



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



In the matter of:

[NAME REDACTED]

Applicant for Public Trust Position

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ADP Case No. 19-02787

Appearances

For Government: Eric Price, Esq., Department Counsel
For Applicant: *Pro Se*

10/14/2021

Decision

MALONE, Matthew E., Administrative Judge:

Applicant mitigated the trustworthiness concerns raised by her financial problems. Her request for eligibility to occupy a position of public trust is granted.

Statement of the Case

On August 4, 2018, 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 federal contractor. After reviewing the results of the ensuing background investigation, adjudicators for the Department of Defense Consolidated Adjudications Facility (DOD CAF) were unable to determine, as required by Security Executive Agent Directive (SEAD) 4, Section E.4, and by DOD Directive 5220.6, as amended (Directive), Section 4.2, that it is clearly consistent with the interests of national security for Applicant to occupy a position of trust.

On December 27, 2019, DOD CAF issued to Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under the adjudicative guideline for financial considerations (Guideline F). The guideline cited in the SOR was part of the current set of adjudicative guidelines (AG) 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 before an administrative judge from the Defense Office of Hearings and Appeals (DOHA).

On August 11, 2021, I convened the requested hearing via a web-based video conference platform, and the parties appeared as scheduled. Department Counsel proffered Government Exhibits (GX) 1 – 7. Applicant testified and proffered Applicant Exhibits (AX) A - E. All exhibits were admitted without objection. Additionally, I held the record open after the hearing to receive from Applicant additional information. The record closed on August 20, 2021, when Department Counsel waived objection to Applicant's timely post-hearing submission, which is admitted as AX F. DOHA received a transcript of the hearing (Tr.) on August 19, 2021.

Findings of Fact

In the SOR, under Guideline F, the Government alleged that Applicant owed \$24,768 for seven delinquent debts (SOR 1.a – 1.g). In response, she admitted with explanations all of the SOR allegations. (Answer) On July 7, 2021, Department Counsel amended the SOR by adding an allegation (SOR 1.h) that in June 2020, Applicant filed a Chapter 7 bankruptcy petition, and that she was discharged of her debts in September 2020. Applicant timely responded to the amendment, admitting SOR 1.h with explanation. In addition to the facts established by Applicant's admissions, I make the following findings of fact.

Applicant is 33 years old. Since August 2018, she has worked for a defense contractor in a position that requires eligibility for a position of trust. Her job responsibilities include safeguarding personally identifiable information (PII) and access to sensitive facilities. In her e-QIP, Applicant disclosed all but one (SOR 1.e) of the debts alleged in the SOR. All of the SOR debts are documented in three of the four credit reports submitted by the Government. Applicant discussed all of the alleged debts, as well as her overall financial problems, with a government investigator during a personal subject interview (PSI) on October 17, 2018. In support of the Government's SOR amendment, Department Counsel submitted records from the federal bankruptcy court where Applicant filed her Chapter 7 petition. The most recent report of Applicant's credit history submitted by Department Counsel did not contain any adverse financial information. (GX 1 – 7)

Applicant and her husband have been married since October 2017. Previously, between 2010 and 2016, she was in a relationship with a boyfriend with whom she has one child. The child's father is obligated to pay \$182 each month in child support; however, he has not made any payments since 2019. The debt at SOR 1.a is for the

remainder after resale of a repossessed car. Applicant co-signed the auto loan for that car with her ex-boyfriend. When he stopped making the monthly loan payments after they broke up, the car was repossessed. Applicant was saddled with the remaining obligation because her ex-boyfriend did not earn enough money to pay his debts. Between October 2019 and June 2020, when she filed her bankruptcy petition, her pay was involuntarily garnished to satisfy this debt at a monthly rate of about \$400. This debt was discharged through bankruptcy. (Answer; GX 1; GX 2; GX 6; Tr. 27, 40 – 42, 60 – 62)

The debt alleged at SOR 1.b arose in 2016 when Applicant allowed her ex-boyfriend's mother to use her credit card to make ends meet. The debt at SOR 1.c is for a cash advance against Applicant's credit card. Applicant loaned the money to her ex-boyfriend's mother to pay for medical expenses in 2016. The mother never repaid Applicant for either loan. Applicant herself was not able to stay current on either account. Both debts were discharged through bankruptcy. (Answer; GX 1; GX 2; GX 6; Tr. 27 – 28, 42 – 46)

Applicant incurred the credit-card debt at SOR 1.d in April 2016 when she and her ex-boyfriend broke up and vacated the apartment they shared. The expenses associated with cleaning and repairing the apartment fell to Applicant. She used that credit card to cover the costs but was unable to make the necessary payments on the account. This debt was discharged through bankruptcy. (Answer; GX 1; GX 2; GX 6; Tr. 47 – 48)

The debt alleged at SOR 1.e is for a delinquent cable television and internet account. Applicant asserted that this debt was paid a few years ago. This debt was not included in her bankruptcy petition and does not appear on the most recent credit reports provided by both parties. (Answer; GX 2 – 7; AX B; Tr. 48)

The debt at SOR 1.f is for a delinquent cellphone account. Applicant switched from one carrier to a new carrier, but she could not afford the early termination fees imposed by the carrier listed in SOR 1.f. This debt was discharged through bankruptcy. (Answer; GX 1; GX 2; GX 6; Tr. 49)

The debt at SOR 1.g is also for a delinquent cable television account; however, Applicant thought that this debt had previously been resolved. This debt was not included in her bankruptcy petition and does not appear on the most recent credit reports provided by both parties. (Answer; GX 1; GX 2 – 7; AX B; Tr. 49 – 50)

Applicant acknowledges that the debts and financial problems addressed in the SOR arose primarily from her poor financial decisions while she was in a relationship with her child's father. Also contributing to Applicant's financial problems was an unalleged mortgage foreclosure. In 2010, Applicant's father convinced her to co-sign a mortgage with him because neither he nor his wife had sufficient credit to obtain a mortgage on their own. Applicant's father assured her that within three years, he would refinance the mortgage and remove Applicant's name from the loan. Her father did not follow through on his intention. The mortgage went into foreclosure in 2019 when Applicant's father lost

his job. He has since redeemed the mortgage and retained the house; however, Applicant was removed as a mortgagor through the bankruptcy process. These circumstances adversely affected Applicant's credit rating, thereby also narrowing her options for resolving her financial problems. (Answer; GX 1; GX 2; AX A; AX F; Tr. 27, 36 – 39, 57 – 59)

In 2019, Applicant sought legal advice about how she might resolve her delinquent debts, particularly the car repossession debt at SOR 1.a and her liability for her father's mortgage. At the time, her personal finances were characterized by a negative monthly cash flow of about \$154. On her attorney's advice, she filed Chapter 7 bankruptcy as alleged in SOR 1.h. Through that process, Applicant relinquished a vehicle even though she was always up to date on the purchase loan. In its place, she purchased another used car and she has been current on that loan at all times. Although she earns just under \$20 an hour, her current finances are sound. She meets all of her current monthly obligations and has incurred no new unpaid debts. She now has about \$15,000 in regular savings and another \$4,000 in a retirement savings account. She and her husband together earn about \$70,000 annually and have an estimated \$1,000 remaining each month after expenses. A former landlord provided a written statement that Applicant was current on her rent between December 2019 and January 2021. (Answer; GX 6; GX 7; AX A; AX B; AX D; Tr. 29 – 35, 50 – 53, 55 – 56)

Applicant is well-respected by her personal and professional associates. She has a reputation for generosity and professionalism. Her child's father and grandmother each provided written statements corroborating Applicant's assertions about the debts at SOR 1.a – 1.c. They also expressed their positive views regarding Applicant's character, reliability, and trustworthiness. Applicant's father also provided written corroboration of his actions regarding Applicant's involvement with his mortgage. (AX C – F)

Policies

SEAD 4, Appendix A, Paragraph 1(d), requires that a decision to grant eligibility for a position of public trust must be "clearly consistent with the interests of national security." 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.

When applying the adjudicative guidelines, 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

Applicant accrued nearly \$25,000 in debt that became delinquent starting in 2016. Her debts remained unresolved until 2020, when she was discharged of her debts through a Chapter 7 bankruptcy petition. This information reasonably raised a trustworthiness concern about Applicant's finances that is articulated at AG ¶ 18:

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 following AG ¶ 19 disqualifying conditions:

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

By contrast, Applicant's response to the Government's information requires consideration of the following pertinent AG ¶ 20 mitigating conditions:

- (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; and
- (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.

Applicant's financial problems were the result of her own poor decisions when she was asked to financially assist people close to her – the father and grandmother of her child, as well as her own father. She also accepted that it was her responsibility to resolve those debts to the best of her ability. Nonetheless, others' failure to repay Applicant, her father's failure to refinance the mortgage as he said he would, and Applicant's status as a single mother making just under \$20 an hour together amount to circumstances beyond her control that culminated in onerous financial burdens. In response to those circumstances, Applicant liquidated her debts through Chapter 7 bankruptcy. Her decision in this regard was not intended to evade responsibility for her debts; rather, under these circumstances it was the most prudent option available to her and was taken on advice of legal counsel. Applicant already was meeting all of her current monthly obligations (e.g., rent, car loan, etc.), and she had not accrued any new unpaid debts other than those listed in the SOR; however, she had no foreseeable way to resolve her past debts. Since the completion of her petition, Applicant has continued to manage her personal finances without difficulty. She and her husband earn sufficient income to pay their bills while still having money remaining each month for contingencies.

All of the foregoing supports application of the mitigating conditions at AG ¶¶ 20(b) and 20(c). Available information shows that the trustworthiness concerns raised by Applicant's financial problems are mitigated.

I also have evaluated this record in the context of the whole-person factors listed in AG ¶ 2(d). More specifically, I note the favorable information about Applicant's character, as well as about her finances before, during, and after her Chapter 7 bankruptcy. A fair and commonsense assessment of the record evidence as a whole supports a conclusion that the trustworthiness concerns raised by the Government's information are now mitigated.

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: FOR APPLICANT

Subparagraphs 1.a – 1.h: For Applicant

Conclusion

In light of all of the foregoing, it is clearly consistent with the interests of national security for Applicant to occupy a position of public trust. Applicant's request for public trust eligibility is granted.

MATTHEW E. MALONE
Administrative Judge