



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



In the matter of:)	
)	
[REDACTED])	ADP Case No. 15-03691
)	
Applicant for Public Trust Position)	

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel
For Applicant: Jonathan Bell, Esq.

09/14/2017

Decision

MARINE, Gina L., Administrative Judge:

This case involves 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 February 6, 2013. On December 1, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns under Guideline F, financial considerations. The action was taken under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.¹

On February 1, 2016, Applicant answered the SOR, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on December 19, 2016, and the case was assigned to me on June 1, 2017. On June 22,

¹ ADP Case No. 14-01655 (App. Bd. Nov. 3, 2015) (“The Guidelines apply to all adjudications under the Directive, including both security clearance and public trust cases.”)

2017, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for July 10, 2017. I convened the hearing as scheduled.

Government Exhibits (GE) 1 through 4 were admitted into evidence without objection. I appended to the record a letter the Government sent to Applicant as Hearing Exhibit (HE) I, and the Government's exhibit list as HE II. At the hearing, Applicant testified and submitted Applicant's Exhibits (AX) 1 through 5, which were admitted without objection. At Applicant's request, I left the record open until July 24, 2017. Applicant timely provided additional documents, which I admitted as AE 6 through 19, without objection. I appended several additional documents to the record as HE III and IV. DOHA received the transcript (Tr.) on July 14, 2017.

On June 8, 2017, the DOD implemented new AG.² Accordingly, I have applied the June 2017 AG.³ However, because the September 2006 AG were in effect on the date the FORM was completed, I have also considered the September 2006 AG. I conclude that my decision would have been the same under either version.

Findings of Fact⁴

Applicant is 51 years old, never married, and has no children. She received her associate's degree in 1987, bachelor's degree in 1993, master's degree in 1995, and doctorate in 2002. She has been steadily employed full time as a licensed clinical psychologist since December 2002. In May 2013, she began working in the defense field and transitioned to her current employer in March 2016. This is her first application for a position of trust.⁵

Despite a high debt-to-income ratio due to the costs associated with obtaining her advanced degrees and underemployment, Applicant was able to meet her monthly expenses until 2008. Her expenses doubled following the unexpected dissolution of a long-term relationship and she was involved in a car accident. Emotional and physical injuries ensued. As an independent contractor, she incurred medical expenses for which she did not have health insurance, leave without pay, and tax debt. Between 2008 and 2009, she incurred expenses to open her own practice, which ultimately failed.⁶ In 2011,

² On December 10, 2016, the Security Executive Agent issued Directive 4 (SEAD-4), establishing a "single, common adjudicative criteria for all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position." (SEAD-4 ¶ B, *Purpose*). The SEAD-4 became effective on June 8, 2017 (SEAD-4 ¶ F, *Effective Date*). The National Security Adjudicative Guidelines (AG), which are found at Appendix A to SEAD-4, apply to determine eligibility for initial or continued access to classified national security information. (SEAD-4 ¶ C, *Applicability*).

³ ISCR Case No. 02-00305 at 3 (App. Bd. Feb. 12, 2003) (security clearance decisions must be based on current DOD policy and standards).

⁴ Unless otherwise indicated by citation to another part of the record, I extracted these facts from Applicant's SOR answer and her SCA (GE 1).

⁵ See also AX 5.

⁶ Tr. at 65-67. Applicant estimated those costs to be approximately \$6,000 to \$10,000.

she sought financial counseling to resolve her financial indebtedness and was advised to file bankruptcy.⁷

Applicant filed a Chapter 7 bankruptcy petition in February 2012, including credit-card debt totaling \$61,802, state tax debt totaling \$6,774 from tax years 2007, 2008, and 2011, and federal tax debt totaling \$64,727 from tax years 2007 through 2010. Her credit-card debt was discharged in May 2012 (SOR ¶ 1.a).⁸ In October 2011, the IRS filed a \$61,226 tax lien against Applicant. By April 2013, she was indebted to the IRS in the approximate amount of \$67,807 for tax years 2007 through 2010 (SOR ¶ 1.b).

Despite working diligently with State A to resolve her tax debt, State A garnished her bank account. By May 2012, Applicant resolved it through payments totaling approximately \$10,000.⁹ Between 2009 and 2013, Applicant worked with the IRS to address her debt, during which time it was placed in non-collectible status. In approximately 2015, when it was removed from non-collectible status, she resumed working with the IRS.¹⁰

Applicant paid \$22,471 to the IRS in March 2016 towards her debt for tax years 2007 and 2008. In July 2016, she filed paperwork requesting to repay her debt for tax years 2008, 2009, and 2010 in monthly installments of \$747. That same month, the IRS approved that request with payments to begin by automatic deductions from her checking account in August 2016. Those payments were paid timely through June 2017. As of July 2017, the balanced owed for tax years 2008 through 2010 was \$39,167. She does not owe a balance for tax years 2011 through present.¹¹

In March 2013, Applicant borrowed \$8,820 as a personal loan so that she could timely pay the IRS the taxes that she owed for tax year 2012. She repaid that loan in full by January 2016, over 2 years early. She timely paid \$250 each month beginning April 2013, which was more than the minimum due of \$166.¹² On a date not specified in the record, Applicant borrowed \$21,120 as a personal loan from which she made her March 2016 payments to the IRS. To repay this loan, she timely paid \$375 per month to her lender between April 2016 and July 2017.¹³ On a date not specified in the record, Applicant borrowed an amount not specified in the record as a consolidation loan to stay

⁷ GE 2 at p. 2; AX 17; Tr. at 19, 21-27, 40-41. Applicant attributed her tax debt to having insufficient funds to pay the taxes due on her 1099 income at the end of the tax year, despite efforts to set aside funds during the year to pay it.

⁸ GE 4; Tr. at 25-29.

⁹ GE 1 at p. 42; GE 2 at p. 2; AX 14; Tr. at 25, 27, 67-68

¹⁰ GE 1 at p. 42; AX 13; Tr. at p. 25, 56-57, 63-64

¹¹ AX 1, AX 7, and AX 8; Tr. at 28.

¹² AX 15 and AX 19.

¹³ AX 12 and AX 19.

current with her taxes and bills. As of July 2017, she owed \$2,151 on this loan and made advance payments sufficient to keep her current through April 2018.¹⁴

In 2005, Applicant accrued student loan debt totaling approximately \$145,233. She began repaying this debt in October 2013 in monthly installments of approximately \$600. In October 2015, they increased, through a graduated repayment schedule, to approximately \$957. Applicant timely made those payments through June 2017.¹⁵

Applicant earned an annual salary of \$42,000 to \$45,000 from 2002 through 2005, and the high \$50,000s to high \$70,000s from 2005 through 2013. Since 2013, her annual salary has increased from \$90,000 to \$130,000.¹⁶ Applicant currently lives within her means and is managing her finances responsibly.¹⁷ Applicant's character and work performance are highly regarded by her colleagues.¹⁸

Policies

Positions designated as ADP I and ADP II are classified as sensitive positions. 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 the interests of national security.¹⁹

When evaluating an applicant's eligibility for a position of trust to support a DOD contract, an administrative judge must consider the disqualifying and mitigating conditions in the AG.²⁰ These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies the guidelines in a commonsense manner, considering all available and reliable information, in arriving at a fair and impartial decision.

In addition to the guidelines, the Directive sets forth procedures that must be followed in trustworthiness adjudications. The Government must present evidence to establish controverted facts alleged in the SOR. Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. An applicant has the ultimate burden of

¹⁴ AX 3; Tr. at 31-32.

¹⁵ AX 9 and AX 10; Tr. at 25, 29-30. Although this debt was not alleged in the SOR, I will consider it to evaluate mitigation and whole person.

¹⁶ Tr. at 20-21; 45-46.

¹⁷ AX 2 and 3; Tr. at 31.

¹⁸ AX 4, AX 6 and AX 16.

¹⁹ Directive, § 3.2.

²⁰ Directive, Enclosure 2.

persuasion to establish their eligibility for a public trust position.²¹ 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 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 of potential, rather than actual, risk of compromise of sensitive information.

Analysis

Guideline F (Financial Considerations)

The concern under this guideline is set out in AG ¶ 18:

Failure 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds

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

Applicant's financial indebtedness and her failure to timely pay federal income taxes establish three disqualifying conditions under this guideline: AG ¶ 19(a) (inability to satisfy debts), AG ¶ 19(c) (a history of not meeting financial obligations), and AG ¶ 19(f) (failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required).

²¹ Directive, Enclosure 3, ¶¶ E3.1.14, E3.1.15.

The security concerns raised in the SOR have been mitigated by the following applicable factors:

AG ¶ 20(a): the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

AG ¶ 20(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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

AG ¶ 20(c): the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(g): the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant acted responsibly to address her delinquent debts, which were largely caused by circumstances beyond her control. She took action by filing bankruptcy to resolve her credit-card debt. Well before the issuance of the SOR and her background investigation interview, she resolved her state tax debt, began paying her student loan debt, and initiated action to resolve her federal tax debt. Applicant has established a meaningful track record of regular and timely payments on both her student loan and federal tax debts. Applicant received financial counseling and has managed her finances sensibly for well over three years. Given the circumstances under which she incurred her delinquent debt and failed to timely pay her taxes, and in light of the responsible manner in which she handled both issues, I conclude that Applicant's finances are under control.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall common sense judgment based upon careful consideration of the following guidelines, each of which is to be evaluated in the context of the whole person. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(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, and I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude that Applicant has mitigated the security concerns raised by her financial indebtedness and failure to timely pay her taxes. Accordingly, Applicant has carried her burden of showing that it is clearly consistent with the interests of national security to grant her eligibility for a public trust position.

Formal Findings

I make the following formal findings on the allegations in the SOR:

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

Subparagraphs 1.a – 1.b: For Applicant

Conclusion

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

Gina L. Marine
Administrative Judge