



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



In the matter of: )  
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[NAME REDACTED] ) ADP Case No. 14-02844  
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)  
Applicant for Position of Trust )

**Appearances**

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

06/08/2015

**Decision**

MALONE, Matthew E., Administrative Judge:

Applicant experienced financial problems as a result of employment difficulties between 2004 and 2012. She has paid or resolved most of her past-due debts and can be relied on to complete her repayment efforts. Her current finances are sound and her past financial problems no longer cast doubt on her trustworthiness. Her request for eligibility to occupy a position of trust is granted.

**Statement of the Case**

On December 5, 2012, Applicant submitted an Electronic Questionnaire for Investigations Processing (EQIP) to obtain eligibility for an ADP I/II/III position<sup>1</sup> for her

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

job with a defense contractor. After reviewing the results of the ensuing background investigation, Department of Defense (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.<sup>2</sup>

On August 8, 2014, DOD issued Applicant a Statement of Reasons (SOR) alleging facts which, if proven, raise trustworthiness concerns addressed through the adjudicative guideline (AG)<sup>3</sup> for financial considerations (Guideline F). Applicant timely responded to the SOR (Answer) and requested a hearing. The case was assigned to me on March 3, 2015, 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. Applicant presented Applicant's Exhibits (Ax.) A - C. All exhibits were admitted without objections. DOHA received the hearing transcript (Tr.) on April 2, 2015.

### **Findings of Fact**

Under Guideline F, the Government alleged that Applicant owes \$81,809 for 15 delinquent or past-due debts (SOR 1.a - 1.o). As to SOR 1.o, it was alleged that after Applicant's mortgage, with a balance of \$108,000, was foreclosed, the house was sold for \$66,000, implying Applicant still owes \$42,000. Applicant admitted all of the allegations. She also provided explanations and asserted various affirmative defenses. 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 49 years old and is employed by a defense contractor as a medical reviewer 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 personally identifiable information (PII) associated with the health care system's constituents. Prior to her current employment, Applicant worked in various capacities as a licensed practical nurse (LPN) beginning around 1994. (Gx. 1)

Applicant was married from July 1984 until she was divorced in October 1987. A second marriage lasted from April 1991 until it ended by divorce in July 2002. Applicant has cohabited with her boyfriend since October 2002. She has five children, ages 29, 26, 23, 10 and 6. (Gx. 1)

When Applicant submitted her EQIP, she disclosed numerous past-due medical debts. Applicant also disclosed that she mistakenly failed to pay a state school tax and a state property tax around the time she moved from State A to her current residence in

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<sup>2</sup> Required by the Regulation, as amended, and by DOD Directive 5220.6, as amended (Directive).

<sup>3</sup> 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).

State B in 2011. She also disclosed the debts alleged at SOR 1.d, 1.h, and 1.l - 1.n. Credit reports subsequently obtained by Government investigators documented the remaining debts alleged in the SOR. (Gx. 1; Gx. 2; Gx. 4)

Applicant started having financial problems in October 2004, after the birth of her 10-year-old child. She initially was granted maternity leave from her nursing job for about six weeks, but was later told by her employer that she did not qualify for that much time off and she was terminated in November 2004. Applicant was unemployed until June 2005, when she was hired for a job at a health care center. She held that job until June 2010, when she resigned because of a change in management. From then until 2011, Applicant was employed intermittently with periods of unemployment or underemployment until relocating to State B. Applicant's ability to work was also interrupted when she gave birth to her youngest child in July 2008. (Gx. 1; Gx. 3; Tr. 42 - 44)

Applicant started having trouble paying her mortgage in State B in about 2008. After a refinance of her mortgage in 2009 resulted in a \$300 increase in her monthly payments, she tried to obtain a mortgage modification from the lender. She was told to stop paying her mortgage for at least three months so she would qualify for modification programs. However, she was unable to successfully negotiate a new mortgage with the lender and the loan was foreclosed in 2011 with a balance of \$108,000. As alleged in SOR 1.o, the property securing the mortgage was later resold for \$60,000. When Applicant filed her 2012 taxes, she declared as income an amount the lender had forgiven after the resale. Available credit reports in 2014 and 2015 show the account has a zero balance due. (Gx. 1 - 4; Ax. A; Tr. 44 - 48)

Applicant acknowledged that she did not make good financial decisions when she started falling behind on her bills. She relied excessively on credit cards and payday loans to make ends meet, and she soon was unable to meet those obligations. However, after Applicant was hired for her current job in early 2013, she again was able to address her debts. She has resolved the medical and tax debts she disclosed in her EQIP. In response to the SOR and at her hearing, Applicant established that she has paid or resolved most of the debts alleged in the SOR. Applicant is currently repaying the debts at SOR 1.a, 1.g, and 1.k. She has paid or otherwise resolved the debts at SOR 1.b, 1.c, 1.f, 1.h, 1.i, 1.l, and 1.m. She also established the debt at SOR 1.e is a duplicate of SOR 1.a. As to her remaining debts, Applicant is taking a reasonable approach by planning to start paying them as other debts are resolved. As to the car repossession debt alleged at SOR 1.d, Applicant averred that she has been unable to communicate with the creditor to establish a repayment plan. (Answer; Ax. A; Ax. C; Tr. 48 - 52)

Applicant's current finances are sound. She has not incurred any debts she cannot pay since beginning her current job. She applied a \$6,000 income tax refund from her 2014 taxes to her past-due debts, and her monthly finances reflect a net cash flow of about \$800 after expenses, including debt payments. (Tr. 54 - 64)

Applicant has an excellent reputation among her current coworkers and supervisors. Those sources, as well as other longer term associates, praise her professionalism and reliability. (Ax. B)

## Policies

Positions designated as ADP I/II/III are classified as “sensitive positions.”<sup>4</sup> 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.<sup>5</sup> The Regulation also requires that DOD contractor personnel are entitled to the procedural protections in the Directive before any adverse determination may be made.<sup>6</sup>

The Directive requires that each decision be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,<sup>7</sup> 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.

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

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<sup>4</sup> Regulation, ¶ C3.6.15.

<sup>5</sup> Regulation, ¶ C6.1.1.1.

<sup>6</sup> Regulation, ¶ C8.2.1.

<sup>7</sup> Directive. 6.3.

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 AG ¶ 19(a), the record shows Applicant was unable, not unwilling, to repay her past-due debts.

By contrast, the following pertinent AG ¶ 20 mitigating conditions apply:

(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; and

(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;

(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.

All of these mitigating conditions apply. Applicant's financial problems began when she experienced employment problems between 2004 and 2012. Although initially she did not make wise choices in response to the effects of her reduced income, Applicant has now demonstrated she is willing and able to resolve all of her debts and that she can be relied on to continue those efforts. Available information shows she is likely to continue those efforts and that she will not again experience the circumstances that gave rise to her past-due debts. As to AG ¶ 20(e), Applicant established that the debt at SOR 1.e was a duplicate of SOR 1.a, and that she is no longer responsible for any remaining mortgage debt as alleged in SOR 1.o. Further, Applicant's current finances are sound and she has demonstrated good judgment and reliability through her efforts to resolve her debts over the past two years. On balance, Applicant has mitigated the trustworthiness concerns raised by her financial problems.

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 response to her financial problems, her complete candor about those problems, and the positive information about her reputation in the workplace. A fair and commonsense assessment of all available information shows that the Government's concerns about Applicant's trustworthiness have been satisfied.

### **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.o:	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 trust. Applicant's request for ADP eligibility is granted.

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MATTHEW E. MALONE  
Administrative Judge