 payment plan) and taken steps to implement that plan sufficient to mitigate the concern. She and her husband have completed about 80% of the Chapter 13 payment plan and have less than 12 months left before completing it in full. At that time, they will receive a discharge relieving them from further liability for the covered debts. In addition, Applicant, unlike many others in these financial cases, did a good job documenting efforts made to resolve the financial problems. Taken as a whole, the evidence supports a conclusion that Applicant is on a favorable upward trend, which militates against recurrence of the same or similar problems.

To conclude, the evidence leaves me with no doubt or 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.³¹ For all these reasons, I conclude Applicant 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.k:	For Applicant

³⁰ ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008) (citations and quotations omitted).

³¹ AG ¶ 2(a)(1)–(9).

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