



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



In the matter of:	)	
	)	
[NAME REDACTED]	)	ADP Case No. 18-02321
	)	
Applicant for Position of Trust	)	

**Appearances**

For Government: Chris Morin, Esq., Department Counsel  
For Applicant: *Pro se*

08/14/2019

\_\_\_\_\_  
**Decision**  
\_\_\_\_\_

MALONE, Matthew E., Administrative Judge:

Available information is not sufficient to mitigate the trustworthiness concerns raised by Applicant’s financial problems. She has not addressed her debts in any meaningful way, and she deliberately withheld information about her financial problems when she submitted her application for a position of trust. Accordingly, Applicant’s request for eligibility to occupy a position of trust is denied.

**Statement of the Case**

On June 8, 2017, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain 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, as required by DOD Directive

5220.6 (Directive), that it is clearly consistent with the interests of national security to grant Applicant's request for a position of trust.

On December 21, 2018, DOD issued Applicant a Statement of Reasons (SOR) alleging facts raising trustworthiness concerns addressed under the adjudicative guidelines (AG) for financial considerations (Guideline F) and personal conduct (Guideline E). 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.

Applicant timely responded to the SOR (Answer) and requested a hearing. I received the case on April 5, 2019, and scheduled the hearing for May 21, 2019. The parties appeared as scheduled. Department Counsel submitted Government Exhibits (GX) 1 – 6. Applicant testified and presented Applicant Exhibit (AX) A. I held the record open after the hearing to receive from Applicant additional relevant information; however, she did not submit anything further and the record closed on May 31, 2019. All exhibits proffered at the hearing were admitted without objection. I received a transcript of the hearing (Tr.) on June 17, 2019.

### **Findings of Fact**

Under Guideline F, the Government alleged that Applicant owed \$21,266 for 22 delinquent or past-due debts (SOR 1.a – 1.w). Nine of the debts alleged (SOR 1.b, 1.c, 1.e, 1.j – 1.m, 1.s and 1.t) are for unpaid medical bills totaling \$5,844. In response, Applicant admitted the allegations at SOR 1.a, 1.f – 1.i, 1.n – 1.r, and 1.v. She denied the remaining allegations. As to her medical bills, Applicant denied those allegations on the basis that she has medical insurance that, ostensibly, covered those bills. At the outset of the hearing, Department Counsel withdrew the SOR 1.e allegation for lack of information. (Answer; Tr. 9 – 10)

Under Guideline E, the Government alleged that Applicant intentionally made false statements in her June 2017 e-QIP when she omitted the debts alleged at SOR 1.a – 1.e and 1.g – 1.w (SOR 2.a). It was further alleged that she intentionally made false statements in her June 2017 e-QIP when she omitted the fact that in 1997, she was charged with felony child abuse and misdemeanor contributing to the delinquency of a minor, and that she was convicted of misdemeanor child abuse. In response to the SOR, Applicant denied both Guideline E allegations. (Answer) In addition to the facts established by Applicant's admissions to some of the SOR allegations, I make the following findings of fact.

Applicant is 46 years old and employed by a defense contractor in a position that requires eligibility for a position of trust. Her duties as an administrative assistant at a military hospital include safeguarding personally identifiable information (PII) and access to sensitive facilities. Applicant has worked for her current employer since January 2016. She has held similar jobs at civilian medical facilities, but this is her first request for position of trust eligibility. (GX 1; GX 2; Tr. 12, 41)

Applicant has been married twice, with both marriages ending in divorce. Her first marriage began in May 1999 and ended in September 2003. Her second marriage began in April 2014 and ended in July 2018. She has two children, ages 28 and 15. Her younger child lives with her, as do a niece and nephew, both four years old, of whom Applicant recently became guardian. (GX 1; GX 2; Tr. 40 – 42)

Applicant claims that her financial problems arose from her second marriage, which she described as abusive. She averred that she was left with responsibility for the marital debt because her ex-husband was often unemployed and all of their bills were in her name as the sole, reliable income earner. Applicant receives no child support from the father of her 15-year-old child. She receives some financial support from her home state for one of the other two children, but is not yet receiving support for the other child because that child only recently moved to her home state. (GX 2; Tr. 47, 76 – 78)

The debt alleged at SOR 1.a is the remainder due after a car repossession in July 2014. Applicant financed the purchase of a used car in May 2014. She claimed it was a lemon, and that she was about to return the car when it was taken away by the dealer after she missed two payments. Applicant has not taken any action to resolve this debt since late 2014. (Answer; GX 2 – 4; Tr. 36, 48 – 52)

The debt alleged at SOR 1.n is the result of a dispute with a former landlord. Applicant claimed the landlord failed to make needed repairs to the property in which she was living. Because of that dispute, Applicant did not pay the full amount of rent required by her lease. The landlord sued her for the difference, and Applicant was present in court when the landlord was awarded the \$1,458 civil judgment against Applicant that is alleged in SOR 1.n, and which remains unresolved. (Answer; GX 2 – 4; Tr. 37, 60 – 62)

Applicant testified that the medical debts alleged in the SOR were for emergency room medical services. Those debts arose beginning in 2013, while Applicant was gainfully employed. Further, she claimed that she thought those services were covered by employer-sponsored medical insurance she carried through her previous employment; however Applicant was unemployed for the year preceding her current job. Some of the smaller amounts past due are likely for required co-payments. Applicant has not acted to pay or otherwise resolve any of the debts at SOR 1.b, 1.c, 1.e, 1.j – 1.m, 1.s and 1.t. (Answer; GX 2 – 4; Tr. 35 – 36, 52 – 54, 70, 72)

Applicant claimed in response to the SOR and at the hearing that she is making payments on the debts alleged at SOR 1.f, 1.g, and 1.p, and that she is in contact with the creditor at SOR 1.h to establish a repayment plan for that debt. She did not submit any additional information at or after the hearing about the details of her SOR 1.f, 1.g, and 1.p arrangements, or that would establish that she has made any payments on any of her debts. By contrast, all of the Guideline F SOR allegations are supported by the Government's information. (Answer; GX 2 – 4; Tr. 40 – 41, 54 – 56, 64)

Applicant did not disclose any of her debts in response to questions in e-QIP Section 26 (Financial Record). In that section, she was asked if, in the preceding seven

years, she (1) had any property repossessed for failure to pay a purchase loan; (2) had any civil judgments entered against her to enforce a delinquent debt; (3) had any collection actions presented for delinquent accounts; or (4) was then or had been more than 120 days past-due on any debt. A credit report obtained by government investigators on June 20, 2017 (12 days after Applicant submitted the e-QIP) reflected all but two of the debts alleged in the SOR under Guideline F. SOR 2.a alleged that Applicant deliberately omitted those debts by answering “no” to all of the Section 26 questions. In response, Applicant denied intending to make any false statement or to hide anything from the government. During a subject interview (SI) with a government investigator on February 13, 2018, she stated that she did not know she was required to list her debts in the e-QIP. At her hearing, Applicant explained that she was largely unaware of many of her medical debts when she completed the e-QIP and that she did not have a credit report available to her for reference at the time she answered those questions. Nonetheless, Applicant acknowledged she was present in court when the SOR 1.n civil judgment was entered against her. She also was aware that her car was repossessed in 2014 and that she had a remaining obligation on that car loan. (Answer; GX 1; GX 2 – 4; Tr. 37 – 40, 62)

In 1997, Applicant left her oldest child at home with a babysitter so she could go to work. At some point, the child went down the street to play with another child. When that child’s father took Applicant’s child home at the end of the day, the babysitter was gone. He then took Applicant’s child to the police station believing Applicant had left her child unattended. As alleged in SOR 2.b, Applicant was later issued a citation charging her with felony child abuse and misdemeanor contributing to the delinquency of a minor. Applicant appeared in court without legal representation and pleaded guilty to misdemeanor child abuse. The other charges were dismissed. She was placed on probation for nine months and made subject to child services supervision of her parenting. (Answer; GX 2; GX 5; GX 6; Tr. 73 – 75)

Also as alleged in SOR 2.b, Applicant did not disclose her 1997 arrest and guilty plea when she answered “no” to questions about felony charges and about offenses involving “crimes of violence against a child” in e-QIP Section 22 (Police Record). Applicant denies any intent to make a false statement about her arrest or to mislead the government by her e-QIP answers. In this instance, she was unrepresented in court and did not know that she had been charged with a felony. She also believed that, because the offense was 20 years old when she submitted her e-QIP, it was beyond the scope of the question. Further, despite the language of the charge against Applicant, the record does not show that anyone committed an act of violence against her child. (Answer; GX 1; GX 2; Tr. 39 – 40)

As to Applicant’s current finances, available information shows that she is meeting all of her current monthly obligations and has not incurred any new delinquencies. Applicant files and pays her income taxes as required. Since September 2018, Applicant has been living with a friend after Hurricane Florence made Applicant’s leased residence uninhabitable. Applicant pays her friend about \$200 monthly, but she expects to pay at least \$500 more when her insurance claims are resolved and she can find another place

to rent. As noted earlier, Applicant is receiving monetary support for one of the children for whom she is now a guardian. She expects to also receive support for the other child later this year. Applicant estimates she currently has about \$400 - \$500 remaining each month after expenses; however, her ability to maintain that positive cash flow will depend on receipt of additional child support. Applicant receives no child support from the father of her 15-year-old child who still lives with her. (GX 2; AX A; Tr. 41 – 47, 64 – 69, 77 – 78)

In March 2019, Applicant enlisted the services of a financial advisor for purposes of cleaning up her credit report. Applicant found that person on Facebook after speaking with friends at church. She paid the advisor, known only as “Carl,” \$300, in exchange for which she believes he is addressing the debts alleged at SOR 1.i, 1.o and 1.q – 1.r. Applicant also claimed that she has nearly completed repaying the debt at SOR 1.p. Further, she submitted a recent credit report which does not list several of the debts in the SOR, but did not provide any information about what became of those debts. Applicant did not present any documentation of what Carl has accomplished, or to support her claims of payments to SOR 1.p. Applicant also did not present any information that shows she manages her money in any systematic way, such as through the use of a budget. (AX A; Tr. 55 – 59, 63 – 64, 84 – 86)

### **Policies**

Security Executive Agent Directive (SEAD) 4, Appendix A, Paragraph 1(d) requires that 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. (Directive, 6.3) Decisions must also reflect consideration of the following factors, commonly referred to as the “whole-person” concept, listed in the guidelines at AG ¶ 2(d):

- (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.

Additionally, when applying the adjudicative guidelines (AG), the presence or absence of a disqualifying or mitigating condition is not, by itself, conclusive. Nonetheless, 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.

Applicant's financial problems arose largely during her second marriage, which ended in 2018. Available information shows that most of the debts listed in the SOR have been past due or delinquent since at least 2013. Applicant's recent credit report notwithstanding, the record does not establish that any of the debts alleged have been

paid or otherwise resolved. This record requires application of the disqualifying conditions at AG ¶¶ 19(a) (*inability to satisfy debts*); and 19(c) (*a history of not meeting financial obligations*).

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; and

(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; and

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

Applicant's financial problems are recent, because they are unresolved despite having gone unaddressed, in some cases, since at least 2013. I note Applicant's claim that most of her current debts resulted from her second marriage and divorce. While circumstances such as those, as well as her more recent relocation due to Hurricane Florence, presented conditions beyond her control, Applicant did not establish that she acted responsibly in the face of those challenges. She did not support her claims that she has paid or is paying some of her debts. As to financial counseling, Applicant did not show how or if her retention of "Carl" to assist in her resolution efforts has resulted in any tangible benefit or financial improvements. Based on the foregoing, AG ¶¶ 20(a) – 20(d) do not apply, and the trustworthiness concerns raised under this guideline are not mitigated.

## **Personal Conduct**

The trustworthiness concern about Applicant's personal conduct is stated at AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security

investigative or adjudicative processes. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and

(b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

More specifically, the SOR allegations that Applicant deliberately withheld from her e-QIP relevant information about her finances and her arrest record reasonably raised the disqualifying condition at AG ¶ 16(a):

deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant's negative responses to the questions at issue were inaccurate. As alleged in the SOR, Applicant had multiple debts that required disclosure in e-QIP Section 26. She also had been charged with criminal offenses that required disclosure in e-QIP Section 22. To be disqualifying, her negative responses in both sections must have been intentional. Her failure to disclose her felony and misdemeanor child abuse charges was not intentional. Those events occurred 20 years before she completed the e-QIP, and as a *pro se* defendant, it is plausible that she did not understand that her initial charge was a felony that must be reported regardless of how much time has elapsed. SOR 2.b is resolved for the Applicant.

The same cannot be said of her failure to disclose her debts. That information is recent and has pervaded her personal circumstances for most of the past decade. Applicant knew her vehicle had been repossessed in 2014, as alleged in SOR 1.a, and she was present in court when a civil judgment was entered against her three months before she submitted her e-QIP. Applicant's explanation that she did not know she had these and other reportable debts, in light of all of the available information about her finances, is not credible. AG ¶ 16(a) applies. I also have considered the following pertinent AG ¶ 17 mitigating conditions:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;



(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully; and

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

These mitigating conditions do not apply. Applicant made no effort to correct her omissions before being confronted with that information during her background investigation. She also did not present any information showing she asked for guidance regarding what information should or should not be provided in response to the Section 26 questions. Finally, her omissions cannot be considered minor. In her first application for a position of trust with the government, Applicant chose to be deceptive about information that is directly relevant to the government's ability to accurately assess whether Applicant can be trusted to put the national interest ahead of her own. Additionally, Applicant's conduct in this regard was a potential violation of a federal law (18 U.S.C. §1001) that prohibits making such false statements to a government agency regarding matters within its jurisdiction. Absent substantial information, which Applicant did not provide, to support any of the aforementioned mitigating conditions, the trustworthiness concerns about Applicant's reliability and judgment raised through SOR 2.a remain.

I have evaluated the facts and have applied the appropriate adjudicative factors under Guidelines E and F. I also have reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(d). Applicant's financial problems remain unresolved, and Applicant deliberately withheld from her e-QIP information on which the government must reasonably rely in deciding whether she can be entrusted with sensitive information. Applicant did not present any information to support her claims of action regarding her debts or to suggest that her current circumstances and false statements do not reflect on her current judgment and reliability. Therefore, doubts about her trustworthiness remain. 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.d, 1.f – 1.w:	Against Applicant
Subparagraph 1.e:	Withdrawn
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	For 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.

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MATTHEW E. MALONE  
Administrative Judge