



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



In the matter of:)
)
)
[NAME REDACTED]) ADP Case No. 12-06741
)
)
Applicant for Public Trust Position)

Appearances

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

03/31/2014

Decision

MALONE, Matthew E., Administrative Judge:

Applicant’s financial problems over the past several years arose from unforeseen periods of unemployment and unplanned medical expenses, for which she was not insured. She has been employed for over two years, has medical insurance, and has established a debt repayment plan through a recent Chapter 13 bankruptcy petition. Her request for a public trust position is granted.

Statement of the Case

On March 5, 2012, Applicant submitted an Electronic Questionnaire for Investigations Processing (EQIP) to obtain eligibility for an ADP I/II/III position¹ for her job with a defense contractor. After reviewing the results of the ensuing background investigation, which included her responses to Department of Defense (DOD)

¹ As defined in Chapter 3 and Appendix 10 of DOD Regulation 5220.2-R, as amended (Regulation).

adjudicators' interrogatories,² it could not be determined that it is clearly consistent with the interests of national security to grant Applicant's request for a position of trust.³

On August 27, 2013, DOD issued to Applicant a Statement of Reasons (SOR) alleging facts which, if proven, raise trustworthiness concerns addressed in the adjudicative guideline (AG)⁴ for financial considerations (Guideline F).

Applicant timely answered the SOR and requested a hearing. The case was assigned to me on January 2, 2014, and I convened a hearing in this matter on January 23, 2014. Department Counsel presented Government Exhibits (Gx.) 1 - 5, which were admitted without objection.⁵ Applicant testified and made a timely post-hearing submission of seven exhibits. They have been admitted without objection as Applicant's Exhibits (Ax.) A - G.⁶ DOHA received a transcript of the hearing (Tr.) on February 7, 2014.

Findings of Fact

Under Guideline F, the Government alleged that Applicant owes \$93,898 for 22 delinquent or past-due debts (SOR 1.a - 1.v). SOR 1.a - 1.g and 1.i - 1.p represent unpaid medical bills totaling \$6,142. The majority of her remaining debt consists of a past-due mortgage account for \$80,173 (SOR 1.s). The other allegations are for debts from delinquent credit cards, telephone accounts, or other past-due retail accounts. Applicant denied SOR 1.g, and admitted the remaining allegations. Her admissions are incorporated in my findings of fact. Having reviewed Applicant's response to the SOR, the transcript, and exhibits, I make the following additional findings of fact.

The debt alleged at SOR 1.r is a duplicate of SOR 1.q. Also, the debt alleged at SOR 1.v is a duplicate of SOR 1.t. Accordingly, SOR 1.r and 1.t were withdrawn at the hearing, and the total amount of debt at issue in the remaining allegations was reduced to \$90,655. (Tr. 10 - 13)

Applicant is 33 years old, has never been married, and is employed by a defense contractor for work that requires access to sensitive automated information to perform her duties as a customer service representative. Except for short periods of unemployment due to lay offs, Applicant has been employed in a variety of jobs since she graduated from high school in 1999. Between 2006 and 2008, she studied for her

² Authorized by DOD Directive 5220.6 (Directive), Section E3.1.2.2.

³ Required by the Regulation, as amended, and by the Directive, as amended.

⁴ The adjudicative guidelines were implemented by DOD on September 1, 2006. These guidelines were published in the Federal Register and codified through 32 C.F.R. § 154, Appendix H (2006).

⁵ Also, an index listing each exhibit is included in the record as Hearing Exhibit (Hx.) 1. See Tr. 24 - 34.

⁶ The email transmitting Applicant's post-hearing submissions and waiving objections is included as Hx. 2.

associate's degree, but left school without her degree when she gave birth to her only child in April 2008. (Gx. 1 and 2; Tr. 41 - 43)

Applicant has worked for her current employer since February 2012. Her work history consists mainly of customer service and technical support jobs similar to her current defense contractor position. She was unemployed due to lay off between September and November 2006; between May and September 2008; between May and September 2009; and between February and September 2010. Her work between September 2010 and February 2012 consisted mainly of temporary agency positions. Applicant averred that her May 2008 lay off occurred because she wanted to take time off after her child was born, but her employer decided to let her go. Applicant has never received child support from the father of her child. (Gx. 1 and 2; Tr. 42 - 47)

Applicant and her mother have lived together since at least March 2004. Applicant relies on her mother's income (she works in a different part of the same company as Applicant) to help with mortgage and other payments. In 2003, Applicant inherited her grandmother's house. She and her mother moved into that house in 2005. The original mortgage had been paid off when the grandmother died. Applicant subsequently obtained a home equity loan of about \$80,000 to renovate the house, pay off her and her mother's car loans, and pay off other bills. (Gx. 2; Tr. 48, 75 - 76)

When Applicant was laid off in May 2008, she fell behind in her mortgage payments. After missing about six payments, she resumed paying but only for months moving forward after she started working again. In 2010, she obtained a loan modification that accounted for the missed payments, made her current on her obligations, and lowered her monthly payments from about \$1,100 to about \$470. (Gx. 2; Tr. 48 - 51)

More recently, Applicant's mother has been unable to work at times for medical reasons. Further complicating reductions in her mother's income is the need for Applicant to occasionally take unpaid time off to care for her. Applicant again fell behind on her mortgage payments in late 2011 because she was laid off. Despite finding work with her current employer in early 2012, Applicant's mother's health resulted in an overall reduction in household income. This made it difficult to catch up on missed mortgage payments. Foreclosure proceedings started in December 2011. As a result, the current mortgage lender identified in SOR 1.s refused to accept payments when Applicant could make them. Applicant currently owes more than \$16,000 in past-due mortgage payments. She has been working with the lender to attempt another mortgage modification. (Gx. 2 - 4; Ax. B; Tr. 52 - 54, 67)

Until being hired for her current job, she had no employer-sponsored medical insurance. All of her and her child's health care was obtained through emergency room visits. The medical debts alleged in the SOR represent Applicant's obligation for those visits after Medicaid has paid its portion of the costs. Also, Applicant accrued two past-due cell phone accounts (SOR 1.h and 1.t) for which she has been making regular payments since May 2013. (Answer; Gx. 2 - 4; Ax. D)

To stop foreclosure and try to resolve the other debts, Applicant has filed for Chapter 13 bankruptcy protection. The resulting repayment plan requires her to pay \$525 each month for 57 months. Applicant has declared \$158,121 in liabilities against \$52,364 in assets. Her liabilities cover most of the debts alleged in the SOR; however, some of the medical debts alleged were too old to be included in bankruptcy and may no longer be attributable to Applicant. In addition to the Chapter 13 payment, Applicant was not required to relinquish her home and is required to pay her \$470 mortgage payment. (Ax. G; Tr. 56 - 57)

When Applicant responded to DOD interrogatories in June 2013, she submitted a personal financial statement (PFS). The PFS reflected a \$810 monthly remainder after expenses. At her hearing, Applicant stated that her net monthly income has decreased because of increased medical insurance costs. But her expenses will decrease in May 2014, when her daughter no longer requires private daycare, which currently costs about \$460 monthly. (Gx. 2; Tr. 63 - 66)

Applicant has not incurred any new delinquencies since she started her current job. She completed financial counseling as a prerequisite to filing Chapter 13 bankruptcy. Applicant has an excellent record of performance, as reflected by her production statistics and by several awards and commendations. (Ax. A; Ax. H; Tr. 70 - 71)

Policies

Positions designated as ADP I/II are classified as “sensitive positions.”⁷ In deciding whether a person should be assigned to an ADP position, it must be determined that his or her loyalty, reliability, and trustworthiness are such that it is “clearly consistent with the interests of national security” to do so.⁸ The Regulation also requires that DOD contractor personnel are entitled to the procedural protections in the Directive before any adverse determination may be made.⁹

The Directive requires that each decision be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,¹⁰ and consideration of the pertinent criteria and adjudication policies in the adjudicative guidelines. Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the new guidelines. Commonly referred to as the “whole-person” concept, those factors are:

- (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

⁷ Regulation, ¶ C3.6.15.

⁸ Regulation, ¶ C6.1.1.1.

⁹ Regulation, ¶ C8.2.1.

¹⁰ Directive. 6.3.

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

The Government's information and Applicant's admissions in response to the SOR, are sufficient to support the allegations in the SOR. The facts thereby established raised a trustworthiness concern addressed, in relevant part, at AG ¶ 18 as follows:

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 classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant has been experiencing financial problems for several years. Until recently, she has been unable to make any substantial progress in resolving her debts. Available information requires application of the disqualifying conditions listed at AG ¶ 19(a) (*inability or unwillingness to satisfy debts*); and AG ¶ 19(c) (*a history of not meeting financial obligations*). As to AG ¶ 19(a), the record shows she has been willing, but often unable, to pay her debts.

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

(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.¹¹

The record supports application of all of these mitigating conditions. Applicant's financial problems arose largely through uneven employment and unplanned lay offs. Her current job appears to be more stable than any of her previous positions, making it less likely she will again be laid off and lose income. Also, she has employer-sponsored health insurance that obviates the need for emergency room visits for basic medical needs.

Applicant has not incurred any new debts since early 2012, and she has shown throughout the past several years that she is as proactive in her debt resolution efforts as her resources permit. She obtained a loan modification in 2010 to resolve her mortgage debts, she entered into repayment agreements with at least three of her creditors, she started negotiating with her mortgage lender to resolve her most recent mortgage debts, and she has now established a structured repayment plan through her Chapter 13 bankruptcy petition. Applicant's current income allows her to meet all of her expenses, including her bankruptcy payments, and her positive cash flow will increase later this year when she no longer has to pay for her child's daycare. On balance, Applicant has mitigated the Government's concerns about her financial problems.

Whole-Person Concept

I have evaluated the facts presented 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(a). Applicant is a 33-year-old single mother. Until early 2012, she experienced several lay offs and unexpected expenses associated with her mother's health. On several occasions, she demonstrated a willingness to try to resolve her debts to the best of her ability. Her record at work over

¹¹ AG ¶¶ 20(e) (*the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue*) and 20(f) (*the affluence resulted from a legal source of income*) have no relevance to these facts and circumstances.

the past two years has been excellent, and there is no indication that she is unable or unwilling to protect sensitive information. Her current circumstances have improved so that her past history of lay offs will not recur, and she has embarked on a reliable plan of debt repayment. A fair and commonsense assessment of available information shows that Applicant's finances no longer pose an unacceptable trustworthiness concern.

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.q, 1.s, 1.u, 1.v:	For Applicant
Subparagraphs 1.r, 1.t:	Withdrawn

Conclusion

In light of all of the foregoing, it is clearly consistent with the interests of national security for Applicant to have access to sensitive automated information. Request for a position of trust is granted.

MATTHEW E. MALONE
Administrative Judge