



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



In the matter of:)
)
 [REDACTED]) ADP Case No. 15-05554
)
 Applicant for Public Trust Position)

Appearances

For Government: Caroline E. Heintzelman, Esq., Department Counsel
For Applicant: *Pro se*

03/28/2017

Decision

HESS, Stephanie C., Administrative Judge:

This case involves trustworthiness concerns raised under Guideline F (Financial Considerations.) Applicant incurred delinquent debt as a result of her 2009 divorce, however, she acted responsibly under the circumstances. Eligibility for access to sensitive information is granted.

Statement of the Case

Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) on September 22, 2014. On February 23, 2016, the Department of Defense (DOD) sent her a Statement of Reasons (SOR), citing trustworthiness concerns under Guideline F. The DOD acted under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); DOD Regulation 5200.2-R, *Personnel Security Program* (January 1987), as amended (Regulation); and the adjudicative guidelines (AG) implemented by DOD on September 1, 2006.

Applicant received the SOR, submitted her Answer on March 11, 2016, and requested a decision on the record without a hearing. Department Counsel submitted the Government's written case on April 27, 2016. A complete copy of the file of relevant

material (FORM), which included Government Exhibits (GX) 1 through 7, was sent to Applicant on May 2, 2016. She was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. She received the FORM on May 10, 2016. DOHA received her Response on June 6, 2016, which was admitted to the record without objection. The case was assigned to me on February 10, 2017.

On February 22, 2017, I reopened the record until March 10, 2017, to permit Applicant to submit additional information. On March 9, 2017, she submitted a statement and an additional document via electronic mail which I admitted to the record, without objection, as Applicant Exhibits (AX) A and B.

Findings of Fact

The SOR alleges 30 delinquent debts totaling approximately \$12,700. These debts include: ten medical debts totaling \$2,240; three judgments totaling \$2,574; and several credit-card and cell phone debts. In her Answer, Applicant wrote "I admit" next to each allegation on a copy of the SOR. However, she also attached an explanatory statement and a list describing the repayment status of each SOR debt. The list also included denials of several of the SOR debts. Her admissions, as modified, are incorporated in my findings of fact.

Applicant is a 45-year-old employee of defense contractor for which she has worked since November 2001. She graduated High School in May 1989. She married in 1994 and divorced in 2009. She has two children, ages 19 and 15. She has held a DOD position of trust since 2005. (GX 3.)

Applicant's financial problems arose after her divorce. As part of the divorce settlement, the marital debts were divided between Applicant and her husband. Since the divorce, Applicant has "tried [her] best to stay on top of [her] finances . . ." but has not always been able to do so. (Answer.) Additionally, Applicant was unaware of several delinquent accounts until her personal subject interview (PSI) in December 2014. (GX 4.)

Applicant filed Chapter 13 bankruptcy in early March 2017, with monthly payments to begin on April 30, 2017. She included all her remaining debts in the bankruptcy. She also completed the required credit counseling. (AX A; AX B.) Prior to filing bankruptcy, she had paid or was in repayment plans with the following SOR creditors:

¶ 1.a - \$1,502 judgment - \$80 a month – balance as of March 2016 - \$353;

¶ 1.b - \$674 judgment - satisfied in August 2013 (GX 5; GX 6);

¶ 1.c - \$398 judgment – paid in full November 2011;

¶ 1.k - \$501 cash advance – paid \$200 in February 2016, making payments;

¶¶ 1.n and 1.cc - \$431 and \$318 credit union accounts – paid in 2001;

¶ 1.r - \$179 debt owed to high school – paid by ex-husband;

¶ 1.dd - \$798 past due vehicle loan – account is current. (Answer.)

Applicant is also disputing the following accounts with the credit reporting agencies:

¶¶ 1.n and 1.cc – disputing as paid;

¶ 1.r – disputing as paid;

¶¶ 1.s, 1.v, 1.aa, and 1.bb – disputing as current with \$0 past due balances. (Answer.)

The debts totaling \$2,240 alleged in SOR ¶¶ 1.i, 1.o-q, 1.t, 1.u, and 1.w-z, are medical debts for her children’s care. Applicant and her husband have been making payments on these debts. (Answer.)

Applicant contacted several of her creditors to arrange repayment plans prior to her PSI in December 2014. Applicant has not incurred any delinquent debt since 2013, and the majority of her debt was incurred in 2010. She currently lives within her means. (GX 5; GX 6.) Her statements concerning the circumstances that led to her indebtedness and the steps she has taken to resolve her delinquent accounts, including her recent bankruptcy filing, are straightforward and credible. (Answer; AX A.)

Policies

Positions designated as ADP I and ADP II are classified as “sensitive positions.” Regulation ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3. The standard that must be met for assignment to sensitive duties is that 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.” Regulation ¶ C6.1.1.1. Department of Defense contractor personnel are entitled to the procedural protections in the Directive before any final unfavorable access determination may be made. Regulation ¶ C8.2.1.

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. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard sensitive information.

When evaluating an applicant’s suitability for a public trust position, the administrative judge must consider the disqualifying and mitigating conditions in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the

whole person. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

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 Government must present substantial evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). An applicant has the ultimate burden of demonstrating that it is clearly consistent with national security to grant or continue eligibility for a public trust position.

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.

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

Applicant's admissions, corroborated by the record evidence, 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").

However, a person can mitigate concerns raised by his or her financial circumstances by establishing one or more of the mitigating conditions listed under the guideline. The relevant mitigating conditions in this case are:

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; and

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

Applicant's financial difficulties arose due to circumstances largely beyond her control, specifically her divorce in 2009. She also incurred \$2,240, nearly 20% of her total debt, in medical debt for her children's care. She initially acted responsibly under the circumstances by not incurring any significant delinquent debt since 2010, by contacting many of her creditors prior to her background investigation to arrange repayment plans, by paying a number of her debts, and by entering repayment plans for several accounts. She has recently chosen to resolve her remaining debts by filing Chapter 13 bankruptcy, which is reasonable given her circumstances. She has completed the requisite credit counseling.

Overall, Applicant has acted in good faith to resolve her delinquent accounts. "Good faith" means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. ISCR Case No. 99-0201, 1999 WL 1442346 at *4 (App. Bd. Oct. 12, 1999). A [trustworthiness] adjudication is an evaluation of an individual's judgment, reliability, and trustworthiness. It is not a debt-collection procedure. ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010.) A person is not required to establish resolution of every debt alleged in the SOR. He or she need only establish a plan to resolve financial problems and take significant actions to implement the plan. The adjudicative guidelines do not require that an individual make payments on all delinquent debts simultaneously, nor do they require that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

Applicant has established a plan to resolve her remaining debts and has established a sufficient track record of debt resolution. AG ¶¶ 20(a) through 20(d) apply.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a position of trust 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 position of trust 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. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but I have also considered the following:

Applicant has worked as a federal contractor since 2001, and has held a position of trust since 2005. She lives within his means, has not incurred any recent delinquent debt, and has been actively working to resolve her delinquent debts for several years. I am confident that Applicant will continue her good-faith efforts to resolve her remaining delinquent debts.

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 mitigated the trustworthiness concerns raised by her delinquent debts.

Formal Findings

As required by section E3.1.25 of Enclosure 3 of the Directive, I make the following formal findings on the allegations in the SOR:

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

Subparagraphs 1.a – 1.dd:

For Applicant

Conclusion

I conclude that it is clearly consistent with the interest of national security to continue Applicant's eligibility for a public trust position. Eligibility for access to sensitive information is granted.

Stephanie C. Hess
Administrative Judge