



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



In the matter of:

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ADP Case No. 17-01217

Applicant for Public Trust Position

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel

For Applicant: *Pro se*

03/29/2018

Decision

Curry, Marc E., Administrative Judge:

Applicant mitigated the financial considerations security concerns. Eligibility to continue working in a public trust position is granted.

Statement of the Case

On May 22, 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 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; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG) effective within the DOD on June 8, 2017.

On June 26, 2017, Applicant answered the SOR allegations, admitting all of them except SOR subparagraphs 1.a, 1.ww, and 2.a. She requested a decision based on the

administrative record instead of a hearing. On August 31, 2017, Department Counsel prepared a File of Relevant Material (FORM). Applicant filed a response on October 26, 2017. The case was assigned to me on January 17, 2018.

Findings of Fact

Applicant is a 40-year-old married woman with two children. She is a high school graduate, and has been working as a claims customer service advocate since 1998. (Item 3 at 22) Over the years, Applicant has incurred approximately \$16,000 of delinquent debt. Subparagraph 1.a is a delinquent federal income tax debt for 2013, totaling \$1,382. Applicant and her husband incurred this because when they filed their income tax return, they forgot to submit one of his W-2 forms from the three jobs that he worked that year. They discovered their oversight approximately a year later, after the Internal Revenue Service (IRS) contacted them. (Item 5 at 2) This debt was satisfied through an offset from their 2015 refund. (Item 2 at 1; Item 5 at 2)

The remainder of the SOR debts are medical bills. The SOR does not identify any of the creditors by name. When Applicant began addressing these debts, she contacted a representative of the medical facility where she and her family have received most of their health care over the years. She learned that 37 of the 49 debts that formed the basis of the SOR were owed to this facility (subparagraphs 1.b – 1.dd; 1.ii, 1.ii – 1.rr). (Item 2) When she attempted to develop a payment plan, the representative told her that 26 of these debts, totaling \$10,400, were listed as inactive, having been charged off, and that they were uncollectible (subparagraphs 1.b – 1.v; 1.ii- 1.nn, 1.qq). (Answer at 10-12) As of the date of the Applicant's response to the FORM, she was waiting for the medical facility representative to consolidate the remaining debts due and set up a proposed payment plan (SOR subparagraph 1.oo and 1.rr). (Response at 3-7) These debts total approximately \$500.

As for the remaining SOR debts, Applicant has satisfied the debts alleged in subparagraphs 1.ff through 1.hh, 1.j, and 1.kk, totaling approximately \$180. (Response at 18) Also, she has paid the debt alleged in subparagraph 1.nn, totaling \$133. Recently, in June 2017, Applicant negotiated a settlement agreement with the creditor alleged in subparagraph 1.uu and made the first of 10 monthly payments. (Item 2 at 5)

Subparagraph 1.ss totals \$556. Applicant attempted to negotiate a payment arrangement, but was unsuccessful, as she currently cannot afford to make the proposed monthly payment. (Response at 13) Applicant was unable to contact the creditor of the debt alleged in subparagraph 1.tt, totaling \$327. She sent a \$10 money order to the address on the credit report "to see if [she] would get a response back or a new bill." (Response to FORM at 10)

Applicant contacted a representative of the creditor for the debt alleged in subparagraph 1.vv, totaling \$223, but was unable to negotiate a payment arrangement. (Response to FORM at 10) She sent a \$10 money order to the creditor. It has not been returned. (Response to FORM at 14) Applicant satisfied the debt alleged in subparagraph

1.ww, totaling \$58, and the debt alleged in subparagraph 1.xx, totaling \$39. (Item 2 at 14; Item 2 at 13)

The SOR alleges that Applicant did not list all of her delinquencies on her security clearance application, completed on April 21, 2014. She contends that the omissions were unintentional. She disclosed her federal income tax delinquency, as alleged in subparagraph 1.a, and she disclosed four debts, providing detailed information about why they became delinquent and when she satisfied them. (Item 3 at 36-40) These four debts were the only ones that appeared on the credit report that she referenced when she completed the security clearance application. (Item 2 at 5)

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).¹

¹ 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," AG ¶ 19(c), "a history of not meeting financial obligations," and AG ¶ 19(f), "failure . . . to pay Federal, state or local income taxes, as required."

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; 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 and her husband inadvertently underreported their income when he forgot to submit a W-2 from with his 2013 federal income taxes for one of the three jobs he worked that year. The IRS informed them of the oversight and deducted the delinquency from the refund they received in 2015. Although this does not explicitly trigger the application of AG ¶ 20(g), it is sufficient to mitigate subparagraph 1.a. I resolve this allegation in her favor.

The remaining SOR debts do not stem from foolish or irresponsible spending. Instead, they are medical bills. By the time Applicant had completed her security clearance

application, she had identified and paid four of these medical bills. When confronted with the remaining bills, she paid seven of them, made a payment arrangement with another creditor, to which she is adhering, and proactively reached out to a representative from the medical facility where her family receives most of their treatment, ascertaining what she owed, and discussing a payment plan.

Applicant's progress towards debt reduction has not been without problems. The majority of her debts were charged off, she was unable to reach settlement agreements with some of the creditors, and she could not locate other creditors. Nevertheless, upon evaluating the cause of her financial problems, her payment of several of the debts, and her ongoing efforts to resolve the remainder, I conclude that her financial problems are gradually and responsibly being resolved. AG ¶¶ 20(b) and 20(d) apply.

Applicant is not working with a counselor. However, given the clear indications that the problem is being resolved, I conclude that AG ¶ 20(c) applies partially.

Personal Conduct

Under this guideline, "conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information." Moreover, "of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes." (AG ¶ 15)

The SOR identified none of the creditors of the debts that Applicant allegedly omitted from her trustworthiness application. Instead, the SOR identifies them generically as "medical" accounts. Although automatic data processing case pleadings are not required to be pled with the specificity of criminal pleadings, they must, at minimum, be specific enough for applicants to prepare a response. Here, the Government is alleging that Applicant omitted debts that were never identified in the SOR.

Additionally, Applicant listed her federal income tax delinquency on the security clearance application, together with four delinquencies of which she was aware. Under these circumstances, her contention that she was unaware of those that she did not include when she completed the application is credible. I conclude that she did not falsify her security clearance application, and that there are no personal conduct security concerns. (*See generally*, ISCR Case No. 15-06990, (App. Bd. Jan. 11, 2018) (judge erred in finding applicant deliberately falsified application because he failed to consider that applicant disclosed several of his debts))

Whole-Person Concept

Given the nature of the debts and the Applicant's efforts towards resolving them, I conclude that her progress is sufficient to constitute sufficient evidence of financial rehabilitation to mitigate 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:	FOR APPLICANT
Subparagraphs 1.a – 1.xx:	For Applicant
Paragraph 2, Personal Conduct:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is 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 granted.

Marc E. Curry
Administrative Judge