



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



In the matter of:

Applicant for a Public Trust Position

ADP Case No. 15-00947

Appearances

For Government: Benjamin R. Dorsey, Esq., Department Counsel

For Applicant: *Pro se*

06/27/2016

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Defense Department's intent to deny her eligibility for a public trust position to work in the defense industry. Applicant's financial problems were caused by events beyond her control and she has acted responsibly in light of her circumstances. Accordingly, her eligibility to occupy a position of trust is granted.

Statement of the Case

On August 3, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing trustworthiness concerns under the financial considerations guideline.¹ DOD adjudicators were unable to find that it is clearly consistent with the interests of national security to grant or continue Applicant's access to sensitive information and recommended that the case be submitted to an administrative judge for a determination whether to revoke or deny Applicant's eligibility to occupy a public trust position.

¹ This case is adjudicated under DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). The *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply to this case. The AG replace the guidelines in Enclosure 2 to the Directive.

Applicant answered the SOR and requested a decision without a hearing.² The Government submitted its written case on September 24, 2015. A complete copy of the file of relevant material (FORM) and the Directive were provided to Applicant. She received the FORM on October 23, 2015, and provided a response. The case was assigned to me on February 17, 2016. The documents appended to the FORM are admitted as Government's Exhibits (GE) 1 through 6, and the documents provided by Applicant are admitted as Applicant's Exhibits (AE) A through C. All documents are admitted without objection.

Findings of Fact

Applicant, 28, has worked for a federal contractor since August 2014. Her position requires access to personally identifiable information (PII), and requires her to obtain eligibility to occupy a public trust position. Based on the disclosures in her September 2014 eligibility application, and information discovered during her background investigation, the SOR alleges that Applicant owes \$7,100 in delinquent student loans and \$6,200 in other delinquent debt.³

Applicant admits owing the student loan debts alleged in SOR ¶¶ 1.a through 1.c. In 2014 and 2015, the Department of Education (ED) intercepted her federal income tax refunds, totaling \$14,570, and applied them to her outstanding account balances. This appears to have resolved her student loan accounts. According to the most recent credit report in the record, dated July 2015, Applicant's student loan balances are \$136. In December 2015, Applicant filed a hardship claim with the ED; however, the status of the claim is unknown. Applicant also admits owing the debts alleged in SOR ¶¶ 1.d and 1.i through 1.j; however, she has not made any payments towards these accounts.⁴

Applicant denies owing the debts alleged in SOR ¶¶ 1.e, 1.g, and 1.h., claiming to have no knowledge of the accounts. Applicant did not provide any evidence to indicate that she has challenged the debts with the reported creditors or with the credit reporting agencies. Applicant also denies the debts alleged in SOR ¶¶ 1.f and 1.k. She claims that the debt alleged in SOR ¶ 1.f was the result of identity theft. She also claims to have hired a company to dispute the debt in SOR ¶ 1.k. Applicant did not provide any documentation to corroborate either of these claims.⁵

Applicant's financial problems were caused, in-part, by her history of low-paying jobs. Until May 2011, Applicant worked as a stay-at-home mother. She began working a part-time retail position in May 2011. Applicant worked this part-time position for 1.5 years before she was able to secure a second part-time position as a nursing assistant. Applicant worked the two part-time jobs until at least May 2013, when scheduling

² GE 2.

³ GE 3, 5-6.

⁴ GE 2, 6; AE A.

⁵ AE A-C.

conflicts between the two jobs caused her to quit the nursing assistant position. In May 2013, Applicant found full-time employment as a nursing assistant. She worked the full-time position and the part-time retail job until February 2014, when she was fired from the nursing assistant position after her certification lapsed. After losing her full-time job, Applicant continued to work the part-time retail position. In August 2014, she began working her current job. She continues to work her part-time job. Applicant's financial problems were exacerbated by her on ongoing estrangement from her husband. The couple married in June 2010 and separated in July 2012. Applicant does not receive child support from her husband. She struggles to support her two children, ages 5 and 10, on her income alone.⁶

The debts alleged in the SOR became delinquent between 2008 and 2012. She has not incurred any additional delinquent debt or opened any new consumer credit accounts since starting her current job. Applicant believes that with her current income, she finally has the means to start repaying her remaining delinquent debts.⁷

Policies

Positions designated as ADP I and ADP II are classified as "sensitive positions."⁸ "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 the interests of national security."⁹ 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.¹⁰ An administrative judge's objective is a fair, impartial, and commonsense decision that embraces all available, reliable information about the person, past and present, favorable and unfavorable.

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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable decision.

A person who seeks access to a public trust position 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

⁶ GE 4.

⁷ GE 4.

⁸ DOD Regulation 5200.2-R, *Personnel Security Program* (January 1987), as amended (Regulation) ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3.

⁹ Regulation ¶ C6.1.1.1.

¹⁰ See Regulation ¶ C8.2.1.

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 of potential, rather than actual, risk of compromise of sensitive information.

Analysis

Guideline F, Financial Considerations

Unresolved delinquent debt is a serious security concern because failure to “satisfy debts [or] 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.”¹¹

The SOR alleges that Applicant owes \$13,300 in delinquent debt, including \$7,100 in student loans. The alleged debts are supported by the credit reports in the record, establishing a *prima facie* case that Applicant has a history of not meeting her financial obligations and that she has demonstrated an inability to do so.¹² Applicant’s financial problems were caused by events beyond her control: a series of low-paying jobs; her 2012 separation from her husband; and, his failure to pay child support. She has acted responsibly given her circumstances. Since 2011, she has consistently worked two jobs when possible. She has not incurred any delinquent debt or opened any new consumer credit accounts since beginning her current position. Applicant appears to be living within her means. With her student loans resolved, Applicant will have the ability to resolve her remaining \$6,200 in delinquent accounts.

Based on the record, I have no doubts about Applicant’s eligibility to occupy a position of trust. In reaching this decision, I have considered the whole-person factors at AG ¶ 2. Applicant’s delinquent debts are not indicative of reckless or irresponsible behavior. Nor is the delinquent debt and indication that Applicant is incapable of handling, protecting, or sensitive information.

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, Financial Considerations:	FOR APPLICANT
Subparagraphs 1.a-1.k:	For Applicant

¹¹ AG ¶ 18.

¹² AG ¶¶ 19(a) and (c).

Conclusion

In light of all of the circumstances presented, it is clearly consistent with the interests of national security to grant Applicant access to sensitive information. Applicant's eligibility to occupy a position of trust is granted.

Nichole L. Noel
Administrative Judge