



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



In the matter of:)	
)	
[Redacted])	ADP Case No. 17-02686
)	
Applicant for Public Trust Position)	

Appearances

For Government: Michelle Tilford, Esquire, Department Counsel
For Applicant: *Pro se*

05/17/2018

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves trustworthiness concerns raised under Guideline F (Financial Considerations). Eligibility for a public trust position is denied.

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on October 25, 2016. On August 30, 2017, the Department of Defense (DOD) sent her a Statement of Reasons (SOR), citing trustworthiness concerns under Guideline F. DOD acted under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); DOD Regulation 5200.2-R, *Personnel Security Program* (January 1987), as amended (Regulation);¹ and the adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016), for all adjudicative decisions on or after June 8, 2017.

¹ On April 3, 2017, DOD Manual 5200.02, *Procedures for the DoD Personnel Security Program (PSP)*, (Manual) was published. It cancelled and incorporated the Regulation, but it did not include the provisions for ADP cases. ADP cases continue to be adjudicated in accordance with the Deputy Under Secretary of Defense's Memorandum for the Director, Defense Office of Hearings and Appeals, dated November 19, 2004.

Applicant answered the SOR on October 4, 2017, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on November 16, 2017, and the case was assigned to me on January 16, 2018. The Defense Office of Hearings and Appeals (DOHA) sent her a notice of hearing on February 8, 2018, scheduling the hearing for March 1, 2018. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 7 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AX) A and B, which were admitted without objection. I kept the record open until March 31, 2018, to enable her to submit additional documentary evidence. She timely submitted AX C through K, which were admitted without objection. DOHA received the transcript (Tr.) on March 9, 2018.

Findings of Fact

In Applicant's answer to the SOR, she admitted the allegations in SOR ¶¶ 1.a-1.i, 1.l-1.p, and 1.s. She denied the allegations in SOR ¶ 1.j, 1.k, 1.q, and 1.r. Her admissions in her answer and at the hearing are incorporated in my findings of fact. At the beginning of the hearing, Department Counsel moved to withdraw SOR ¶ 1.o, on the ground that it duplicated SOR ¶ 1.f. I granted the motion. (Tr. 15.)

Applicant is a 30-year-old diet clerk employed by a federal food-service contractor. She worked as a grocery store cashier from September 2006 to June 2011 and as an assistant basketball coach from November 2010 to March 2014. She worked as a nursing assistant from June 2011 to March 2014. She worked as a customer service representative for a defense contractor from March 2014 to April 2015, when she was laid off. She worked a part-time job for about a month and then was unemployed until she began her current job in December 2015. (Tr. 29-30.) She was unemployed for about three months from about August to October 2016, because her employer would not allow her to continue working until she completed and submitted her e-QIP. She testified that it took her three months to submit the e-QIP, because she made errors that required correction and had difficulty obtaining information about a sibling who was born in a foreign country. (Tr. 48-49) She has never been cleared for a public trust position, but she has held a common access card (CAC) since she was hired for her current job. (Tr. 18.)

Applicant has never married. She has three children, ages 8, 4, and 3, for whom she is entitled to child support. The father of her oldest child pays \$750 per month. She is entitled to \$527 per month from the father of her two younger children, but she rarely receives it because, in her words, "he doesn't know how to keep a job." (Tr. 20-21, 53; AX K.)

Applicant attended a university from August 2007 to December 2009, a community college from August 2010 to January 2012, a university from March 2012 to September 2015, and a technical school from May 2016 to the present. She has never received a degree, but she has received professional certification as a nursing assistant and aspires to become a nurse.

Applicant's project manager has observed her pleasant attitude and her willingness to work additional hours as needed, including working on her scheduled day

off or overnight during inclement weather. (AX A.) Applicant's supervisor describes her as a self-starter, trustworthy, and a dependable co-worker, who has a positive attitude and is respectful and compassionate with patients in the hospital where she is employed. (AX E.) A staff nurse at the hospital considers her motivated, dedicated and attentive to the needs of patients. The staff nurse has observed that she enters patients' rooms "with a soft voice and bright smile." (AX G.) Two friends describe her as compassionate, dedicated to her children, and hard-working. (AX F; AX H.)

In Applicant's answer to DOHA interrogatories in August 2017 and her answer to the SOR, she stated that she was enrolled in a debt-management program. The program required an initial enrollment fee of \$39, a monthly maintenance fee of \$20 and monthly payments of \$143 to creditors, amounting to a total of \$163 per month. (GX 4 at 4, 5, 9-12.) At the hearing, she testified that she did not have the money to make the initial payment to the debt-management agency. (Tr. 49.)

Applicant filed a Chapter 7 bankruptcy petition in February 2018. (AX B.) It took her a year to accumulate funds to pay the attorney's fee of \$1,700. (Tr. 50.) As of the date the record closed, there had been no action on the petition.

The SOR alleges 18 delinquent debts totaling about \$40,000. The debts are reflected in credit reports from November 2016 and July 2017. (GX 2; GX 3.) All the debts except the student loans were included in the bankruptcy. The evidence concerning these debts is summarized below.

SOR ¶ 1.a: deficiency of \$11,850 after automobile repossession. Applicant missed one payment in August 2016, when she was required to leave her job until she completed her e-QIP, and her automobile was repossessed. She is not a salaried employee, and is paid only for the hours she actually works. (Tr. 25-26.) Her pay was garnished for \$50 per pay period from December 2016 to March 2017.

SOR ¶ 1.b: deficiency of \$5,192 after automobile repossession in 2015, charged off and judgment entered in March 2016. Applicant's pay was also garnished for this repossession in 2015. She testified that she has included the two repossession deficiencies in her bankruptcy petition. (Tr. 34.)

SOR ¶¶ 1.c-1.e and 1.g: student loans placed for collection of \$4,628; \$4,460; \$3,336; and \$1,323. Applicant paid \$5 per month on each of the loans as part of a rehabilitation program. (Tr. 35-36.) In March 2018, she was approved for an income-driven repayment plan. She does not expect to be required to pay anything immediately, because she intends to resume attending college courses. (Tr. 35-36; AX J.)

SOR ¶¶ 1.f, 1.i, and 1.m: judgments for \$1,773; \$883; and \$844 for unpaid rent. Applicant incurred these debts when she was not working. She had originally intended to include them in a debt-management plan, but they are now included in her bankruptcy. (Tr. 36.)

SOR ¶¶ 1.h, 1.i, 1.n, and 1.s: telecommunications bills placed for collection of \$1,267, \$651, \$1,267, and \$120. These debts were all incurred during Applicant's periods of unemployment. They are not resolved.

SOR ¶ 1.j: delinquent medical bill for \$210. Applicant testified that she disputed this debt online because she has never received a bill for this amount. As of the date of the hearing, she had not received a response. (Tr. 39.)

SOR ¶ 1.k: judgment filed in September 2015 for \$5,539. This debt was for private school tuition in 2013 and 2014. Applicant testified that she wanted her daughter to attend a private school because it would give her a better education. The debt was incurred before Applicant began receiving child support. It was being collected by garnishment of \$50 per month, but it is now included in the bankruptcy (Tr. 40-41.)

SOR ¶ 1.p: community college debt placed for collection of \$1,633. Applicant's state tax refund of \$780 was seized to partially pay this debt. (AX I.)

SOR ¶ 1.q: utility bill placed for collection of \$728. Applicant disputed this debt on the ground that she has never lived in the community where the debt was incurred. (Tr. 45.) The debt is not reflected in the credit reports from July 2017 and March 2018, indicating that the dispute was resolved in her favor. (GX 3; AX D.)

SOR ¶ 1.r: medical bill placed for collection of \$191. Applicant was unable to provide any information about this debt at the hearing. (Tr. 47-48.) The name and address of the collection agency are reflected in the November 2016 credit report, but there is no evidence that Applicant attempted to contact the collection agency or anyone else to obtain information about the debt.

Policies

The Under Secretary of Defense's Memorandum of November 19, 2004, treats ADP positions as sensitive positions, and it entitles applicants for ADP positions to the procedural protections in the Directive before any final unfavorable access determination may be made. The standard set out in the Manual and the adjudicative guidelines for assignment to sensitive duties is that the person's loyalty, reliability, and trustworthiness are such that assigning the person to sensitive duties is clearly consistent with the interests of national security. Manual ¶ 7.1a(2); AG ¶ 2.b.

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. Under AG ¶ 2(b), "[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 access to sensitive information.

Analysis

Guideline F, Financial Considerations

The trustworthiness 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. . . . An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

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

Applicant's admissions and the documentary evidence in the record raise the following potentially disqualifying conditions: AG ¶ 19(a) ("inability to satisfy debts"); AG ¶ 19(c) ("a history of not meeting financial obligations"); and AG ¶ 19(e) ("consistent spending beyond one's means or frivolous or irresponsible spending, which may be indicated by excessive indebtedness, significant negative cash flow, a history of late payments or of non-payment, or other negative financial indicators"). Applicant's decision to send her daughter to a private school that she could not afford was not "frivolous or irresponsible," but it was clearly beyond her means.

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(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;

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(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;

AG ¶ 20(a) is not established. Applicant's delinquent debts are numerous, recent, and were not incurred under circumstances making them unlikely to recur.

AG ¶ 20(b) is not fully established. Applicant has encountered conditions largely beyond her control: her unemployment from April to November 2015 and failure of the father of her two younger children to pay court-ordered child support. Her unemployment from August to October 2016 was not a condition beyond her control, but was the result of her failure to timely complete and submit her e-QIP. She acted responsibly regarding her student loans, completing a rehabilitation program and qualifying for an income-driven loan. However, she has not acted responsibly regarding the other debts. She allowed several debts to go to judgment. She relied on garnishment to pay some of the debts. She presented no evidence of efforts to negotiate payment plans. She contacted a debt-management company but failed to follow through with the company's debt-consolidation plan. She claimed that she could not afford the fees for the debt-management plan, but she was able to accumulate \$1,700 to file a bankruptcy petition.

AG ¶ 20(c) is not established. Applicant's debt-management company did not provide the financial counseling contemplated by this mitigating condition, and her financial problems are not yet under control.

AG ¶ 20(d) is not yet established for the student loans, because Applicant has not established a track record of complying with the terms of her new loan. It is not established for the other debts alleged in the SOR. Neither an involuntary collection by garnishment nor a Chapter 7 bankruptcy constitutes a good-faith effort to resolve debts. See ISCR Case No. 11-08274 (App. Bd. May 2, 2013) (bankruptcy is not good-faith effort); ISCR Case No. 09-5700 (App. Bd. Feb. 24, 2011) (garnishment is not good-faith effort).

AG ¶ 20(e) is established for the medical bill alleged in SOR ¶ 1.j and the utility bill alleged in SOR ¶ 1.q. Applicant has not disputed any of the other debts alleged in the SOR.

Whole-Person Concept

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. In applying the whole-person concept, an 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. 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.

I have incorporated my comments under Guideline F in my whole-person analysis and applied the factors in AG ¶ 2(a). After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the trustworthiness concerns raised by her delinquent debts.

Formal Findings

Paragraph 1, Guideline F (Financial Considerations): **AGAINST APPLICANT**

Subparagraphs 1.a-1.b:	Against Applicant
Subparagraphs 1.c-1.e:	For Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	For Applicant

Subparagraphs 1.h-1.i:	Against Applicant
Subparagraph 1.j:	For Applicant
Subparagraphs 1.k-1.n:	Against Applicant
Subparagraph 1.o:	Withdrawn
Subparagraph 1.p:	Against Applicant
Subparagraph 1.q:	For Applicant
Subparagraph 1.r-1.s:	Against Applicant

Conclusion

I conclude that it is not clearly consistent with the interests of national security to grant Applicant eligibility for a public trust position. Eligibility for a public trust position is denied.

LeRoy F. Foreman
Administrative Judge