



**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. 15-07124

Appearances

For Government: Erin Thompson, Esq., Department Counsel
For Applicant: *Pro se*

05/01/2017

Decision

CURRY, Marc E., Administrative Judge:

Given Applicant's unresolved income tax delinquency and her history of financial problems, her bankruptcy discharge does not mitigate the trustworthiness concern. Eligibility for access to sensitive information is denied.

Statement of the Case

On May 16, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the concerns under Guideline F, financial considerations, explaining why it was unable to find it clearly consistent with the interests of national security to grant or continue Applicant's eligibility to occupy an automated data processing position. The DOD CAF took the action under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG) effective within the DOD on September 1, 2006.

On June 12, 2016, Applicant answered the SOR allegations, admitting 12 of them, and denying 1.a, 1.f, 1.g, 1.k, 1.p, 1.q, and 1.s through 1.u. She requested a hearing before

an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The case was assigned to me on February 13, 2017. On March 16, 2017, I scheduled a hearing for April 21, 2017. The hearing was held as scheduled. I received nine Government exhibits (GE 1 – 9), nine exhibits from Applicant (AE A – AE I), and I considered Applicant's testimony. The transcript was received on May 1, 2017.

While this case was pending a decision, Security Executive Agent Directive 4 was issued establishing National Security Adjudicative Guidelines (AG) applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The AG supersede the adjudicative guidelines implemented in September 2006 and are effective for any adjudication made on or after June 8, 2017. Accordingly, I have adjudicated Applicant's eligibility to work in an automated data processing position under the new AG.¹

Findings of Fact

Applicant is a 51-year-old woman with two adult children. She has been married for three years. A previous marriage, from 1987 to 2007, ended in divorce. She has earned some college credits. For the past 15 years, Applicant has worked for various contractors processing service referral requests for military members and their families, and educating them about their medical benefits. (Tr. 17)

Applicant is highly respected on the job. Her supervisor, who has overseen her since 2003, regards her as his most productive worker. (AE A) A previous supervisor lauded her "confidence, integrity, and professionalism." (AE B) Over the years, she has earned multiple achievement certificates. (AE E – AE G)

Over the past 20 years, Applicant incurred more than \$100,000 of delinquent debt, including approximately \$40,000 of delinquent car loan payments (SOR subparagraphs 1.d and 1.i), and \$60,000 of delinquent federal income taxes from 2002 through 2004. (Answer; Tr. 34, 37; GE 6 at 34, 43) The SOR also reflects a lien filed against Applicant's property in 2008 for her outstanding federal income tax debt, incurred between 2002 and 2004, totaling \$17,030 (SOR subparagraph 1.a). (GE 5 at 2). In addition, as of January 2015, she had not filed her 2011 and 2012 federal income tax returns. (Answer at 1; GE 1 at 27).

Applicant attributes much of her financial problems to her troubled first marriage. Specifically, her ex-husband was a spendthrift that did not manage money well. (Tr. 20) Her financial problems worsened after the divorce, as she sought to re-establish herself financially and did "not really have the resources to do so" (Tr. 20)

In May 2016, Applicant filed for Chapter 7 bankruptcy protection. (GE 6) On November 2, 2016, the bankruptcy court discharged all of the commercial SOR debt, totaling \$60,000, and federal income tax debt totaling \$44,000, stemming from tax years

¹ Application of the AGs that were in effect as of the issuance of the SOR would not change my decision in this case.

2002 through 2004. (GE 6 at 43) The court did not discharge the interest that had incurred on the tax delinquencies, totaling \$23,000. (Tr. 37) Approximately one month after the bankruptcy discharge, the Internal Revenue Service (IRS) released the tax lien, as alleged in subparagraph 1.a. (GE 5 at 2)

Applicant filed her federal income tax returns for 2011 and 2012. (GE 1 at 27) It is unclear from the record when she did so. She does not owe any delinquency for tax year 2012. (GE 1 at 27) She owes \$9,000 for tax year 2011. (GE 1 at 27) In sum, Applicant currently has \$32,000 of remaining delinquent federal income tax debt, constituting the interest from the income tax delinquencies incurred between 2002 and 2004 (\$23,000) and 2011. (\$9,000) All of her federal income tax filings are up to date. (Tr. 27) The IRS has applied overpayments from tax years 2012 through 2015 to her delinquency. (Tr. 31) Shortly after the bankruptcy discharge, Applicant arranged a payment plan with the IRS to address her income tax delinquency. The first payment of \$255 was scheduled to post a few days after the hearing. After that payment, Applicant will make \$115 monthly payments for the next four to five years. (Tr. 33, 44) She did not submit a copy of the payment plan.

Applicant has paid her \$140 state income tax delinquency, alleged in subparagraph 1.k. (Tr. 37) Applicant filed for Chapter 7 bankruptcy protection in 1995. In May 1997, the court discharged approximately \$18,000. (Tr. 20; GE 6 at 70) Applicant has approximately \$2,100 deposited in two savings accounts. (Tr. 51)

Policies

When evaluating an applicant's suitability for a trustworthiness position, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to be considered in evaluating an applicant's eligibility for access to sensitive 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 overall adjudicative goal is a fair, impartial, and commonsense decision. According to 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 the national security 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, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

Analysis

Guideline F, Financial Considerations

Under this guideline, “failure 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, [and] trustworthiness” (AG ¶ 18) Applicant’s delinquencies trigger the application of disqualifying conditions. AG ¶ 19(a), “inability to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations.” Applicant’s failure to file her income tax returns for 2011 and 2012, as of the date of the SOR, triggers the application of AG ¶ 19(f), “failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.”

The IRS released the 2008 tax lien approximately one month after Applicant’s bankruptcy discharge. I resolve subparagraph 1.a in her favor. Currently, all of Applicant’s federal income tax returns are up to date, including those for tax years 2011 and 2012. I resolve subparagraph 1.c in her favor.

As for the remaining allegations, the following mitigating conditions 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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

AG ¶ 20(c) the person has received or is receiving counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

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

AG ¶ 20(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant's financial troubles did not occur because of extravagant or foolish spending. Instead, they initially stemmed from Applicant's marriage to a spendthrift spouse, and initially worsened after her divorce, as she struggled to adjust financially. Conversely, in 2016, nine years after their divorce, Applicant still had more than \$100,000 of delinquent debt, including \$60,000 of delinquent federal income tax payments. Moreover, the record is unclear as to why she did not file her 2011 and 2012 federal income tax returns on time. This is particularly troubling, given her previous history of income tax delinquencies. AG ¶¶ 20(b) and 20(c) do not apply.

Applicant satisfied the \$140 state income tax delinquency, alleged in subparagraph 1.k. I resolve it in her favor. Using the Chapter 7 bankruptcy process, Applicant obtained a discharge of all of the commercial SOR debts, together with the principal on all of her delinquent federal income debt incurred through 2004. Discharging one's debts through the federal bankruptcy process is a legitimate method of eliminating debt, and constitutes a good-faith effort "to otherwise resolve debts" under AG ¶ 20(d). However, given Applicant's history of trouble filing her income tax returns on time, the amount of remaining delinquent income taxes that remain outstanding, and the brief period of time since she implemented a tax payment plan, I conclude that AG ¶ 20(d) applies, but has limited probative value.

Applicant has developed a payment plan to satisfy her tax delinquency; however, payments under the plan were not scheduled to begin until after the hearing. Under these circumstances, AG ¶ 20(g) does not apply.

Whole-Person Concept

In assessing the whole person, the administrative judge must consider the totality of an applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d).² Applicant is an exceptional worker and a person of good character. Much of her debt stems from her previous marriage to a spendthrift husband. Through the Chapter 7 bankruptcy process, she has obtained a release of all of the SOR debts and approximately two-thirds the amount of the IRS debt. Conversely, approximately \$32,000 of income tax delinquency remains outstanding, and payments were not scheduled to begin until after the hearing. Under these circumstances, it is too soon to conclude that Applicant has mitigated the financial considerations trustworthiness concerns.

² The factors under AG ¶ 2(d) are as follows:

(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.

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:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraphs 1.d – 1.j:	Against Applicant
Subparagraph 1.k:	For Applicant
Subparagraphs 1.l – 1.v:	Against Applicant

Conclusion

In light of all of the circumstances, it is not clearly consistent with the interests of national security to grant or continue Applicant's eligibility for access to sensitive information. Eligibility to access to sensitive information is denied.

Marc E. Curry
Administrative Judge