



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



In the matter of:)	
)	
[Redacted])	ADP Case No. 14-04484
)	
Applicant for Public Trust Position)	

Appearances

For Government: David F. Hayes, Esquire, Department Counsel
For Applicant: *Pro se*

06/16/2015

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 July 18, 2013. On December 4, 2014, 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); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.

Applicant received the SOR on December 16, 2014; answered it on January 11, 2015; and requested a hearing before an administrative judge. Department Counsel was ready to proceed on February 26, 2015, and the case was assigned to me on March 4, 2015. The Defense Office of Hearings and Appeals (DOHA) sent her a notice of hearing on March 9, 2015, scheduling the hearing for March 25, 2015. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 4 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 April 17, 2015, to enable her to submit additional documentary evidence. She timely submitted AX C through E, which were admitted without objection. DOHA received the transcript (Tr.) on April 7, 2015.

Findings of Fact

In her answer to the SOR, Applicant admitted SOR ¶ 1.a in part and admitted SOR ¶¶ 1.d-1.k, 1.m-1.u, 1.x-1.gg, with explanations. She denied SOR ¶¶ 1.b, 1.v, and 1.w. She neither denied nor admitted 1.c and 1.l. Her admissions in her answer and at the hearing are incorporated in my findings of fact.

Applicant is a 32-year-old customer service representative employed by a federal contractor since June 2013. She served on active duty in the U.S. Navy from November 2001 to November 2008 and received an honorable discharge. She received a security clearance in November 2001, which was administratively terminated after she left active duty.

Applicant married in November 2004 and separated in May 2006. She has a ten-year-old son. She receives no fixed amount of child support. She testified, "I have to ask for money. It's not like he just gives it to me or I receive a monthly thing." (Tr. 43.)

Applicant lived with her mother until she was six years old and then lived with an aunt. She knows very little about her father. (GX 1 at 24.) Her lack of family involvement motivated her to join the Job Corps and then enlist in the Navy. Applicant had no contact with her mother until the birth of her son in 2004, after her mother was released from a drug rehabilitation facility. Applicant lived with her mother two years. Her mother stole money and property from her to support her drug addiction, and then stole her car and gave it to a drug dealer. Her mother was murdered in 2012 by her boyfriend, also a drug addict. (Tr. 45-47.)

Applicant injured her back while in the Navy, was placed on the temporary disability retired list (TDRL) in November 2008, and began receiving disability retirement, which was significantly less than her active-duty pay. (Tr. 30, 40, 42.)

Applicant was unemployed and attended school from December 2008 to May 2010. (Tr. 49.) Her student loans are deferred and not alleged in the SOR. (Tr. 50-51.) She held private-sector customer service positions from May 2010 to February 2012, when she was fired because her employer was not satisfied with the medical justification for a leave of absence when she had spinal surgery. (GX 1 at 14-15.) She was unemployed from February 2012 until she began her current position in June 2013. While unemployed, she received VA benefits of \$900 per month. (Tr. 56.)

Applicant had spinal surgery in February 2011, was removed from the TDRL, and received \$25,000 in severance pay. She used her severance pay to pay off a \$3,400 deficiency from a repossessed car, bought furniture and clothing, and paid off her

mother's \$4,500 debt to a drug dealer. She paid \$1,800 as a deposit for the home she now occupies. She admitted that she "spoiled" her son by spending a significant amount to buy him new clothes "and educational tablets and things like that." (Tr. 57.) She spent \$2,000 to put her mother in a hotel to keep her away from the drug dealers and her abusive boyfriend. (Tr. 58-62.) She also bought another car, but she was unable to make the payments on the car, and it was repossessed. The judgment for \$3,416, alleged in SOR ¶ 1.r, was filed against Applicant in February 2012 for the deficiency after repossession. The judgment is unsatisfied (Tr. 89; GX 4 at 1.) In 2013, she spent \$2,000 on her grandmother's funeral. Her father was at the funeral with "his hand out," and she gave him \$500. (Tr. 71.)

The SOR alleges 33 debts, totaling more than \$60,000, reflected on her credit bureau reports (CBRs) from July 2013, June 2014, and February 2015.¹ (GX 2, 3, and 4.) Fifteen debts are medical debts. Applicant presented no evidence of efforts to resolve the debts in SOR ¶¶ 1.a, 1.d, 1.r, 1.t-1.w, 1.y, 1.z, 1.dd, and 1.gg.

In her answer to the SOR, Applicant denied the cell phone debt for \$2,116 alleged in SOR ¶ 1.b. At the hearing, she testified that she and her mother had a prepaid cell phone with this creditor, and that she recently was offered a contract by the creditor. (Tr. 87-88.) Her July 2013 CBR reflects a cell phone account that was referred for collection in March 2011 and has been paid. (GX 2 at 20.) Her June 2014 CBR reflects another cell phone account with the same service provider that was referred for collection in September 2012 for \$2,116, and it is unresolved. (GX 3 at 2.)

Applicant attributed her medical expenses (SOR ¶¶ 1.c, 1.e, 1.i-1.q, 1.bb, 1.cc, 1.ee, and 1.ff) to her spinal surgery. At the hearing, she testified that she lived too far away from the VA medical center and went to local emergency rooms for relief when she was in severe pain. She still suffers from intense pain and requires strong medications, which sometimes cause her to miss work. (Tr. 92.) She intends to submit the medical bills to the VA and seek payment from the VA if they are for her service-connected injuries. She also believes that some of the medical bills may be covered by TRICARE. (Tr. 35, 38.) She testified that she had already typed letters to her medical creditors, and that she would submit copies of the letters and any responses before the record closed. (Tr. 100-02.) I kept the record open so that she could submit copies of her letters and any responses. However, she did not submit any documentary evidence of her efforts to resolve these debts.

In her answer to the SOR, Applicant claimed that the medical debts in SOR ¶¶ 1.i and 1.j are the same debt. The evidence reflects that they are separate debts. Although both debts are for \$348, her June 2014 CBR reflects that one account was opened in August 2012 and the other was opened in March 2014. The date of last activity on one is April 2012 and on the other is November 2013, and they have different account numbers. (GX 3 at 2.)

¹ The SOR alleges that the debts in SOR ¶¶ 1.c, 1.e, and 1.i-1.q are reflected on a CBR dated July 27, 2014. There is no CBR bearing this date in the record. However, GX 3 is dated June 17, 2014.

Applicant also claimed that the tuition debts alleged in SOR ¶¶ 1.f and 1.x are the same debt. The evidence reflects two separate debts owed to the same creditor. They are for different amounts, have different account numbers, and were referred for collection on different dates. Applicant testified that she was currently enrolled in a class for medical coding and billing, and that she previously was enrolled in a pharmacy technician class but did not complete it. (Tr. 84-85.) It appears that the two debts were for separate classes. The debt in SOR ¶ 1.f was referred for collection in July 2012, and the debt in SOR ¶ 1.x was referred in January 2013. (GX 2 at 16; GX 3 at 2.) Applicant testified that she was paying this creditor \$49 per month and her payments were current. (Tr. 85.) She provided no documentation of the \$49 payments. In February 2015, she received a settlement offer for the debt in SOR ¶ 1.f. (AX C.) She stated that she made the first of three \$108 payments, but she was unable to produce documentation of the payments. (AX C.) Her March 2015 CBR does not reflect the SOR ¶ 1.x debt, suggesting that it was paid or absorbed into the debt in SOR ¶ 1.f. However, the CBR reflects the SOR ¶ 1.f debt as unpaid, with a balance due of \$545. (AX A.)

In March 2015, Applicant also received an offer to settle the \$538 credit card debt alleged in SOR ¶ 1.g for \$269 in four monthly payments. (AX D.) There is no evidence that she accepted the offer or made any payments. (Tr. 37-38, 84.)

The \$440 jewelry store debt alleged in SOR ¶¶ 1.h and 1.s arose when Applicant gave her husband a power of attorney while she was deployed at sea, and her husband bought jewelry in her name. SOR ¶ 1.h is the debt underlying the judgment in SOR ¶ 1.s. Applicant has settled this debt. (AX E; Tr. 35-36, 64-66.)

Applicant testified that she received a written settlement offer for the \$179 debt alleged in SOR ¶ 1.aa and made a payment agreement providing for monthly \$20 payments. She did not submit documentation of her agreement or proof of payments. (Tr. 96.)

Applicant has rented the same house since 2012. The house was sold and the new owners increased her rent from \$900 to \$950. She recently accepted an offer from the new owners to purchase the house under a rent-to-own contract, which will reduce her monthly payments from \$950 to \$899. Applicant lives in the house with her son and a 27-year-old friend who is unemployed. Applicant does not charge her friend rent and provides her food and clothing. (Tr. 69-70.) In early 2013, the aunt who raised Applicant and two teenagers who were living with her aunt also moved in with Applicant and stayed until December 2013. The additional occupants in Applicant's house caused her electricity bill to increase from \$80 per month to \$250 per month. (Tr. 72-73.)

Applicant's answer to the SOR includes a detailed budget reflecting net income of \$2,691, expenses of \$2,362, and a net remainder of \$329. She has never sought financial counseling. She devised her monthly budget by using resources she found on the internet. (Tr. 75-77.) Her budget does not include payments for the debts alleged in the SOR. (Tr. 95.) She stated that she plans to pay off her debts at \$100 per month, starting with the smaller debts and working her way up to the larger debts.

Policies

Positions designated as ADP I and ADP II are classified as “sensitive positions.” 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 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.” Regulation ¶ C6.1.1.1. DOD contractor personnel are entitled to the procedural protections in the Directive before any final unfavorable access determination may be made. Regulation ¶ C8.2.1.

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 concern under this guideline is 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.

This concern is broader than the possibility that an individual might knowingly compromise sensitive or classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting sensitive or classified information. An individual 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, her CBRs, and her testimony at the hearing establish two disqualifying conditions under this guideline: AG ¶ 19(a) ("inability or unwillingness to satisfy debts") and AG ¶ 19(c) ("a history of not meeting financial obligations").

The following mitigating conditions under this guideline 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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

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;

AG ¶ 20(d): the individual initiated 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, ongoing, and were not incurred under circumstances making them unlikely to recur.

AG ¶ 20(b) is not established. Applicant encountered several conditions beyond her control: her marital breakup, her back injury, her drug-addicted mother's theft, the expenses incurred in an effort to protect her mother, and her husband's financial irresponsibility while holding a power of attorney from Applicant. On the other hand, her

generosity toward free-loading family members and friends was a condition that she could control. She acted responsibly by resolving the jewelry store debt in SOR ¶ 1.h, but she has not acted responsibly regarding the other delinquent debts. She claimed to have made payments on several debts but has not documented those payments. She has a plan to resolve her medical debts, but she produced no evidence of significant actions to execute the plan. She testified that she intends to begin paying off the smaller debts and then progressing to the larger debts, but her smallest debts remain unpaid. A promise to pay a delinquent debt in the future is not a substitute for a track record of paying debts in a timely manner. ISCR Case No. 07-13041 at 4 (App. Bd. Sep. 19, 2008).

AG ¶ 20(c) is not established. Applicant has not received financial counseling beyond her personal internet research, and her financial situation is not under control.

AG ¶ 20(d) is established for the jewelry store debt in SOR ¶¶ 1.h and 1.s. It is not established for the other debts alleged in the SOR.

AG ¶ 20(e) is not established. Applicant denied several debts in the SOR, but she has not articulated or documented a basis for disputing the debts. She has not filed any disputes with the original creditors, collection agencies, or credit reporting agencies.

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. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant was candid and sincere at the hearing. She has had a difficult life, without a stable family or role models. She suffered a debilitating injury in the Navy. She has been generous to her family and friends, often to her financial detriment. She knows

what she needs to do to begin resolving her financial problems, but apparently lacks the discipline to do it. She had an opportunity to resolve many of her debts when she received \$25,000 in severance pay. She paid off one delinquent debt, but squandered much of the remainder.

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 financial problems. 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.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraphs 1.i-1.r:	Against Applicant
Subparagraph 1.s:	For Applicant
Subparagraphs 1.t-1.w:	Against Applicant
Subparagraph 1.x:	For Applicant
Subparagraphs 1.y-1.gg:	Against Applicant

Conclusion

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

LeRoy F. Foreman
Administrative Judge