



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



In the matter of:)	
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)	
[NAME REDACTED])	ADP Case No. 14-01133
)	
)	
Applicant for Public Trust Position ¹)	

Appearances

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

05/22/2015

Decision

MALONE, Matthew E., Administrative Judge:

Applicant owes significant past-due and delinquent debts consisting mainly of unpaid student loans and medical accounts. She also has private commercial debts that are past due or delinquent. Applicant’s debts arose, in part, from circumstances beyond her control. But those circumstances have not been present for several years and she has not acted responsibly to pay or otherwise resolve her debts. Applicant’s request for eligibility to occupy a position of trust is denied.

¹ The Statement of Reasons incorrectly captioned this case as an application for a security clearance.

Statement of the Case

On November 13, 2013, Applicant submitted an Electronic Questionnaire for Investigations Processing (EQIP) to obtain eligibility for a public trust position. 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.²

On August 25, 2014, DOD issued to Applicant a Statement of Reasons (SOR) alleging facts which, if proven, raise trustworthiness concerns addressed through the adjudicative guidelines (AG)³ for personal conduct (Guideline E) and 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 26, 2015. Department Counsel for the Defense Office of Hearings and Appeals (DOHA) presented Government Exhibits (Gx.) 1 and 2.⁴ Applicant testified and presented Applicant's Exhibits (Ax.) A - C. All exhibits were admitted without objection. DOHA received the hearing transcript (Tr.) on April 3, 2015.

Findings of Fact

Under Guideline F, the Government alleged that Applicant owes \$18,369 for 17 delinquent or past-due debts (SOR 1.a - 1.q⁵). Applicant admitted all of the allegations under this guideline.

Under Guideline E, the Government alleged that Applicant deliberately falsified her EQIP when she omitted from it the debts alleged at SOR 1.h - 1.q by answering "no" to a Section 26 (Financial Record) question that requires disclosure of debts that have been referred for collection in the preceding seven years. (SOR 2.a) It was also alleged that she deliberately falsified her EQIP when she omitted from it the debt alleged at SOR 1.p by answering "no" to a Section 26 (Financial Record) question that requires disclosure of accounts in the preceding seven years that have been suspended, charged off, or cancelled for failing to pay as agreed. (SOR 2.b) Applicant denied both

² Required by DOD Regulation 5200.2-R, as amended (Regulation), 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 A *Government's Exhibit List* is included in the record as Hearing Exhibit (Hx.) 1. A third exhibit (Gx. 3) was identified and marked, but not moved into evidence. (Tr. 51) I have placed it in the blue administrative folder for possible reference on appeal, but I have not considered its contents as part of my decision.

⁵ The SOR as written contained allegations 1.a - 1.r; however, it skipped SOR 1.d. I amended the SOR at hearing to correct this typographic error. (Tr. 13 - 17)

of the Guideline E allegations,⁶ claiming that she misunderstood the questions. (Answer) 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 a 38-year-old employee of a defense contractor in a position that requires eligibility for a position of trust, because her employer supports management of the health care system used by members of the military. Applicant must be deemed suitable to be entrusted with personally identifiable information (PII) managed by her employer. Since graduating from high school, she attended college or vocational training in 2008 and 2013. References she provided praise her work ethic, reliability, and good character. (Ax. A; Ax. B)

Applicant has three children, ages 19, 14, and 9. She was married from May 2001 until divorcing in April 2009. Her ex-husband pays no child support but helps out when his children need something. Applicant and her children lived with her parents from 2008 until 2011, and from May 2013 until November 2014. Applicant now rents a home for \$925 a month. (Gx. 1; Tr. 62 - 65)

Applicant works as an extended care clerk at a military hospital. She started working there full time in 2013, but she was laid off in June 2014. Applicant was then recalled to that job in August 2014 on a part-time basis. Applicant works every other weekend for a total of 24 hours each month. She likes this arrangement because of the convenience it affords her in raising her children. Applicant brings home between \$700 and \$900 each month, and she receives \$367 each month in state assistance through food stamps. Applicant and her children rely on Medicaid for their medical insurance. (Answer; Gx. 1; Tr. 10, 34 - 35, 41 - 42, 57)

When Applicant submitted her EQIP, she did not disclose any past-due or delinquent debts as required by questions in EQIP Section 26. A subsequent credit report obtained by Government investigators listed the debts alleged in the SOR. As to why she did not list her debts, Applicant claimed alternatively that she either did not understand the questions or that she was rushed by her employer to complete the EQIP. (Answer; Gx. 2; Tr. 21 - 22, 33 - 34, 62)

Applicant owes \$6,671 for seven unpaid medical bills (SOR 1.b - 1.h) dating back to 2011. In response to the SOR, she provided information showing she paid three of those debts (SOR 1.b - 1.d) while still living with her parents, but she has not paid or otherwise tried to resolve any of her remaining medical debts. As of September 2014, Applicant also was at least 90 days past due in paying seven student loans totaling \$31,974 (SOR 1.i - 1.o). At her hearing, Applicant claimed that her student loans have either been deferred or in forbearance for eight or nine years. Another student loan for \$1,819 (SOR 1.q) was referred for collection in October 2013. Applicant has not tried to resolve this debt. She has not paid or otherwise tried to resolve her past-due student

⁶ These allegations were also amended at hearing to conform to the corrections made to SOR 1.

loans. Finally, Applicant owes \$9,114 for two credit card accounts (SOR 1.a and 1.p). She has not taken action to pay or otherwise resolve either debt. (Answer; Gx. 2; Ax. C; Tr. 36 - 39, 67)

Applicant files her state and federal tax returns on time each year. In 2015, she received an income tax refund of \$9,699 based on a \$22,304 adjusted gross income for the 2014 tax year. Applicant has about \$4,000 of that refund remaining in her savings account. She has not used any of her tax refund to resolve any of the debts alleged in the SOR. The only action Applicant has taken to resolve her debts occurred after she received the SOR. (Tr. 59 - 61, 68)

Policies

Positions designated as ADP I/II/III⁷ are classified as “sensitive positions.”⁸ 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.⁹ The Regulation also requires that DOD contractor personnel are entitled to the procedural protections in the Directive before any adverse determination may be made.¹⁰ Each decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,¹¹ and must include 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

⁷ As defined in Chapter 3 and Appendix 10 of the Regulation.

⁸ Regulation, ¶ C3.6.15.

⁹ Regulation, ¶ C6.1.1.1.

¹⁰ Regulation, ¶ C8.2.1.

¹¹ Directive. 6.3.

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 under this guideline. 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*).

I have also considered the following pertinent mitigating conditions available under 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;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;

(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

(f) the affluence resulted from a legal source of income.

None of these mitigating conditions is applicable to the facts and circumstances presented. AG ¶¶ 20(e) and (f) are not pertinent here as Applicant did not dispute any of the debts alleged and because no facts or allegations were presented regarding unexplained affluence. The other AG ¶ 20 mitigating conditions do not apply because Applicant did not present information to establish them. Although three of her medical debts appear to have been paid, available information shows that Applicant took no action on any of her debts until after she received the SOR. Although Applicant was left in difficult straits when her marriage ended in 2009, six years have now passed, and her failure to take any action on any of her debts until after the SOR was issued precludes a conclusion that she acted reasonably under the circumstances. It also precludes a finding that she made any prompt or good-faith efforts to resolve her debts, some of which have been delinquent for several years.

Applicant's current finances are not sound. She does not earn enough to cover her monthly rent and she appears to be living paycheck to paycheck. On balance, Applicant has not mitigated the trustworthiness concerns raised by her continuing financial problems.

Personal Conduct

Available information also showed that Applicant did not list her debts when she completed her EQIP. To be disqualifying, it must be established that she omitted this information with the intent to deceive the Government about information material to an assessment of her suitability for the requested eligibility. Because Applicant denied both of the allegations in this regard, the burden remained on the Government to produce sufficient evidence to support a conclusion that Applicant's omissions were intentional. Because such information can be derived from circumstantial evidence, I conclude Applicant intended to withhold from the Government information about her financial

problems. The facts established raise a trustworthiness concern about Applicant's personal conduct that is addressed at AG ¶ 15, as follows:

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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

More specifically, available information requires application of 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 security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant claimed in her response to the SOR that she did not understand the EQIP questions about her debts. At hearing, she explained that she had been hurried in completing the EQIP and that her omissions were wholly inadvertent. I find it implausible that Applicant, who knew or should have known about her delinquent medical debts, did not have enough time to simply answer "yes" to any of the Section 26 questions about debts within the preceding seven years. The foregoing circumstantially shows an intent to withhold this information and supports application of AG ¶ 16(a).

By contrast, none of the AG ¶ 17 mitigating conditions apply. Applicant's falsification is not minor because it has a direct bearing on the Government's ability to trust that she will act as required in protecting the information entrusted to her. No information was presented showing she tried to correct her omissions, and her conduct in this regard is too recent to be resolved by the passage of time. On balance, the trustworthiness concerns about Applicant's personal conduct have not been mitigated.

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(a). Applicant has a good reputation at work. However, this is not sufficient to counter reasonable doubts about Applicant's suitability for a position of trust raised by the Government's information. Because protection of the interests of national security is the principal goal of these adjudications, those doubts must be resolved against the granting of such eligibility.

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.b - 1.d:	For Applicant
Subparagraphs 1.a, 1.e - 1.q:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a - 2.b:	Against 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