



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



In the matter of:

Applicant for Public Trust Position

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ADP Case No. 15-06830

Appearances

For Government: Braden M. Murphy, Esq., Department Counsel

For Applicant: *Pro se*

06/02/2017

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 did not present sufficient evidence to explain, extenuate, or mitigate the concern stemming from her history of financial problems. Accordingly, this case is decided against Applicant.

Statement of the Case

Applicant completed and submitted a Questionnaire for National Security Positions (SF 86 format) on May 20, 2015. Thereafter, on April 9, 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. She answered the SOR on May 12, 2016; she admitted all but one of the allegations and provided an explanation for each allegation; and she provided documentation to support her answer.

Neither Applicant nor Department Counsel requested a hearing, and so the case will be decided on the written record. On August 22, 2016, Department Counsel

submitted all relevant and material information that could be adduced at a hearing.¹ The file of relevant material (FORM) was mailed to Applicant, who received it on August 23, 2016. She did not reply to the FORM within the 30-day period provided for under the Directive. The case was assigned to me on June 2, 2017.

Procedural Matters

Department Counsel's FORM includes Exhibit 6, which is a report of investigation (ROI) summarizing Applicant's interview that took place during the May 2015 background investigation. The ROI is not authenticated by a witness, as required under ¶ E3.1.20 of the Directive.² The Directive provides no exception to the authentication requirement. Indeed, the authentication requirement is the exception to the general rule that prohibits consideration of an ROI.

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, who has not replied to the FORM, 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, given the lack of an authenticating witness, I have not considered the ROI in reaching my decision.

Findings of Fact

Applicant is a 44-year-old claims service advocate for a health-care contractor to the Defense Department. She has worked for this company since 1995. She is seeking to obtain or retain 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.

In her April 2015 application, Applicant disclosed that she had financial problems.³ She reported six delinquent financial accounts and explained, in general, that she and her husband fell behind on their bills and were unable to catch up.

Under Guideline F for financial considerations, the SOR alleged a history of financial problems consisting of 13 collection or charged-off accounts in amounts

¹ 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.

² 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.).

³ Exhibit 4.

ranging from \$63 to \$5,372 for a total of \$13,359. The delinquent accounts are established by her admissions or the credit reports.⁴ Four of the accounts are medical collection accounts for a total of \$2,359.

In her answer to the SOR, Applicant details, at some length, the status of each debt she admits. She explained that she has made payment arrangements with most of her creditors. Her documentation submitted in support of her answer shows that she has made a single payment of \$25 for one of the medical collection accounts on May 2, 2016. Otherwise, she did not submit any documentation showing that the 13 delinquent accounts were paid, settled, in a payment arrangement, cancelled, forgiven, or otherwise resolved.

Law and Policy

This case is adjudicated under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Review Program* (Jan. 2, 1992), as amended (Directive); and the National Security Adjudicative Guidelines (AG), effective June 8, 2017.

Discussion

Under Guideline F for financial considerations,⁵ 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 an individual's reliability, trustworthiness, and ability to protect classified or sensitive information.⁶

The concern is broader than the possibility that a person might knowingly compromise classified 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:

AG ¶ 19(a) inability to satisfy debts;

AG ¶ 19(b) unwillingness to satisfy debts regardless of ability to do so;

⁴ Exhibits 5 and 7.

⁵ AG ¶¶ 18, 19, and 20 (setting forth the concern and the disqualifying and mitigating conditions).

⁶ AG ¶ 18.

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

AG ¶ 20(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolved debts.

The evidence supports a conclusion that Applicant has a problematic financial history sufficient to raise a security concern under Guideline F. At this point, all 13 of the delinquent financial accounts are unresolved and ongoing. With that said, I have given little weight to the four medical collection accounts that remain unresolved. Medical debt is unlike other types of debt. First, it is presumed that medical debt is incurred for necessary medical care and treatment as opposed to frivolous or irresponsible spending or otherwise living beyond one's means. Second, medical debt is usually unplanned, unexpected, and nondiscretionary. Third, it can add hundreds if not thousands of dollars in debt in a short period, which can be overwhelming for a debtor. In my view, having less than \$2,500 in unresolved medical collection accounts does not fatally undermine Applicant's suitability. Accordingly, the allegations in SOR ¶¶ 1.b-1.e are decided for Applicant.

The same cannot be said for the other nine delinquent debts for about \$11,000. She did not present any documentation for those accounts. And there is no track record showing that she will adhere to the payment arrangements.

To conclude, Applicant's history of financial problems, which is ongoing, creates doubt or concern about her reliability, trustworthiness, good judgment, and ability to protect sensitive information. 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 did not present sufficient information to explain and mitigate the trustworthiness concern.

Formal Findings

The formal findings on the SOR allegations are:

Paragraph 1, Guideline F:	Against Applicant
Subparagraph 1.a:	Against Applicant
Subparagraphs 1.b-1.e:	For Applicant
Subparagraphs 1.f-1.m:	Against Applicant

Conclusion

In light of the record as a whole, it is not clearly consistent with the interests of national security to grant Applicant eligibility for access to sensitive information.

Michael H. Leonard
Administrative Judge