



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



In the matter of:)	
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)	ADP Case No. 14-03299
Applicant for Public Trust Position)	

Appearances

For Government: Ray T. Blank Jr., Esq., Department Counsel
For Applicant: *Pro se*

07/24/2015

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to deny her eligibility for a public trust position. The evidence shows Applicant has a history of financial problems or difficulties. But Applicant presented sufficient evidence to explain and mitigate the concern stemming from her unfavorable financial history. Accordingly, this case is decided for Applicant.

Statement of the Case

On September 22, 2014, the Department of Defense (DOD) sent Applicant a statement of reasons (SOR) detailing a trustworthiness concern under Guideline F for financial considerations.¹ The action was taken under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Review Program* (Jan. 2, 1992), as

¹ The SOR was issued by the DOD Consolidated Adjudications Facility, Fort Meade, Maryland. It is a separate and distinct organization from the Defense Office of Hearings and Appeals, which is part of the Defense Legal Services Agency, with headquarters in Arlington, Virginia.

amended (Directive); Department of Defense Regulation 5200.2-R, *Personnel Security Program* (Jan. 1987), as amended (Regulation); and the adjudicative guidelines (AG)² implemented by the DOD on September 1, 2006. The SOR recommended submission of Applicant's case to an administrative judge to determine her eligibility to occupy an automated data processing (ADP) position to support a contract with the DOD.

Applicant answered the SOR on October 18, 2014, and she opted for a decision based on the written record in lieu of a hearing. Thereafter, on April 29, 2015, Department Counsel submitted all relevant and material information that could be adduced at a hearing.³ This so-called file of relevant material (FORM) was mailed to Applicant, who received it on May 28, 2015. Applicant replied to the FORM on about June 26, 2015, and her response is made part of the record as follows: (1) Exhibit A—memorandum of explanation; (2) Exhibit B—law firm paperwork; (3) Exhibit C—copies of federal income tax returns for 2011, 2012, 2013, and 2014; and (4) Exhibit D—copies of state income tax returns for 2011, 2012, 2013, and 2014. The case was assigned to me on July 18, 2015.

Ruling on Evidence

Exhibit 8 is a report of investigation (ROI) from the background investigation of Applicant. The document is a summary of an interview of Applicant conducted on January 15, 2014. An ROI may be received and considered as evidence when it is authenticated by a witness.⁴ Here, Exhibit 8 is not authenticated in any way. Although Applicant, who is representing herself, has not raised the issue via an objection, I am raising it *sua sponte*. With that said, it is evident that Department Counsel is acting in good faith, having highlighted the issue in their brief.⁵ Nevertheless, Applicant's lack of an objection in her response to the FORM does not amount to a knowing waiver of the right to object to the ROI.⁶ Accordingly, Exhibit 8 is not admissible and I have not considered it.

² The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines in Enclosure 2 to the Directive.

³ The file of relevant material consists of Department Counsel's written brief and supporting documents, some of which are identified as evidentiary exhibits in this decision.

⁴ Directive, Enclosure 3, ¶ E3.1.20; see ISCR Case No. 11-13999 (App. Bd. Feb. 3, 2014) (the Appeal Board restated existing caselaw that a properly authenticated report of investigation is admissible).

⁵ Department Counsel Brief at 2, n. 1.

⁶ *Wavier* means "[t]he voluntary relinquishment or abandonment – express or implied – of a legal right or advantage; the party alleged to have waived a right must have had both knowledge of the existing right and the intention of forgoing it." *Black's Law Dictionary*, 1717 (Bryan A. Garner ed., 9th ed., West 2009).

Findings of Fact

Applicant is a 45-year-old employee of a health care contractor for the Defense Department. She has been employed with health care companies since at least 2004. She is seeking to obtain eligibility to occupy a position of public trust for her current job responsibilities. Eligibility is necessary because her job involves access to sensitive but unclassified information known as personally identifiable information (PII).

Applicant is twice divorced and the mother of a 21-year-old daughter. In her answer to the SOR, she acknowledged that she had poor credit and had outstanding debts. She stated that she is a trustworthy person who takes her job seriously. She further stated that she is a hard worker who does the best she can to provide for her family. She described herself in the past as homeless with a young daughter, but she bounced back.

The available documentary evidence shows that Applicant has a history of financial problems or difficulties.⁷ That history as set forth in the SOR is as follows: (1) failure to file state and federal income tax returns for 2011 and 2012; (2) nine medical collection accounts for a total of \$1,748; (3) two collection accounts owed to a local government for juvenile service for a total of \$293; and (4) a single consumer collection account for telephone service for \$5,046. Applicant admitted all these matters except for the tax returns, which she stated she had filed. Those matters are addressed below.

(1) Applicant provided copies of her state and federal income tax returns for 2011, 2012, 2013, and 2014, all of which were prepared and filed with the assistance of a tax preparation firm.⁸ The state and federal returns for 2011 and 2012 were filed in June 2015. A review of the returns shows a mix of refunds and taxes owed with a final outcome of a \$7 refund from the state and \$1,123 in taxes owed to the IRS. The returns also show a substantial increase in income in 2014. Her 2014 adjusted gross income was \$42,884 whereas it never exceeded \$34,000 in the three previous years.

(2) Applicant admitted the nine medical collection accounts, and she stated that she intended to seek assistance with a credit service agency to repay her debts.

(3) Applicant explained that the two collection accounts owed to a local government stem from her daughter's involvement with a county juvenile court service. She further explained her daughter was paying fees associated with probation, but stopped. She stated she asked her daughter to take care of the debts. The two collection accounts appear in the 2013 credit report, but they do not appear in the more recent credit reports from 2014 and 2015.

⁷ Exhibits 5, 6, and 7 (credit reports from 2013, 2104, and 2015, respectively).

⁸ Exhibits C and D.

(4) Applicant admitted the single consumer collection account for telephone service. The account appears in the 2013 credit report, but it does not appear in the more recent credit reports from 2014 and 2015.

Applicant retained the services of a law firm that specializes in providing credit repair services.⁹ A recent case status report shows the law firm has taken action to intervene with Applicant's creditors as well as challenge information on credit reports.

Discussion

Under Guideline F for financial considerations,¹⁰ the suitability of an applicant may be questioned or put into doubt when that applicant has a history of excessive indebtedness or financial problems or difficulties.¹¹ The overall concern is:

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 [sensitive] information.¹²

The concern is broader than the possibility that a person might knowingly compromise sensitive information to obtain money or something else of value. It encompasses concerns about a person's self-control, judgment, and other important qualities. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding sensitive information.

The evidence supports a conclusion that Applicant has a history of financial problems or difficulties. The facts indicate inability or unwillingness to satisfy debts¹³ and a history of not meeting financial obligations¹⁴ within the meaning of Guideline F. The facts are sufficient to establish these two disqualifying conditions, and the facts also

⁹ Exhibit B.

¹⁰ AG ¶¶ 18, 19, and 20 (setting forth the concern and the disqualifying and mitigating conditions).

¹¹ ISCR Case No. 95-0611 (App. Bd. May 2, 1996) (It is well settled that "the security suitability of an applicant is placed into question when that applicant is shown to have a history of excessive indebtedness or recurring financial difficulties.") (citation omitted); and see ISCR Case No. 07-09966 (App. Bd. Jun. 25, 2008) (In security clearance cases, "the federal government is entitled to consider the facts and circumstances surrounding an applicant's conduct in incurring and failing to satisfy the debt in a timely manner.") (citation omitted).

¹² AG ¶ 18.

¹³ AG ¶ 19(a).

¹⁴ AG ¶ 19(c).

establish that she failed to timely file state and federal income tax returns for 2011 and 2012.¹⁵

I have considered the six mitigating conditions under Guideline F, and the following are most pertinent to Applicant's case:¹⁶

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 [person] initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Although Applicant has a problematic financial history, this case has a number of mitigating circumstances to consider. First, she sought assistance and followed professional guidance by retaining the services of a tax preparation firm. As a result, she has now filed state and federal income tax returns for the two years in question as well as for the past two tax years. That means she is in compliance with tax authorities on filing requirements, and she owes a relatively small amount, less than \$1,200, to the IRS.

Second, she has not resolved any of the nine medical collection accounts, but those accounts have diminished security significance. That is because the debts were incurred for necessary medical care. The debts were not caused by frivolous or irresponsible spending, high living, or other matters of security significance.

Third, the two collection accounts owed to the local government also have diminished security significance. That is so because the debts were incurred by Applicant's daughter's involvement with juvenile probation. Moreover, those two collection accounts do not appear on the most recent credit reports, which suggests they may be otherwise resolved.

Fourth, the single consumer collection account for more than \$5,000 is a sizeable and substantial debt with security significance. But it too does not appear on the most recent credit reports, which suggests it may be otherwise resolved.

Fifth, Applicant sought assistance and followed professional guidance by retaining the services of a law firm to improve her credit worthiness. The law firm specializes in helping consumers repair their credit, and it is taking action on her behalf. It is too soon to predict the outcome of those actions.

¹⁵ AG ¶ 19(g).

¹⁶ AG ¶¶ 20(a)–(f).

Sixth, Applicant's income has recently increased by a substantial amount. In 2014, her adjusted gross income was more than \$12,000 more than in the previous year. The additional income should improve her overall financial stability and allow her to address delinquent debts.

Based on all those circumstances, taken together, I am persuaded that Applicant has presented sufficient evidence to explain and mitigate the concern stemming from her unfavorable financial history. The evidence leaves me without doubt or concern about Applicant's eligibility and suitability for a public trust position. In reaching this conclusion, I weighed the evidence as a whole and considered if the favorable evidence outweighed the unfavorable evidence or *vice versa*. I gave due consideration to the whole-person concept.¹⁷ Accordingly, I conclude Applicant explained and mitigated the financial considerations concern.

Formal Findings

The formal findings on the SOR allegations are as follows:

Paragraph 1, Guideline F:	For Applicant
Subparagraphs 1.a–1.m:	For Applicant

Conclusion

In light of the record as a whole, it is clearly consistent with the interests of national security to grant Applicant eligibility for an ADP position. Eligibility for access to sensitive information is granted.

Michael H. Leonard
Administrative Judge

¹⁷ AG ¶ 2(a)(1)–(9).