



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



In the matter of:

Applicant for Trustworthiness Position

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ADP Case No. 15-03904

Appearances

For Government: Benjamin R. Dorsey, Esq., Department Counsel
For Applicant: *Pro se*

09/01/2017

Decision

Curry, Marc E., Administrative Judge:

Although Applicant's financial problems were caused largely by circumstances beyond her control, she failed to provide enough evidence to carry her burden of proving that she was in the process of resolving her financial problems. Applicant's application for eligibility to occupy an automated data processing (ADP) position is denied.

Statement of the Case

On January 20, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F, financial considerations, explaining why it was unable to find Applicant eligible to occupy an ADP position. The DOD CAF took the action under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG) effective within the DOD on September 1, 2006.

On February 12, 2016, Applicant answered the SOR allegations, admitting all of the allegations, and requested a decision based on the administrative record instead of a

hearing. On May 4, 2016, Department Counsel prepared a File of Relevant Material (FORM). Applicant received the FORM on May 12, 2016, and filed a response on June 5, 2016. The case was assigned to me on March 21, 2017. On July 14, 2017, I re-opened the record, extending it to July 21, 2017, to afford Applicant the opportunity to submit additional exhibits. Applicant did not submit any additional exhibits, and I closed the record on July 21, 2017.

While this case was pending a decision, Security Executive Agent Directive 4 was issued establishing National Security Adjudicative Guidelines (AG) applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The AG supersede the adjudicative guidelines implemented in September 2006 and are effective for any adjudication made on or after June 8, 2017. Accordingly, I have adjudicated Applicant's eligibility to occupy an ADP position under the new AG.¹

Findings of Fact

Applicant is a 53-year-old married woman with three adult children. She graduated from high school in 1981, served in the U.S. Navy from 1986 to 1994, when was honorably discharged, and earned a bachelor's degree in 2012. (Item 3 at 9-10) Since 2013, she has worked for a federal government contractor as a document merger.

Applicant has incurred approximately \$16,500 of delinquent debt. Her financial problems stem from a 16-month period of unemployment from March 2012 to July 2013. (Item 3 at 11) In Applicant's SOR answer in February 2016, she promised to begin making payments by March 2016 toward the satisfaction of the debts alleged in subparagraphs 1.a, 1.b, 1.d, 1.e, 1.m, 1.o, and 1.p, totaling approximately \$8,100, and to begin making payments toward the satisfaction of the debt alleged in subparagraph 1.c in May 2016. (Item 2 at 2-3) In addition, she contended that she had paid the debt alleged in subparagraph 1.i, totaling \$537, through monthly payments. She provided no substantiating evidence. It was unclear from her answer what plans, if any, she had established for satisfying the debts alleged in subparagraphs 1.f - 1.k, and subparagraphs 1.n and 1.q.

In Applicant's response to the FORM, she provided proof that she paid the debts alleged in subparagraphs 1.c, 1.h, 1.j, and 1.n. These debts total \$2,930. Also, she provided proof that she paid two unlisted debts, totaling \$1,652. She did not provide any evidence either supporting her contention that she had paid subparagraph 1.i, or that she had initiated any payment plans towards the satisfaction of the other debts.

Policies

When evaluating an applicant's eligibility for access to sensitive information, the administrative judge must consider the adjudicative guidelines. In addition to brief

¹ Application of the AGs that were in effect as of the issuance of the SOR would not change my decision in this case.

introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. 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 making a decision.

In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. 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 decision. 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(d).²

Ruling of Evidence

Item 4 is a Report of Investigation (ROI) summarizing Applicant's Personal Subject Interview conducted on December 16, 2014. Such reports are inadmissible without authenticating witnesses. Directive ¶ E3.1.20. Consequently, I have not considered this document in my disposition of this case.

Analysis

Guideline F, Financial Considerations

The trustworthiness concerns about financial considerations are set forth 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

² The factors under AG ¶ 2(d) 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.

questions about an individual's reliability, trustworthiness and ability to protect classified or sensitive information. . . . An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant's SOR delinquencies trigger the application of disqualifying conditions AG ¶ 19(a), "inability to satisfy debts," AG ¶ 19(b), "unwillingness to satisfy debts regardless of ability to do so," and AG ¶ 19(c), "a history of not meeting financial obligations."

The following mitigating conditions are potentially applicable:

AG ¶ 20(a) 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 person has received or is receiving 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; and

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

Applicant's financial problems stemmed from a lengthy period of unemployment between March 2012 and July 2013. Since then, she has begun paying her debts. To date, she has satisfied the SOR debts alleged in subparagraphs 1.c, 1.h, and 1.j, and 1.n, totaling \$2,930, and she has satisfied several unlisted debts totaling \$1,782. This is sufficient for me to resolve the aforementioned subparagraphs in her favor, and to conclude that AG ¶ 20(b) and AG ¶ 20(d) apply.

Applicant has the burden of proof to establish that her bills are either paid or being paid. In her answer, she contended that she had either satisfied or was about to begin making payments towards the satisfaction of seven SOR debts totaling approximately \$8,100. Her response to the FORM, filed six months after her answer, contains no proof that she has either satisfied, or has begun making payments, as promised. When afforded the opportunity to provide substantiating evidence when I re-opened the record, she failed to do so. Consequently, absent any supporting documentation, I cannot conclude that these remaining SOR debts have been resolved, and given that the total of unresolved SOR debts and the number of debts of uncertain status is nearly four times greater than the amount of satisfied SOR debts, I cannot conclude that her financial problems are being

resolved, or are under control. AG ¶¶ 20(a) and 20(c) do not apply. Applicant has not mitigated the financial considerations trustworthiness concerns.

Whole-Person Concept

Applicant's financial problems were caused largely by circumstances beyond her control. However, she did not submit enough evidence for me to gauge whether her financial problems were under control. Under these circumstances, she has failed to demonstrate that she has reduced the likelihood that her financial problems will continue.

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:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a – 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraphs 1.d – 1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	For Applicant
Subparagraphs 1.k – 1.m:	Against Applicant
Subparagraph 1.n:	For Applicant
Subparagraphs 1.o – 1.p:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national security to grant Applicant eligibility for access to sensitive information. Applicant's application to work in an ADP position is denied.

Marc E. Curry
Administrative Judge