



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



In the matter of:)	
)	
[Redacted])	ADP Case No. 18-00079
)	
Applicant for Public Trust Position)	

Appearances

For Government: Brittany Muetzel, Esq., Department Counsel
For Applicant: *Pro se*

08/29/2018

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 application for a public trust position on March 15, 2017. On January 24, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent her a Statement of Reasons (SOR), citing trustworthiness concerns under Guideline F. The DOD CAF acted under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); DOD Manual 5200.02, *Procedures for the DoD Personnel Security Program (PSP)* (April 3, 2017) (Manual); 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.

Applicant answered the SOR on March 15, 2018, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on April 6, 2018, and the case was assigned to me on April 12, 2018. The Defense Office of Hearings and Appeals (DOHA) sent Applicant a notice of hearing on May 22, 2018, scheduling the hearing for June 13, 2018. I convened the hearing as scheduled. Government Exhibits

(GX) 1 through 3 were admitted in evidence without objection. Applicant testified but did not present the testimony of any other witnesses or submit documentary evidence. I kept the record open until June 25, 2018 to enable her to submit documentary evidence. She did not submit anything further. DOHA received the transcript (Tr.) on June 25, 2018.

Findings of Fact

In Applicant's answer to the SOR, she admitted all the allegations. I have incorporated her admissions in my findings of fact.

Applicant is a 35-year-old quality-assurance auditor employed by a federal contractor since April 2017. (Tr. 22.) She was unemployed from February to April 2017. She was employed in various non-federal jobs from July 2004 to April 2017. She has never held a security clearance or eligibility for a public trust position.

Applicant received an associate's degree in May 2013. She married in October 2007 and divorced in September 2016. She has four children: 16-year-old twins, a 13-year-old, and a 12-year-old.

The SOR alleges 19 delinquent debts. Department Counsel withdrew SOR ¶¶ 1.f and 1.j, leaving 17 debts totaling about \$24,000. (Tr. 31-32, 46.) The debts alleged in the SOR are reflected in credit reports from April 2017 and January 2018. (GX 2; GX 3.) The evidence concerning these debts is summarized below.

SOR ¶ 1.a: student loan past due for \$1,607, with total balance of \$17,857. Applicant incurred this debt while earning her associate's degree between October 2011 and May 2013. She testified that she made monthly \$100 payments on the loan until she became unemployed in February 2017. She has not made any further payments. (Tr. 25.)

SOR ¶¶ 1.b, 1.k, 1.n, 1.o, 1.p, 1.q, and 1.s: medical debts for \$4,020, \$31, \$125, \$916, \$30, \$27, and \$656. Applicant testified that the debts were "more than likely" incurred for herself rather than her children. She does not remember what the debts were for. She has not made any payments or contacted any of the creditors. (Tr. 27-29.)

SOR ¶¶ 1.c, 1.d, and 1.e: student loans placed for collection of \$3,970, \$2,092, and \$1,654. These debts also were incurred while Applicant was obtaining her associate's degree. The credit report from January 2018 reflects that the last activity on these accounts was in January 2015. (GX 3 at 2.) She has not made any payments on these debts. She testified that she was in the process of consolidating these loans when she became unemployed in February 2017. (Tr. 29-30.) Her tax refunds were diverted in 2016 and 2017 to pay delinquent student loans. (Tr. 25-26.)

SOR ¶ 1.g: charged-off loan for \$730. Applicant testified she opened this account in her name for her ex-husband and he promised to pay it. The credit report from January 2018 reflects that the account was opened in September 2016, and the last activity was in January 2017. She has not made any payments on the debt. (Tr. 32; GX 3 at 2.)

SOR ¶ 1.h: telecommunications bill for \$278. Applicant has not contacted the creditor or made any payments on this debt.

SOR ¶ 1.i: loan charged off for \$122. Applicant testified that she could not remember how this debt was incurred. The credit report from January 2018 reflects that it was opened in October 2007 and charged off in July 2016. Applicant has not attempted to determine that nature of the debt or to resolve it. (Tr. 34.)

SOR ¶ 1.l: judgment for \$4,661, entered in February 2015 for delinquent student loan. Applicant testified that the judge “threw out” this judgment because the creditor refused to accept her offer to making an \$80 payment. (Tr. 30-31.) She provided no documentation to support her testimony.

SOR ¶ 1.m: medical debt for \$3,391. Applicant testified that this debt was incurred in in May 2016 when she was hospitalized for dehydration. She has not contacted the creditor or made any payments on the debt. (Tr. 33-34.)

SOR ¶ 1.r: satellite television service bill for \$415. Applicant has taken no action to resolve this debt. (Tr. 28.)

When Applicant was interviewed by a security investigator after she submitted her application for a public trust position, she promised that she would look into several of her outstanding debts. At the hearing, she testified that she had not done so. When asked why she had taken no action, she testified, “There is no excuse in particular . . . I just haven’t reached out to anybody.” (Tr. 35.)

Applicant earns about \$32,000 per year. She has no other sources of income. She has not sought child support from her ex-husband. She has no savings and no retirement account. She drives a four-year-old car, on which the monthly payments are \$276. She has not sought or received financial counseling. Her fixed monthly expenses total about \$2,500. She estimates that she has \$400-\$500 left each month after paying all her living expenses. She describes herself as living paycheck to paycheck. (Tr. 38-42.)

Policies

A memorandum from Under Secretary of Defense dated November 19, 2004, treats public trust positions as sensitive positions, and it entitles applicants to the procedural protections in the Directive before any final unfavorable 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 adjudicative guidelines. 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 eligibility for access to sensitive information.

Analysis

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

Applicant's admissions and the documentary evidence submitted at the hearing establish two potentially disqualifying conditions 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(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;

None of these mitigating conditions are established. Applicant's debts are recent, numerous, and were not incurred under circumstances making them unlikely to recur. Her unemployment from February to April 2017, her divorce, and her needs for medical care were conditions largely beyond her control. However, she has not acted responsibly. She has not contacted any of her creditors, sought financial counseling, or made payments on any of her delinquent debts. She attempted to make partial payments on the judgment alleged in SOR ¶ 1.I, and she claimed that the judge “threw out” the judgment, but she provided no documentation to support her testimony, even after being given additional time to obtain and submit it.

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(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.

I have incorporated my comments under Guideline F in my whole-person analysis and applied the factors in AG ¶ 2(d). 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. Accordingly, I conclude she has not carried her burden of showing that it is clearly consistent with national security to grant her eligibility for a public trust position.

Formal Findings

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

Subparagraphs 1.a-1.e:	Against Applicant
Subparagraph 1.f:	Withdrawn
Subparagraphs 1.g-1.i:	Against Applicant
Subparagraph 1.j:	Withdrawn
Subparagraph 1.k-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