



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



In the matter of:)	
)	
[Redacted])	ADP Case No. 15-06259
)	
Applicant for Public Trust Position)	

Appearances

For Government: Gina Marine, Esq., Department Counsel
For Applicant: *Pro se*

02/14/2017

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves trustworthiness concerns raised under Guideline F (Financial Considerations). Eligibility for a public trust position is denied.

Statement of the Case

Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) on February 5, 2015. On February 10, 2016, the Department of Defense (DOD) sent her a Statement of Reasons (SOR), citing trustworthiness concerns under Guideline F. 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. The guidelines are codified in 32 C.F.R. § 154, Appendix H (2006), and they replace the guidelines in Appendix 8 of the Regulation.

Applicant answered the SOR on March 9, 2016, and requested a decision on the record in lieu of a hearing before an administrative judge. Department Counsel submitted the Government's written case on April 13, 2016, and a complete copy of the file of relevant material (FORM) was sent to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's

evidence. The FORM consisted of Department Counsel's statement of the case, along with the SOR (Item 1); Applicant's answer to the SOR (Item 2); her e-QIP (Item 3); an unauthenticated summary of a personal subject interview (PSI) conducted by a security investigator on May 21, 2015 (Item 4)¹; a credit bureau report (CBR) dated February 14, 2015 (Item 5); and an affidavit from Applicant dated November 30, 2004 (Item 6.) She received the FORM on May 13, 2016, and she responded on the same day by submitting extracts from her Equifax and Experian CBRs dated February 27, 2016, and documentary evidence that the medical debt alleged in SOR ¶ 1.d was paid in full. Her response to the FORM was added to the record as Item 7, without objection by Department Counsel. The record closed on May 27, 2016. The case was assigned to me on February 2, 2017.

Findings of Fact²

Applicant admitted the allegations in SOR ¶¶ 1.d, 1.f, and 1.g in her answer to the SOR. She denied the allegations in SOR ¶¶ 1.a-1.c and 1.e. Her admissions are incorporated in my findings of fact.

Applicant is a 51-year-old file specialist employed by a federal contractor since May 1994. She graduated from high school in June 1963 and has no formal education beyond high school. She has never married. She has three adult children, ages 39, 33 and 30. She was cleared for a public trust position in August 2004.³

When Applicant submitted her e-QIP, she disclosed a deficiency of \$9,435 after a vehicle was repossessed and seven small medical debts that she attributed to misunderstanding her co-pay obligations. The SOR alleges the deficiency after repossession (SOR ¶ 1.e); a \$259 debt to an insurance company (SOR ¶ 1.g); and five delinquent medical debts for \$137 (SOR ¶ 1.a), \$68 (SOR ¶ 1.b), \$69 (SOR ¶ 1.c), \$155 (SOR ¶ 1.d), and \$168 (SOR ¶ 1.f). The debts are reflected in her CBR from February 2014 (Item 5.) The evidence concerning the debts alleged in the SOR is summarized below.

SOR ¶¶ 1.a-1.d and 1.f: medical debts for \$137, \$68, \$69, \$155, and \$168. In the May 2015 PSI, Applicant told the investigator that she was unaware of her obligation to make co-payments on her medical debts and thought that they were covered in full

¹ Department Counsel informed Applicant that she was entitled to comment on the accuracy of Item 4; make corrections, additions, deletions, or updates; or object to the lack of authentication. I have treated her failure to object to Item 4 or offer any comments about its accuracy as a waiver of any objections to it. See ISCR Case No. 12-10810 at 2 (App. Bd. Jul. 12, 2016) ("Although *pro se* applicants are not expected to act like lawyers, they are expected to take timely and reasonable steps to protect their rights under the Directive.").

² Applicant's personal information is extracted from her e-QIP (Item 3) unless otherwise indicated by a parenthetical citation to the record.

³ Applicant's e-QIP reflects that she was cleared for a public trust position in August 2004. (Item 3 at 26.) However, the evidence in the DOD CAF file reflects that she was questioned about her delinquent debts in November 2004 and submitted an affidavit discussing them. (Item 6.) It is not clear from the record whether the information in her e-QIP is incorrect or financial concerns arose after she was cleared.

by her medical insurance. All the medical debts appear to have been for routine medical visits and not for emergency care. Applicant submitted no evidence of payments on the medical debts alleged in SOR ¶¶ 1.a-1.c. The debts alleged in SOR ¶¶ 1.b and 1.c were referred for collection in August 2008 and were deleted from her CBRs in about August 2015, in accordance with the Fair Credit Reporting Act.⁴ In her answer to the SOR and response to the FORM, Applicant submitted documentary evidence that the debt alleged in SOR ¶ 1.d was paid in full. She also submitted documentary evidence of a \$45 payment on the debt in SOR 1.f in March 2016 and a \$78 payment in April 2016, corroborating her statement that she had a payment agreement for this debt.

SOR ¶ 1.e: deficiency after vehicle repossession (\$9,435). Applicant opened this account in May 2006. In the May 2015 PSI, Applicant told an investigator that she fell behind on her vehicle payments in 2009 because she used her available funds to pay for utilities and higher priority debts, and the vehicle was repossessed and sold. She was contacted by the creditor in 2014, who demanded payment of the deficiency in full. She told the investigator she intended to contact the creditor in June 2015 and try to arrange a payment agreement. The deficiency was charged off and the debt was sold in August 2010. The debt is not resolved.

SOR ¶ 1.g: insurance company debt for \$259. Applicant admitted this debt in her answer to the SOR and response to the FORM. She asserted that the debt was paid in full by electronic check and she provided check numbers, but she submitted no documentation of payment. The debt is not reflected in the February 2016 CBR submitted by Applicant. It was referred for collection in December 2014, less than seven years preceding this CBR, and the absence of this debt from this CBR indicates that the debt was resolved.

Applicant has been employed by the same employer since May 2004, and she apparently has experienced financial problems for many years. She was questioned about her delinquent debts in November 2004, and she admitted three delinquent credit-card accounts, a delinquent personal loan, two delinquent medical debts, and a delinquent telecommunications account. At the time of the November 2004 interview, her expenses exceeded her income by about \$117 per month.⁵ (Item 6.)

In Applicant's answer to the SOR and in response to the FORM, she submitted no evidence of the quality of her performance or testimonials from co-workers or

⁴ Under the Fair Credit Reporting Act, a credit report may not list accounts placed for collection, charged off debts, or civil judgments that antedate the credit report by more than seven years, or until the statute of limitations has run, whichever is longer. The exceptions to this prohibition do not apply to these debts. 10 U.S.C. § 1681c.

⁵ The delinquent debts disclosed in the November 2004 affidavit were not alleged in the SOR and may not be the basis for denying her application to continue her eligibility for a public trust position. However, conduct not alleged in the SOR may be considered to assess an applicant's credibility; to decide whether a particular adjudicative guideline is applicable; to evaluate evidence of extenuation, mitigation, or changed circumstances; to consider whether an applicant has demonstrated successful rehabilitation; or as part of a whole-person analysis. ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006). I have considered Item 6 for these limited purposes.

supervisors. She provided no information about her current monthly income, circumstances that may have made her unable to meet her financial obligations, and no evidence of credit counseling.

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.

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 [sensitive] 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 a person might knowingly compromise sensitive information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting sensitive information. A person 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 and her February 2015 CBR 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"). The following mitigating conditions under this guideline are potentially applicable:

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 delinquent debts are recent, numerous, and were not incurred under circumstances making them unlikely to recur.

AG ¶ 20(b) is not established. Applicant has provided minimal information about her financial circumstances and has provided no evidence that her financial problems were caused by conditions largely beyond her control.

AG ¶ 20(c) is not established. Applicant presented no evidence of financial counseling and insufficient evidence to constitute “clear indications” that her financial problems are under control.

AG ¶ 20(d) is established for the debts alleged in SOR ¶¶ 1.d, 1.f, and 1.g, which have been paid or are being paid. It is not established for the debts in SOR ¶¶ 1.a-1.c and 1.e.

AG ¶ 20(e) is not established. Although Applicant claimed that some of the debts alleged in the SOR were paid, she has not disputed their validity.

Whole-Person Analysis

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 considered the factors in AG ¶ 2(a). Because Applicant requested a determination on the record without a hearing, I had no opportunity to evaluate her credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003). 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 delinquent debts. Accordingly, I conclude she has not carried her burden of showing that it is clearly consistent with national security to continue her eligibility for a public trust position.

Formal Findings

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

Subparagraphs 1.a-1.c:

Against Applicant

Subparagraph 1.d:

For Applicant

Subparagraph 1.e:

Against Applicant

Subparagraphs 1.f-1.g:

For Applicant

Conclusion

I conclude that it is not clearly consistent with national security to continue Applicant's eligibility for a public trust position. Eligibility for a public trust position is denied.

LeRoy F. Foreman
Administrative Judge