



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



In the matter of:)	
)	
[REDACTED])	ADP Case No. 15-06755
)	
Applicant for Public Trust Position)	

Appearances

For Government: Charles C. Hale, Esq., Department Counsel
For Applicant: *Pro se*

06/05/2017

Decision

HESS, Stephanie C., Administrative Judge:

Applicant experienced circumstances largely beyond her control that caused her financial issues, but mitigated the trustworthiness concerns raised under Guideline F (Financial Considerations). Eligibility for access to sensitive information is granted.

Statement of the Case

Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) on November 8, 2014. On March 4, 2016, the Department of Defense (DOD) sent her a Statement of Reasons (SOR), alleging 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); and the adjudicative guidelines (AG) implemented by DOD on September 1, 2006.

Applicant answered the SOR on April 9, 2016, and requested a decision on the record without a hearing. Department Counsel for the Defense Office of Hearings and Appeals (DOHA) submitted the Government's written case on May 17, 2016. A complete copy of the file of relevant material (FORM), which included Government Exhibits (GX) 1 through 6, was sent to Applicant on May 19, 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 26, 2016, and filed a Response received by DOHA on July 1, 2016. Department Counsel had no objections to Applicant's Response. Applicant objected to GX 4, the summary of her personal subject interview, I sustained her objection, and admitted GX 1 through 3 and GX 5 and 6. The case was assigned to me on April 6, 2017.

Findings of Fact

Applicant is a 39-year-old information technology systems consultant employed by a defense contractor since August 2014, and has worked in the information technology field since 1998. She earned her high school equivalency diploma in 1996, attended information technology school from 1996 to 1998, and took college courses from 2009 to 2012. She married in February 2007, divorced in March 2013, and she and her ex-husband have two children aged 19. This is her first application for a public trust position. (GX 3; Answer.)

The SOR alleges that Applicant owes nine delinquent debts totaling approximately \$30,517. In her Answer, Applicant admitted eight of the debts, denied one debt, and explained the origin and status of each debt. Applicant's admissions in her Answer are incorporated in my findings of fact. The delinquent debts are reflected in Applicant's credit bureau reports (CBRs) from July 2015 and November 2014. (GX 6; GX 5.) She listed a number of her delinquent accounts on her e-QIP. (GX 3.)

Applicant began experiencing financial difficulties due to several factors. She was laid off in July 2008 through August 2009, after nine years with her employer. The reduced unemployment income caused her to fall behind on her financial obligations. She and her ex-husband separated in November 2010, resulting in greater financial strain. Applicant experienced two additional periods of unemployment from November through December 2012, and from May 2013 through June 2013. (Answer; GX 3.)

Applicant entered a repayment plan for the \$11,839 judgment entered in 2012 (SOR ¶ 1.a) for a credit-card account she opened in 2006. She has been making monthly payments of \$180 since August 2015 and the balance was \$9,543 as of June 2016. She has been paying \$100 monthly payments on the \$4,783 judgment (SOR ¶ 1.c) entered in 2013 for a credit-card account opened in 2006, and the balance was \$2,951 as of May 2016. (Response.)

Applicant paid the \$318 delinquent utility account (SOR ¶ 1.f); the \$189 collection account (SOR ¶ 1.g); the \$180 medical account (SOR ¶ 1.h); and, the \$100 medical debt (SOR ¶ 1.i). These debts were incurred between 2012 and 2014. (Answer; GX 5; GX 6.) The debt alleged in SOR ¶ 1.e is for the balance on a jointly held vehicle loan following voluntary repossession. Applicant and her ex-husband financed a vehicle in 2010, which was surrendered in 2013. Applicant's ex-husband settled this account in 2014 and it is no longer listed on Applicant's 2016 CBRs. (Answer; Response.)

The \$8,300 debt alleged in SOR ¶ 1.d is for the charged-off balance on a jointly held vehicle loan. Applicant and her ex-husband financed a vehicle in 2006, and Applicant maintained the payments until she was laid off in 2008, and the vehicle was involuntarily repossessed. Applicant made no further payments and the debt has been removed from Applicant's 2016 CBRs. (GX 6; Response.)

The \$2,545 judgment entered in 2013 (SOR ¶ 1.b) is for damages from a vehicle accident which were not covered by Applicant's insurance. She has contacted the court to arrange payments. (Answer.)

In March 2012, Applicant borrowed \$4,321 to purchase a vehicle. She made timely monthly payments of \$295 until she paid off the loan in August 2014. Applicant consolidated her student loans in November 2014 and has since made timely monthly payments, currently at \$340 a month. She electronically maintains a monthly budget, has a savings account and a 401(k), and is current on all her ongoing financial obligations. She lives within her means, has no open credit-card accounts, and has not incurred any delinquent debt since 2014. (Response.)

Policies

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 [sensitive] 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 are the result of circumstances largely beyond her control, specifically her periods of unemployment between 2008 and 2013, totaling 17 months, and her 2010 separation leading to her 2013 divorce. She acted responsibly

under the circumstances by initiating repayment plans for two of her debts, paying four of her debts, contacting the creditor on another debt, and by not incurring any new delinquent debt since 2014. The vehicle-loan debt alleged in SOR ¶ 1.e was resolved by her ex-husband. The only remaining unaddressed debt is from a 2008 vehicle repossession following her job lay off. She has dramatically reduced her overall debt through repayment, and her delinquent-debt exposure by not maintaining any credit-card accounts. The evidence supports a conclusion that Applicant has gained control over her financial circumstances.

She acted in good faith by resolving the majority of her delinquent debts. “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’s past financial difficulties do not cast doubt on her current reliability, trustworthiness, or good judgment. Although her financial record is not perfect, she has made a good-faith effort to repay her debts and has established a plan to resolve her financial issues within her means. AG ¶¶ 20 (a) - (d) apply.

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 security clearance 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's experienced several periods of unemployment and a divorce which were financially destabilizing. However, she has been with her current employer since August 2014 and has not incurred any significant delinquent debt since that time. She has repaid or established and maintained repayment plans with the majority of her creditors. Her conduct is consistent with that of individuals entrusted with access to sensitive information.

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 security concerns raised by her delinquent debts. Accordingly, I conclude she has carried her burden of showing that it is clearly consistent with the national interest to grant her eligibility for access to sensitive information.

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.i:

For Applicant

Conclusion

I conclude that it is clearly consistent with the interests of national security to grant Applicant eligibility for a position of trust. Eligibility for access to sensitive information is granted.

Stephanie C. Hess
Administrative Judge