



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



In the matter of:)	
)	
[NAME REDACTED])	ADP Case No. 14-02784
)	
Applicant for Position of Trust)	

Appearances

For Government: Braden M. Murphy, Esq., Department Counsel
For Applicant: *Pro se*

05/13/2015

Decision

MALONE, Matthew E., Administrative Judge:

Applicant irresponsibly accrued significant past-due and delinquent credit card and other debt between 2004 and 2012. Although she now is more attentive to her personal finances, her actions to resolve her debts are too recent to mitigate the trustworthiness concerns about her finances. Applicant did not establish that her financial problems are under control and will not recur. Applicant’s request for eligibility to occupy a position of trust is denied.

Statement of the Case

On January 25, 2013, 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

¹ As defined in Chapter 3 and Appendix 10 of DOD Regulation 5200.2-R, as amended (Regulation).

investigation, adjudicators for the Department of Defense (DOD) 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.²

On July 18, 2014, DOD issued Applicant a Statement of Reasons (SOR) alleging facts which, if proven, raise trustworthiness concerns addressed through the adjudicative guideline (AG)³ for financial considerations (Guideline F). Applicant timely responded to the SOR (Answer) and requested a hearing. The case was assigned to another administrative judge on October 14, 2014. A hearing was scheduled for November 20, 2014; however, on November 4, 2014, the hearing was continued for good cause shown. On March 3, 2015, the case was transferred to me and I convened a hearing on March 25, 2015. Department Counsel for the Defense Office of Hearings and Appeals (DOHA) presented Government Exhibits (Gx.) 1 - 4.⁴ Applicant testified and presented Applicant's Exhibit (Ax.) A. I held the record open after the hearing to receive additional relevant information. DOHA received the hearing transcript (Tr.) on April 3, 2015. The record closed on April 7, 2015, when I received Applicant's timely post-hearing submissions, included in the record as Ax. B - K. All exhibits were admitted without objection.⁵

Findings of Fact

Under Guideline F, the Government alleged that Applicant owes \$18,983 for 28 delinquent or past-due debts (SOR 1.a - 1.bb). Applicant denied, with explanations, the debts at SOR 1.b, 1.d, 1.f, 1.j, 1.l, 1.m, 1.q, 1.u - 1.w, and 1.y - 1.bb. She admitted, with explanations, the remaining allegations. In addition to the facts established by Applicant's admissions, and based on all available information, I make the following findings of fact.

Applicant is 27 years old and is employed by a defense contractor in a position that requires eligibility for a position of trust. Her employer supports management of the health care system used by members of the military, and Applicant must be found suitable to be entrusted with related personally identifiable information (PII). Applicant graduated from high school in 2004 and was enrolled in college or technical training until May 2009, and from June 2010 until December 2011. She did not earn a degree. (Gx. 1)

² Required by the Regulation, as amended, and by DOD Directive 5220.6, as amended (Directive).

³ 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).

⁴ The Government's Exhibit List is included in the record as Hearing Exhibit (Hx.) 1.

⁵ Department Counsel's email forwarding Ax. E - L and waiving objections to their admission is included as Hx. 2.

Applicant first started working at her current job site as a temporary agency employee in July 2012. She was hired as a regular employee in March 2013. After she graduated from high school, Applicant was generally unemployed until May 2008 while she was in college studying early childhood education. Thereafter, she was steadily employed except for a four-month period in late 2009 after she was laid off from an assistant teacher position for not having enough qualifying college credits. (Gx. 1)

Applicant has been married since December 2010; however, she and her husband have been separated since December 2012. Applicant has three children, ages five, one, and six months. The older two children are the product of her marriage. Applicant receives no child support from either father, but does receive \$150 in monthly state benefits. Applicant currently lives with her mother, and has lived with her off-and-on for about eight years. Applicant pays her mother \$400 for rent each month, and another \$100 for various other expenses. (Gx. 1; Gx. 2; Tr. 40, 48 - 49, 56)

When Applicant submitted her EQIP, she disclosed the debts alleged at SOR 1.r, 1.t - 1.v, and 1.bb. Credit reports obtained by the Government documented those debts, as well as the remaining SOR allegations. Starting in 2004, when Applicant was an 18-year-old college student, she opened several credit card accounts in response to unsolicited offers she received in the mail. She used the credit cards, as well as a series of student loans, to support herself through about 2008, when she started working in addition to attending school. However, she had already begun to fall behind on her credit card payments and they became delinquent. Applicant and her husband also incurred delinquent debts from 2010 until 2012, when they separated. Her husband characterized their use of credit as "careless," but also claimed, as she has, that some of the debts in Applicant's credit reports are the result of fraudulent charges against her accounts. Applicant did not provide information that corroborates such claims. In response to the SOR, Applicant also disputed the validity of some of the alleged debts. For example, Applicant claimed that the AT&T and Dish Network debts at SOR 1.d - 1.f should not have been charged to her. However, she did not support her disputes with additional information. (Gx. 1 - 4; Ax. H; Tr. 33, 36 - 38, 39, 41)

Applicant averred that the debts at SOR 1.h, 1.i, and 1.o were resolved when she won a civil suit by default. A recent credit report shows these accounts as paid. These allegations are resolved for Applicant. The debt at SOR 1.f appears to be a duplicate of SOR 1.d. Accordingly, SOR 1.f is resolved for Applicant. (Answer; Gx. 2; Tr. 34 - 35)

Applicant stated at her hearing that she owes about \$50,000 in federally-subsidized student loans. They are in deferment; however, they will come due in July 2015. Applicant anticipates she will be able to repay them as part of an income-based agreement with the lender. (Gx. 3 - 4; Tr. 53 - 54)

In March 2013, Applicant was interviewed about her delinquent and past-due debts. She acknowledged most of the debts were her responsibility, but claimed that she no longer lives beyond her means. She also claimed she would begin resolving her indebtedness and obtain credit counseling or other professional help to do so. In March

2015, Applicant enlisted the services of a law firm specializing in resolving and “cleaning up” credit report inaccuracies. She is paying them \$55 each month for their services. The same week as her hearing, Applicant also contracted with a credit counseling firm to whom she will pay \$36 each month to build an account from which to pay negotiated settlements. (Ax. F; Ax. G; Tr. 30, 39 - 40, 44 - 45)

Applicant earns about \$1,500 in monthly take-home pay. According to a post-hearing personal financial statement (PFS), after expenses, which do not include payments made to any debts or to the two credit counseling firms she is using, Applicant has less than \$50 remaining. Applicant listed child care as one of her monthly expenses, but she also presented information showing she receives a state voucher to pay for, or defray the costs of, her child care. (Ax. B; Ax. E; Tr. 55 - 56)

Applicant is regarded in the workplace as a “great fit” for the work to which she is assigned. Her performance evaluations are satisfactory, and she is viewed as productive and reliable. (Ax. I; Ax. J)

Policies

Positions designated as ADP I/II/III are classified as “sensitive positions.”⁶ 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.⁷ The Regulation also requires that DOD contractor personnel are entitled to the procedural protections in the Directive before any adverse determination may be made.⁸

The Directive requires that each decision be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,⁹ 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 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.

⁶ Regulation, ¶ C3.6.15.

⁷ Regulation, ¶ C6.1.1.1.

⁸ Regulation, ¶ C8.2.1.

⁹ Directive. 6.3.

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

Available information is sufficient to support all of the SOR allegations. The facts established raise a trustworthiness concern about Applicant's finances that is addressed 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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

More specifically, available information requires application of the disqualifying conditions at AG ¶¶ 19(a) (*inability or unwillingness to satisfy debts*); and 19(c) (*a history of not meeting financial obligations*). As to the latter condition, available information suggests this is a case of inability rather than unwillingness to pay her debts. However, Applicant did not seek credit counseling or other assistance until the same month as her hearing, despite the fact the hearing was delayed for four months. This shows an unwillingness to address her financial problems in any meaningful way.

The following AG ¶ 20 mitigating conditions are available to Applicant if based on sufficient information:

(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; and

(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.

AG ¶ 20(a) does not apply because Applicant's financial problems are recent and multiple. The debts remain largely unpaid. Although three debts were likely resolved through civil court actions, and one is a duplicate allegation, there is no record of other payment or other resolution. AG ¶ 20(b) does not apply because Applicant's debts are almost exclusively the result of her own irresponsible use of credit. Applicant has admitted as much.

AG ¶ 20(c) does not apply. Applicant has retained the services of two credit counseling firms to "clean up" her credit history; however, she did so only within the month before her hearing, despite telling an investigative agent two years earlier that she intended to seek professional financial help. Applicant's procrastination in this regard is noteworthy also because she did not seek counseling either after she received the SOR, requested the hearing, or requested a delay in her hearing in November 2014. For many of these same reasons, AG ¶ 20(d) does not apply. Applicant did not establish that she actually repaid any of the debts, and her delay in taking any action precludes application of this mitigating condition.

Finally, Applicant claims that some of the debts were the result of erroneous charges or fraudulent use of her accounts. Some of her claims are plausible, but none are supported by any documentary evidence.

Applicant did not show that she has made any payments for her credit counseling services. She also did not show how she would make those payments, or her future student loan payments. It is encouraging that she now seems to understand the need to

resolve her financial problems; however, on balance she did not mitigate the trustworthiness concerns raised by her long history of unpaid debts.

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(a). Specifically, I note Applicant's sincerity in wanting to change her financial circumstances, and her positive record of performance at work. However, without more information that shows actual progress in resolving her past-due debts, this positive information is not sufficient to overcome the doubts about her trustworthiness that have been raised by the Government's information. Because protection of the nation's sensitive information is the primary focus in these adjudications, any remaining doubts must be resolved against the individual.

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.e, 1.g, 1.j - 1.n, 1.p - 1.bb:	Against Applicant
Subparagraphs 1.f, 1.h, 1.i, 1.o:	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 ADP eligibility is denied.

MATTHEW E. MALONE
Administrative Judge