



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



In the matter of:)
)
) ADP Case No. 16-02013
)
Applicant for Public Trust Position)

Appearances

For Government: David F. Hayes, Esq., Department Counsel
For Applicant: *Pro se*

10/31/2017

Decision

CREAN, THOMAS M., Administrative Judge:

Based on a review of the pleadings, eligibility for a public trust position is granted. Applicant presented sufficient credible information to mitigate financial trustworthiness concerns.

Statement of the Case

On November 5, 2015, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) to obtain eligibility for a public trust position to work in support of a defense agency. (Item 2) Applicant was interviewed by an agent from the Office of Personnel Management on April 19, 2016. (Item 3, Personal Subject Interview (PSI)) After reviewing the results of the background investigation, the Department of Defense (DOD) could not make the affirmative findings required to grant Applicant access to sensitive information.

On September 2, 2016, DOD issued Applicant a Statement of Reasons (SOR) for financial trustworthiness concerns under Guideline F. DOD 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 (AG) implemented by DOD on September 1, 2006.

Applicant answered the SOR on September 29, 2016. (Item 1). She admitted seven of the eight allegations of financial security concern, and requested a decision on the record. Department Counsel submitted the Government's written case on October 25, 2016. (Item 8). Applicant received a complete file of relevant material (FORM) on November 17, 2016, and was provided the opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant did not provide additional information in response to the FORM. I was assigned the case on October 1, 2017.

The SOR in this case was issued under DoD 5200.2-R and the September 1, 2006 AGs. DoD Manual 5200.02, *Procedures for the DOD Personnel Security Program (PSP)* became effective on April 3, 2017, and it incorporates and replaces DoD 5200.2-R. While this case was pending decision, the Director of National Intelligence issued Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), which he made applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The new AGs supersede the September 1, 2006 AGs and are effective on or after June 8, 2017. Accordingly, I have evaluated Applicant's eligibility for access to sensitive information under DoD Manual 5200.02 and the new AGs. The outcome of my decision would have remained the same if adjudicated under the former AGs.

Procedural Issues

Applicant was advised in the FORM that the summary of the PSI (Item 3) was not authenticated and could not be considered over his objection. She was further advised that she could make any corrections, additions, or deletions to the summary to make it clear and accurate, and could object to the admission of the summary as not authenticated by a Government witness. She was additionally advised that if no objection was raised to the summary, the administrative judge could determine that she waived any objection to the admissibility of the PSI summary. Applicant did not raise any objection to consideration of the PSI when she responded to the FORM. Since there is no objection by Applicant, I will consider information in the PSI in my decision.

Findings of Fact

After a thorough review of the pleadings, I make the following findings of fact. Applicant is 44 years old. She graduated from high school in June 1992, and received a bachelor's degree in December 2013. She attended college while employed full time by attending classes at night and on weekends. She has been employed as a benefits file coordinator for a DOD contractor since April 1996. Applicant married in December 2006 and separated in September 2011 because of her husband's alcohol abuse and infidelity. The divorce is pending as of the response to the FORM in November 2016. She has one child from the marriage living with her. She does not receive child support for the child. Applicant listed two bankruptcies and some consumer debts in response to questions on the e-QIP. Applicant has worked for the same company for almost 30

years. There is no information in the case file to indicate her present salary. (Item 2, e-QIP, dated November 5, 2015)

The SOR alleges and credit reports (Item 4, dated November 24, 2015; and Item 5, dated October 24, 2016) confirm the eight financial issues listed in the SOR. The financial issues are a Chapter 7 bankruptcy filed in August 2000, and discharged in November 2000 (SOR 1.a); a Chapter 7 Bankruptcy filed in February 2009 and discharged in June 2009 (SOR 1.b); a \$8,414 automobile loan placed for collection (SOR 1.c); a \$788 telephone debt placed for collection (SOR 1.d); a \$1,660 student loan placed for collection (SOR 1.e); a \$8,796 student loan place for collection (SOR 1.f); a \$131 medical debt placed for collection (SOR 1.g); and a \$711 credit card debt placed for collection (SOR 1.h). The total amount of the delinquent debt is approximately \$20,000. She admitted all of the debts with explanation except SOR 1.f. She denied SOR 1.f because it was not on her credit report. (Response to SOR, dated September 29, 2016 at Document A)

Applicant admits filing the 2000 bankruptcy (SOR 1.a) because she was overwhelmed by debts incurred while she attended college. At the time she filed the bankruptcy petition, none of the debts listed in the bankruptcy were delinquent. (Item 6, Affidavit; Item 7, Bankruptcy Documents)

Applicant admitted on the e-QIP and in the PSI that she and her husband filed the 2009 Chapter 7 bankruptcy (SOR 1.b). Her husband was out of work, and they could not afford to pay their debts only on her salary. (Item 3, PSI, dated April 19, 2016, at 4)

Applicant attributes her delinquent debts to the abrupt departure of her husband and the subsequent separation in 2011. Applicant could no longer afford to pay her debts on her salary alone. She was forced to choose between paying for necessities or paying creditors. Her husband left her with all of the marital debt. He has not sent her any funds or paid any child support (Item 3, PSI at 4)

Applicant's husband took the family's two cars when they separated. One car is subject to the loan at SOR 1.c. Her husband was to make the payments on the loan, but he has not done so. Applicant has not made payments on the car loan since her husband has possession of the car. Applicant expects the car loan to be decided in the divorce proceedings. (Item 1, Response to SOR, dated September 26, 2016)

Applicant admits the telephone debt at SOR 1.d. The bill was incurred by both she and her husband during the marriage. Applicant anticipates the responsibility for the debt to be determined in the divorce proceedings. (Response to the SOR, date September 29, 2016 at Document C)

Applicant acknowledged that delinquent debt for a student loan at SOR 1.e is a debt for her education. She stated that she made payment arrangements with the creditor and will be paying \$100 monthly payments on the debt. She did not provide any

documents to verify the arrangement or any payments made in furtherance of the agreement. (Response to SOR, dated September 29, 2016)

Applicant provided documents to establish that she paid in full the medical debt for her care at SOR 1.g. (Response to SOR, September 29, 2016, Document D)

The credit card debt at SOR 1.h was incurred during the marriage by Applicant and her husband. The debt has been reduced to \$360, and Applicant agreed to make ten monthly payments of \$36. Applicant provided documents verifying the agreement and the first few payments. (Response to SOR, dated September 24, 2016 at document E)

Policies

When evaluating an applicant's suitability for a public trust position, the administrative judge must consider the disqualifying and mitigating conditions in the 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 over-arching adjudicative goal is a fair, impartial and common sense decision. According to AG ¶ 2(a), 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 [access to sensitive information] 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 applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion as to obtaining 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 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

Financial Considerations

There is a trustworthiness concern for a failure or inability to live within one's means, satisfy debts, and meet financial obligations, and may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulation, raising questions about an individual's reliability, trustworthiness, and ability to protect sensitive information. An individual who is financially overextended is at risk of having to engage in illegal or otherwise questionable acts to generate funds (AG ¶ 18). Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligation to protect sensitive information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a position of trust. An applicant is not required to be debt free, but is required to manage her finances in such a way as to meet her financial obligations.

Adverse information in credit reports can normally meet the substantial evidence standard to establish financial delinquency. Applicant has unresolved debts from her marriage. Her delinquent debts are established by credit reports, her admissions in the e-QIP, and her response to the SOR. Applicant appears to be willing to satisfy the debts since she has contacted creditors to pay or settled some of the debts. The debts pose a trustworthiness concern raising Financial Consideration Disqualifying Conditions under AG ¶ 19:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

I considered the following Financial Considerations Mitigating Conditions under 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;
- (b) the conditions that resulted in the financial problems 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 individual 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; and

(d) the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts.

Bankruptcy is a legal and permissible means of resolving debt. Applicant filed two bankruptcies. The first bankruptcy was filed over 17 years ago. The other bankruptcy was filed by Applicant and her husband over eight years ago. This bankruptcy resolved debts she and her husband could not pay because her husband was unemployed. The bankruptcies each resolved the delinquent debts Applicant had at the time. I find for Applicant as to SOR 1.a and 1.b.

The mitigating conditions at AG ¶¶ 20(a) and 20(b) apply. Applicant incurred debt during her marriage. While the debts are numerous and recent, they were incurred under circumstances not likely to recur. The debts are from the marriage, and Applicant's husband played a significant role in accruing the debt. Applicant's husband left her with the debts when they separated and he left the marriage. He has not made any effort to acknowledge the debts and pay his share. Applicant is no longer married so the delinquent debts are not likely to recur. Applicant acted responsibly by not accumulating any additional delinquent debt since she and her husband separated.

Mitigating condition AG ¶ 20(c) applies. Applicant contacted her creditors to arrange to make payments on some of her debts. She paid one debt (SOR 1.g), and is making payments on two other debts (SOR 1.e and 1.h) She anticipates that the divorce will require Applicant's husband to pay the three remaining debts. (SOR 1.c, 1.d, and 1.h) These facts establish evidence of Applicant's good-faith efforts to pay delinquent debts. There is sufficient evidence to conclude that Applicant has a reasonable and adequate plan to resolve her financial problems, and her financial problems will be resolved within a reasonable period.

Mitigating condition AG ¶ 20(c) does not apply. Applicant did not provide any evidence of financial counseling. Financial counseling is required to file bankruptcy petitions. However, Applicant's second bankruptcy was filed in 2009 and she accumulated the SOR delinquent debts after the bankruptcy was completed.

The record contains corroborating or substantiating documentation of Applicant's efforts to mitigate and resolve her financial problems. In requesting an administrative determination, Applicant chose to rely on the written record. She provided sufficient evidence to supplement the record with relevant and material facts regarding her circumstances, articulate her position, and mitigate the financial trustworthiness concerns. She provided adequate credible information regarding her past efforts to

address her delinquent debts. She presented a sufficiently credible plan of how and when the debts were to be resolved. Applicant's reasonable payments on some of her debts and her responsible plan to include the debts in the divorce degree show that Applicant acted reasonably and honestly with regard to her financial duties and obligations.

Applicant provided enough details about what she did to address the debts alleged in the SOR. She provided sufficient documentation to show proof of payments of some debts, correspondence to or from the creditors to establish maintenance of contact, evidence of attempts to negotiate payment plans, or other evidence of progress or resolution. There is sufficient evidence to establish that Applicant made great progress resolving her debts in a financially responsible manner. There is ample evidence of responsible behavior, good judgment, and reliable conduct and actions by Applicant towards her finances. Applicant met her burden to establish her good-faith efforts to resolve her remaining debts. She established that she acted with reasonableness, prudence, honesty, and an adherence to duty and obligation towards her financial obligations. There is sufficient assurance that her financial problems are resolved, are under control, and will not recur in the future. Her reasonable and responsible actions towards her finances is a strong indication that she will protect and safeguard sensitive information.

I find that she acted responsibly and made a good-faith effort to pay her debts. Her financial problems do not cast doubt on her current reliability, trustworthiness and good judgment. Applicant's information is sufficient to establish that she acted responsibly under the circumstances and that her finances are under control. In short, the file provided by Applicant contains sufficient evidence to determine that Applicant paid, arranged to pay, settled, compromised, or otherwise resolved her debts. Applicant has mitigated financial trustworthiness concerns.

Whole-Person Analysis

Under the whole-person concept, the administrative judge must evaluate an applicant's trustworthiness eligibility by considering the totality of the applicant's conduct and all relevant circumstances. 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.

Under AG ¶ 2(c), the ultimate determination of whether to grant a trustworthiness clearance 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 all the facts and circumstances surrounding this case. Applicant is required to show that she has a credible and reasonable plan to resolve her financial problems and that she has taken significant action to implement that plan. Applicant established her reasonable plan to resolve her delinquent debts, shown that she has taken sufficient actions to implement the plan, and established that she is managing her financial obligations within her resources. Accordingly, she established that she can be trusted to manage sensitive information. Overall, the record evidence leaves me without questions and doubts pertaining to Applicant's judgment, reliability, trustworthiness, and her eligibility and suitability for a position of trust. For all these reasons, Applicant's eligibility for a public trust position is granted.

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.h:	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 national security to grant Applicant eligibility for a public trust position. Eligibility for access to sensitive information is granted.

THOMAS M. CREAN
Administrative Judge