



**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. 15-06850

Appearances

For Government: Carroll Connelley, Esquire
For Applicant: *Pro se*

03/22/2017

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Applicant submitted sufficient evidence to mitigate Guideline F trustworthiness concerns. Applicant's eligibility to occupy a position of trust is granted.

Statement of the Case

On April 5, 2016, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing concerns under Guideline F (Financial Considerations) regarding her eligibility to occupy an automated data processing (ADP) position designated ADP-I/II/III. The action was taken under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006. Applicant timely responded to the SOR, admitting the allegations raised, and requested a hearing before a Defense Office of Hearings and Appeals (DOHA) Administrative Judge.

On December 27, 2016, I was assigned this case. On January 11, 2017, a notice of hearing was issued setting a hearing for January 31, 2017. The hearing was convened as scheduled. The government offered five exhibits (Exs.), which were accepted into the record without objection as Exs. 1-5. Applicant testified, introduced one witness, and offered two exhibits, which were accepted into the record without objection as Exs. A-B. The transcript (Tr.) of the proceeding was received on February 8, 2017. The record was held open through March 8, 2017, to provide Applicant additional time to submit any other

materials she deemed relevant. On March 8, 2017, she sent an email to the Government that included five documents of information. Those items were accepted into the record without objection as Exs. C-G and the record was closed. Based on my review of the file and submissions, Applicant mitigated financial considerations trustworthiness concerns.

Findings of Fact

Applicant is a 33-year-old departmental team leader. She achieved her present job level after starting as a temporary employee in April 2013. Applicant has earned an associate's degree in legal office administration. She is a separated mother of two pre-teen children. Since she began full-time employment, her manager has given her outstanding ratings. The same individual, who considers Applicant to be her "right-hand," personally promoted Applicant to her leadership position. The manager sees hiring Applicant as one of her best management decisions. (Tr. 15) She does not have anyone the caliber of Applicant currently on staff.

Over the past few years, Applicant has experienced some difficult times. In 2011, after a protracted period of feeling under the weather with no clear diagnosis of her condition, she was diagnosed with cancer. She immediately underwent surgery. (Tr. 30) This led to post-surgical treatments, which included bouts of 24-hour care for her children, as she could not be around them due to radioactivity concerns during some of her treatments. (Tr. 25) As a consequence, she missed a considerable amount of work. While she was taking time off for medical care, her employer laid off her entire department, leaving her unemployed from October 2011 through May 2012. During that time, more cancer treatments were conducted in early 2012, and continue to date on a periodic basis. (Tr. 31) When the early 2012 treatment was completed, she relocated to be closer to her parents so they could help her manage her children while she convalesced and looked for a new job. (Tr. 31-32)

At the same time of Applicant's relocation, she and her husband separated. While it did not cause their separation, the couple had made some poor financial choices during their time together. In their younger years, they had relied too much on credit. (Tr. 33) They remain separated, with Applicant taking primary responsibility for the children. Most of the bills now at issue are related to medical care. She was not aware of some of them because her estranged husband maintained, and continues to maintain, the family health insurance policy. She is not privy to the billing information he receives or has received. (Tr. 26)

At issue in the SOR are 10 delinquent debts, set forth under 10 separate allegations. In sum, they represent about \$11,000. Most are medical in nature:

1.a-1.d – Collection accounts (medical) - \$150, \$306, \$68, \$68. Paid. Applicant could not identify these medical debts. (Tr. 34) These collection efforts were created in 2013 or 2014, possibly indicating they relate to her 2011-2012 cancer treatment and follow-ups. She does not know if they were covered by insurance. She does not know whether she met a catastrophic limit on the policy during her illness. She knows of no other medical

care rendered during this timeframe. Rather than protract the process, she paid off all four accounts in one payment. (Exs. C, E, and F)

1.e – Collection account - \$374. Paid. Applicant initially had no knowledge of this alleged debt, but followed the information on Government Ex. 2, a 2016 credit report, to discover who to pay. It was settled by payment of \$281 to the referenced entity. (Exs. C, E, and F)

1.f – Charged-off account - \$9,002. Unpaid. Applicant believes this was for a commercial credit card shared with her husband. It became delinquent in December 2011, around the time of her illness and separation. She believes the account was used for goods and services. She recently tried to contact the creditor to address the debt and see if it was still owed, or included in her husband's bankruptcy.

1.g-1.h – Collections accounts (medical) - \$403, \$321. Investigating; Possibly Deleted For Reasons Other Than Age. Applicant had no knowledge of these alleged debts. She has researched the information noted on the credit report at Government Ex. 3, an earlier credit report from 2015, but to no avail. These collection efforts were initiated in 2012 and 2014, respectively. Despite inclusion in Applicant's 2015 credit report (Ex. 2), they are no longer reflected in her 2016 credit report (Ex. 3) or her January 29, 2017, credit report (Ex. B)

1.i – Collection account - \$49. Paid. Although she is not sure what this account was for, Applicant found contact information on the Government's Ex. 2. The balance has increased to \$135.57. The balance owed was paid. (Exs. C, E, and F)

1.j – Collection account - \$354. Paid. This is a collection account for a propane servicer. She disputes this balance. It is for tanks of propane left behind by a prior tenant at her residence. She was assessed the balance owed on that account when she switched the property to another servicer. She explained the situation to the servicer, but was unsuccessful. Rather than further dispute the issue, she paid the balance. (Ex. G)

As discussed below, Applicant regularly pays her rent on time and makes timely payments on her car loan. (Tr. 21-23; Ex. A) She is timely on her regular monthly expenses. She purposefully obtained a couple of small balance credit cards in order to make purchases and timely payments in an effort to improve her credit rating. (Tr. 23) She has no new commercial debts, but she wants to pay her mother about \$2,000. (Tr. 48) She is paying off her smaller debts first, then tackling the progressively larger ones.

Applicant's husband has filed for bankruptcy, although Applicant does not know anything about his petition or what debts he has been seeking to discharge. She does not know if any of the debts at issue are included. She believes whatever debts he included in his petition may have already been discharged, including a home mortgage. It is unknown whether the credit card noted at SOR allegation 1.f was included

At present, Applicant takes home about \$1,200 after taxes and deductions each month. Her current expenses appear to exceed her present net income, although she has

received some economic help from her mother. The extent of financial assistance from her husband for herself or their children is unclear. Applicant regularly makes timely payments on her present obligations. (Tr. 45) In response to the Government's comment that, "at the end of the month you don't have additional funds that you're saving away each month, but you're making all your payments?," Applicant stated: "No, but I'm making my payments right." (Tr. 45) She conceded, however, that she presently has no excess funds apart from an anticipated \$5,000 tax refund. She is currently enrolled in financial counseling. (Ex. D).

Policies

When evaluating an applicant's suitability for a position of trust, the administrative judge must consider the adjudicative guidelines. The adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to protected information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. The protection of secure information is the paramount consideration.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and has the ultimate burden of persuasion to obtain a favorable decision."

A person who seeks a public trust position enters into a fiduciary relationship with the Government predicated upon trust and confidence that transcends normal duty hours. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard information. Section 7 of Executive Order 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

Analysis

Guideline F, Financial Considerations

Under Guideline F, AG ¶ 18 sets forth the applicable trustworthiness concern: 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. Here, the Government introduced credible evidence showing Applicant has about 10 delinquent debts, amounting to about \$11,000. Such facts raise the following disqualifying conditions:

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

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

Five conditions could mitigate these financial concerns:

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.

Applicant was diagnosed with cancer in 2011, after a protracted period of ill health. She immediately underwent surgery and extensive measures related to post-operative treatment and aftercare. While she was undergoing this treatment, in about October 2011, she was laid off from her job. She continued to be unemployed through May 2012. In the interim, she was separated from her husband and relocated to be near her family, who could help her care for her children while she recuperated and worked to find new employment as quickly as possible. These obstacles all had financial repercussions. They, along with her efforts to not let them hamper her moving forward, give rise to AG ¶ 20(b).

There is no documentary evidence showing Applicant disputes her one remaining identified delinquent debt. This is true despite her concern that the account noted at SOR allegation 1.f may have been included in her husband's bankruptcy. Regardless, AG ¶ 20(e) does not apply.

Although Applicant stated money is very tight, she stated that she has been making monthly payments on her obligations in a timely manner. There is no evidence of new delinquent debt. Her debt issues are contained. She is in the process of receiving needed financial counseling. She showed that she has directly satisfied seven of the 10 delinquent debts at issue, including accounts she could not identify and balances she legitimately questioned. She did so in order to expedite this process. She has systematically satisfied all of her smaller debts, ranging from \$49 to \$403, leaving only the debts at SOR allegation 1.f-1.h unaddressed.

As for the delinquent debts alleged at 1.g and 1.h, which were originally culled from a 2015 credit report for the SOR, they are not reflected in her more recent credit reports. These include 2017 report from just days before the hearing. Inasmuch as they are both less than seven years old, it is unlikely they were removed for being dated, leaving their status weighing in Applicant's favor. Regardless, at the time of the hearing, she was in anticipation of a tax refund of approximately \$5,000 which could give her the opportunity to make further payments on the debt yet remaining. Under these facts, there is sufficient evidence to deduce that Applicant has raised AG ¶¶ 20(c) and 20(d).

Whole-Person Concept

Under the whole-person concept, the 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. The administrative judge should consider the adjudicative process factors listed at AG ¶ 2(a). Under AG ¶ 2(c), the final determination of whether to grant eligibility for a position of trust must be an overall commonsense judgment based on consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I incorporate my comments under the guideline at issue in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is a 33-year-old departmental team leader who has worked for the same employer since April 2013. Applicant has an associate's degree in legal office administration. A separated mother of two young children, for whom she presently has primary responsibility, Applicant relocated to be close to her parents in 2012. She did so to have help defray the costs of child care and supervision while she sought employment and, thereafter, while she worked.

Although Applicant finds money is tight at present, she is meeting all of her regular, monthly obligations. There is no evidence she has acquired new delinquent debt. Starting with her smaller debts, she has directly satisfied all but three delinquent debts. Of those three debts, two unknown medical collection efforts from between 2012 and 2014 are no longer reflected in her more recent credit report. While the basis for their removal is

unknown, it is plainly not because they are dated. Consequently, only one delinquent debt is clearly left unaddressed.

Applicant is now enrolled in financial counseling. With that aid, she should learn techniques and garner advice as to how to best address her remaining debt and apply a substantial tax refund she is awaiting. While the evidence does not indicate that Applicant is living beyond her means, it does reflect that she is presently raising her children on her present income, meeting her recurring obligations, and not acquiring new financial burdens. Given her efforts to honor her debts to date, her strategy for addressing them, her current financial counseling, and her present ability to meet her debts, I find that she has mitigated trustworthiness concerns under Guideline F.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
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Subparagraphs 1.a-1.j:	For Applicant
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Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interest of national security to permit Applicant to maintain a public trust position. Eligibility for a public trust position is granted.

Arthur E. Marshall, Jr.
Administrative Judge