



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



In the matter of:

)  
)  
)  
)  
)

ADP Case No. 17-00627

Applicant for Public Trust Position

**Appearances**

For Government: Bryan Olmos, Esq., Department Counsel

For Applicant: *Pro se*

08/17/2018

---

**Decision**

---

Curry, Marc E., Administrative Judge:

Although Applicant has taken some steps to address her financial delinquencies, it is too soon to conclude that she has mitigated the trustworthiness concern, given the nature of the remaining delinquencies and the amount that remains outstanding. Eligibility to continue working in a public trust position is denied.

**Statement of the Case**

On April 14, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the trustworthiness concerns under Guideline F, financial considerations, explaining why it was unable to find it clearly consistent with the national interest to grant her eligibility for a position of trust. The DOD CAF took the action under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; and DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the adjudicative guidelines (AG) issued after September 1, 2006.<sup>1</sup>

---

<sup>1</sup> While the case was pending, the Director of National Intelligence issued revised AGs, effective for any

On May 20, 2017, Applicant answered the SOR allegations, denying all of them except for SOR subparagraph 1.a, and requesting a hearing. The case was assigned to me on January 18, 2018.

The hearing was initially scheduled for April 23, 2018. At Applicant's request, it was continued and rescheduled for May 16, 2018. The hearing was held as rescheduled. I received six Government exhibits (GE 1 – GE 6), and one Applicant exhibit (Applicant Exhibit (AE) A). At the close of the hearing, I left the record open to June 8, 2018, at Applicant's request, to allow her to submit additional evidence. She did not submit any additional exhibits by the deadline, whereupon I closed the record. The transcript was received on June 5, 2018.

### **Preliminary Rulings**

1. Subparagraphs 1.b through 1.d, and 1.h allege debts, but do not identify the creditors. As such, Applicant was not provided adequate notice to prepare a reply. Consequently, in light of her denials, I resolve them in her favor.

2. Subparagraph 1.n alleges that Applicant failed to file state income tax returns for tax years 2009 through 2012. The state where Applicant lived during this period does not have a law requiring residents to file state income tax returns. (<https://doc.we.gov/find-taxes/income-tax>) Therefore, I resolve subparagraph 1.n in Applicant's favor.

### **Findings of Fact**

Applicant is a 47-year-old single woman. She was married previously from 1996 to 2002. She has a high school diploma and has earned some college credits (Tr. 26). Since February 2016, she has been working for a federal contractor as a data analyst and information developer. (GE 1 at 12)

Applicant's marriage ended in divorce (GE 2 at 4) The terms of the divorce reflected the amicable nature of their separation. (Tr. 28) Specifically, Applicant and her husband maintained a joint interest in their marital home and in stock options from a job where they worked together in the 1990s. Applicant continued to occupy the house, while her ex-husband maintained responsibility to pay the property taxes and the mortgage. (Tr. 74) Also, he was required to pay monthly alimony totaling \$2,200. (Tr. 27, 32) Generally, they communicated before exercising any of their stock options.

By the mid-2000s, Applicant's ex-husband began experiencing financial problems, leading to a concurrent souring of their post-marital relationship. Specifically, the alimony payments became erratic, and Applicant's ex-husband stopped paying property taxes on their home. Also, he began cashing in their jointly-owned stock options without Applicant's knowledge, using the proceeds to pay his debts, and not paying any of the taxes on the proceeds. (Tr. 19, 39, 78)

---

adjudication on or after June 8, 2017. Accordingly, I have used the revised AGs in this adjudication. My decision would not have changed had I have used the AGs in place when the SOR was issued.

. In 2009, Applicant's ex-husband filed for bankruptcy protection. He neither notified Applicant, nor included her as a creditor. (Tr. 31) The subsequent discharge left Applicant solely responsible for the unpaid property taxes and the taxes from the exercise of the stock options. (Tr. 78)

Applicant was unaware of the extent to which her ex-husband was violating the terms of the agreement because, through most of this period, she was recuperating from severe injuries from a hiking accident in 2006, including a concussion, major hearing loss, a partially paralyzed hand, and a leg so severely broken, that she was unable to walk without assistance until 2011. (Tr. 12, 41)

Applicant spent several years recovering from the injuries sustained in the hiking accident. During this time, her income was limited, as she worked part time. (Answer at 7; Tr. 43) Absent financial support from her ex-husband, and underemployed because of the hiking accident, Applicant began to struggle with her finances. (Tr. 41) In 2009, the bank foreclosed the mortgage on her home. Applicant received the surplus proceeds and used them primarily to pay loans from family members, and legal fees to an attorney she retained to represent her in her ex-husband's bankruptcy proceeding. (GE 2 at 5; Tr. 35)

By 2015, Applicant had incurred multiple debts including the deficiency from a repossessed car, totaling \$6,094 (SOR subparagraph 1.a), two medical bills related to the hiking accident (SOR subparagraphs 1.j and 1.k), and an unresolved property tax lien totaling \$18,494 (SOR subparagraph 1.f). Applicant purchased the car, referenced in subparagraph 1.a, in May 2014. (GE 5 at 3) Four months after she purchased the car, she was laid off from her job, and subsequently unemployed for approximately a year. (GE 1 at 14) Currently, she is negotiating a settlement with the creditor. (Answer at 4)

The medical debts alleged in SOR subparagraphs 1.e, 1.j and 1.k total approximately \$1,000. Applicant sought the help of a medical charity, which paid these debts. (Answer at 5)

The tax lien totaling \$18,494, as alleged in SOR subparagraph 1.f, stems from 2005. Applicant contends that her ex-husband did not pay the property tax on the home, as required in their divorce agreement. (Tr. 32) Applicant intends to hire an accountant to review her federal tax records to ascertain what portion that her ex-husband owes, and to negotiate a reduction of the remainder that she owes in anticipation of developing a payment plan. (Tr. 23, 84-85) As of the date of the hearing, she had not retained an accountant.

Applicant did not file her federal income tax returns for tax years 2009 through 2012, as alleged in SOR subparagraph 1.m. She contends that she had no responsibility to file federal income tax returns during those years because she was either underemployed or unemployed, and did not meet the income threshold for filing returns. (Tr. 25) She provided no documentary evidence in support of this contention.

Subparagraphs 1.g, 1.i, and 1.l are miscellaneous alleged delinquencies totaling approximately \$1,200. She denies them and is working with her credit counselor to get them removed from her credit report. (Answer at 6; AE A)

Applicant earns \$86,000 per year. (Tr. 81) She has \$70,000 in retirement and savings accounts. (Tr. 81) Currently, she is living with her parents, caring for them and helping with their living expenses. She has approximately \$200 in monthly discretionary Income.

## **Policies**

When evaluating an applicant's suitability for a trustworthiness position, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. 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. 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. 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 determination.

Under the whole-person concept, 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).<sup>2</sup>

---

<sup>2</sup> 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.

## Analysis

### Guideline F, Financial Considerations

The trustworthiness concerns about financial considerations are set forth in AG ¶ 18:

Failure or inability 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 information. . . .

Applicant's delinquencies trigger the application of disqualifying conditions AG ¶ 19(a), "inability to satisfy debts," and AG ¶ 19(c), "a history of not meeting financial obligations." Applicant's outstanding tax lien for delinquent property taxes raises a security concern under AG ¶ 19(f), "failure to pay or file Federal, state or local income taxes, as required."

Applicant contention that she was not required to file federal income tax returns between 2009 and 2012, absent any supporting factual documentation or legal reference, is not sufficient to escape scrutiny under AG ¶ 19(f).

The following mitigating conditions are potentially applicable:

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 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;

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.

Applicant's financial problems did not occur as a result of foolish or irresponsible spending. Instead, they occurred when her ex-husband reneged on the terms of their divorce agreement, and later schemed to conceal the proceeds from a stock sale, to which she was entitled, by filing for federal bankruptcy protection, leaving her with the tax consequences. Applicant's financial problems were exacerbated by the severe hiking accident she suffered in 2006.

Applicant satisfied the medical debts alleged in subparagraphs 1.e, 1.j, and 1.k with the help of a medical charity. I resolve these allegations in her favor. Applicant retained a credit counseling agency to assist her in resolving the disputed debts alleged in subparagraphs 1.g, 1.i, and 1.l. These efforts are sufficient to mitigate these debts under AG ¶ 20(d). I resolve these allegations in her favor.

Elements of AG ¶¶ 20(b) through 20(d) apply, given the cause of Applicant's financial problems and her efforts to resolve them. However, Applicant's most significant debt, the property tax delinquency, remains outstanding. She provided no documentary support for her contention that she had no responsibility to file federal income tax returns from 2009 to 2012, and her largest commercial delinquency, alleged in subparagraph 1.a, remains unaddressed. Given the heavy burden generated by failing to file income tax returns or pay income taxes, the length of time the tax lien has been outstanding, and Applicant's unsubstantiated promise to resolve it, I cannot conclude that she has mitigated the trustworthiness concern.

### **Whole-Person Concept**

Given the nature and seriousness of Applicant's outstanding debts, and the length of time they have been delinquent, I conclude Applicant has not mitigated the trustworthiness concern.

### **Formal Findings**

Formal findings for 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
Subparagraphs 1.b-1.e:	For Applicant
Subparagraph 1.f:	Against Applicant

Subparagraphs 1.g-1.l:

For Applicant

Subparagraph 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 the interests of the United States to grant Applicant eligibility for a position of trust. Eligibility for a position of trust is denied.

---

Marc E. Curry  
Administrative Judge