



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



In the matter of:

Applicant for Public Trust Position

)
)
)
)
)

ADP Case No. 15-05517

Appearances

For Government: Jeff A. Nagel, Esq., Department Counsel

For Applicant: *Pro se*

03/31/2017

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department's intent to deny or revoke her eligibility for a public trust position. She produced sufficient evidence to explain, extenuate, or mitigate the concern stemming from two delinquent student loan accounts for which she cosigned for a nephew. 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 January 14, 2015. About one later on March 11, 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. The action was taken under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Review Program* (Jan. 2, 1992), as amended (Directive); Department of Defense Regulation 5200.2-R, *Personnel Security Program* (Jan. 1987), as amended (Regulation); and the adjudicative guidelines (AG)

implemented by the DOD on September 1, 2006.¹ She answered the SOR by admitting the allegations and providing a one-page memorandum in explanation.

Neither Applicant nor Department Counsel requested a hearing, and so the case will be decided on the written record. On May 23, 2016, Department Counsel submitted all relevant and material information that could be adduced at a hearing.² The file of relevant material (FORM) was mailed to Applicant, who received it on June 1, 2016. She replied to the FORM on July 26, 2016, with documentation concerning the student loans, and those matters are made part of the record as Exhibit A. The case was assigned to me on March 24, 2017.

Procedural Matters

Department Counsel's FORM includes Exhibit 3, which is a report of investigation (ROI) summarizing Applicant's interview that took place during the April 2015 background investigation. The ROI is not authenticated as required under ¶ E3.1.20 of the Directive.³ Department Counsel's written brief includes a footnote advising Applicant that the summary was not authenticated and that failure to object may constitute a waiver of the authentication requirement. Nevertheless, the record does not demonstrate that Applicant understood the concepts of authentication, waiver, and admissibility. It also does not demonstrate that she understood the implications of waiving an objection to the admissibility of the ROI. Accordingly, Exhibit 3 is inadmissible and I have not considered the information in the ROI.

Findings of Fact

Applicant is a 61-year-old customer service representative for a health-care contractor to the Defense Department. She has worked for this company since 2002. She is seeking to obtain 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.

The SOR allegations are limited to two student loan accounts that were charged off in the amounts of about \$17,668 and \$28,635, respectively. The SOR allegations are established by Applicant's admissions and explanations as well as credit reports from January 2015 and February 2016.⁴ In addition, the credit reports reflect joint contractual

¹ The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines in Enclosure 2 to the Directive.

² The file of relevant material consists of Department Counsel's written brief and supporting documentation, some of which are identified as evidentiary exhibits in this decision.

³ See *generally* ISCR Case No. 12-10933 (App. Bd. Jun. 29, 2016) (In a concurring opinion, Judge Ra'anani notes the historical concern about reports of investigation in that they were considered by some to present a heightened problem in providing due process in security clearance cases. Judge Ra'anani raises a number of pertinent questions about using an unauthenticated ROI in a non-hearing case with a *pro se* applicant.).

⁴ Answer to SOR; Exhibits 4 and 5.

liability on the student loan accounts. Other than the two student loan accounts, the credit reports do not reflect any past-due accounts.

In her answer to the SOR, Applicant explained the following circumstances surrounding the two delinquent student loan accounts: (1) she cosigned the loans for her nephew who assured her that she would not have to worry about the loans, but she has since learned that he has not made payments since 2011; (2) she contacted the creditor to make payment arrangements; (3) she learned that her nephew is in jail and cannot assist her with the payments; and (4) she stated that she has been a dedicated employee for the last 14 years or so. In her reply to the FORM, she provided documentation showing that in April 2016 both loans were settled for lesser amounts and that she would be issued IRS forms 1099-C for the 2016 tax year.⁵

Discussion

Under Guideline F for financial considerations,⁶ 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 a [person's] reliability, trustworthiness, and ability to protect [sensitive] information.⁷

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 or factors:

AG ¶ 19(a) inability or unwillingness to satisfy debts;

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

AG ¶ 20(b) the conditions that resulted in the financial problems were largely beyond the person's control (e.g., loss of employment, a business

⁵ Exhibit A.

⁶ AG ¶¶ 18, 19, and 20 (setting forth the concern and the disqualifying and mitigating conditions).

⁷ AG ¶ 18.

downturn, unexpected medical emergency, or a death, divorce, or separation), and the [person] acted responsibly under the circumstances;

AG ¶ 20(c) [t]here are clear indications that the problem is being resolved or is under control; and

AG ¶ 20(d) the [person] initiated 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 security concern under Guideline F. She incurred joint contractual liability on two student loans when she cosigned the loans for her nephew. Her nephew then defaulted on the loans, a circumstance she was unaware of until this process commenced. She has since taken reasonable and responsible action to address the delinquent loans, which resulted in settlements for lesser amounts. She will be required to address the phantom income as reflected in IRS forms 1099-C when she files her income tax returns for tax year 2016. These circumstances show that she has acted in good faith to address the delinquent student loan accounts, and that the problem has been resolved and is under control.

To conclude, the record evidence leaves me with no doubt or concern about Applicant's eligibility and suitability for a public trust position. 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 produced 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 |
|---------------------------|---------------|

| | |
|-------------------|---------------|
| Subparagraph 1.a: | For Applicant |
|-------------------|---------------|

| | |
|-------------------|---------------|
| Subparagraph 1.b: | For Applicant |
|-------------------|---------------|

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