



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



In the matter of:	)	
	)	
[Redacted]	)	ADP Case No. 18-00329
	)	
Applicant for Public Trust Position	)	

**Appearances**

For Government: Tara R. Karoian, Esq., Department Counsel  
For Applicant: *Pro se*

09/21/2018

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**Decision**

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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 November 15, 2016. On February 23, 2018, 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); 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 19, 2018, and requested a decision on the written record without a hearing. Department Counsel submitted the Government's written case on May 7, 2018. On May 22, 2018, a complete copy of the file of relevant material (FORM) was sent to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. She

received the FORM on June 13, 2018, and did not respond.<sup>1</sup> The case was assigned to me on September 6, 2018.

### **Findings of Fact**

In Applicant's answer to the SOR, she admitted the allegations in SOR ¶¶ 1.b and 1.d through 1.u. She denied the allegations in SOR ¶¶ 1.a and 1.c. Her admissions are incorporated in my findings of fact.

Applicant is a 43-year-old medical assistant employed by a federal contractor since April 2017. She dropped out of high school after three years and received her general educational development (GED) certificate in 1998. (FORM Item 6 at 3.) She completed a six-month training program and became a registered medical assistant in March 2007.

Applicant worked as a medical assistant in the private sector from March 2007 to October 2008. After marrying and moving to another state, she was unemployed from October 2008 to February 2009. She worked as a medical assistant for a federal contractor from February 2009 to October 2011 and apparently held public trust eligibility. (FORM Item 3 at 36.) She was unemployed from October 2011 to March 2013 after moving again. At some point during this period of unemployment, she turned down a job offer because the pay was too low. (FORM Item 3 at 39.) She worked as a medical assistant in the private sector from March 2013 to July 2014, worked as a store clerk from August to November 2014, and worked as a child-support case worker for a state government from November 2014 to June 2016. She moved to another state because she "needed a change" and was unemployed from July 2016 until she began her current employment. (FORM Item 3 at 14.)

Applicant married in March 1993 and divorced in May 2003. She married again in July 2008 and divorced in January 2015. Her second husband was on active duty in the U.S. Navy, which would explain her relocations in 2008 and 2013. She has three children from her first marriage, ages 25, 23, and 21. (FORM Item 3 at 22-30.)

The SOR alleges 21 delinquent debts that are reflected in credit reports from January 2018 and January 2017. (FORM Items 4 and 5.) The evidence concerning these debts is summarized below.

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<sup>1</sup> The FORM included a summary of a personal subject interview (PSI) conducted on November 14, 2017. The PSI was not authenticated as required by Directive ¶ E3.1.20. Department Counsel informed Applicant that she was entitled to comment on the accuracy of the PSI summary; make any corrections, additions, deletions or updates; or object to consideration of the PSI on the ground that it was not authenticated. Applicant did not respond to the FORM or otherwise object to consideration of the PSI summary. I conclude that she waived any objections to the PSI summary. Although *pro se* applicants are not expected to act like lawyers, they are expected to take timely and reasonable steps to protect their rights under the Directive. ISCR Case No. 12-10810 at 2 (App. Bd. Jul. 12, 2016). See ADP Case No. 17-03252 (App. Bd. Aug. 13, 2018) (holding that it was reasonable for the administrative judge to conclude that any objection had been waived by an applicant's failure to object after being notified of the right to object).

**SOR ¶ 1.a: state tax lien for \$13,657.** Applicant denied this allegation in her answer to the SOR and provided documentary evidence that the debt was paid in full. She stated in her application for a public trust position that the debt was incurred when she received unemployment benefits after turning down a job offer, not realizing that her refusal of the job offer disqualified her from receiving unemployment benefits. She stated that she was paying \$400-\$500 per month on the debt. (FORM Item 3 at 39.) Although the credit report from January 2017 listed the debt as “tax lien other,” the document reflecting satisfaction of the debt was issued by the state “Employment Security Department,” not the state tax authority. (FORM Item 5 at 2; Enclosure to SOR Answer.)

**SOR ¶ 1.b: judgment for \$9,256 for delinquent auto loan.** Applicant admitted this allegation and explained that the debt was incurred when she purchased an automobile with another person and the other person failed to make the payments. The debt is not resolved.

**SOR ¶ 1.c: cellphone account placed for collection of \$1,385.** Applicant denied having service with this provider since 2008, asserted that the account is fraudulent, and provided a reference number for her claim. A reference number, standing alone, is not sufficient documentary evidence to support her claim, because it would require someone to contact the creditor and obtain documentary evidence to which the reference number applies. The Directive does not authorize an administrative judge to act as an investigator for either party. ISCR Case No. 15-01515 at 3 (App. Bd. Aug. 17, 2016). The Directive makes it clear that it is responsibility of the parties to present evidence for the administrative judge’s consideration. ISCR Case No. 08-10170 (App. Bd. Jul. 8, 2011). This debt is not resolved.

**SOR ¶ 1.d-1.u: medical bills and other debts in various amounts.** In Applicant’s answer, she asserts that all these allegations are based on medical bills. However, the credit reports reflect that the debts in SOR ¶¶ 1.g and 1.h are unsecured loans, the debt in SOR ¶ 1.p is for satellite television service, and the debt in SOR ¶ 1.u is for a secured loan. She provided documentary evidence of one \$100 payment in March 2018 to a debt collector for the medical bills. She did not submit evidence of any further payments. The debts alleged in SOR ¶¶ 1.-1.u are not resolved.

Applicant was interviewed by a security investigator in November 2017. During the interview, she attributed her financial problems to her most recent divorce, being the sole provider for her family from 2015 through 2017, underemployment at minimum-wage jobs, and lack of health insurance to cover medical bills. She did not provide specific information about her income and expenses. (FORM Item 6 at 6.) The dates of last activity for the medical debts alleged in SOR ¶¶ 1.d, 1.f, 1.i, 1.j, 1.l, 1.n, 1.o, and 1.p are all in 2013 or 2014, before her divorce. (FORM Item 4.) She has not explained why none of these debts were covered by military medical care benefits while she was still married to an active-duty member of the U.S. Navy.

## **Policies**

The standard set out in 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. AG ¶ 2(c). 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 national security eligibility 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 national security eligibility.

## **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 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 FORM establish the following potentially disqualifying conditions:

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

AG ¶ 19(b): unwillingness to satisfy debts regardless of the ability to do so; and

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

AG ¶ 19(f) ("failure to file . . . or failure to pay annual Federal, state, or local income tax as required") is not established. This disqualifying condition applies only to income taxes. The evidence indicates that the "tax lien other" reflected on Applicant's credit report is actually a recoupment of unemployment benefits.

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 recent, numerous, and were not incurred under circumstances making them unlikely to recur.

AG ¶ 20(b) is not fully established. Applicant's two divorces and her unemployment from October 2008 to February 2009 were conditions beyond her control. It is not clear whether her unemployment from October 2011 to March 2013 was beyond her control, because she has indicated that she turned down a low-paying job during this period. Her unemployment from July 2016 to April 2017 was the result of her voluntary decision. She has not established that the uninsured medical expenses were a condition beyond her control. She took no significant actions to resolve her medical debts until she realized that her job was in jeopardy and she provided evidence of only one \$100 payment that she made after receiving the SOR. An applicant who waits until his or her clearance is in jeopardy before resolving debts may be lacking in the judgment expected of those with access to classified information. ISCR Case No. 16-01211 (App. Bd. May 30, 2018) *citing* ISCR Case No. 15-03208 at 5 (App. Bd. Mar. 7, 2017).

AG ¶ 20(c) is not established. Applicant has not sought or received financial counseling, and her delinquent debts are not under control.

AG ¶ 20(d) is established for the lien alleged in SOR ¶ 1.a, but not for the other delinquent debts alleged in the SOR.

AG ¶ 20(e) is not established. Applicant has not submitted documentary evidence supporting her claim of fraud regarding the cellphone bill. "Possible fraud" is not a sufficient basis for finding mitigation under AG ¶ 20(b). Actual fraud, established by substantial evidence, could provide mitigation in appropriate circumstances. ISCR Case No. 10-02803 at 6 (App. Bd. Mar. 19, 2012.)

### **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 considered the factors in AG ¶ 2(d). Because Applicant requested a determination on the record without a hearing, I had no opportunity to evaluate her credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003). 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. 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

Subparagraph 1.a: For Applicant

Subparagraphs 1.b-1.u: 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