



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



In the matter of:)	
)	
REDACTED)	ADP Case No. 16-00360
)	
Applicant for Public Trust Position)	

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel
For Applicant: *Pro se*

12/01/2017

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant is seriously delinquent on student-loan balances totaling approximately \$21,943. She also owes medical collection debt totaling \$1,978, a credit card collection debt of \$480, and a past-due insurance debt of \$78. While unemployment compromised her finances, more progress is needed toward resolving her delinquent debts. Eligibility for a public trust position is denied.

Statement of the Case

On May 26, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR), detailing the trustworthiness concerns under Guideline F, financial considerations, and explaining why it was unable to find it clearly consistent with the national interest to grant her eligibility for a public trust position. The DOD CAF took the action under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; 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 August 4, 2016, Applicant answered the SOR allegations and requested a decision on the written record by an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On November 9, 2016, the Government submitted a File of Relevant Material (FORM), consisting of six exhibits (Items 1-6). DOHA forwarded a copy of the FORM to Applicant on November 14, 2016, and instructed her to respond within 30 days of receipt. Applicant received the FORM on January 9, 2017. No response to the FORM was received by the February 8, 2017 deadline. On October 1, 2017, I was assigned the case to determine whether it is clearly consistent with national security to grant or continue a public trust position for Applicant.

Evidentiary Ruling

Department Counsel submitted as Item 4 a summary of an unsworn enhanced subject interview of Applicant conducted on May 21, 2015. This document was part of the DOD Report of Investigation (ROI) in Applicant's case. Under ¶ E3.1.20 of the Directive, a DOD personnel background report of investigation may be received in evidence and considered with an authenticating witness, provided it is otherwise admissible under the Federal Rules of Evidence. The interview summary did not bear the authentication required for admissibility under ¶ E3.1.20.

In ISCR Case No. 15-01807 decided on April 19, 2017, the Appeal Board held that it was not error for an administrative judge to admit and consider a summary of personal subject interview in the absence of any objection to it or any indication that it contained inaccurate information. The applicant in that case had objected on appeal to the accuracy of some of the information in a FORM, but had not objected to the interview summary or indicated that it was inaccurate in any aspects when she responded to the FORM.

Unlike the applicant in ISCR Case No. 15-01807, Applicant did not submit a response to the FORM submitted in her case. However, as in ISCR Case No. 15-01807, Applicant was provided a copy of the FORM and advised of her opportunity to submit objections or material that she wanted the administrative judge to consider. In a footnote, the FORM advised Applicant of the following:

IMPORTANT NOTICE TO APPLICANT: The attached summary of your Personal Subject Interview (PSI) (Item 4) is being provided to the Administrative Judge for consideration as part of the record evidence in this case. In your response to this File of Relevant Material (FORM), you can comment on whether [the] PSI summary accurately reflects the information you provided to the authorized OPM investigator(s) and you can make any corrections, additions, deletions, and updates necessary to make the summary clear and accurate. Alternatively, you can object on the ground that the report is unauthenticated by a Government witness and the document may not be considered as evidence. If no objections are raised in your response to the FORM, or if you do not respond to the FORM, the Administrative Judge may determine that you have waived any

objections to the admissibility of the summary and may consider the summary as evidence in your case.

Concerning whether Applicant understood the meaning of authentication or the legal consequences of waiver, Applicant's *pro se* status does not confer any due process rights or protections beyond those afforded her if she was represented by legal counsel. She was advised in ¶ E3.1.4 of the Directive that she may request a hearing. In ¶ E3.1.15, she was advised that she is responsible for presenting evidence to rebut, explain, or mitigate facts admitted by her or proven by Department Counsel and that she has the ultimate burden of persuasion as to obtaining a favorable trustworthiness decision.

While the Directive does not specifically provide for a waiver of the authentication requirement, Applicant was placed on sufficient notice of her opportunity to object to the admissibility of the interview summary, to comment on the interview summary, and to make any corrections, deletions, or updates to the information in the report. She was advised that if she did not respond, the interview summary may be considered as evidence in her case. Applicant chose to rely solely on the record presented in the FORM, which included the information reflected in the interview summary, however disqualifying, mitigating, or exculpatory the information. I cannot presume without any evidence that Applicant failed to understand her due process rights or obligations under the Directive or that she did not want the summary of her interview considered in her case. Accordingly, I accepted Item 4 in the record, subject to issues of relevance and materiality in light of the entire record, including Applicant's admissions to the allegations.

Summary of SOR Allegations

The SOR alleges under Guideline F that, as of May 26, 2016, Applicant owed five student loans in collection totaling \$21,943 (SOR ¶¶ 1.a-1.e), six medical debts in collection totaling \$1,978 (SOR ¶¶ 1.f-1.j, 1.m), a credit card debt in collection for \$480 (SOR ¶ 1.k), and an insurance debt in collection for \$78 (SOR ¶ 1.l). When Applicant answered the SOR, she admitted the debts, but indicated that the claims for the medical debts were being resubmitted.

Findings of Fact

Applicant's admissions to the debts are incorporated as findings of fact. After considering the FORM, which includes Applicant's Answer to the SOR as Item 2, I find that the \$291 medical collection debt in SOR ¶ 1.i is duplicated in SOR ¶ 1.n. Additional findings of fact follow.

Applicant is a 35-year-old college graduate with a bachelor's degree awarded in December 2005. She and her spouse married in November 2013, but they have lived separately since late May 2015. (Items 3-4.) Applicant has a four-year-old daughter and two stepsons now ages 8 and 15. She seeks a position of trust with a healthcare claims company.¹ (Item 3.)

¹ On her April 13, 2015 SF 86, Applicant listed her present employment as a customer service representative

Applicant attended a community college from August 2000 to May 2003. After earning her associate degree, she continued her studies at a nearby college. She paid for her studies for her bachelor's degree with student loans obtained for approximately \$26,338 between September 2003 and September 2005. (Items 3, 6.)

Applicant worked as a case manager at a children's home from April 2005 to April 2012. She lost her job when the company downsized in April 2012, but within the month, she began working as a machine operator for a polymer manufacturer. In March 2014, she was fired for violating the company's attendance policy. However, because her absenteeism was caused by pregnancy (her daughter was born in September 2013) and illness, Applicant was awarded unemployment compensation. Applicant was unemployed until October 2014, when she began working as a customer service representative at a call center. (Item 3.) The FORM does not include any information about her income.

On April 13, 2015, Applicant completed and certified to the accuracy of a Questionnaire for National Security Positions (SF 86). She responded affirmatively to an inquiry concerning whether she was currently over 120 days delinquent on any debt, and she indicated that she owed about \$20,000 in past-due student loan debt. She explained that unemployment for herself and her spouse led to her inability to make her student loan payments starting in January 2015. About actions taken to address the debt, she stated: "I have had 12 monthly installments of \$50 taking [sic] directly out of my bank account. Working on scheduling a payment arrangement with the institution." Applicant listed no other delinquency on her SF 86. (Item 3.)

A check of Applicant's credit record on May 5, 2015, revealed that some of her student loans were past due. Federally-guaranteed student loan balances of \$8,194 (\$279 past due, SOR ¶ 1.a) and \$4,440 (\$152 past due, SOR ¶ 1.c) were 120 days or more past due. A student loan obtained from her state educational financing authority was in collection for \$2,644 (SOR ¶ 1.d). Applicant was reportedly current on student loan balances of \$5,539 (SOR ¶ 1.b), \$1,234 (SOR ¶ 1.e), and \$2,807 (not alleged). A credit card account had recently been placed in collection for \$480 (SOR ¶ 1.k), although there had been no activity on the account since June 2012. A \$78 insurance debt from February 2014 (SOR ¶ 1.l), and medical debts of \$291 from July 2009 (SOR ¶ 1.i) and \$65 from September 2012 (SOR ¶ 1.m), were also in collection. (Item 6.)

On May 21, 2015, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM). She confirmed that she owed about \$20,000 in student-loan debt to a state educational financing authority. She was then confronted with the details of her student loans, which showed that she had loans with more than one lender.² She did not dispute the debts, but she was unable to provide any information

with a copier manufacturer since October 2014, but she provided a work email address for the healthcare claims company. (Item 3.) It is unclear when she started with the healthcare company.

² It is unclear whether the \$20,000 in student loan debt listed on her SF 86 is in addition to the past-due student loans on her credit record. The credit reports in the FORM do not show a single account with a balance anywhere near \$20,000.

about the creditors. She indicated that she had a repayment arrangement for a student loan under which she paid \$50 for 12 months. When the plan expired, her lender wanted to increase her monthly payment, but she could not afford it. She was supporting herself solely on her income because her spouse had recently abandoned the marriage. She indicated that she is working on payment plans. Applicant was then confronted about the medical and credit delinquencies on her credit record. She did not recognize them as valid debts but indicated that she would contact the creditors for information about them. (Item 5.)

As of January 27, 2016, Applicant was past due on five student loans with an aggregate balance of \$21,943 (SOR ¶¶ 1.a-1.e). There had been no activity on any of the five accounts since August 2015. Five medical debts totaling \$1,913 were in collection (SOR ¶¶ 1.f-1.j). The credit card collection debt of \$480 (SOR ¶ 1.k), the \$78 insurance collection debt (SOR ¶ 1.l), and the \$65 medical debt (SOR ¶ 1.m) were no longer on her credit record (Item 5), although there is no evidence of any payments on those debts. Applicant was making timely payments of \$49 a month on a student loan with a balance of \$2,571. She had obtained the loan for \$7,554 in September 2003. (Item 5.)

Applicant presented no information about her income or her expenses. As of April 2015, she was living with her grandmother in a house owned by her uncle. (Item 3.) It is unclear whether Applicant pays any rent or covers any of the household bills.

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 national security. The Deputy Under Secretary of Defense (Counterintelligence and Security) Memorandum, dated November 19, 2004, indicates trustworthiness adjudications will apply to cases forwarded to DOHA by the Defense Security Service and Office of Personnel Management. Department of Defense contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination may be made.

When evaluating an Applicant’s suitability for a public trust position, the administrative judge must consider the disqualifying and mitigating conditions in the Adjudicative Guidelines (AG). 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 reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

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 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 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 as to potential, rather than actual, risk of compromise of sensitive information. See Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

On December 10, 2016, Security Executive Agent (SecEA) Directive 4 was issued, which established National Security Adjudicative Guidelines (AGs) effective June 8, 2017. Under SecEA Directive 4, the National Security Adjudicative Guidelines supersede the adjudicative guidelines implemented in September 2006 and apply to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. Accordingly, in issuing my decision, I considered both the National Security Adjudicative Guidelines effective June 8, 2017, and the previous Adjudicative Guidelines. My decision would be the same if the case was considered under the Adjudicative Guidelines effective within the DOD September 1, 2006.

Analysis

Guideline F, Financial Considerations

The trustworthiness concerns about financial considerations are set forth 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.

The Government met its burden of establishing a *prima facie* case for disqualification. As of January 2016, Applicant was delinquent on five student loans totaling \$21,943 and five medical debts totaling \$1,913. Additionally, there is no evidence that she paid a \$480 credit card debt, a \$78 insurance debt, or a \$65 medical debt that were in collection as of May 2015, although those debts have since been dropped from her credit record. Disqualifying conditions AG ¶ 19(a), “inability or unwillingness to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations,” apply because of Applicant’s record of financial delinquency.

Applicant has the burden of presenting evidence of explanation, extenuation, or mitigation to overcome the security concerns raised by her delinquent debts. Under the AG effective for any adjudication on or after June 8, 2017, past-due debts may be mitigated under one or more of the following conditions under ¶ 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;

(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;

(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;

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

(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.

Mitigating condition AG ¶ 20(a) cannot reasonably apply in light of the ongoing delinquency on the accounts in SOR ¶¶ 1.a-1.m. Her unemployment from April 2014 to October 2014 and her recent marital separation in April or May 2015 are circumstances that implicate AG ¶ 20(b). However, Applicant defaulted on some of her student loans in 2012 and 2013, when she was employed full time. While she made some \$50 payments on a student loan under a repayment plan after she first defaulted, she apparently could not continue the payments. She still owes a \$746 medical collection debt from November 2013 (SOR ¶ 1.f) and a \$291 medical debt from July 2009 (SOR ¶ 1.i). The \$78 insurance debt (SOR ¶ 1.l) has been outstanding since at least February 2014. The credit card debt

(SOR ¶ 1.k) is from June 2012. Applicant has not credibly explained what led her to incur collection debts when she was employed. Moreover, without some evidence of her income and expenses, it is difficult to excuse or justify her apparent ongoing disregard of the SOR debts.

AG ¶¶ 20(c) and 20(d) have some applicability in that Applicant made \$50 payments toward a student loan under a payment plan before February 2015. She made payments through June 2015 on the student loans in SOR ¶¶ 1.b and 1.e. Even so, the absence of any payments toward any of the debts in the SOR in 2016 undermines her case for mitigation. Some recent progress is needed toward resolving her delinquencies to overcome the trustworthiness concerns.

AG ¶ 20(e) applies only in that the debt in SOR ¶ 1.n is a duplicate listing of the medical collection debt in SOR ¶ 1.i and was not shown to be an additional debt. While Applicant disputed the delinquencies in SOR ¶¶ 1.k-1.m in May 2015 because she did not recognize them, she admitted the debts when she answered the SOR. Concerning her medical collection debt, she indicated that insurance claims were being resubmitted. Yet, she provided no documentation to show that the debts were either paid or should have been paid by medical insurance.

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).³ The analysis under Guideline F is incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

A security clearance or trustworthiness adjudication is not aimed at collecting an applicant's personal debts. Rather, it involves an evaluation of an applicant's judgment, reliability, and trustworthiness in light of the guidelines in the Directive. See ISCR Case No. 09-02160 (App. Bd. June 21, 2010). The Appeal Board has held that an applicant is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. An applicant need only establish a plan to resolve financial problems and take significant actions to implement the plan. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). In choosing a decision on the written record, it was incumbent on Applicant to provide sufficient information about her circumstances to show that her financial situation is sufficiently stable and not likely to present a trustworthiness concern. Not enough is known

³ 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.

about Applicant's financial situation, including her income and expenses, for me to conclude that she is able or willing to address the SOR debts in the near future. After considering all the facts and circumstances in light of the financial considerations guideline, I conclude that it is not clearly consistent with national security to grant Applicant access to sensitive information at this time.

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
Subparagraphs 1.a-1.m:	Against Applicant
Subparagraph 1.n:	For Applicant

Conclusion

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

Elizabeth M. Matchinski
Administrative Judge