



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



In the matter of:

Applicant for Public Trust Position

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ADP Case No. 15-03713

Appearances

For Government: Charles Hale, Esq., Department Counsel

For Applicant: *Pro se*

07/28/2017

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department's intent to deny her eligibility for a public trust position. She presented sufficient evidence to establish that she is making a good-faith effort to repay overdue creditors. Accordingly, this case is decided for Applicant.

Statement of the Case

Applicant completed and submitted a Questionnaire for National Security Positions (SF 86 format) on August 6, 2013. Thereafter, on March 24, 2016, after reviewing the application and the information gathered during a background investigation, the Department of Defense Consolidated Adjudications Facility, Fort Meade, Maryland, sent Applicant a statement of reasons (SOR), detailing a trustworthiness concern under Guideline F for financial considerations. The SOR is similar to a complaint. She answered the SOR on June 29, 2016; she admitted the factual allegations; and she requested a hearing.

The case was assigned to me on August 17, 2016. The hearing was held as scheduled on December 8, 2016. Department Counsel offered Exhibits 1-5, and they

were admitted. Applicant testified on her own behalf and offered Exhibits A-H, and they were admitted. The hearing transcript (Tr.) was received on December 16, 2016.

The record was kept open until December 30, 2016, to provide Applicant an opportunity to submit additional documentation. She made a timely submission, and those matters are made part of the record, without objection, as Exhibits I, J, and K.

Procedural Matters

The SOR was erroneously drafted as if Applicant was seeking eligibility for access to classified information via a security clearance. Instead, she is seeking eligibility to occupy a position of public trust, which entails access to sensitive but unclassified information. At hearing, the SOR was amended without objections to correct three drafting errors, which included adding SOR ¶ 1.k.¹

Findings of Fact

Applicant is a 48-year-old referral-management specialist for a health-care contractor to the Defense Department. She has worked for the health-care company since September 2013, initially as a contract employee and then a regular, full-time employee.² She submitted letters of recommendation from co-workers and friends attesting to her job performance, reliability, trustworthiness, and good judgment.³ She requires eligibility to occupy a position of public trust for her job responsibilities. Eligibility is necessary because her job involves access to sensitive but unclassified information.

Applicant married in 1991 and divorced in 1997. She has two adults sons, ages 25 and 20. Both sons, as well as her former spouse, have served or are serving in the U.S. Marine Corps. As a result, she considers her current employment as an opportunity to give back to servicemembers and veterans. Her educational background includes a high school diploma and some college in an attempt to obtain a nursing degree.

Applicant has worked primary in the health-care field. Her employment history includes periods of unemployment and short-lived jobs. After her divorce, she worked as a laboratory technician during 1998-2006. She then worked as a health-unit coordinator during 2006-2008. She resumed working as a laboratory technician during 2008-2009, which ended in her termination. She was then unemployed from June 2009 to May 2010. She returned to work as a cash poster for a medical center for about three months in 2010, when she was laid off. She was then unemployed from May 2010 to November 2010. She returned to work as a customer-service representative for a

¹ Tr. 17-19.

² Tr. 58.

³ Exhibit H.

medical staffing company for about two months in 2010, when she resigned. She then had a part-time job at a donut shop for about three months in 2010-2011. She was then unemployed from January 2011 to April 2011. She returned to work at a children's hospital in a temporary job for about three months in 2011. She was then unemployed for about three months in 2011. She returned to work as a health-unit clerk in a correctional facility for about three months in 2011, but was terminated when she made an honest mistake on a patient's chart. She was then unemployed from November 2011 to September 2012. She worked as a prior-authorization clerk for about three months in 2012. She left that position in December 2012 for a job as a data-entry specialist for a retail pharmacy business. She was terminated from that job when she inadvertently left her computer unsecured. She was then unemployed from December 2012 until she began her current employment in about September 2013. She did not receive unemployment compensation following the terminations.

The SOR alleges a history of financial problems consisting of the following items: (1) student loan accounts in collection for a total of about \$55,000; (2) two delinquent child-support accounts for a total of about \$7,392 and an unsatisfied judgment for \$10,290 related to child support; and (3) a single charged-off account for \$869 and four collection accounts for a total of about \$4,525. Department Counsel conceded that that \$409 collection account in SOR ¶ 1.i is a duplication of the \$492 collection account in SOR ¶ 1.h.⁴ The SOR allegations are established by substantial evidence consisting of Applicant's admissions, testimony, and documentary evidence.⁵

Applicant candidly admitted her history of financial problems and that she did not handle those matters in the way an adult should handle such matters.⁶ She explained that she fell behind due to unemployment, which first occurred during 2009-2010. Since resuming full-time employment in 2013, she has worked hard and is committed to resolving her delinquent debts. To that end, she presented documentation for the items alleged in the SOR except for the single charged-off account.

Applicant's delinquent student loan accounts were transferred, sold, or consolidated with a single lender that services student loans.⁷ The documentation shows Applicant has four student loan accounts with outstanding principal of about \$55,000; the accounts were placed into forbearance in April 2016; and payments will resume in April 2017. Her plan is to contact the lender and attempt to lower the monthly payment and interest rate.⁸

⁴ Tr. 73-74.

⁵ Exhibits 2-5.

⁶ Tr. 43.

⁷ Exhibit D.

⁸ Tr. 48.

Concerning the child support, as Applicant's two sons are both adults, and the SOR allegations concern repayment of a child-support arrearage. The child support order was initially established in State M, but is collected via a reciprocal enforcement action in Applicant's state of residence. She explained that the unsatisfied judgment was obtained in State M in 2013, and it will be considered resolved when she completes repaying the arrearage.⁹ She presented documentation establishing that she has made consistent monthly payments on the arrearage since September 2014, paying a total of \$8,810 as of December 2016.¹⁰ She estimated the balance due on the arrearage is about \$3,600.¹¹

Applicant has worked to resolve the \$869 charged-off account in SOR ¶ 1.d.¹² She called the original creditor several times and learned that the debt had been sold. She eventually found the current owner of the debt, a law firm, and has been in contact with them. She was waiting for the law firm to provide her account information so she can address the debt.

Applicant presented documentation showing her efforts to resolve the three collection accounts with the same creditor in SOR ¶¶ 1.f, 1.g, and 1.h.¹³ She made payment arrangements with the creditor in April 2016 by agreeing to make monthly payments of about \$25. As of April 2016, the account balances were \$866, \$491, and \$924. As of December 2016, the balances were reduced to \$711, \$273, and \$824.

Applicant had a good command of the details of her overall financial situation.¹⁴ She described the specifics of her monthly rent, electric bill, gas bill, two credit card accounts, cell phone, groceries, auto, Internet and TV bill, etc. She presented documentation to establish that her electricity account, gas account, and two credit card accounts are in good standing.¹⁵ She stated that she lives within her means, that she learned the hard way that a budget is important, and that she is doing her best to make every payment she is obliged to make.

⁹ Tr. 45-46.

¹⁰ Exhibits A and I.

¹¹ Tr. 75-76.

¹² Tr. 44-45.

¹³ Exhibits E, F, and G.

¹⁴ Tr. 77-80.

¹⁵ Exhibits B, C, J, and K.

Law and Policy

This case is adjudicated under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Review Program* (Jan. 2, 1992), as amended (Directive); and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), effective June 8, 2017.

Discussion

Under Guideline F for financial considerations,¹⁶ 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. 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 classified or sensitive information.¹⁷

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.

In analyzing the facts of this case, I considered the following disqualifying and mitigating conditions:

AG ¶ 19(a) inability to satisfy debts;

AG ¶ 19(c) a history of not meeting financial obligations; and

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

The evidence supports a conclusion that Applicant has a problematic financial history sufficient to raise a concern under Guideline F. Applicant's history of financial struggles is long-standing, dating back to about 2009-2010, when she went through her first period of unemployment. As a result of her financial struggles, she was unable to satisfy her child-support obligation and defaulted on student loan accounts, both of which are the matters of most concern here. She has addressed both in a reasonable way. She has made consistent monthly payments on the child-support arrearage since

¹⁶ AG ¶¶ 18, 19, and 20 (setting forth the concern and the disqualifying and mitigating conditions).

¹⁷ AG ¶ 18.

September 2014, repaying nearly \$9,000 to date. She had her student loan accounts placed into forbearance and has a realistic plan to address them when they come out of forbearance. She is also in the process of resolving the charged-off account and the three collection accounts, none of which involve large sums of money. She presented substantial documentation showing that she initiated and is adhering to a good-faith effort to pay or settle what she owes to her various creditors. Her documentation shows she is making reasonable progress in resolving her financial problems within her limited financial means. Overall, I was impressed by Applicant's efforts, given her means, and I am persuaded that she will be financially responsible going forward.

To conclude, Applicant's history of financial problems no longer creates doubt and concern about her reliability, trustworthiness, good judgment, and ability to protect sensitive information. 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 also gave due consideration to the whole-person concept. For all these reasons, I conclude Applicant presented sufficient information to explain and mitigate the trustworthiness concern.

Formal Findings

The formal findings on the SOR allegations are:

Paragraph 1, Guideline F:	For Applicant
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Subparagraphs 1.a-1.k:	For Applicant
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Conclusion

In light of the record as a whole, it is clearly consistent with the interests of national security to grant Applicant eligibility for access to sensitive information.

Michael H. Leonard
Administrative Judge