



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



In the matter of:)	
)	
[NAME REDACTED])	ADP Case No. 18-00632
)	
Applicant for Position of Trust)	

Appearances

For Government: Allison Marie, Esq., Department Counsel
For Applicant: *Pro se*

07/08/2019

Decision

MALONE, Matthew E., Administrative Judge:

Available information is not sufficient to mitigate the trustworthiness concerns raised by Applicant’s financial problems. Those difficulties include unpaid medical bills, as well as past-due federal and state income taxes. Although Applicant’s debts arose, in part, from events beyond her control, she did not establish that she has acted responsibly under the circumstances. Her request for eligibility to occupy a position of trust is denied.

Statement of the Case

On December 29, 2016, Applicant submitted an Electronic Questionnaire for Investigations Processing (EQIP) to obtain or renew eligibility for an ADP I/II/III position for her job with a defense contractor. After reviewing the results of the ensuing background investigation, DOD adjudicators were unable to determine that it is clearly

consistent with the interests of national security to grant Applicant's request for a position of trust, as required by required by Security Executive Agent Directive (SEAD) 4, Section E.4, and by DOD Directive 5220.6, as amended (Directive), Section 4.2.

On August 29, 2018, DOD issued Applicant a Statement of Reasons (SOR) alleging facts raising trustworthiness concerns addressed through the adjudicative guideline (AG) for financial considerations (Guideline F). The current adjudicative guidelines were issued by the Director of National Intelligence on December 10, 2016, to be effective for all adjudications on or after June 8, 2017.

The Applicant timely responded to the SOR and requested a hearing. I received the case on March 11, 2019, and scheduled the hearing for March 28, 2019. The parties appeared as scheduled. Department Counsel presented Government Exhibits (GX) 1 - 6. Applicant testified and presented Applicant's Exhibit (AX) A. I received a transcript of the hearing (Tr.) on April 30, 2019.

Findings of Fact

Under Guideline F, the Government alleged that Applicant owed \$12,669 for unpaid federal taxes from tax years 2009, and 2011 – 2013. (SOR 1.a) It was also alleged that Applicant did not timely file, as required, her federal income tax returns for tax years 2009 through 2016 (SOR 1.b); and that she failed to pay her state income taxes for the 2008, 2009, and 2012 tax years, with the 2008 and 2009 tax debts having been satisfied through levy on her employment wages (SOR 1.c). The SOR also alleged that Applicant owed \$15,219 for 11 delinquent medical bills (SOR 1.d – 1.m, 1.o); and that she owed an unspecified balance due on a commercial credit card account (SOR 1.n).

In response to the SOR (Answer), Applicant admitted, with explanations and supporting documents, all but one (SOR 1.o) of the allegations. With her Answer, Applicant provided copies of her 2015 and 2016 federal income tax returns. They were not signed or dated. (Tr. 14)

In addition to the facts established by Applicant's admissions, I make the following findings of fact. Applicant is 49 years old and employed by a defense contractor in a position that requires eligibility for a position of trust. Applicant works as a claims processor for a company that supports management of the health care system used by members of the military, and her duties include safeguarding personally identifiable information (PII) associated with the health care system's constituents. She has worked for her current employer since October 1996, and she has held a public trust position since at least 2004. (GX 1; Tr. 37 – 38)

The allegations regarding Applicant's failure to timely file her federal income tax returns between 2009 and 2016 are based on her disclosures in response to tax and finance questions in her e-QIP. At or near the time of her September 2017 subject interview by a government investigator, Applicant provided information that shows she timely filed her 2014 return and owed no additional taxes. At her hearing, she presented

information that shows her 2013 return was timely filed, but it was rejected due to errors by the person who prepared the return. That year, Applicant received an erroneous \$6,000 refund that she had to repay. Applicant's information at hearing showed that the total federal income tax debt alleged has been reduced to \$2,568, and that her refunds, most recently for tax year 2016, have been applied to the debts for tax years 2009, 2011, and 2012. Her remaining tax debt is for 2012 alone. This information implies that Applicant's returns for those years have, as she has claimed, been filed. (Answer; GX 1; GX 2; AX A; Tr. 27 – 28, 30 – 34)

In her e-QIP, Applicant also disclosed her state income debts for the 2008, 2009, and 2012 tax years. Available information further shows that only her 2012 debt remains unresolved. That debt is being enforced through a February 2017 tax lien for \$1,233. (Answer; GX 1; GX 2; GX 5; Tr. 34, 48 – 50)

Applicant has a history of income tax problems. A 2003 signed, sworn statement from a previous subject interview showed she had incurred numerous delinquent or past-due debts, including federal and state income tax debts totaling about \$4,650. She averred therein that her financial problems stemmed from circumstances beyond her control, such as surgery and a car accident. As to her taxes, most often, Applicant testified that she failed to timely file her income tax returns, usually because she knew she could not afford to pay any additional taxes. Applicant's taxes due after her returns usually resulted from the fact that she claimed nine exemptions from withholding. This practice results in higher paychecks, but also requires payment of those taxes with her returns. Applicant still claims nine exemptions from withholding. (GX 6; Tr. 44 – 50, 65 – 67)

In her e-QIP, Applicant disclosed numerous unpaid medical bills. For the most part, her medical debts (SOR 1.d – 1.m, 1.o total \$15,219) are for services provided to her and her family over the past several years. The largest of her medical debts (SOR 1.d for \$9,099) is for Applicant's hospitalization for cardiac care. Applicant has always had employer-provided medical insurance, albeit, with high deductibles. SOR 1.d aside, she has not explained why she did not pay her other more moderate bills. Applicant also has not taken any discernable action to pay or otherwise resolve any of her medical debts. (Answer; GX 1; GX 4; GX 5; Tr. 34, 50 – 51, 68 – 70)

Applicant and her husband have been married since June 2005, and they have two children (ages 11 and 13). Applicant had financial problems before they were married, but she avers her current debt is largely due to her husband's drinking and gambling. However, Applicant testified that her husband's vices have not been an issue for them since 2008. More recently, he has had sporadic employment since 2016 which, in 2018, caused them to fall behind on their mortgage and lose a car to repossession. Applicant has not sought any professional financial counseling or other assistance, but she testified that, now that her husband is again employed, they can afford to file, and would be able to make payments under, a Chapter 13 bankruptcy protection "to save the house." She indicated they would file such a petition a few days after her hearing. (Answer; GX 1; GX 2; Tr. 28 – 29, 35, 40 – 42, 60 – 63, 70 – 71)

In 2013, Applicant's husband was injured in a car accident and had to leave his job of 25 years without retirement benefits. In 2016, he received a \$59,000 settlement from that accident. In July 2016, Applicant and her husband paid \$10,000 down on a new house, financing the remaining \$80,000 with a mortgage. After paying for repairs and other costs associated with that purchase, they had about \$45,000 remaining. In August 2016, Applicant and her family went on a one-week cruise. Applicant did not specify for what other purposes they used the settlement funds. Applicant's current finances are not sound. She has incurred additional unpaid debts over the past year, and her checking account was overdrawn by about \$400 as of the day of her hearing. (GX 1; GX 2; Tr. 44, 51 – 59, 63 – 64)

Policies

Eligibility for a position of public trust must be based on a determination that it is "clearly consistent with the interests of national security" to do so. All such adjudications must adhere to the procedural protections in the Directive before any adverse determination may be made. Each decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policies in the adjudicative guidelines. (See, Directive, 6.3) Decisions must also reflect consideration of the factors, commonly referred to as the "whole-person" concept, listed in the guidelines at AG ¶ 2(d) as follows:

- (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.

The presence or absence of a disqualifying or mitigating condition is not, by itself, conclusive. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of eligibility for a position of trust.

The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a position of trust for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the Government's case. Because no one is entitled to a position of trust, an applicant bears a heavy burden of persuasion. A person who has access to sensitive information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring applicants possess the requisite judgment, reliability, and trustworthiness of one who will

protect sensitive information as his or her own. Any reasonable doubt about an applicant's suitability for access should be resolved in favor of the Government.

Analysis

Financial Considerations

The facts established by this record reasonably raise a trustworthiness concern about Applicant's finances that is addressed, in relevant part, at AG ¶ 18, as follows:

Failure 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds.

More specifically, available information requires application of the disqualifying conditions at AG ¶¶ 19(a) (*inability to satisfy debts*); 19(b) (*unwillingness to satisfy debts regardless of the ability to do so*); 19(c) (*a history of not meeting financial obligations*); and 19(f) (*failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required*).

I also have considered the following pertinent AG ¶ 20 mitigating conditions:

(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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

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

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

None of these mitigating conditions is supported by this record. Applicant's financial problems and her tax reporting and payment difficulties have persisted over much of the past 15 years. For the most part, they remain unresolved. As to her income tax filings, it is likely that all of her returns have now been filed; however, Applicant still claims an excessive number of exemptions from withholding for a household of four. She will likely incur another income tax bill she cannot afford, in light of available information about her current finances. Given her long-term conduct in this regard, it is also more likely than not that she will decide not file her income tax returns when she knows she cannot pay the resulting tax bill.

Applicant's financial problems arose, in part, from unusual or unforeseen circumstances. Of note is her husband's sporadic employment history and issues regarding alcohol and gambling. Additionally, it appears Applicant has had some medical issues in the past few years. Nonetheless, although she claimed that her husband's gambling and drinking caused them financial problems, his conduct ceased more than ten years ago. As to his employment problems, available information shows that Applicant and her husband did not make reasonable financial decisions when he was employed, leaving them unable to deal with contingencies. As to her medical problems, Applicant did not present sufficient information showing that she has tried to address those debts in any meaningful way. Applicant did not establish that she has acted responsibly under the circumstances. To the contrary, Applicant and her husband failed to use the \$45,000 remaining from his accident settlement to pay any of the debts at issue in this case. On balance, Applicant did not mitigate the security concerns raised under this guideline.

I have evaluated the facts and have applied the appropriate adjudicative factors under Guideline F. I also have reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(d). Applicant's finances remain a trustworthiness concern because she has not shown over the past 15 years that she is able or willing to responsibly fulfill her income tax and other financial obligations. Her continued conduct in this regard sustains the doubts about her judgment, reliability and trustworthiness that is raised by the Government's information. Because protection of the national interest is the principal focus of these adjudications, any remaining doubts must be resolved against the Applicant.

Formal Findings

Formal findings 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: Against Applicant

Conclusion

In light of all of the foregoing, it is not clearly consistent with the interests of national security for Applicant to occupy a position of trust. Applicant's request for public trust eligibility is denied.

MATTHEW E. MALONE
Administrative Judge