



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



In the matter of:)	
)	
[REDACTED])	ADP Case No. 17-02227
)	
Applicant for a Public Trust Position)	

Appearances

For Government: Allison Marie, Esq., Department Counsel
For Applicant: *Pro se*

07/06/2018

Decision

HESS, Stephanie C., Administrative Judge:

Applicant incurred delinquent debts, however her finances are now under control. She has mitigated the Guideline F (Financial Considerations) concern. Eligibility for access to sensitive information is granted.

Statement of the Case

Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) on June 1, 2016. On July 11, 2017, the Department of Defense (DOD) sent her a Statement of Reasons (SOR), citing trustworthiness concerns under Guideline F. The DOD acted under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective June 8, 2017.

Applicant answered the SOR on August 10, 2017, and requested a decision on the written record without a hearing. On October 12, 2017, Applicant requested a hearing in front of an administrative judge. Department Counsel was ready to proceed on November 8, 2017, and the case was assigned to me on November 22, 2017. That same day, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for the agreed upon date of November 29, 2017. I convened the hearing as scheduled. Government Exhibits (GX) 1 and 3 through 10 were admitted in evidence without objection. Applicant testified, called one witness, and submitted Applicant's

Exhibits (AX) A through G, which were admitted without objection. Applicant objected to GX 2, the background investigator's summary of Applicant's personal subject interview, on the basis that it did not include the statements that the investigator made to Applicant about her debts. Applicant testified about the statements the investigator made, otherwise confirmed the accuracy of the summary, and I admitted the document. DOHA received the transcript (Tr.) on December 11, 2017.

Department Counsel amended SOR ¶¶ 1.z, 1.aa, and 1.bb which alleged that Applicant is indebted to the Federal Government for three tax liens, by striking "Federal Government" and adding "State of South Carolina" in each of the allegations. Applicant admitted these amended allegations, but disputed the current amounts of the liens.

Findings of Fact

Applicant is a 55-year-old claims customer service advocate employed by her current Federal contractor employer since March 1990. She is uncertain when she was first granted a position of public trust. Applicant married in 2000, separated in 2005, and divorced in 2012. Applicant has two adult children who are independent, and a 19-year-old son who resides with her.

The SOR alleges 28 delinquent accounts which include: a \$11,245 deficiency balance on a repossessed mobile home (SOR ¶ 1.a); a student loan that is \$303 past due within \$20,259 balance (SOR ¶ 1.b); a \$6,697 deficiency balance on a repossessed vehicle (SOR ¶ 1.c); and, 18 delinquent medical accounts totaling \$10,880 (SOR ¶¶ 1.d, 1.g through 1.k, 1.m. through 1.p, and, 1.r through 1.y.) Applicant admits knowledge of the accounts, however she is disputing several of them, including SOR ¶ 1.a and several of the medical accounts, and she further states that many of the alleged medical accounts are duplicates. Her admissions are incorporated in my findings of fact.

After Applicant married her husband in 2000, they struggled financially, due primarily to her husband's inability to maintain steady employment. Applicant periodically took personal loans to help cover the family's expenses. After she and her husband separated in 2005, Applicant's three children resided with her. Applicant's husband did not pay child support during their period of separation, or after they divorced in 2012. Applicant incurred all of the SOR medical debt between 2012 and 2014 due to several health issues from which she suffers, and for necessary medical care for her children. Because her finances were tight, Applicant sometimes prioritized providing for her children over paying her outstanding medical bills. (Tr. 87-92.)

Prior to completing her 2016 e-QIP, Applicant contracted with a debt-consolidation company in an effort to resolve her delinquent accounts. The debt-consolidation company disputed several medical debts. Additionally, Applicant entered repayment plans with several of her medical and other creditors and made payments. However, due to unusual and unforeseen expenses, to include a \$290 auto repair in September 2017, a \$225 auto repair in October 2017, and a \$472 auto repair in November 2017, she was unable to maintain the payments. (Answer; AX G.)

Applicant underwent her personal subject interview with the background investigator on March 27, 2017. Applicant testified that the summary of the interview did not reflect information that the investigator provided to Applicant. Specifically, Applicant credibly testified that after discussing her delinquent accounts with the investigator, the investigator told Applicant that her job was not in jeopardy, and that rushing to pay the accounts would not make a difference in the adjudication of her suitability to maintain her position of trust. Applicant relied on these representations, and did not immediately resume her repayment plans or begin addressing additional delinquent accounts. However, she made a successful effort to remain current on her ongoing financial responsibilities. (Tr. 23-25; GX 4.)

Upon receiving the SOR in July 2017, Applicant realized that her delinquent accounts created a concern. She immediately began contacting her creditors and restarting repayment plans or entering into new agreements. She has taken control of her finances by entering repayment agreements with many of her creditors, disputing several accounts, and earning additional money by working a part-time job. Applicant has not incurred any delinquent medical debt since 2014, incurred one delinquent account (SOR ¶ 1.c) in 2016, and none since then. (GX 4.)

The \$11,245 debt alleged in SOR ¶ 1.a is for the balance on a repossessed mobile home. Applicant disputed this debt through a credit-consolidation company in 2016. Applicant lived in a mobile home from 1997 to 2014 and made timely mortgage-loan monthly payments, which included insurance. Applicant discovered a defect in the outer structure of her mobile home and contacted her insurance company for repairs. The insurance company initially made repairs for water-penetration damage to the floor and walls. However, the problem recurred and the insurance company refused additional repairs, claiming that Applicant had been negligent in maintaining the home. Applicant emphatically states that she properly, and frequently, performed maintenance on the home. Eventually, mold and mildew in the walls due to recurring water penetration caused health problems for Applicant's son. Applicant agreed to move out and leave possession of the home to the mortgage-loan creditor. Between March 1997 and April 2014, Applicant made 409 monthly payments on the mobile-home mortgage-loan account, which had an initial balance of \$23,601. The loan creditor was granted possession of the mobile home by the County Court in September 2014. There was no monetary judgment award. (GX 3; GX 8.) Applicant was never contacted about a balance due on the mobile-home mortgage-loan and has recently disputed the amount claimed by the creditor to the three major credit reporting agencies. (Answer.)

Applicant helped finance her two adult children's college educations by taking out parent and student loans on their behalf. The delinquent student loan alleged in SOR ¶ 1.b is no longer past due and is in forbearance. Applicant will make \$108 payments, which are within her budget, beginning in October 2018. (AX A; Tr. 42-44.)

The \$6,697 debt alleged in SOR ¶ 1.c is the balance due on a repossessed vehicle. Applicant purchased a car for her son to use while working and attending college in August 2015, and her son made the \$258 monthly payments. Not long after purchasing the car, it stopped running, however, Applicant's son continued to make the payments.

After several months, Applicant's son lost his job, was unable to maintain the payments, and the car was repossessed. The creditor offered Applicant a settlement of \$2,000, however she was unable to pay the entire amount when offered. Applicant entered a repayment agreement with the creditor of \$100 a month. She will settle this account as soon as she is able. (Tr. 44-45; AX B.)

Applicant was primarily treated at two separate hospitals for her medical conditions. However, she was billed by several different departmental groups within those two hospitals, two of which groups have very similar names. One of those groups with similar names has since disbanded, which has further complicated Applicant's efforts to resolve these debts. Since first attempting in 2016 to consolidate her medical accounts and enter repayment plans with the creditors, Applicant has encountered extreme difficulty in trying to locate the appropriate creditor for each of the medical accounts, received inaccurate information from the creditor's representatives, and has been charged for duplicate accounts. Additionally, Applicant has been personally billed for charges which should have been covered by her insurance carrier. Applicant continues to try to get accurate information to resolve these accounts, and has disputed several accounts with the creditors and the credit reporting agencies. Applicant has consolidated several of her accounts, and has made payments on the consolidated accounts. (Answer; AX C; GX 4; Tr. 49-68; Tr. 70-111.)

The \$6,241 debt alleged in SOR ¶ 1.d is for consolidated medical accounts owed to the same creditor. This total includes SOR ¶¶ 1.h for \$177; 1.i for \$165; 1.r for \$153; 1.w for \$60, as well as other non-SOR charges. Applicant disputed these accounts because she did not receive notice of them, and had believed that her insurance company covered these costs. She made multiple attempts to receive more information about the accounts from her insurance company. She ultimately was able to speak with a customer service representative who retrieved archived explanation-of-benefits documents from her accounts. The documents show that Applicant's insurance company did not timely file its claims, but that no balance is due by Applicant. Applicant also contacted the medical creditor and its collection agency, neither of which showed payments due by Applicant for these accounts. These debts are resolved. (Answer.)

The \$1,011 debt alleged in SOR ¶ 1.c is for a delinquent cellular telephone account. Applicant first entered a repayment plan in June 2016. She has now entered a new repayment agreement of \$50 per month. (AX G.)

The \$298 debt alleged in SOR ¶ 1.f is owed to a cable company. This debt was initially \$598 for unreturned equipment and services. Applicant returned the equipment and entered a repayment plan in July 2016. Due to unforeseen expenses, she was unable to maintain the payments. However, she is now making monthly payments.

The debts alleged in SOR ¶ 1.g for \$250 and 1.u for \$94 are for delinquent medical accounts owed to the same creditor, which is the aforementioned disbanded departmental group. Applicant contacted the creditor by telephone and made a payment. When she again contacted the creditor to make another payment, she was informed that the medical office had closed, the physicians had gone their separate ways, and the

representative had no way to accept a payment. The representative gave Applicant a post office box address, and Applicant sent a payment to that address. She never received confirmation of her payment, and has not made any additional payments.

Despite several attempts, Applicant has been unable to locate the appropriate medical creditors for the \$935, the \$328, and the \$44 accounts alleged in SOR ¶¶ 1.j, 1.n and 1.x. She disputes these accounts, but will continue to make efforts to find the creditors and resolve the accounts. (Answer.)

On Applicant's behalf, the debt-consolidation company Applicant hired in 2016 contested SOR ¶¶ 1.k for \$692; 1.o for \$328; 1.p for \$271; 1.t for \$110; 1.v for \$62; and, 1.y for \$718, as shown on Applicant's June 2017 credit bureau report. (GX 4.) However, she entered into an agreement in July 2016 for the consolidated repayment to the creditor of these medical accounts. (GX 1; GX 2; Answer; AX E.) Applicant has made several payments on these consolidated accounts, and has been offered a 35% discount on the balance when she is ready to pay it off. (AX E; Tr. 72.)

The \$477 debt alleged in SOR ¶ 1.l is for a personal loan to a local credit union. Applicant secured this loan through an online process, with repayment made through direct debits from her account. Applicant thinks she repaid this loan in full, and disputes the debt. However, she entered a repayment agreement with this creditor and has made several payments. (AX D; Answer.)

The \$398 medical debt alleged in SOR ¶ 1.m is owed to the same medical creditor as the consolidated debt alleged in SOR ¶ 1.d. When contacting the medical creditor about other alleged SOR debts, the medical creditor located SOR ¶ 1.m for \$398 and another unalleged debt of \$467. The medical creditor consolidated these debts and Applicant is making \$50 monthly payments. (AX C; Tr. 55-57.)

The \$158 delinquent debt alleged in SOR ¶ 1.q is for a satellite television account. Applicant contacted this creditor and began a \$50 per month repayment plan.

Applicant hired a tax preparer, who miscalculated her state taxes owed for tax years 2012, 2014, and 2015. The state entered three liens against Applicant in 2017. Applicant has been paying these liens through a biweekly garnishment of \$113 since April 2017. As of November 28, 2017, Applicant owed a balance of \$321 on the three combined liens.

Applicant's former coworker and friend testified that Applicant is hard-working, trustworthy, and a person of integrity. She notes that Applicant has been a single parent for many years and that she has been responsible in managing her limited finances. (Tr. 124-127.)

Policies

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. Decisions include,

by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard sensitive information.

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 an evaluation of the whole person. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

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 national security. The Government must present substantial evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). An applicant has the ultimate burden of demonstrating that it is clearly consistent with national security to grant or continue eligibility for a public trust position.

Guideline F, Financial Considerations

The concern under this guideline 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.

This concern is broader than the possibility that an individual might knowingly compromise sensitive information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting sensitive information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding sensitive information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

The record evidence establishes that SOR ¶¶ 1.h, 1.i, 1.r, and 1.w are included in the consolidated debt alleged in SOR ¶ 1.d. I have not considered the debt alleged in SOR ¶ 1.h, 1.i, 1.r, or 1.w when evaluating Applicant's financial status. When the same conduct is alleged twice in the SOR under the same guideline, one of the duplicative allegations should be resolved in Applicant's favor. See ISCR Case No. 03-04704 (App. Bd. Sep. 21, 2005) at 3 (same debt alleged twice).

The following disqualifying conditions apply under this guideline:

AG ¶ 19(a): inability to satisfy debts; and

AG ¶ 19(c): a history of not meeting financial obligations.

The following mitigating conditions are potentially applicable:

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;

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(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 incurred debt due to circumstances that were largely beyond her control, primarily, her medical conditions, single parenthood, and car problems. Her separation and ultimate divorce from her husband deepened her financial difficulties. Applicant initially acted responsibly and in good faith by contracting with a credit-consolidating company in 2016 to repay her creditors. Following her personal subject interview in 2017, she relied on statements made by the background investigator to her detriment. Upon realizing the potential negative impact of her delinquent accounts on her eligibility for maintaining her position of trust, she took immediate action and contacted her creditors, and both reestablished and established repayment plans. She also disputed several accounts and provided evidence that she is not personally responsible for the \$6,241 medical account alleged in SOR ¶ 1.d. Applicant brought the student loan accounts current, was granted forbearance by the lender until October 2018, at which point the payments will be within her budget. Although Applicant has not fully resolved the debt alleged in SOR ¶ 1.a, she provided credible testimony and documentation supporting the legitimacy of her dispute.

“Good faith” means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. ISCR Case No. 99-0201, 1999 WL 1442346 at *4 (App. Bd. Oct. 12, 1999). A trustworthiness adjudication is an evaluation of a person’s judgment, reliability, and trustworthiness. It is not a debt-collection procedure. ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010.) A person is not required to establish resolution of every debt alleged in the SOR. He or she need only establish a plan to resolve financial problems and take significant actions to implement the plan. The adjudicative guidelines do not require that a person make payments on all delinquent debts simultaneously, nor do they require that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

While legally responsible for the state tax liens entered against her, Applicant did not incur these debts through irresponsible behavior, but as the result of a professional tax preparer’s error. The fact that Applicant is paying this debt through garnishment rather than a voluntary effort diminishes its mitigating force. ISCR Case No. 08-06058 at 4 (App. Bd. Aug. 26, 2010). However, payment by garnishment does not bar mitigation of financial concerns. ISCR Case No. 04-07360 at 2-3 (App. Bd. Sep 26, 2006). The three combined debts now total less than \$325.

Applicant has not incurred any recent delinquent debts, and currently lives within her means. The majority of her debts are owed for delinquent medical accounts, which are not indicative of poor judgment or irresponsible spending. Applicant has addressed and is repaying the debts for which she is liable in a responsible manner. Although her financial record is not perfect, she has implemented a reasonable plan to resolve her financial issues within her means. Applicant’s financial difficulties do not cast doubt on her current reliability, trustworthiness, or good judgment. Applicant successfully disputed several of her accounts. AG ¶¶ 20(b), 20(d), and 20(e). AG ¶ 20(a) and 20(g) partially apply.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a position of trust must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. In applying the whole-person concept, an administrative judge must evaluate an applicant’s eligibility for a position of trust 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(a):

- (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.

If 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 I have also considered the following:

Applicant has worked for the same employer for over 28 years, and is held in high esteem by her former coworker. She is a hard-working and dedicated single mother who works a second job in order to improve her financial circumstances.

Formal Findings

As required by section E3.1.25 of Enclosure 3 of the Directive, I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): FOR APPLICANT

Subparagraphs 1.a – 1.bb:

For Applicant

Conclusion

I conclude that it is clearly consistent with the interests of national security to grant Applicant eligibility for a public trust position. Eligibility for access to sensitive information is granted.

Stephanie C. Hess
Administrative Judge