



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



In the matter of:)
)
) ADP Case No. 14-03279
)
)
Applicant for Position of Trust)

Appearances

For Government: Braden M. Murphy, Esq., Department Counsel
For Applicant: *Pro se*

10/21/2015

Decision

CURRY, Marc E., Administrative Judge:

Applicant’s financial problems began after her husband died in 2002 and were compounded by a two-year unemployment from 2011 to 2013, together with a serious car accident in 2012 that required extensive, costly medical treatment. Since gaining a job in 2013, Applicant has begun paying her bills. Also, she filed suit against both the driver of the van in which she was passenger and the driver who hit the van. Under these circumstances, I conclude Applicant has mitigated the concerns regarding her eligibility for access to the sensitive information required to hold an automated data position (ADP).

Statement of the Case

On October 7, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns under Guideline F, financial considerations.¹ The action was

¹The SOR caption mistakenly identifies this case as an Industrial Security Clearance Review case.

taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended, and the adjudicative guidelines (AG) implemented on September 1, 2006.

Applicant answered the SOR on November 5, 2014, admitting subparagraphs 1.a through 1.e, subparagraphs 1.g through 1.j, subparagraphs 1.l through 1.o, and subparagraphs 1.r through 1.s. She denied the remainder and requested a decision on the written record. On February 27, 2015, Department Counsel prepared a File of Relevant Materials (FORM). Applicant received the FORM on April 20, 2015, and submitted a reply on June 10, 2015, whereupon, the case was assigned to me on June 16, 2015.

Findings of Fact

Applicant is a 55-year-old woman with an adult child. Since January 2013, Applicant has been working as a data processor for an insurance company. She began as a part-time employee, and she was promoted to full-time employment in March 2014. (Item 3 at 3) Applicant earned a bachelor's degree in 1997. (Item 4 at 11)

In 2002, Applicant's husband died. She could not support herself on her income alone. (Item 3 at 3) Her debts gradually mounted and increasingly became delinquent. In 2007, her mobile home was foreclosed. (Item 4 at 10) She then had to live with other people. (Item 3 at 3)

Applicant continued to attempt to support herself, working full-time in a custodial position and part-time as a math instructor at a local community college. In 2007, she lost her custodial job, and in 2011, the grant that paid her instructor salary ended, leaving her unemployed. Subsequently, she was unemployed for the next two years. (Item 4 at 12)

In 2012, Applicant moved into a homeless shelter. In May 2012, while living at the shelter, she was involved in a serious car accident while being transported from church in a van, driven by a homeless shelter employee, that collided in an intersection with another automobile. (Item 3 at 3) She suffered severe facial injuries, including a fractured right orbital bone, together with orbital hemorrhaging, and traumatic optic neuropathy. (Item 3 at 11)

By January 2013, Applicant had recovered enough from the car accident to begin working part-time for her current employer. By then, however, she had incurred approximately \$47,000 of delinquent debt, including multiple loans totalling \$11,800 (subparagraphs 1.a, 1.d-1.e, 1.h-1.i, and 1.s), a deficiency stemming from the foreclosed mobile home totalling \$15,700 (subparagraph 1.c), delinquent medical bills totalling

approximately \$3,160 (subparagraphs 1.p, 1.q, 1.t-1.v, 1.x, and 1.y²), approximately \$17,000 of delinquent student loan debt (subparagraphs 1.l-1.o), delinquent utilities (1.r, 1.aa), and a loan owed to an insurance company (1.w as duplicated in 1.z). Also, she had not filed her 2010 federal income tax return, as listed in subparagraph 1.b.

Shortly after Applicant's accident, she entered into a payment agreement to satisfy the debt owed to the hospital that treated her. The debts totalled \$11,781. (Item 3 at 9) It is unclear from the record whether this amount included any or all of the bills alleged in the SOR. Under the agreement, she was to pay the hospital \$25 per month, beginning in June 2012. There is no record evidence of whether Applicant made any of these payments.

In January 2014, Applicant retained an attorney. (Item 3 at 13) With her attorney's help, she compiled all of the medical bills. As of July 2014, she had received treatment totalling \$31,116. This included the hospital that provided her primary treatment, which by then totalled \$25,033, together with treatment from other medical professionals, including ophthalmologists, neurosurgeons, and ear, nose, and throat doctors. (Item 3 at 16)

In October 2014, Applicant sued both the driver of the van in which she was a passenger and the driver of the car that collided with it. (Item 3 at 19) Both drivers were insured when the accident occurred. (Item 3 at 14-15) Applicant denies responsibility for any of the medical bills listed in the SOR (subparagraphs 1.k, 1.q, 1.t-1.v, and 1.x-1.y), contending that they are not her responsibility because she was not at fault for the accident that triggered them.

Since being promoted to full-time employment in March 2014, Applicant has been gradually repaying her delinquent debt. (Item 3 of 3) Currently, she has paid the debt listed in subparagraphs 1.h, 1.p, and 1.aa in their entirety, (Response at 8, 30; Item 3 at 3), and has entered an agreement to satisfy the student loans. Per the student loan repayment agreement, she has been making \$19 monthly payments since December 2014. (Response at 3-9) By May 2015, she had reduced the balance to \$15,615. (Response at 8) In sum, she has reduced her delinquencies by approximately \$2,300.

Applicant attributes her failure to file her 2010 federal income taxes on time to the loss of her W-2 forms and other important records when her mobile home was repossessed. In October 2014, Applicant filed her 2010 federal income tax returns. (Item 3 at 4-5) She owed \$47. The Internal Revenue Service deducted this amount from the refund that Applicant received for tax year 2014. (Response 37)

Applicant is no longer homeless. (Item 3 at 3) As of May 2015, she earned \$10.81 per hour. (Response at 15)

²The SOR alleges another delinquent medical bill, as listed in subparagraph 1.j, totaling \$369. It predates the vehicle accident.

Policies

When evaluating an applicant's trustworthiness, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied together with the factors listed in the adjudicative process. According to AG ¶ 2(c), 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, 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 as to obtaining a favorable trustworthiness determination.

Analysis

Guideline F, Financial Considerations

Under this guideline, "failure or inability 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 information." (AG ¶ 18) Over the years, Applicant incurred more than \$47,000 of delinquent debt, the majority of which remains outstanding. Also, she did not file her 2010 federal income tax return when it was due. AG ¶ 19(a), "inability or unwillingness to satisfy debts," AG ¶ 19(c), "a history of not meeting financial obligations," and AG ¶ 19(g), "failure to file annual federal, state, or local income tax returns as required, or fraudulent filing of the same," apply.

Applicant's financial problems began after her husband died in 2002. They were compounded when she lost her full-time job in 2007, and reached their nadir when she lost her part-time job in 2011. Since beginning full-time work with her current employer, Applicant has gradually begun rehabilitating her finances, satisfying three debts in their entirety, and making steady payments on her student loans over a six-month period. Also, she has filed her 2010 federal income tax return and paid the amount owed.

Applicant's progress is minimal in light of the amount of the delinquent debt. However, given that this progress began while Applicant was living in a homeless shelter

and recovering from severe injuries from a car accident, I conclude that it is sufficient to apply the following mitigating conditions under 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, or a death, divorce, or separation), and the individual acted responsibly under the circumstances;

(c) . . . there are clear indications that the problem is being resolved or is under control; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant denies the medical bills listed in the SOR, asserting that she was not at fault for the injuries, and that she retained an attorney to litigate a recovery. Regardless of who is subject to liability for her medical bills, she incurred them. Consequently, 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," does not apply. Nevertheless, Applicant's consultation with an attorney constitutes additional evidence in support of the application of AG ¶ 20(c).

Whole-Person Concept

Under the whole-person concept, the 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.

Circumstances beyond Applicant's control contributed to her inability to pay her debts. Although her debt repayment progress has been limited, it is significant considering the impediments that she has overcome, and her modest salary. Moreover, as the passenger in one of the vehicles in an accident involving two insured motorists, it is reasonable to conclude that, having sued both motorists, she will be compensated for the related medical bills listed in the SOR. Under these circumstances, I conclude that Applicant has mitigated the 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: FOR APPLICANT

Subparagraphs 1.a-1.aa: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national security to grant Applicant eligibility to occupy an ADP position. Applicant's eligibility to occupy an ADP position is granted.

MARC E. CURRY
Administrative Judge