



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



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| In the matter of: |) | |
| |) | |
| [REDACTED] |) | ADP Case No. 15-08174 |
| |) | |
| Applicant for Public Trust Position |) | |

Appearances

For Government: Rhett Petcher, Esq., Department Counsel
For Applicant: *Pro se*

08/25/2017

Decision

MARINE, Gina L., Administrative Judge:

This case involves trustworthiness concerns raised under Guideline F (Financial Considerations). Eligibility for access to sensitive information is denied.

Statement of the Case

Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) on January 30, 2015. On June 13, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns under Guideline F, financial considerations. The action was taken 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 the DOD on September 1, 2006.¹

Applicant answered the SOR on August 11, 2016, and requested a decision on the record without a hearing. On August 31, 2016, Department Counsel submitted the Government's written case and sent a complete copy of the file of relevant material (FORM) to Applicant, including documents identified as Items 1 through 5. She was

¹ ADP Case No. 14-01655 (App. Bd. Nov. 3, 2015) ("The Guidelines apply to all adjudications under the Directive, including both security clearance and public trust cases.")

given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. She received the FORM on September 9, 2016, and timely submitted her response, to which the Government did not object. I marked the documents comprising her FORM response as Applicant Exhibits (AX) A through D. Item 1 contains the pleadings in the case. Items 2 through 5 and AX A through D are admitted into evidence. The case was assigned to me on June 30, 2017.

On June 8, 2017, the DOD implemented new AG.² Accordingly, I have applied the June 2017 AG.³ However, because the September 2006 AG were in effect on the date the FORM was completed, I have also considered the September 2006 AG. Having considered both versions of the AG, I conclude that my decision would have been the same had I applied the September 2006 AG.

Findings of Fact⁴

Applicant is 57 years old. She has no children, and divorced her husband of 11 years in 1995. She received her high school diploma in 1978. Since 2005, she has been employed by a federal healthcare provider, having been promoted twice; from a customer service representative (CSR) II to III in 2009 and from CSR III to a provider relations outreach specialist in 2014. She was granted a confidential clearance in 1998, and has held a position of trust since 2006.

The SOR alleges seven delinquent debts totaling \$51,091, including two federal tax liens totaling \$21,204 (SOR ¶¶ 1.d and 1.e), and five accounts in collection status. The collection accounts include a \$28,581 federal student loan (SOR ¶ 1.a), two wireless bills totaling \$637 (SOR ¶¶ 1.b. and 1.c), a \$575 payday loan (SOR ¶ 1.f), and a \$94 medical bill (SOR ¶ 1.g). In her SOR answer, Applicant denied, without explanation, the debts alleged in SOR ¶¶ 1.b through 1.d. Her admitted debts total \$40,586. The credit reports establish each of the denied debts.⁵ Applicant provided a

² On December 10, 2016, the Security Executive Agent issued Directive 4 (SEAD-4), establishing a "single, common adjudicative criteria for all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position." (SEAD-4 ¶ B, *Purpose*). The SEAD-4 became effective on June 8, 2017 (SEAD-4 ¶ F, *Effective Date*). The National Security Adjudicative Guidelines (AG), which are found at Appendix A to SEAD-4, apply to determine eligibility for initial or continued access to classified national security information. (SEAD-4 ¶ C, *Applicability*).

³ ISCR Case No. 02-00305 at 3 (App. Bd. Feb. 12, 2003) (security clearance decisions must be based on current DOD policy and standards).

⁴ Unless otherwise indicated by citation to another part of the record, I extracted these facts from Applicant's SOR answer (Item 1), her SCA (Item 2), and the summaries of her June 2015 and September 2015 subject interviews (Item 3). I considered that Item 3 was not authenticated as required by Directive ¶ E3.1.20. However, Applicant was informed by Department Counsel that she was entitled to make corrections, additions, deletions, and updates to Item 3. She was also informed that she was entitled to object to consideration of Item 3 on the ground that it was not authenticated. Applicant did neither in her response to the FORM.

⁵ Items 4 and 5.

copy of the tax lien which also establishes the debt alleged in SOR 1.d.⁶ Applicant attributed her delinquent debts to “financial hardship” caused by “not having enough money coming in to pay her debts,” without providing any more specific details.

Applicant failed to timely file her federal tax returns for tax years 2006 through 2011 because she did not have funds available to pay the amounts owed.⁷ After her bank account was garnished in about 2010 or 2011, she contacted the IRS to explain her financial hardship. The IRS placed her account in hardship status and advised that her tax refunds would be withheld from that point forward until her debt was paid in full. In November 2012, the IRS filed a \$9,869 lien for tax years 2006, 2009, and 2010 (SOR ¶ 1.d), and another in June 2013 for tax years 2007, 2008, and 2011 in the amount of \$11,336 (SOR ¶ 1.e).⁸ As of June 2015, her last contact with the IRS had been November or December 2014.⁹ In September 2016, Applicant initiated paperwork to establish an installment agreement for tax years 2006 through 2011. The installment agreement was established in October 2016 with a monthly payment of \$120 and a total balance of \$23,653.¹⁰ In October 2016, she timely made her first IRS installment payment and also paid the debts alleged in SOR ¶¶ 1.f and 1.g.¹¹

Although it was not alleged in the SOR, Applicant answered “no” to each financial-related question on her SCA, thereby failing to disclose any of the SOR debts that she knew about at the time that she completed it.¹² During her June 2015 background-investigation interview, she claimed she did so because she did not have access to the internet and was unable to obtain a credit report. She voluntarily reported her known debts during that interview, which included the federal student loan debt (SOR ¶ 1.a.) and one of the federal tax liens (SOR ¶ 1.e). She also promised to research her unknown debts and resolve them if deemed responsible.¹³

In June 2015, she described her financial situation as “living paycheck to paycheck.” She planned to move in with her parents in November 2015 so that she could use the unspecified amount she paid in rent towards resolving her debt.¹⁴

⁶ AX B; GE 3 at p. 4.

⁷ Because the Government did not specifically allege her failure to file in the SOR, I will consider it only to evaluate mitigation and whole person. The record does not address whether and when she filed those returns. However, in light of the record as a whole, I assume that they have been filed. My decision would be the same whether they have been filed or not.

⁸ AX B; GE 3 at p. 4.

⁹ Item 3 at p. 4.

¹⁰ While the record does not indicate what, if any, tax refunds were withheld, this balance suggests that there was little to nothing withheld.

¹¹ AX A, C, and D.

¹² I will consider this only to evaluate mitigation and whole person.

¹³ Item 3 at p. 4-5.

¹⁴ Item 3 at p. 5-6.

However, as reported on her August 2016 budget worksheet, she was paying monthly rent of \$860. She had a negative monthly net remainder of over \$2,000 and was making bi-weekly payments for two unspecified loans totaling \$315.¹⁵ There were no payments referenced on that budget to the creditors alleged in the SOR. The record is otherwise silent as to specific details about her relevant income and expense history and any particulars concerning the financial impact that her past or present circumstances have had on her ability to pay her delinquent debt. The record is also silent as to whether Applicant has sought out or received any credit counseling.

Policies

Positions designated as ADP I and ADP II are classified as sensitive positions. The standard that must be met for assignment to sensitive duties is that, based on all available information, 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.¹⁶

When evaluating an applicant's eligibility for a position of trust to support a DOD contract, an administrative judge must consider the disqualifying and mitigating conditions in the AG.¹⁷ These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies the guidelines in a commonsense manner, considering all available and reliable information, in arriving at a fair and impartial decision.

In addition to the guidelines, the Directive sets forth procedures that must be followed in trustworthiness adjudications. The Government must present evidence to establish controverted facts alleged in the SOR. Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. An applicant has the ultimate burden of persuasion to establish their eligibility for a public trust position.¹⁸ 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 applicant has the ultimate burden of persuasion to obtain a favorable trustworthiness decision.

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. The government reposes a high degree of trust and confidence in individuals to whom it

¹⁵ See attachment to SOR Answer.

¹⁶ Directive, § 3.2.

¹⁷ Directive, Enclosure 2.

¹⁸ Directive, Enclosure 3, ¶¶ E3.1.14, E3.1.15.

grants access to sensitive information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of sensitive information.

Analysis

Guideline F (Financial Considerations)

The concern under this guideline is set out in AG ¶ 18:

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, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's financial indebtedness and her failure to timely pay her federal income taxes establish three disqualifying conditions under this guideline: AG ¶ 19(a) (inability to satisfy debts), AG ¶ 19(c) (a history of not meeting financial obligations), and 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 security concerns raised in the SOR may be mitigated by any of the following potentially applicable factors:

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 individual has received or is receiving financial 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;

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; 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.

AG ¶ 20(a) is not established. Applicant's numerous delinquent debts remain unresolved, including substantial federal debt owed for taxes and student loans.

AG ¶ 20(b) is not established. Applicant did not meet her burden to establish that her financial hardship was largely beyond her control. However, even if it was so deemed, she has not met her burden to establish that she acted responsibly to address the resulting debts.

AG ¶ 20(c) and 20(d) are not established. Applicant is credited with establishing an installment agreement to address her tax debt, with timely paying the first installment, and with paying two other SOR debts; albeit after she received the SOR. However, she has not initiated any action to resolve her student loan debt or the two wireless account debts. I cannot conclude that her financial problems are under control.

AG ¶ 20 (e) is not established. Applicant did not articulate a basis to dispute the legitimacy of the wireless account debts alleged in SOR ¶¶ 1.b and 1.c. She also did not provide any evidence of action taken to resolve the issue.

AG ¶ 20(g) is not established. Applicant did not initiate contact with the IRS to notify them of her financial hardship until after they garnished her bank account. She did not contact them again to resolve the debt until after she received the SOR. Moreover, Applicant provided proof of only one installment payment to the IRS and her monthly budget shortfall suggests that she may have trouble making those payments.

Whether or not Applicant could afford to pay her taxes, she was required to timely file her tax returns. Absent a compelling excuse or reason, Applicant's failure to timely file her tax returns and pay her tax debt reveals a deficiency in the judgment, reliability, and trustworthiness required of persons handling sensitive information. A person who fails repeatedly to fulfill his or her legal obligations, such as filing income tax returns when due, does not demonstrate the high degree of good judgment and reliability required of those granted access to sensitive information.¹⁹ "Failure to file income tax returns suggests that an applicant has a problem with complying with well-established government rules and systems. Voluntary compliance with such rules and systems is essential for protecting classified information."²⁰

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall common sense judgment based upon careful consideration of the following guidelines, each of which is to be evaluated in the context of the whole person. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(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 I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude that Applicant has not mitigated the security concerns raised by her financial indebtedness, or by her failure to timely file income tax returns and pay income taxes. I am also troubled by Applicant's failure to report either her failure to timely file tax returns and pay taxes, or the student loan debt, which she knew about at the time she completed the SCA. Answering "yes" instead of "no" to the applicable questions would not have required access to the internet or a credit report. Especially because this was not her first SCA, her failure to report these issues further calls into question her reliability, trustworthiness, and good judgment. Accordingly, Applicant has not carried her burden of showing that it is clearly consistent with the interests of national security to grant her eligibility for a public trust position.

¹⁹ See, e.g., ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 18, 2015).

²⁰ ISCR Case No. 01-05340 at 3 (App. Bd. Dec. 20, 2002).

Formal Findings

I make the following formal findings on the allegations in the SOR:

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

Subparagraphs 1.a – 1.e: Against Applicant

Subparagraphs 1.f – 1.g: For Applicant

Conclusion

I conclude that it is not clearly consistent with the interests of national security to grant Applicant eligibility for a public trust position. Eligibility for a public trust position is denied.

Gina L. Marine
Administrative Judge