



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



In the matter of:

ADP Case No. 17-01736

Applicant for Public Trust Position

Appearances

For Government: David F. Hayes, Esq., Department Counsel

For Applicant: *Pro se*

02/15/2018

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the financial considerations trustworthiness concerns. Eligibility for access to sensitive information is denied.

Statement of the Case

On June 2, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing trustworthiness concerns under Guideline F, financial considerations. The action was taken under *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 (AG) effective within the DOD on September 1, 2006. On June 8, 2017, new AG were implemented and are effective for decisions issued after that date.¹

¹ I 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 July 5, 2017, and she elected to have her case decided on the written record. Department Counsel submitted the Government's file of relevant material (FORM). The FORM was mailed to Applicant, and it was received on September 19, 2017. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. Applicant did not object to the Government's evidence, which are identified as Items 1 through 5, and they were admitted into evidence. Applicant submitted documents, which were marked Applicant Exhibits (AE) A through D. There was no objection, and they were admitted into evidence.

Findings of Fact

Applicant admitted the SOR allegations in ¶¶ 1.a-1.c, 1.e, 1.f, and 1.h-1.w. She denied the allegations in SOR ¶¶ 1.d and 1.g. Her admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact.

Applicant is 40 years old. She attended college, but did not earn a degree. She has never been married. She has a 19-year-old child. She disclosed on her June 2016 Electronic Questionnaire for Investigations Processing (e-QIP) that she has lived with her parents since 1996. She has worked for her employer, a federal contractor, since 2005.²

On her e-QIP, under Section 26 regarding her financial record, Applicant disclosed she had student loans that were in deferment that she is unable to pay at this time. She also disclosed she had unpaid hospital and medical bills from 2013 and 2014. She noted she had frequent hospital stays during this time, and has a chronic illness that causes her to have outpatient procedures.³

In February 2017, Applicant was interviewed by a government investigator. During the interview she was confronted with the debts alleged in the SOR, including her numerous medical debts and others. She acknowledged the debt in SOR ¶ 1.a from April 2015 was likely for an inpatient hospital stay. She acknowledged that the other medical debts were likely related to her hospital stays, but she did not have specific knowledge of each individual debt. She indicated to the investigator that she would contact the hospital and arrange a payment plan. The debts alleged in the SOR are supported by credit reports from July 2016 and May 2017, and Applicant's admissions.

In Applicant's July 2017 answer to the SOR, she stated that her medical debts were with a collection company. On June 16, 2017, after receipt of the SOR, she contacted the collection company to discuss payment arrangements. The company agreed to consolidate the medical debts alleged in SOR ¶¶ 1.a-1.c, 1.e, and 1.i-1.v (total balance is approximately \$37,003). She agreed to pay \$20 biweekly and the payments would be applied toward the oldest debts first. She made the two \$20

² Item 2.

³ Items 1, 3.

payments in June 2017. In her October 2017 FORM response, she provided proof she made one additional \$20 payment in August 2017, but was unable to make any more payments due to household expenses.⁴ These debts are unresolved.

Applicant admitted she owed the collection account in SOR ¶ 1.f (\$917). She stated that in July 2017, she contacted the creditor and was advised the debt included nonpayment for a bill and the cost of equipment that was not returned. She was told that if she returned the equipment, the amount owed would be reduced. She stated in her answer that she was admitted to the hospital in December 2012 and had multiple hospital stays until May 2013. She was renting an apartment, and her friends had to move her belongings from her apartment to her mother's residence. She has been unable to locate some of her belongings. Applicant indicated on her e-QIP that she has lived at her mother's residence since 1996. She did not list any other places of residence. She stated in her answer that she was going to make a \$20 payment for the debt in July 2017. No documentation of a payment was provided. In her FORM response, she stated she was unable to find the equipment. No other information was provided.⁵ The debt is unresolved.

Applicant disputed the debts alleged in SOR ¶¶ 1.d (\$762) and 1.g (\$762). I conclude they are likely duplicates and find in her favor for SOR ¶ 1.g. She stated the creditor said it did not show an account in the amount for \$762 in their system. Applicant did not provide documentary evidence of what actions she has taken to dispute the debt. Credit reports from June 2016 and May 2017 show this debt was charged off in 2013.⁶ It remains unresolved.

Applicant admitted the debt in SOR ¶ 1.h (\$707). It was charged off in approximately December 2013. Applicant was confronted with the debt during her February 2017 interview. She contacted the creditor after receiving the SOR and arranged a payment plan that was to commence in July 2017. She is to make payments of \$23 a month. She provided proof that she made payments in July, August, September, and October 2017. She is resolving this debt.⁷

Applicant admitted the debt in SOR ¶ 1.w (\$796). It was charged off in 2010. Applicant was confronted with the debt during her February 2017 interview. She contacted the creditor after receiving the SOR and arranged a payment plan that was to commence in July 2017. She is to make payments of \$10 a month. She provided proof that she made payments in July, August, September, and October 2017. She is resolving this debt.⁸

⁴ Item 1; AE A, B.

⁵ Item 1; AE A.

⁶ Item 1; AE A.

⁷ Items 1, 3, 4, 5; AE A, C.

⁸ Items 1, 3, 4, 5; AE A, D.

Applicant did not provide evidence that she is receiving or has received financial counseling. She did not provide a budget or information about her current finances. She did not provide information about why she failed to address her debts until after receiving the SOR.

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 the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense 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 national security eligibility will be resolved in favor of the national security."

Directive ¶ E3.1.14, states that the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states that 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 of potential, rather than actual, risk of compromise of sensitive information.

Analysis

Guideline F: Financial Considerations

The trustworthiness concern relating to the guideline for financial considerations is set out 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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

AG ¶ 19 provides conditions that could raise trustworthiness concerns. The following are potentially applicable:

- (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 has delinquent debts from at least 2010 that she is unwilling or unable to resolve. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate trustworthiness concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 are potentially applicable:

- (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 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 action to resolve the issue.

Applicant disclosed that she had a chronic medical condition and that she was hospitalized in 2013 and 2014. She has recurring medical issues. When confronted with her medical and other delinquent debts during her background interview, she acknowledged she owed the debts but did not know the specifics. She indicated at that time she would contact the hospital and make payment arrangements. She did not take action until after she received the SOR. She failed to follow through on her payment plan for her medical debts and other debts. She is making minimal monthly payments on two of her delinquent debts. She did not provide information about her current finances. Applicant's past inaction and disregard for her financial obligations is an indication of her ongoing financial problems. I am unable to conclude future financial problem are unlikely to recur. Her behavior casts doubt on his current reliability, trustworthiness and good judgment. AG ¶ 20(a) does not apply.

Applicant indicated she has a chronic medical condition and had several hospital stays and procedures in 2013 and 2104. It is unknown whether she had medical insurance or the status of her finances at the time or subsequently. Minimal information was provided. Her medical issues were beyond her control. For the full application of AG ¶ 20(b), it requires Applicant to have acted responsibly under the circumstances. There is no evidence that she has done so. It is unlikely that Applicant was unaware that she had numerous medical bills. She was confronted with them and her other delinquent debts during her interview. There is scant evidence that she has done anything regarding her delinquent debts until after she received the SOR. Even then, her actions are minimal. She failed to follow through on her \$20 biweekly payment plan for the medical debts that were consolidated. Applicant did not act responsibly. AG ¶ 20(b) has minimal application.

There is no evidence that Applicant has received financial counseling and there are not clear indications her financial problems are being resolved or under control. I cannot find that Applicant's contact with creditors after receiving the SOR to make payment arrangements constitutes a good-faith effort to repay overdue creditors. AG ¶ 20(c) and 20(d) do not apply.

Applicant stated in her answer to the SOR that she disputed the debts in SOR ¶¶ 1.d and 1.g. I have found in her favor on one debt due to duplication. The debt was charged off in 2013. She failed to provide sufficient evidence as to the basis to dispute the legitimacy of the past-due debt and she failed to provide documented proof to substantiate the basis of the dispute or evidence of actions to resolve the issue. AG ¶ 20(e) does not apply.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a public trust position 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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a public trust position 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. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is 40 years old. She has been steadily employed since at least 2005. I have considered she has a chronic medical conditions that required hospital stays and medical attention. Applicant was aware of her delinquent medical debts and other debts, but has taken minimal action to resolve them. Despite agreeing to a payment plan for her consolidated medical debts, she made only three \$20 payments. She provided insufficient evidence regarding her finances. Applicant does not have a reliable financial track record. Concerns remain about her reliability, trustworthiness, and good judgment. Applicant failed to mitigate the Guideline F, financial considerations trustworthiness concerns.

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.f:	Against Applicant
Subparagraphs 1.g-1.h:	For Applicant
Subparagraphs 1.i-1.v:	Against Applicant
Subparagraph 1.w:	For Applicant

Conclusion

In light of all of the circumstances, 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.

Carol G. Ricciardello
Administrative Judge