



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



In the matter of:)	
)	
[REDACTED])	ADP Case No. 15-02846
)	
Applicant for Public Trust Position)	

Appearances

For Government: Tara R. Karoian, Esq., Department Counsel
For Applicant: *Pro se*

02/06/2017

Decision

HESS, Stephanie C., Administrative Judge:

Applicant experienced circumstances largely beyond her control that caused her financial issues, but mitigated the trustworthiness concerns raised under Guideline F (Financial Considerations). Eligibility for access to sensitive information is granted.

Statement of the Case

Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) on January 14, 2013. On November 9, 2015, the Department of Defense (DOD) sent her a Statement of Reasons (SOR), alleging trustworthiness concerns under Guideline F. The DOD acted under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); DOD Regulation 5200.2-R, *Personnel Security Program* (January 1987), as amended (Regulation); and the adjudicative guidelines (AG) implemented by DOD on September 1, 2006.

Applicant answered the SOR on December 30, 2015, and requested a decision on the record without a hearing. Department Counsel submitted the Government's written case on February 16, 2016. A complete copy of the file of relevant material

(FORM), which included Government Exhibits (GX) 1 through 6, was sent to Applicant on February 17, 2016. She was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. She received the FORM on February 26, 2016, and did not respond.¹ The case was assigned to me on November 4, 2016.

Findings of Fact

Applicant is a 32-year-old customer claims associate employed by a defense contractor since March 2013. She has completed course work at two colleges and was enrolled in classes in 2012, when she completed her e-QIP. She married in 2003, and she and her husband have two children ages 12 and 10. This is her first application for a public trust position. (GX 3.)

The SOR alleges that Applicant owes 25 delinquent debts totaling approximately \$29,303. In her Answer, Applicant admitted all of the debts and stated that she entered repayment plans with all but three of the creditors. According to her Answer, Applicant made the first payment on one SOR debt in June 2015. She contacted the creditor of 15 SOR debts, all medical accounts, and arranged for the accounts to be consolidated. She made her first bi-monthly payment of \$25 on December 11, 2015. She was scheduled to make the first payment on five additional SOR debts in January 2016 and on the remaining SOR debt in February 2016. Applicant's admissions in her Answer are incorporated in my findings of fact.

The delinquent debts are reflected in Applicant's credit bureau reports (CBRs) from March 2015 and January 2013. (GX 4; GX 5.) She listed a number of her delinquent accounts on her e-QIP, and discussed many of the accounts during her personal subject interview (PSI) on March 5, 2013. (GX 3; GX 6.)

The \$10,125 charged-off debt alleged in SOR ¶ 1.a is for a vehicle loan. Applicant contacted the creditor and agreed to make monthly payments of \$100 which were due to start in January 2015. The March 2015 CBR indicates that a revised payment plan began in January 2015.

The \$4,058 charged-off debt alleged in SOR ¶ 1.b is for a vehicle loan. The March 2015 CBR indicates that a revised payment plan began in January 2015. Applicant contacted the creditor in November 2015 entered a monthly repayment plan of \$75, which was due to start in January 2016.

The \$484 debt alleged in SOR ¶ 1.c is the past-due amount on a \$3,925 student-loan debt. The March 2015 CBR shows that a revised payment plan began in

¹ The Defense Office of Hearings and Appeals (DOHA) transmittal letter is dated February 17, 2016, and Applicant's receipt is dated February 26, 2016. The DOHA transmittal letter informed Applicant that she had 30 days after receiving it to submit information. The DOHA transmittal letter and receipt are appended to the record as Administrative Exhibit 1.

December 2014. Applicant contacted the creditor and agreed to a repayment plan of \$5 a month beginning in June 2015.

The debt alleged in SOR ¶ 1.e is for a delinquent student loan owed to the university from which she took on-line courses. Applicant contacted the university about a repayment plan, but it required four installment payments of \$587, which Applicant was unable to make. She intends to repay this debt.

Applicant provided a document with her Answer from a student-loan collection agency that lists a principal balance of \$8,879 and confirms an agreement of monthly payments of \$5 beginning on December 26, 2015. Applicant stated in her Answer that this document pertains to both student loan accounts alleged in SOR ¶¶ 1.c and 1.e, but that the monthly payment is applied only to the debt alleged in SOR ¶ 1.c.

The \$2,349 debt alleged in SOR ¶ 1.d is for Applicant's unpaid rent at a prior residence. She was unable to locate the current creditor and that the debt remains unresolved.

The \$1,795 debt alleged in SOR ¶ 1.f is owed to a cellular company. Applicant arranged a monthly repayment plan of \$25 that was scheduled to start in February 2016.

The \$1,376 debt alleged in SOR ¶ 1.g is for a vehicle loan. Applicant arranged a \$50 monthly payment scheduled to begin in January 2015 as an automatic withdrawal from her checking account. (Answer.)

The \$869 debt alleged in SOR ¶ 1.i is owed to a cable company. Applicant contacted the company and was informed that the actual balance owed was \$469 because Applicant had returned some equipment. The company stated it would report the correct balance to the credit-reporting agencies. The balance on this debt is unresolved.

The \$469 debt alleged in SOR ¶ 1.n is for a personal loan used for living expenses. Applicant made a \$20 payment over the phone in December 2015 and will continue to make monthly payments of \$20 until the debt is paid in full. (GX 6; Answer.)

The \$402 debt alleged in SOR ¶ 1.o is owed to a cellular company. According to her Answer, Applicant arranged for \$24 monthly payments to be deducted from her checking account beginning in January 2016.

The debts alleged in SOR ¶¶ 1.h, 1.j, 1.l, 1.m, and 1.p through 1.y are for medical accounts totaling \$4,004, which Applicant consolidated and has been making \$25 bi-weekly payments since December 11, 2015. In May 2009, Applicant sprained her ankle and was treated at the emergency room. She was uninsured and thus was personally liable for the costs of the treatment. Applicant provided the new account number assigned to the consolidated debts. (Answer.)

Applicant was unemployed from March 2012 until October 2012, which resulted in financial hardship. She was unable to pay her rent, resulting in the \$2,349 debt alleged in SOR ¶ 1.d. She was also unemployed from January 2010 until March 2011, and stated in her PSI that this period of unemployment caused her financial difficulties. In October 2012, Applicant was deemed at-fault in a car accident. She was unaware that at the time of the accident, her insurance, which was paid through direct withdrawal from her bank account, had lapsed. Her car was totaled, and she remained liable for the balance on the loan. She was also fined \$700, which she paid off in \$50 monthly payments. (Answer; GX 6.)

In her Answer, Applicant explained that her husband was unemployed from April 2013 until November 2013, when he found temporary employment. The temporary employment ended in April 2014 and he was unemployed until October 2015. Applicant stated that going from a dual-income household to a single-income household caused her to be unable to pay her outstanding debts. Applicant has not incurred any delinquent debt since 2014. (GX 4.)

Policies

Positions designated as ADP I and ADP II are classified as “sensitive positions.” 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 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. Department of Defense contractor personnel are entitled to the procedural protections in the Directive before any final unfavorable access determination may be made. Regulation ¶ C8.2.1.

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. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard sensitive information.

When evaluating an applicant’s suitability for a public trust position, the administrative judge must consider the disqualifying and mitigating conditions in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to [sensitive] information will be resolved in favor of national security. The Government

must present substantial evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). An applicant has the ultimate burden of demonstrating that it is clearly consistent with national security to grant or continue eligibility for a public trust position.

Analysis

Guideline F, Financial Considerations

The concern under this guideline is 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.

This concern is broader than the possibility that an individual might knowingly compromise sensitive information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding sensitive information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's admissions, corroborated by the record evidence, establish two disqualifying conditions under this guideline: AG ¶ 19(a) ("inability or unwillingness to satisfy debts") and AG ¶ 19(c) ("a history of not meeting financial obligations").

Applicant's financial difficulties are the result of circumstances largely beyond her control. In 2009, she incurred significant unexpected medical expenses as the result of an accident. Between 2010 and 2012, she experienced two periods of unemployment that total 20 months. In October 2012, she was in a car accident while unintentionally uninsured that resulted in additional financial hardship. Between April 2013 and October 2015, Applicant's husband was unemployed, except for five months of temporary work. She acted responsibly under the circumstances by contacting her creditors to initiate repayment plans, consolidating her medical debts into one account, and not incurring any new delinquent debt since 2014. The evidence supports a conclusion that Applicant has gained control over her financial circumstances.

The majority of Applicant's debts are medical debts that total \$4,004. She consolidated the debts into a single account with a new account number and has been making bi-monthly payments of \$50 since December 2015. The record evidence substantiates that Applicant has established repayment plans for the vehicle loans alleged in SOR ¶¶ 1.a and 1.b, and for the student loan alleged in SOR ¶ 1.c. These three debts comprise over 61% of her debt. Of the 25 debts alleged in the SOR, Applicant has established repayment plans for all but three.

"Good faith" means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. ISCR Case No. 99-0201, 1999 WL 1442346 at *4 (App. Bd. Oct. 12, 1999). A trustworthiness adjudication is an evaluation of an individual's judgment, reliability, and trustworthiness. It is not a debt-collection procedure. ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010.) A person is not required to establish resolution of every debt alleged in the SOR. He or she need only establish a plan to resolve financial problems and take significant actions to implement the plan. The adjudicative guidelines do not require that an individual make payments on all delinquent debts simultaneously, nor do they require that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

Although Applicant's financial record is not perfect, she has made a good-faith effort to repay her debts and has established a plan to resolve her financial issues within her means. AG ¶¶ 20 (a) - (d) apply.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a public trust position must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. In applying the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (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.

I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but I have also considered the following:

Applicant and her husband experienced several periods of unemployment which were financially destabilizing. However, she has been steadily employed since March 2013 and has not incurred any recent delinquent debt. She has established and maintained repayment plans with the majority of her creditors. Her conduct is consistent with that of individuals entrusted with access to sensitive information.

After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns raised by her delinquent debts. Accordingly, I conclude she has carried her burden of showing that it is clearly consistent with the national interest to grant her eligibility for access to sensitive information.

Formal Findings

As required by section E3.1.25 of Enclosure 3 of the Directive, I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): FOR APPLICANT

Subparagraphs 1.a – 1.y:

For Applicant

Conclusion

I conclude that it is clearly consistent with the interests of national security to grant Applicant eligibility for a position of trust. Eligibility for access to sensitive information is granted.

Stephanie C. Hess
Administrative Judge