



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



In the matter of:)	
)	
)	ADP Case No. 14-04174
)	
Applicant for Public Trust Position)	

Appearances

For Government: Julie R. Mendez, Esq., Department Counsel
For Applicant: *Pro se*

03/24/2016

Decision

CERVI, Gregg A., Administrative Judge:

This case involves concerns raised under Guideline F (Financial Considerations). Applicant has not mitigated the financial considerations trustworthiness concerns. Eligibility for access to sensitive information is denied.

Statement of the Case

Applicant completed a Questionnaire for National Security Positions (SF 86)¹ on June 11, 2013. On October 3, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations.² 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

¹ Applicant is requesting a trustworthiness determination for access to sensitive information, also known as a "public trust" determination, to occupy an automated data processing (ADP) position.

² Item 1.

1987), as amended (Regulation); and the adjudicative guidelines (AG) implemented by DOD on September 1, 2006.

Applicant responded to the SOR on February 20, 2015,³ and elected to have the case decided on the written record in lieu of a hearing. The Government's written brief with supporting documents, known as the File of Relevant Material (FORM), was submitted by Department Counsel on May 20, 2015.

A complete copy of the FORM was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the concerns. Applicant received the FORM on June 9, 2015. She did not submit a response to the FORM, nor did she assert any objections to the Government's evidence. The case was assigned to me on February 23, 2016. The Government's exhibits included in the FORM (Items 1 to 7) are admitted into evidence.

Findings of Fact

The SOR alleges 28 delinquent debts, including four judgments, totaling approximately \$17,000. Additionally, the SOR alleges two bankruptcy filings that resulted in a Chapter 7 discharge in 2004 and the dismissal of a Chapter 13 case in 2006. Applicant admitted the SOR allegations except for five debts alleged in SOR ¶¶ 1.p, 1.r, 1.t, 1.y, and 1.z. She provided brief notes with her denials. The evidence submitted with the FORM substantiates the SOR allegations.⁴

Applicant is 37 years old and has been employed as a customer service representative for a defense contractor since May 2013. She has not served in the military nor has she previously held a public trust position. In the past 10 years, she experienced approximately 3.5 years of unemployment or part-time employment. Due to her inability to meet financial obligations, Applicant filed Chapter 7 bankruptcy in 2004. Her reported liabilities of approximately \$40,000 were discharged in 2004.⁵ She again filed bankruptcy in 2005 under Chapter 13. This bankruptcy was dismissed in 2006 because Applicant failed to make payments to cure the arrears, and failed to make plan payments.⁶

Applicant denied SOR ¶ 1.p, a judgment for \$906 filed by her bankruptcy attorney in 2008 for unpaid attorney fees. In her Answer and SF 86, Applicant claimed the debt had been reduced to \$125 through the use of a payment plan.⁷ Applicant is making progress toward resolving this debt.

³ Item 2.

⁴ Items 2–7.

⁵ Item 4.

⁶ Item 5.

⁷ Items 2 and 3.

Applicant denied SOR ¶ 1.r, a judgment filed in 2007 for approximately \$694, as paid in 2007. She did not provide evidence of payment and the debt continues to appear as an unsatisfied judgment in her 2013 credit bureau report (CBR).⁸ Applicant denied SOR ¶ 1.t, a judgment for \$990. She claimed in her Answer that she was unaware of the judgment, however, the judgment appears on her 2014 CBR and she listed it in her SF 86 as a collection for an auto loan for which she was making payments until she was laid off in 2009. Applicant denied SOR ¶ 1.y, a collection account for \$336 by a cable service provider. She claimed in her Answer that she returned the equipment, however the debt continues to appear as a collection account in her 2013 CBR. Finally, Applicant denied SOR ¶ 1.z, which alleges a collection for a cash advance company for \$275. Applicant claimed in her Answer that this was “billed twice.” I am assuming Applicant is claiming this debt is a duplicate SOR allegation; otherwise, the reason for her denial is unclear. Although there is a similar account alleged in SOR ¶ 1.bb, her 2013 CBR shows that these are separate accounts. For all of the denied allegations, Applicant did not submit documentary evidence in support of her contentions.

Applicant submitted evidence of debtor education and counseling, completed in December 2014, in anticipation of a new Chapter 7 bankruptcy filing.⁹ Although Applicant claimed her income covers her household expenses, a personal budget submitted with her Answer indicates the contrary; her monthly income of \$3,798 is insufficient to meet her expenses of \$3,937. No documents or additional information were submitted in response to the FORM. There is no documentary evidence of payments toward or resolution of the SOR debts, except as described above. I was unable to evaluate Applicant’s credibility and demeanor, or to inquire into the current status of her finances since she elected to have her case decided without a hearing.

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.

⁸ Item 7.

⁹ No evidence of a new bankruptcy filing has been submitted except for certificates of completion of courses in credit counseling and personal financial management, and notices of electronic filing procedures.

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 for financial considerations 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 [sensitive] information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (b) a history of not meeting financial obligations.

Applicant has long-standing financial problems that she is unable or unwilling to resolve. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate the financial considerations concerns are provided under AG ¶ 20. The following are potentially applicable:

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

Applicant's delinquent debts are long-standing and reoccurring. Applicant has a history of filing bankruptcy to discharge or reduce payments on delinquent debts. Although many of her debts have become delinquent due to job loss or underemployment, Applicant has not acted responsibly despite receiving a Chapter 7 bankruptcy discharge in 2004, and a payment plan in a Chapter 13 bankruptcy filed a year later. Although Applicant now claims to be filing another Chapter 7 bankruptcy, she has not established a consistent record of sound financial management before or after past bankruptcy filings. Applicant has again completed court-mandated credit counseling, however there is no evidence that her financial problems are being resolved or are under control.

With regard to SOR ¶ 1.p, there is evidence of good-faith efforts to repay the debt, and Applicant has made sufficient headway toward its resolution. However, there is insufficient evidence to persuade me that the remaining SOR debts have been or are being satisfactorily addressed, nor is there evidence that Applicant is financially stable and able to meet future financial responsibilities.

Based on the record presented, I find that the debt alleged in SOR ¶ 1.p has been mitigated. The remaining debts have not been sufficiently addressed to warrant application of full mitigation credit. The remaining unresolved debts and Applicant's precarious financial condition leave me with questions and concerns about Applicant's overall ability and willingness to fully face her financial responsibilities. Therefore, her financial status creates doubt about her current reliability, trustworthiness, and good judgment.

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 considered all of the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my findings of fact and comments under Guideline F in this whole-person analysis.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a position of public trust. I conclude Applicant did not mitigate the financial considerations 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:	Against Applicant
Subparagraphs 1.a - 1.o, and 1.q - 1.dd:	Against Applicant
Subparagraph 1.p:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a public trust position. Eligibility for access to sensitive information is denied.

Gregg A. Cervi
Administrative Judge