



**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. 15-06005¹

Appearances

For Government: Robert J. Kilmartin, Esquire, Department Counsel

For Applicant: *Pro se*

October 31, 2017

Decision

ROSS, Wilford H., Administrative Judge:

On October 3, 2014, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). (Item 4.) On May 11, 2016, the Department of Defense (DoD) 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) effective within the DoD for SORs issued after September 1, 2006.² On July 7, 2016, Applicant answered the SOR in writing (Answer) and elected to have her case decided on the written record in lieu of a hearing. (Item 1.) On August 31, 2016, Department Counsel prepared a File of Relevant Material (FORM), which was sent to

¹ The original case number on the SOR has the prefix, "ISCR." All other documents in the case file use the prefix, "ADP." This indicates that Applicant is applying for eligibility for access to a public trust position. Accordingly, in order to comport with the evidence, "ISCR," is struck from the SOR case number and, "ADP," is substituted. (See, Directive, Additional Procedural Guidance, Paragraph E3.1.17.)

² I considered the previous AG, effective September 1, 2006, as well as the new AG, effective June 8, 2017. My decision would be the same under either set of guidelines.

Applicant on September 2, 2016. Applicant received the FORM on September 14, 2016, and had 30 days from its receipt to file objections and submit additional information.³ Applicant elected not to submit additional information. On July 11, 2017, the Defense Office of Hearings and Appeals (DOHA) assigned the case to me.

Findings of Fact

Applicant is 58 years old and divorced. She has one daughter. In July 2006 she began working for a defense contractor. (Item 2 at Section 13A.)

The SOR contained 25 allegations under Guideline F, Financial Considerations. The allegations relate to a bankruptcy, failure to file a tax return, and 23 alleged delinquent debts. Applicant provided narrative responses in her Answer to most of the allegations in the SOR. In analyzing her responses, I find that Applicant admitted allegations 1.a, 1.d, 1.n, 1.o, 1.p, 1.q, 1.r, 1.s, and 1.w. The admitted allegations are deemed findings of fact. She did not respond to allegations 1.t and 1.v. I view her silence as a denial of those debts. I view her responses to the remaining allegations (1.b, 1.c, 1.e, 1.f, 1.g, 1.h, 1.i, 1.j, 1.k, 1.l, 1.m, 1.u, 1.x, and 1.y) I view as denials.

Evidence for the existence of the debts in the SOR is found in credit reports of the Applicant dated November 26, 2014; and April 6, 2016. (Items 4 and 5.) Additional evidence can be found in Section 26 of Item 2. The total amount of past-due indebtedness owed by Applicant is alleged to be approximately \$19,511.

1.a. Applicant admitted that she filed a Chapter 7 bankruptcy, and she received a discharge of her debts. The SOR stated that this happened in 2007. Applicant stated in her Answer, "I filed bankruptcy on or around 2004." Item 4 indicates that the bankruptcy was filed in September 2005, and discharged in December 2005. I take the date of 2005 as being accurate.

1.b. Applicant was alleged to be indebted to a creditor in the amount of \$377 for a past-due debt owed to a telephone provider. Applicant stated in her Answer, "If my debt will make payment arrangements." Applicant stated in Section 26 of Item 2, "My Daughter opened [account] under my name and I did not know. . . . This will be corrected by my daughter." Items 4 and 5 show this debt as being delinquent. No further information was provided. This debt is not resolved.

³ Department Counsel submitted five Items in support of the SOR allegations. Item 3 is inadmissible. It will not be considered or cited as evidence in this case. It is the summary of an unsworn interview of Applicant conducted by an interviewer from the Office of Personnel Management on February 9, 2015. Applicant did not adopt the summary as her own statement, or otherwise certify it to be accurate. Under Directive ¶ E3.1.20, this Report of Investigation summary is inadmissible in the absence of an authenticating witness. In light of Applicant's admissions and other admissible evidence in the record, it is also cumulative.

1.c. Applicant was alleged to be indebted to a creditor in the amount of \$976 for a past-due debt owed to a television program provider. Applicant stated in her Answer, "If my debt will make payment arrangements." Item 4 shows this debt as being delinquent. No further information was provided. This debt is not resolved.

1.d. Applicant was alleged to be indebted to a creditor in the amount of \$241 for a past-due debt. Applicant stated in her Answer, "Will make payment arrangements." She stated in Item 3 at Section 26, "I will start to make payments to this company to take care of this debt." No further information was provided. This debt is not resolved.

1.e. Applicant was alleged to be indebted to a creditor for a past-due medical debt in the amount of \$1,050. Applicant stated in her Answer, "Will see if my bill." She stated in Item 3 at Section 26, "The [Doctor] that did my surgery ruined my voice and I thought that he owed me a part of his fee back. . . . I will start to make payments to satisfy my obligations with the [debts]." Item 4 shows this debt as being delinquent. No further information was provided. This debt is not resolved.

1.f. Applicant was alleged to be indebted to a creditor in the amount of \$977 for a past-due debt owed to a television program provider. Applicant stated in her Answer, "This would be two [accounts] for this company. I only had them 1 time." Item 4 shows this debt as being delinquent. The provider is the same company as that in 1.c. The owed amounts are within one dollar of each other. Based on the available information, I find that this is most likely a duplicate of allegation 1.c. This allegation is found for Applicant.

1.g. Applicant was alleged to be indebted to a bank for a past-due debt in the amount of \$1,749. In her Answer Applicant stated, "? Will verify if my debt. If so will make payment arrangements." Item 4 shows this debt as being delinquent since 2010. No further information was provided. This debt is not resolved.

1.h. Applicant was alleged to be indebted to a creditor for a past-due debt in the amount of \$70. In her Answer Applicant stated, "I will look into this and if still owing will make arrangements to pay off." Items 4 and 5 show this debt as being delinquent since 2010. No further information was provided. This debt is not resolved.

1.i. Applicant was alleged to be indebted to a creditor for a past-due medical debt in the amount of \$412. In her Answer Applicant stated, "? Will verify what debt. If mine will make payment arrangements." Item 4 shows this debt as being delinquent since 2010. No further information was provided. This debt is not resolved.

1.j. Applicant was alleged to be indebted to a creditor for a past-due debt in the amount of \$281. In her Answer Applicant stated, "Will verify I do not recall ever having this [company]." Items 4 and show this debt as being delinquent since 2009. No further information was provided. This debt is not resolved.

1.k. Applicant was alleged to be indebted to a creditor for a past-due debt in the amount of \$177. In her Answer Applicant stated, "Will verify if I owe will make payment arrangements." Items 4 and 5 show this debt as being delinquent since 2010. No further information was provided. This debt is not resolved.

1.l. Applicant was alleged to be indebted to a creditor for a past-due debt in the amount of \$1,310. In her Answer Applicant stated, "Will verify if my debt will make payment arrangements." Item 4 shows this debt as being delinquent. In her e-QIP Applicant stated, "I [cancelled] my service with the company before my contract was up. . . . Will make payment arrangements to get this [paid] off." (Item 2 at Section 26.) No further information was provided. This debt is not resolved.

1.m. Applicant was alleged to be indebted to a creditor for a past-due debt for satellite television services in the amount of \$691. In her Answer Applicant stated, "Will verify my debt if so will make payment arrangement." Items 4 and 5 show this debt as being delinquent since 2010. No further information was provided. This debt is not resolved.

1.n. Applicant was alleged to be indebted to a creditor for a past-due debt in the amount of \$875. In her Answer Applicant stated, "Will make payment arrangements." Items 4 and 5 show this debt as being delinquent since 2009. No further information was provided. This debt is not resolved.

1.o. Applicant was alleged to be indebted to a creditor for a past-due debt to a public library in the amount of \$48. In her Answer Applicant stated, "I will pay this off." Item 4 shows this debt as being delinquent since 2014. No further information was provided. This debt is not resolved.

1.p. Applicant was alleged to be indebted to a creditor for a past-due medical debt in the amount of \$198. In her Answer Applicant stated about this item, "Will make payment arrangements." This same creditor is involved in allegations 1.q, 1.r, and 1.s. With regard to all debts with this creditor Applicant stated in Section 26 of Item 2, "There was a time I was having to help my daughter/grandchildren with living expenses and got behind on the paying of these medical bills. I then forgot about them. . . . I know now of these owing bills to [creditor] and will start to make payments to get them cleared up." Items 4 and 5 show this debt as being delinquent. No further information was provided. This debt is not resolved.

1.q. Applicant was alleged to be indebted to a creditor for a past-due medical debt in the amount of \$109. In her Answer Applicant stated about this item, "Was not working now [I'm] back to work I am working to pay off." This same creditor is involved in allegations 1.p, 1.r, and 1.s. With regard to all debts with this creditor Applicant stated in Section 26 of Item 2, "There was a time I was having to help my daughter/grandchildren with living expenses and got behind on the paying of these medical bills. I then forgot about them. . . . I know now of these owing bills to [creditor]"

and will start to make payments to get them cleared up.” Items 4 and 5 show this debt as being delinquent. No further information was provided. This debt is not resolved.

1.r. Applicant was alleged to be indebted to a creditor for a past-due medical debt in the amount of \$554. In her Answer Applicant stated about this item, “Working to pay off outstanding debt.” This same creditor is involved in allegations 1.p, 1.q, and 1.s. With regard to all debts with this creditor Applicant stated in Section 26 of Item 2, “There was a time I was having to help my daughter/grandchildren with living expenses and got behind on the paying of these medical bills. I then forgot about them. . . . I know now of these owing bills to [creditor] and will start to make payments to get them cleared up.” Items 4 and 5 show this debt as being delinquent. No further information was provided. This debt is not resolved.

1.s. Applicant was alleged to be indebted to a creditor for a past-due medical debt in the amount of \$312. In her Answer Applicant stated about this item, “Working on paying off debt.” This same creditor is involved in allegations 1.p, 1.q, and 1.r. With regard to all debts with this creditor Applicant stated in Section 26 of Item 2, “There was a time I was having to help my daughter/grandchildren with living expenses and got behind on the paying of these medical bills. I then forgot about them. . . . I know now of these owing bills to [creditor] and will start to make payments to get them cleared up.” Items 4 and 5 show this debt as being delinquent. No further information was provided. This debt is not resolved.

1.t. Applicant was alleged to be indebted to a creditor for a past-due debt in the amount of \$6,812. Applicant did not either admit or deny this allegation. According to Items 4 and 5 this debt involves an automobile repossession with joint contractual liability. No further information was provided. I find that this debt is Applicant’s and it is not resolved.

1.u. Applicant was alleged to owe a past-due debt to a bank in the amount of \$300. In her Answer Applicant states, “Is this a duplicate from [allegation 1.g?]” Items 4 and 5 show that Applicant had two accounts with this bank. However, with regard to this specific debt, the entries show it, “Transfer/Sold.” No information is given as to the current creditor on the account. No other information is provided and I am unable to determine whether or not this debt is a duplicate account of another allegation. This allegation is found for Applicant.

1.v. Applicant was alleged to be indebted to a creditor for a past-due debt in the amount of \$241. Applicant did not either admit or deny this allegation. According to Item 4 this debt involves a debt to an insurance company. No further information was provided. I find that this debt is Applicant’s and it is not resolved.

1.w. Applicant was alleged to be indebted to a creditor for a past-due debt in the amount of \$774. In her Answer Applicant stated, “I have made payment arrangements.” Items 4 and 5 show this debt as being delinquent. No further information was provided. This debt is not resolved.

1.x. Applicant was alleged to be indebted to a creditor for a past-due debt in the amount of \$977. In her Answer Applicant says, “? This is the same amount on “f.” Is this a duplicate?” Item 4 shows this as being a medical debt, which is not the same creditor as allegation 1.f. No further information was provided. This debt is not resolved.

1.y. Applicant was alleged to have not filed her 2012 Federal tax return as required. She stated in her Answer, “Will verify and file if needed.” In Section 26 of Item 2 she states about this situation, “I did not know I did not file. I had put in the [information] on my computer but did not check to make sure it had been [accepted].” She goes on to say that she had been notified that she owed \$1,100 in taxes. Applicant further stated, “I just received the notification that these taxes were still owing so I will call and take the actions needed to satisfy my obligation.” No further information was provided.

In her Answer Applicant states that she had medical issues in the first six months of 2015. She broke her arm and was off work during that time. She received 70% of her salary during that period, but it was not enough to pay her bills. In 2016 within three days she broke her ankle and then had to have emergency appendectomy surgery. She concludes her Answer by saying, “My goal going forward is to start paying off this debt.”

Applicant did not provide a workable plan or budget, from which her ability to pay her delinquent debts, or avoid additional debt problems can be predicted with any certainty. She submitted no evidence concerning the quality of her professional performance, or the level of responsibility her duties entail. She provided no character references describing her judgment, trustworthiness, integrity, or reliability.

Policies

When evaluating an applicant’s suitability for national security eligibility for a public trust position, the administrative judge must consider the disqualifying and mitigating conditions in the AGs. 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 AG ¶ 2(a), describing the adjudicative process. The administrative judge’s overarching 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. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 the applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion as to obtaining a favorable trustworthiness decision.

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

Analysis

Guideline F, Financial Considerations

The trustworthiness concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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 personal 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.

AG ¶ 19 describes four conditions that could raise trustworthiness concerns and may be disqualifying in this case:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (c) a history of not meeting financial obligations; and

(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.

Applicant has a history of being unable or unwilling to fully satisfy her debts. She failed to file her tax return for 2012, and also filed for Chapter 7 bankruptcy in 2005. The evidence raises all four trustworthiness concerns, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate trustworthiness concerns arising from Applicant's financial difficulties:

(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;

(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, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(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;

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

(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.

The evidence does not support the application of any of the mitigating conditions in this case. Applicant submitted no information that would show how she intended to resolve her debt issues. In September 2014, when she filled out Item 2, Applicant indicated that she knew she had past-due debts, and she intended to begin paying them. When the SOR was issued in May 2016 it referred to several of the same debts, as well as others. Once again Applicant stated she would enquire about the debts and pay them. Finally, in September 2016, she received the FORM, which once again referred to her failure to pay her debts. She elected not to respond. There is insufficient information to demonstrate that her financial problems are unlikely to continue or recur, calling into question her reliability and trustworthiness. AG ¶ 20 (a), (c), and (d) do not apply.

With regard to AG ¶ 20(b), Applicant alleged that she had financial difficulties in part because she was off work for six months in 2014 due to a medical issue. However, the record shows that many of the debts became delinquent several years before that date. In addition, Applicant submitted no evidence to show that she has behaved responsibly with regard to those debts. This mitigating condition does not apply to this case.

Applicant did not submit any information showing that she has filed her 2012 Federal income tax return. AG ¶ 20(g) does not apply.

As stated, Allegations 1.f and 1.u are found for Applicant. With those exceptions, the remaining allegations and Guideline F are found against Applicant.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a public trust position by considering the totality of the applicant's conduct and all relevant circumstances. The 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.

According to AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a trustworthiness determination must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of the facts and circumstances surrounding this case. Applicant failed to submit sufficient information, from which to conclude that her financial obligations are being responsibly managed and that similar problems are unlikely to recur. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a public trust position. For these reasons, I conclude Applicant did not meet her burden to mitigate the trustworthiness concerns arising from her financial problems.

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:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	Against Applicant
Subparagraph 1.n:	Against Applicant
Subparagraph 1.o:	Against Applicant
Subparagraph 1.p:	Against Applicant
Subparagraph 1.q:	Against Applicant
Subparagraph 1.r:	Against Applicant
Subparagraph 1.s:	Against Applicant
Subparagraph 1.t:	Against Applicant
Subparagraph 1.u:	For Applicant
Subparagraph 1.v:	Against Applicant
Subparagraph 1.w:	Against Applicant
Subparagraph 1.x:	Against Applicant
Subparagraph 1.y:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant national security eligibility for a public trust position. Eligibility for access to sensitive ADP information is denied.

WILFORD H. ROSS
Administrative Judge