



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



In the matter of:)	
)	
)	ADP Case No. 14-04392
)	
Applicant for Public Trust Position)	

Appearances

For Government: Eric H. Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

10/08/2015

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant struggled financially to support herself and her three children after she lost her job in 2004. She tried to save her home by filing for Chapter 13 bankruptcy in 2006 and again in 2007, but she could not make the payments. In the past two years, Applicant has rehabilitated her \$31,556 in student loans and satisfied a 2006 state income tax lien for \$1,856. She filed her 2012 federal income tax return late but has no other record of tax filing delinquency. Applicant plans to resolve the \$1,801 balance remaining on a past-due utility account. She disputes her liability for three other debts. The financial considerations concerns have been sufficiently mitigated. Position of trust granted.

Statement of the Case

On December 5, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR),¹ detailing the trustworthiness concerns under Guideline F, Financial Considerations, as to why it could

¹ The SOR was issued to Applicant under her previous name, which is noted in parentheses in the caption. Applicant married in November 2012, but she did not legally change her last name until September 2014, after her formal wedding ceremony in July 2014. (GEs 1, 3; Tr. 28.)

not grant her eligibility for a public trust position. The DOD CAF 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; and the adjudicative guidelines (AG) effective within the DoD on September 1, 2006.

Applicant answered the SOR allegations on December 20, 2014, and she requested a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge. On April 21, 2015, the case was assigned to me to determine whether it is clearly consistent with the interests of national security to grant Applicant eligibility for a public trust position. On April 30, 2015, I scheduled a hearing for May 27, 2015.

At the hearing, four Government exhibits (GEs 1-4) were admitted into evidence without objection. A chart, prepared by Department Counsel as a supplement to his oral closing argument, was accepted into the record as a hearing exhibit (HE 1). Applicant submitted 14 exhibits (AEs A-N), which were received into the record with no objections. Applicant testified, as reflected in a transcript (Tr.) received on June 3, 2015.

At Applicant's request, I held the record open for two weeks initially for her to submit additional documents. On June 5, 2015, Applicant timely submitted a secure email message, which could not be accessed due to conflicting encryption requirements. On June 16, 2015, she submitted by email eight exhibits (AEs O-V). The Government filed no objections by the June 26, 2015 deadline for comment, and the exhibits were accepted into evidence.

Summary of SOR Allegations

The SOR alleges under Guideline F that Applicant filed Chapter 13 bankruptcies in August 2006 (SOR 1.a) and January 2007 (SOR 1.b), which were dismissed. Additionally, as of December 5, 2014, Applicant allegedly owed a state tax lien of \$1,856 from 2006 (SOR 1.c, duplicated in SOR 1.j); delinquent federal student loans of \$21,007 (SOR 1.d) and \$12,460 (SOR 1.e); \$1,851 in past-due electric utility debt (SOR 1.f); \$621 (SOR 1.g) and \$293 (SOR 1.h) in natural gas debt in collection; a \$60 telecommunications debt in collection (SOR 1.1); and a \$3,617.51 deficiency balance for a timeshare resort that went into foreclosure in July 2011 (SOR 1.k). Finally, Applicant is alleged to have failed to file her 2012 federal income tax return (SOR 1.l).

When Applicant responded to the SOR, she admitted the bankruptcy filings. She explained that she filed initially in August 2006 in an attempt to save her home after she became unemployed. She filed the second bankruptcy to secure more time to sell her home. Applicant admitted the state tax lien in SOR 1.c, but added that it was duplicated in SOR 1.j. As for her student loans, Applicant had them consolidated and had been making the payments to rehabilitate her loan to current status. Applicant acknowledged that she had owed the debts in SOR 1.f, and 1.i, but she was making payments on SOR 1.f and had satisfied the debt in SOR 1.i. Applicant disputed the validity of the gas utility debts in SOR

1.g and 1.h and the timeshare debt in SOR 1.k. She denied SOR 1.i because she had filed her 2012 income tax return in February 2014.

Findings of Fact

Before the introduction of any evidence, Department Counsel stipulated that SOR 1.c and SOR 1.j were the same debt. In light of that fact, and after considering the pleadings, exhibits, and transcript, I make the following findings of fact:

Applicant is a 45-year-old college graduate who works as an “associate provider installation specialist” for a healthcare company with a TRICARE contract. (GE 1; AE C.) She loads information about healthcare providers onto an information technology system. (Tr. 66-67.) She was placed with the employer by a temporary staffing agency in September 2012 at an hourly wage of \$16. She became a full-time permanent employee in October 2013. Applicant’s hourly wage is currently \$19.66. (GE 1; Tr. 36-39.) Her base annual earnings without overtime are “a little less than \$40,000.” (Tr. 67.)

Applicant was married to her first husband from May 1988 to November 2000. They had two sons, now ages 27 and 18, and a daughter, now age 25. Applicant and her current husband were legally married in November 2012. (GE 1; Tr. 27.) He has two grown daughters from a previous relationship. (GE 1; Tr. 28.) Applicant’s 18-year-old son still lives at home. (Tr. 29.)

Applicant graduated from high school in 1988. She attended college while working full time as a supervisor for an energy services company, eventually earning her bachelor’s degree in 2003. (GE 1; Tr. 29-30.) Applicant paid for college in part with student loans. Between September 1995 and October 2001, she took on approximately \$26,079 in student loan debt (SOR 1.d and 1.e). (GE 2.) Applicant averaged \$1,250 in take-home pay every two weeks as of June 2004. (AE L.)

In September 2000, Applicant went on vacation with her sister to a resort. They jointly purchased a timeshare, taking on a \$4,828 loan (SOR 1.k). On her return from vacation, she called to invalidate the purchase. She testified that she called to cancel within the three days allotted under the contract. Applicant never used the timeshare or made a payment toward the loan. She denies that she was billed for the loan or notified about the foreclosure. She received some collection notices initially, but had not asked for confirmation of the cancellation in writing. She let her sister handle the timeshare issue. (Tr. 57-60.) It is unclear whether her sister sought to nullify the contract of sale.

While Applicant was working for the energy services company, she miscalculated her federal income tax liability for tax year 2001. The state assessed a tax liability of \$1,442.28 for 2001. (AE R; Tr. 45-46.) In January 2006, the state filed a \$1,856 state tax lien against Applicant because she had not paid the debt (SOR 1.c, duplicated in SOR 1.j). In July 2007, the state filed a second tax lien of \$606 for an undisclosed tax year, which she satisfied in November 2007. (GE 2.)

In May 2004, Applicant purchased for \$560,000 a four bedroom, 3,000 square foot home for herself and her three children. She took on a conventional 30-year mortgage loan for \$476,000. (GE 2.) She qualified for the loan partially because she owned a rental property.² (Tr. 42.) A few months later, in July 2004, Applicant lost her job with the energy company due to a corporate relocation. The new office was too far from her home and her position was eliminated in the move. (Tr. 31-32.) Applicant collected unemployment while studying for her real estate license examination. She was employed as a realtor from October 2004 until July 2007. (GEs 1, 3.)

Applicant struggled to meet her mortgage payments on her income. Her ex-husband did not pay child support for their three children. She stopped paying her mortgage around September 2005, after she had exhausted her savings. (GE 2; Tr. 39.) The mortgage lender initiated foreclosure of her loan by March 2006. (AE K.) In an effort to keep her home, Applicant filed a Chapter 13 bankruptcy petition in August 2006 (SOR 1.a) listing approximately \$500,000 in debt. (GE 1; Tr. 40, 92.) She made one payment of \$2,800 into the bankruptcy, which was paid to her mortgage lender. The bankruptcy was dismissed in October 2006 for nonpayment. (GE 2; AE J; Tr. 41.)

Applicant refiled a Chapter 13 bankruptcy in January 2007 (SOR 1.b) for time to sell her home. (GEs 2, 3; Tr. 42-43.) In March 2007, Applicant began working in the healthcare industry as a customer service representative for a healthcare claims processing company. (GE 1.) Her bankruptcy was dismissed in April 2007 for failure to maintain the payment schedule. In August 2007, Applicant satisfied a \$6,118 property tax lien on the residence. (GE 2.) Around September 2007, Applicant resolved her mortgage with the proceeds from the sale of her home.³ Her credit report of November 2013 shows a zero balance on the mortgage as of September 2007. (GE 2; Tr. 43.) In October 2007, the gas company placed two debts for collection: \$621(SOR 1.g) and \$293 (SOR 1.h) (GE 2), which Applicant disputes on the basis that the debts were from her rental property that she no longer owned. (Answer; AE P.)

Applicant had some college costs for her daughter's education during the fall 2007 and spring 2008 semesters. About her out-of-pocket costs, Applicant testified that she spent close to \$5,000 in student loan costs for her daughter. (Tr. 68-69.)

In August 2009, Applicant left her job with the healthcare company by mutual agreement of her employer following notice of unsatisfactory work performance.⁴ She had issues with her supervisor and was dissatisfied with the work environment. (GE 1; Tr. 34-35.) Applicant did not have a full-time job from August 2009 to May 2011. She collected

² Applicant's credit report of November 2013 shows that she paid off her mortgage by September 2007. (GE 2; Tr. 43.) Applicant testified that the rental property was also resolved in that she "ended up in foreclosure" before she filed for bankruptcy. (Tr. 42, 53-54.) Her November 2013 credit report shows only one foreclosure, which was for the timeshare loan.

³ Applicant indicated on her e-QIP that she owned her home from May 2004 to April 2010. (GE 1.) Available credit information shows that she owed a zero balance on her mortgage as of September 2007. (GE 2.)

⁴ Applicant's paycheck dated August 21, 2009, shows her annual wages totaled \$33,207.20. (AE M.)

unemployment for about 1.5 years of that time. (Tr. 35-36.) Around March 2009, her student loans were placed in collection for nonpayment. In December 2009, she consolidated her student loan debt. She owed \$19,801.97 (SOR 1.d) and \$11,754.62 (SOR 1.e). (GE 2; AE A.)

As of May 2010, Applicant owed \$1,851 in past-due debt for electric utility services (SOR 1.f). A \$60 Internet services debt from June 2011 was assigned for collection in December 2012 (SOR 1.i.). In July 2011, the resort foreclosed on Applicant and her sister's timeshare loan for failure to make their \$144 monthly payments (SOR 1.k) (GE 2.)

Having had little success in finding a job outside of the real estate industry, Applicant returned to work as a realtor in May 2011, but she earned little to nothing in commissions. (Tr. 33.) She also did some temporary work through staffing agencies until September 2012, when she was placed with her current employer at a wage of \$16 an hour. (GE 1; Tr. 36-39.) Applicant and her spouse began cohabiting and sharing expenses about six months before they married in November 2012. (Tr. 69-70.)

On October 20, 2013, Applicant completed and electronically certified to the accuracy of an Electronic Questionnaire for Investigations Processing (e-QIP), which she then signed on October 21, 2013. In response to financial record inquiries, she listed her bankruptcy filings; her failure to timely file her income tax returns for tax year 2012; her delinquent real estate tax debt of \$6,118, which she paid in 2007; and her delinquent student loans. She attributed her real estate tax and student loan delinquencies to lack of income to support her household. Applicant added that she had arranged to make eight payments starting in August 2013 to bring her student loans out of default status. (GE 1.)

A check of Applicant's credit on November 2, 2013, showed the following delinquent balances: \$1,856 on the tax lien (SOR 1.c, duplicated in 1.j); \$21,007 and \$12,460 on her student loans (SOR 1.d and 1.e); \$1,851 in electric utility debt (SOR 1.f); \$621 and \$293 in natural gas debt (SOR 1.g and 1.h); and \$60 in Internet services debt (SOR 1.i). A zero balance was reportedly owed on the timeshare loan after foreclosure (SOR 1.k). (GE 2.)

On November 12, 2013, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM). Applicant explained that she filed a Chapter 13 bankruptcy petition in August 2006, which she had dismissed because she wanted to try and work out her debts (primarily her mortgage and student loans) with her creditors. Her second bankruptcy petition, which she filed in January 2007, was also dismissed. While she indicated that she was unable to make the payments on her income, she also claimed that the bankruptcy was dismissed because she wanted to work out her debts on her own. Applicant cited her unemployment as the reason for her delinquencies, including the property tax lien. She acknowledged that she had yet to file her 2012 income tax returns because she did not have the paperwork needed. She expected to file her delinquent federal return by December 2013 and anticipated a refund. When confronted about the other debts on her credit record, Applicant indicated that she was paying the minimum required on her student loans in the hope of bringing her accounts current sometime in 2014. Applicant denied any knowledge of the electric and gas utility debts or the timeshare

foreclosure. She expressed her belief that the \$60 debt for cancelled Internet service and the \$1,856 state tax lien for underpayment of income taxes for tax year 2001 had both been paid. Applicant expressed her intent to repay her outstanding debts. (GE 3.)

Around February 2014, Applicant filed her delinquent federal income tax return for 2012. (AE N.) She reported wages of \$12,519, but also a \$1,779 loss of business income from home-based cosmetic sales and real estate work. She continues to maintain her real estate license at a cost of \$500 annually. (Tr. 96.) It is unclear whether she filed her state return at the same time, although she testified that she had filed all her delinquent returns. IRS records show that she filed more than one tax return for tax year 2013. (AE U.) Her federal income tax refund of \$389 for 2012 was intercepted by the IRS and applied to her federal student loan debt in March 2014. (AEs N, T; Tr. 61-62.)

To show her good faith and become eligible for a student loan rehabilitation program, Applicant paid \$20 a month for eight months toward her student loans starting in September 2013. (AE S.) In late July 2014, she then entered into an agreement under which she has paid approximately \$190 a month from mid-August through May 2015.⁵ (AEs A, I, S; Tr. 48.) As of late April 2015, Applicant was current in her student loan payments. (GE 4; AEs I, S; Tr. 49-50.) The loan balances were \$19,980.88 (SOR 1.d) and \$11,860.82 (SOR 1.e). (AE S.)

On December 5, 2014, the DOD CAF issued an SOR to Applicant largely because of the reportedly delinquent accounts on her credit record. Applicant received the SOR on December 11, 2014. On December 12, 2014, Applicant paid the \$60 debt for Internet services. (AE B; Tr. 56-57.) Applicant paid \$120.88 in December 2014, \$121 in February 2015, and \$363 in May 2015 toward the \$1,856 state tax lien from 2006. (AEs B, H; Tr. 46.) Before then, she made payments of minimum amounts, \$25 or \$50, when she could afford to do so. (Tr. 46-47.) By cashier's check on June 2, 2015, Applicant paid \$1,643 to resolve the balance remaining on the 2006 state tax lien (SOR 1.c, duplicated in SOR 1.j). (AE R.)

As of May 22, 2015, Equifax was reporting that Applicant has been making timely payments of \$189 per month toward her student loans, which had a \$31,840 current balance. Applicant had reportedly made no payments since March 2010 to the creditor in SOR 1.f. No other open accounts were shown on her credit record. (GE 4.) Applicant testified that she contacted the creditor to arrange for payments. Told that the debt was too old to be collected by the creditor, Applicant sent a \$50 payment by money order in December 2014 anyway. (AE B; Tr. 51.) In January 2015, Applicant verbally disputed the gas bills identified in SOR 1.g and 1.h because they are from her former rental property. She never lived there and did not own it when the charges were incurred. (Tr. 52-53, 55-56.)

⁵ Payment records show that Applicant made payments of \$210 in August 2014, \$169.50 in September 2014, \$191 in October and November 2014, \$200 in December 2014, \$179.16 for January 2015 (paid February 2, 2015), \$191 in late February 2015, \$190 in March and April 2015, and \$190.16 in late May 2015. (AE S.)

Around May 31, 2015, Applicant reached out to the creditor holding the electric utility debt in SOR 1.f. She offered to make payments of \$50 per month to address the \$1,801 balance. (AE O.) She submitted written disputes of the natural gas debts in SOR 1.g and 1.h and the timeshare debt in SOR 1.k with Trans Union, Experian, and Equifax. (AE P.) As of the close of the record, there was no information about whether the electric company had accepted her repayment offer or whether the three credit reporting agencies had verified or removed the disputed debts from her credit profile.

Applicant's take-home pay averages \$1,100 every two weeks. She has \$8,000 in her 401(k) account at work. Her spouse works full-time for an aircraft manufacturer. He is paid an hourly wage. He earned \$60,000 annually before suffering a back injury. His income declined to \$38,000 in 2013 and 2014 because of his disability. (Tr. 70.) He was out of work for about three months in 2014, but he is currently working full time. (Tr. 73-74.) He currently handles the household bills. (Tr. 98.) Their monthly expenses include \$1,900 for rent. They pay \$60 a month for Internet service and \$220 for cell phones. They do not have cable television or car payments. (Tr. 99-100.) They purchased Applicant's car in late 2014 for \$2,500 and paid it off in six installments. (Tr. 100-101.) Their monthly take-home pay basically covers their monthly expenses, debt payments (including \$190 for her student loans, \$154 in credit card payments, \$50 for the debt in SOR 1.f, and \$150 in financial assistance for family members), and savings of \$150 (\$50 for emergencies, \$40 for retirement, and \$50 for college), although it falls somewhat short during the winter months because of heating costs. According to Applicant's budget for 2015, she and her spouse take home \$4,993 per month. Their expenses total \$4,996, but \$5,271 during the winter months. (AE V; Tr. 63-66.)

The older of Applicant's two sons lives with Applicant's mother. He is unemployed and raising his two children, ages two and three as of May 2015, without help from his children's mother. Applicant provides him some financial assistance that averages approximately \$400. Applicant's mother has had some health issues over the past few years that require Applicant's time. She has missed work on occasion to bring her mother to medical appointments or care for her after surgery. Applicant's employer has allowed Applicant to make up the lost time, so it has not had an impact on Applicant's income. (Tr. 71-73.) Applicant's daughter lives on her own and works two jobs. Applicant pays for her daughter's cell phone and sometimes her groceries. (Tr. 76.) Applicant estimates that she and her spouse have \$100 to \$200 a month in net income after paying their expenses and helping her children. (Tr. 76.)

Applicant was given an overall rating of 4 out of a high of 5 for her work performance in 2014. She excelled in all areas assigned to her to assist her department in meeting its team goals. (AE C.) In a separate letter dated May 29, 2015, Applicant's supervisor expressed his recommendation for Applicant "enthusiastically and without any reservation." He has found Applicant to be a dedicated professional willing to assist in any way possible. (AE Q.) A co-worker authored a character reference letter attesting to Applicant's ability to meet the challenges of a work flow that demands immediate attention. (AE E.)

Policies

Positions designated as ADP I and ADP II are classified as “sensitive positions.” (See Regulation ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3.) The standard that must be met for assignment to sensitive duties is that, based on all available information, the person’s loyalty, reliability, and trustworthiness are such that assigning the person to sensitive duties is clearly consistent with national security. (See Regulation ¶ C8.2.1.) The Deputy Under Secretary of Defense (Counterintelligence and Security) Memorandum, dated November 19, 2004, indicates trustworthiness adjudications will apply to cases forwarded to DOHA by the Defense Security Service and Office of Personnel Management. Department of Defense contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination may be made.

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 (AG). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s overall adjudicative goal is a fair, impartial and commonsense decision. 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 reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

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 to obtain a favorable trustworthiness decision.

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. The government reposes a high degree of trust and confidence in individuals to whom it grants access to sensitive information. Decisions include, by necessity, consideration of the possible risk the Applicant may deliberately or inadvertently fail to safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of sensitive information. See Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The trustworthiness concerns about Financial Considerations are set out in AG ¶ 18:

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. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant's record of financial delinquency implicates AG ¶ 19(a), "inability or unwillingness to satisfy debts," and AG ¶ 19(c), "a history of not meeting financial obligations." She filed twice for Chapter 13 bankruptcy in an effort to save her home, but could not make the payments. In addition, she defaulted on her student loans. She was past due on an electric utility services debt of \$1,851 as of November 2013. A state tax debt of \$1,856 went unpaid for several years. A \$60 Internet services debt in collection since December 2012 was apparently overlooked.

Applicant disputes two natural gas debts in collection that were reported on her credit record as of November 2013 (SOR 1.g and 1.h). She also disputes her liability for the timeshare loan in that she contacted the creditor and cancelled the purchase within three days. As noted by the DOHA Appeal Board, credit reports are ordinary business records which are routinely accepted in DOHA proceedings, and Department Counsel is entitled to rely on the evidence in credit reports. However, an applicant can contest the accuracy of the information in a credit report.⁶ See e.g., ISCR Case No. 08-12184 (App. Bd. Jan. 7, 2010); ISCR Case No. 07-08925 (App. Bd. Sep. 15, 2008). The information about the gas debts is from November 2007 with no update since then. AG ¶ 20(e) provides for mitigation under the following circumstance:

(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(e) is not satisfied regarding the natural gas balances of SOR 1.g and 1.h without some evidence that would indicate she no longer owned the property when the debts were incurred. It is reasonable to assume that the debts were incurred sometime before the collection date of October 2007. Even assuming that the debts were incurred by tenants, Applicant would be legally liable for unpaid balances on any account in her name.

⁶ In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government's obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that she is not responsible for the debt or that matters in mitigation apply.

(internal citation omitted).

The SOR alleges, and Applicant denies any liability for the alleged \$3,617.51 deficiency balance on the timeshare loan written off as a bad debt. The burden is on the Government to prove the debt. There is no evidence of the alleged deficiency balance. While Applicant admits that she made no payments on the timeshare loan, the evidence does not substantiate that she owes a balance on the loan. Her consolidated credit report of November 2013 shows a zero balance on the account. The source of the reported deficiency balance is unclear. As to any outstanding liability, AG ¶ 20(e) is established with respect to the timeshare.

Finally, about her failure to file a timely federal income tax return for tax year 2012, Applicant candidly disclosed on her October 2013 e-QIP and during her November 2013 interview with the OPM investigator that she had not yet filed her 2012 federal income tax return. In her Answer to the SOR, Applicant indicated that she filed her return in February 2014, before the SOR was issued. The return submitted in evidence as AE N does not bear a signature date or show when it was filed. However, the IRS notified Applicant on March 26, 2014, that her expected refund for tax year 2012 would be applied to her delinquent federal student loans. This tends to substantiate Applicant's assertion in her Answer to the SOR that she filed her return in February 2014. AG ¶ 20(g), "failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same" applies, but it is mitigated by AG ¶ 20(e) in that her return was not delinquent as of December 2014 when the SOR was issued.

Concerning other potentially mitigating conditions, 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," is difficult to satisfy. Applicant's failed bankruptcies occurred between 2006 and 2007, and the mortgage issue that led to her repeated filing for bankruptcy was resolved through sale of her home. Applicant subsequently defaulted on student loans consolidated in 2009. She is credited with taking steps to rehabilitate the student loans starting in September 2013. Yet, she also made little effort to resolve a 2006 state income tax lien and a \$1,851 electric utility debt from 2010.

Applicant was unable to maintain her \$2,888 monthly mortgage payments on her unemployment compensation after she lost her job with the energy company in July 2004. One has to question Applicant's judgment in purchasing a home for \$560,000 when she was a single parent and receiving no child support from her ex-husband for their three children. Even so, her bankruptcy filings are reasonably attributed to factors outside of her control in that it was her then employer's decision to close its local office and eliminate her position. AG ¶ 20(b) provides for mitigation in such circumstances:

(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.

Applicant became employed in the healthcare industry, but at lower income than she had previously earned. She managed to resolve a \$6,118 local property tax lien around August 2007, on the sale of her home. A January 2006 state income tax lien went unpaid as she gave priority to supporting herself and her three children, including paying approximately \$5,000 in college costs for her daughter's education. A subsequent, lengthy unemployment from August 2009 to May 2011 caused if not contributed to her utility delinquency in SOR 1.f and to her student loan default. AG ¶ 20(b) would not apply because she resigned voluntarily from her job following allegations of unsatisfactory performance. At the same time, Applicant continued to receive no child support for her youngest son not yet 18.

Before the SOR was issued, Applicant had rehabilitated her federal student loans (SOR 1.d and 1.e) and had filed her delinquent income tax return for tax year 2012 (SOR 1.l). One day after she received the SOR, she paid the \$60 debt for Internet services (SOR 1.i). She made one \$50 payment toward the electric utility delinquency (SOR 1.f) despite being told the debt could not be collected because of its age. She made payments totaling \$604.88 between December 2014 and May 2015 toward the state tax lien (SOR 1.c, duplicated in SOR 1.j) before satisfying the debt with a lump-sum payment of \$1,643 on June 2, 2015. Mitigating conditions AG ¶ 20(c), "the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control," and AG ¶ 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts," apply because of Applicant's efforts in the past two years to address her delinquent debts.

As of the close of the evidentiary record, Applicant had no repayment plans established for the natural gas debts totaling \$914 (SOR 1.g and 1.h). She was disputing those debts and the timeshare loan. It has not been established that Applicant owes a deficiency balance for the timeshare. As of May 2015, the electric utility debt in SOR 1.f was the only past-due account on Applicant's credit record. She has offered to pay the electric utility provider \$50 a month, but there is no evidence her offer had been accepted. She could owe approximately \$2,715 in past-due utility charges, assuming that the \$914 in natural gas debt is verified.

Applicant made timely payments on her student loans over the past two years, when her spouse had lower income due to temporary disability. While their current household budget shows some strain during the winter months because of heating costs, Applicant has persuaded me that she can be counted on to handle her finances responsibly. The security concerns about her financial judgment are mitigated.

Whole-Person Concept

Under the whole-person concept, the administrative judge must consider the totality of an applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(a).⁷

⁷ The factors under AG ¶ 2(a) are as follows:

In making the whole-person assessment required under the Directive, the DOHA Appeal Board has held that an applicant is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. An applicant need only establish a plan to resolve financial problems and take significant actions to implement the plan. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). The student loans, which account for most of Applicant's outstanding debt, have been fully rehabilitated. When she answered the SOR, Applicant explained that her failure to comply with her obligation to timely file and pay income taxes for tax year 2012 was because of the demands of caring for her mother, who had significant health problems. Applicant's delinquent filing was situational and not characteristic of her filing of her tax returns generally. For the reasons discussed above, I conclude it is clearly consistent with national security to grant Applicant access to sensitive information at this time.

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

Subparagraph 1.a-1.i: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant Applicant eligibility for a public trust position. Eligibility for access to sensitive information is granted.

Elizabeth M. Matchinski
Administrative Judge

(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.