



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



In the matter of:)	
)	
[REDACTED])	ADP Case No. 15-05328
)	
Applicant for Public Trust Position)	

Appearances

For Government: Candace L. Garcia, Esq., Department Counsel
For Applicant: *Pro se*

06/02/2017

Decision

MARINE, Gina L., Administrative Judge:

This case involves trustworthiness concerns raised under Guideline F (Financial Considerations). Eligibility for access to sensitive information is denied.

Statement of the Case

Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) on December 5, 2014. On February 22, 2016, 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

Applicant answered the SOR on March 21, 2016, and requested a decision on the record without a hearing. Department Counsel submitted the Government's written case on July 6, 2016. On July 7, 2016, a complete copy of the file of relevant material (FORM) was sent to Applicant (including documents identified as Items 1 through 6),

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.")

who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. She received the FORM on July 12, 2016, and did not respond. Items 1 and 2 are the pleadings in the case. Items 3 through 5 are admitted into evidence. The case was assigned to me on May 18, 2017.

Findings of Fact²

Applicant is 28 years old and has never been married. Applicant has one child, age four. She has no contact with her child's father and does not receive child support.³ She received several certifications while enrolled in a job program between 2008 and 2009 (school A), an associate's degree in 2011 (school B), and another certification in 2014 (school C). She took courses via an online college in 2007 (school D), but did not complete the program.

Applicant has been employed full time by her current employer since November 2014. After relocating to return home, she was unemployed from October 2013 through November 2014. During this time period, she received government assistance. She was also unemployed from January 2012 through April 2012.⁴

The SOR alleges 14 delinquent debts in collection status totaling \$34,083, which are corroborated by Applicant's credit reports.⁵ They include six federal student-loan accounts totaling \$28,773 (SOR ¶¶ 1.i through 1.n), six medical accounts totaling \$4,220 (SOR ¶¶ 1.c through 1.h), a \$631 school tuition account (SOR ¶ 1.a), and a \$459 utility account (SOR ¶ 1.b). In her SOR answer, Applicant admits to all but one (SOR ¶ 1.a) of the debts alleged. She attributes these debts to unemployment and not having medical insurance.

Applicant was enrolled at school D in 2007. In 2008, Applicant received a \$631 tuition bill for a class in which she was enrolled. Applicant disputes the bill on the basis that she did not receive the course materials for the class. She communicated this dispute to school D in 2008. As of December 2014, school D had placed the delinquent account for collection in the amount of \$631 (SOR ¶ 1.a).⁶ Applicant did not provide any documents to substantiate the basis of her dispute. Aside from stating in her SOR answer that she was "in the process of trying to get help with [removing this debt from her credit report]," there is no evidence in the record of any action taken by Applicant since 2008 to resolve this debt.

² I extracted these facts from Applicant's answer to the SOR (Item 2) and the e-QIP (Item 3), unless otherwise indicated by citation to another item in the record.

³ See also Item 4. Because Applicant did not respond to the FORM and affirmatively waive any objection to Item 4, I will consider only those facts in Item 4 that are not adverse to the Applicant unless they are contained in other evidence or based upon Applicant's admissions in her answer.

⁴ See also Item 4.

⁵ Items 5 and 6.

⁶ Item 5.

Applicant borrowed approximately \$25,000 between 2010 and 2011 to help pay her tuition at school B. As of December 2014, six federal student loan accounts totaling \$28,773 had been placed for collection (SOR ¶¶ 1.i through 1.n). As of July 2016, this balance increased to \$28,860.⁷ She made one payment of \$3,000 in April 2014, but otherwise did not take action to resolve her student-loan debts.⁸ In 2014, 2015, and 2016, all or part of three of her federal tax refunds were applied to these debts in an amount totaling \$5,762. Without providing any documentation, Applicant claims in her SOR answer that she is in the process of trying to consolidate these loans.

Applicant received medical care at two different hospitals in 2009, 2011, and 2012. Applicant did not have medical insurance until 2012.⁹ As of December 2014, six medical accounts totaling \$4,220 were placed for collection (SOR ¶¶ 1.c through 1.h).¹⁰ Despite her March 2015 promise to pay these medical debts once she became employed, Applicant stated in her SOR answer that she had not made any progress on resolving them or the debt alleged in SOR ¶ 1.b. A new \$902 medical collection account appeared on her July 2016 credit report.¹¹

The record contains no evidence that Applicant has either sought or received any credit counseling. In her SOR answer, Applicant included a copy of her budget from January through March 2016. It showed a shortfall in January and March. She also provided a copy of her earnings statements for pay periods ending in February and March 2016. The record is otherwise silent as to specific details about her relevant income and expense history and any specifics concerning the financial impact that her past or present circumstances have had on her ability to pay her delinquent debt.

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.¹²

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

⁷ Item 6.

⁸ Item 4.

⁹ See *also* Item 4.

¹⁰ Item 5.

¹¹ Because this debt was not alleged in the SOR, I consider it only for the purpose of evaluating mitigation.

¹² Directive, § 3.2.

conditions in the AG.¹³ 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 persuasion to establish their eligibility for a public trust position.¹⁴ 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 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

Applicant’s admissions, corroborated by her credit bureau reports, 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”).

¹³ Directive, Enclosure 2.

¹⁴ Directive, Enclosure 3, ¶¶ E3.1.14, E3.1.15.

The security concerns raised in the SOR may be mitigated by any of the following potentially 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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

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 individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(e): the individual 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 substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

AG ¶ 20(a) is not established. Applicant's numerous delinquent debts have persisted for more than two years since she regained full-time employment and remain unresolved.

AG ¶ 20(b) is not established. Applicant's unemployment and lack of medical insurance were circumstances beyond her control. However, Applicant has failed to meet her burden to show that she acted responsibly in light of those circumstances.

AG ¶ 20(c) is not established. Applicant has not received any financial counseling and her debts remain unresolved. Therefore, I cannot conclude that her financial problems are under control.

AG ¶ 20(d) is not established. Applicant is credited with making a payment on her federal student loans in 2014. However, resolution of her student-loan debt via an offset of her federal income tax refunds does not constitute good-faith effort.

AG ¶ 20(e) is not established. While Applicant expressed a reasonable basis to dispute the debt alleged in SOR ¶ 1.a, she did not provide documented proof to substantiate the basis of the dispute or evidence of actions to resolve the issue.

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 public trust position 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, and I have considered the factors AG ¶ 2(a). 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 not mitigated the trustworthiness concerns raised by her financial indebtedness. Accordingly, I conclude she has not 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): AGAINST APPLICANT

Subparagraphs 1.a – 1.n: Against Applicant

Conclusion

I conclude that it is not clearly consistent with the interests of national security to grant Applicant eligibility for a public trust position. Eligibility for a public trust position is denied.

Gina L. Marine
Administrative Judge