



**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: 16-03508

Appearances

For Government: Mary M. Foreman, Esquire, Department Counsel

For Applicant: *Pro se*

12/14/2017

Decision

DAM, Shari, Administrative Judge:

Applicant mitigated the financial considerations trustworthiness concerns. National security eligibility for a position of trust is granted.

Statement of Case

On December 12, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F, Financial Considerations. The action was taken under Executive Order 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 after September 1, 2006. On June 8, 2017, new AG were implemented and are effective for decisions issued after that date.¹

¹I considered the previous AG, effective September 1, 2006, as well as the new AG, effective June 8, 2017. My decision would be the same if the case was considered under the previous AG.

Applicant answered the SOR on January 5, 2017 (Answer), and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on April 27, 2017. DOHA issued a Notice of Hearing on May 15, 2017, setting the hearing for June 28, 2017. Department Counsel offered Government Exhibits (GE) 1 through 4 into evidence.² Applicant testified and called two witnesses. She offered Exhibits (AE) A through V into evidence. All exhibits were admitted without objection.³ DOHA received the hearing transcript (Tr.) on July 7, 2017. The record remained open until August 8, 2017, for submission of additional exhibits. Applicant timely submitted AE X that included 8 pages. The exhibit was admitted without objection.

Findings of Fact

Applicant is 32 years old. She has a high school diploma. She completed a nurse's aide certification program. She has been married 12 years. She and her husband have an eight-year-old son. In March 2016, she began her current position with a defense contractor. Prior to this position, she worked for a state university medical center for nine years. She has been a leader for a Boy Scouts troop for two years. Applicant's supervisor is aware of this proceeding and the underlying security concerns. (Tr. 16-19.)

Applicant attributed some of her financial problems to being young and unaware of issues related to credit and financial matters. She also said her son was sick in 2010, resulting in medical bills that she was unable to pay. In spring 2012, her father-in-law was diagnosed with a serious illness, causing her mother-in-law to stop working to care for him. Subsequently, Applicant and her husband began helping them financially. They also assumed the loan payments on a truck that her father-in-law had purchased because Applicant's car needed major repairs. She stopped making payments on her automobile loan, and the creditor repossessed it in 2013. (Tr. 20-21; GE 2.) She attempted to negotiate the return of the car with the creditor, but was unable to afford the large payment requested. (AE A.)

In the summer of 2016, Applicant paid a credit repair company \$1,600 to repair her credit. She and her husband wanted to improve their credit score so they could purchase a home. (AE B.) She has not participated in credit counseling. (Tr. 52.)

Based on credit bureau reports (CBR) from February 2016 and June 2017, the SOR alleged 13 delinquent debts that totaled \$25,188 and became delinquent between 2010 and 2013. (GE 3, GE 4.) The status of each debt is as follows:

SOR ¶ 1.a: Applicant contacted the creditor to negotiate a payment plan of this \$9,839 delinquent automobile car loan. In June 2017, she agreed to make monthly payments of \$40 on this debt. (Tr. 37-40, 52; AE R; AE X at 7.)

²Applicant made one correction to GE 2, which is her Personal Subject Interview. (Tr. 12-13.)

³Department Counsel offered Hearing Exhibit 1 as demonstrative evidence. It is a summary of the SOR-alleged debts. Applicant had no objection to this exhibit. (Tr. 19.)

SOR ¶ 1.b: The retail debt \$368 was disputed by the credit repair company and it was deleted from Applicant's credit report. (AE D.)

SOR ¶ 1.c: This \$11,808 is a duplicate of the automobile loan alleged in ¶ 1.a. (Tr. 37-39; AE G.)

SOR ¶ 1.d: After negotiating a settlement for \$528, Applicant resolved this \$1,107 debt owed to a retailer. (Tr. 35; AE F.)

SOR ¶ 1.e: Applicant started making monthly payments of \$25 on the \$685 medical bill. It is being resolved. (Tr. 32-33, 40; AE E.)

In October 2016, the following eight medical debts alleged in the SOR were deleted from Applicant's credit history after the credit repair company disputed them: ¶ 1.f (\$255); ¶ 1.g (\$255); ¶ 1.h (\$246); ¶ 1.i (\$220); ¶ 1.j (\$159); ¶ 1.k (\$112); ¶ 1.l (\$95); and ¶ 1.m (\$39). These debts totaled \$1,381. Applicant acknowledged they were her son's medical debts that she did not pay. (Tr. 35, 41; AE C, AE D.)

Post-hearing, Applicant submitted documentation that she arranged payment plans for the debts alleged in SOR ¶ 1.g, SOR ¶ 1.j, SOR ¶ 1.k, and SOR ¶ 1.l. They are being resolved. She submitted proof that she paid the debt in SOR ¶ 1.m. The creditor for SOR ¶ 1.h told her that it would no longer accept payments on the debt. (AE X.)

Applicant submitted a budget. Her net family monthly income is \$5,300. After paying expenses, she and her husband have between \$1,200 and \$2,700 remaining at the end of the month depending on if they work overtime. (Tr. 50; AE H.) Applicant stated that their truck is paid and they are current on all other bills, including a car payment and a mortgage payment for a house they recently purchased. (Tr. 46, 51; AE M, AE N, AE P.)

Applicant's husband testified. He is aware of the household finances and the effect that supporting his parents had on their finances. He felt it was his responsibility to help his parents during their difficulties. (Tr. 58-59.) Applicant's mother-in-law testified. She explained the stressful period she went through when her husband learned that he had a rare disease and became seriously ill. At the same time, her mother was dying. As a consequence, she understood the financial burden she placed on her son and daughter-in-law and relied on their financial assistance. (Tr. 61-63.)

A volunteer and committee chair for a Boy Scout's troop wrote a letter of reference for Applicant. She has known Applicant for two years. She praised Applicant's skill and diligence in organizing and implementing a large fundraiser. The treasurer for the committee stated that Applicant is honest and trustworthy. She praised Applicant for her dedication and hard work. A former co-worker at the university hospital where Applicant previously worked complimented Applicant on her capabilities and leadership skills. (AE I, AE J, AE K.)

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are to be used in determining an applicant's eligibility for a position of trust.

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 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "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, and has the ultimate burden of persuasion as to obtaining a favorable [trustworthiness] decision."

A person applying for a position of trust 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 national security eligibility. 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.

Finally, as emphasized in Section 7 of Executive Order 10865, "[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *a/so* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or 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 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.

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

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

Applicant accumulated delinquent debts between 2010 and 2013, which she was unable or unwilling to timely resolve until recently. These facts establish prima facie support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate those concerns.

AG ¶ 20 describes five conditions that could mitigate the trustworthiness concerns arising from Applicant's alleged 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

(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.

The 12 SOR-alleged debts were accumulated between 2010 and 2013. In the past four years, Applicant has not accumulated additional delinquent debts. The evidence establishes mitigation under AG ¶ 20(a), as the circumstances that contributed to her financial delinquencies are unlikely to recur and do not cast doubt on her current trustworthiness.

Some of Applicant's financial delinquencies were caused by financial immaturity, which was a circumstance within her control, as was her decision to help her in-laws during her father-in-law's illness. Her son's medical debts were beyond her control. Applicant did not provide information that she attempted to responsibly manage the debts before they became delinquent, which is required to establish full mitigation under AG ¶ 20(b).

Applicant did not submit evidence that she participated in financial or credit counseling; however, there are clear indications that her financial delinquencies are coming under control. AG ¶ 20(c) partially applies. Applicant initiated a good-faith effort to resolve the alleged debts, albeit some of her efforts occurred after receiving the SOR. She paid two debts; started making payments on another debt in June 2017; attempted to establish a payment plan with one creditor; and recently established a payment plan for four other debts. Applicant's budget can accommodate payments on the outstanding delinquent debts that total less than \$12,000. AG ¶ 20(d) applies.

Applicant hired a credit repair company to investigate delinquent debts. Subsequently, nine debts were disputed and removed from her credit report. However, there is insufficient evidence to find mitigation under AG ¶ 20(e), as she acknowledged that most of the debts belonged to her.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility for a security clearance 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(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.

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

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant is an intelligent and articulate woman, who has successfully worked for her employer since March 2016 and at a previous position for nine years. Volunteers, who have worked with her in supporting the Boy Scouts, speak highly of her honesty and capabilities. She acknowledged her financial delinquencies and has been working to resolve them, including some which had been deleted from her credit history, and the largest debt, an automobile repossession. The Appeal Board has addressed a key element in the whole-person analysis in financial cases, stating:

In evaluating Guideline F cases, the Board has previously noted that the concept of 'meaningful track record' necessarily includes evidence of actual debt reduction through payment of debts. However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrates that he has ' . . . established a plan to resolve his financial problems and taken significant actions to implement that plan.' The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2 (a) ('Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.') There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.⁴

⁴ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

Applicant provided sufficient evidence to demonstrate a plan to implement and resolve outstanding delinquent debts within the scope of the term defined in the above case. The likelihood that financial problems will recur or Applicant will stop making payments on the plans she has initiated is minimal based on her efforts to-date and knowledge that similar problems could jeopardize her employment. The potential for pressure, coercion, or duress is eliminated by the resolution of many of Applicant's formerly outstanding debts and efforts to resolve the largest debt for \$9,800. Overall, the record evidence leaves me without doubt as to Applicant's judgment, eligibility, and suitability for a public trust position. She met her burden to mitigate the trustworthiness concerns arising under the guideline for financial considerations.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraphs 1.a through 1.m: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant a position of trust. National security eligibility is granted.

SHARI DAM
Administrative Judge