



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



In the matter of:)	
)	
[NAME REDACTED])	ADP Case No. 14-01753
)	
Applicant for Position of Trust)	

Appearances

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

12/23/2014

Decision

MALONE, Matthew E., Administrative Judge:

Applicant’s financial problems were caused by circumstances beyond her control. She demonstrated sound judgment in addressing her past-due debts. Her request for eligibility to occupy a position of trust is granted.

Statement of the Case

On July 9, 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 investigation, adjudicators at the Department of Defense (DOD) were unable to

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

determine that it is clearly consistent with the interests of national security to grant Applicant's request for a position of trust.²

On June 16, 2014, DOD issued to 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 me on September 29, 2014, and I convened a hearing on October 23, 2014. Department Counsel for the Defense Office of Hearings and Appeals (DOHA) presented Government Exhibits (Gx.) 1 - 5. Applicant testified and presented Applicant's Exhibit (Ax.) A. All exhibits were admitted without objection. DOHA received the hearing transcript (Tr.) on November 19, 2014.

Findings of Fact

Under Guideline F, the Government alleged that in 2004, Applicant filed for Chapter 13 bankruptcy protection and completed a repayment plan in September 2009 (SOR 1.a); and that she owed \$15,310 for 53 delinquent or past-due debts (SOR 1.b - 1.aaa). Applicant admitted, with explanations, all of the SOR 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 37 years old and was hired by her current employer in August 2013. She previously worked for the same employer between 2000 and 2009, when she was fired because of attendance problems. Through this employer, Applicant first received eligibility for a position of trust in 2005. She was unemployed or worked in part-time temporary positions until December 2009. She was denied unemployment benefits because of the circumstances in which she was terminated from her previous job. In December 2009, Applicant found work with a large financial corporation that paid her about \$15 per hour and gave her an opportunity to earn additional income through a shift differential. In June 2013, Applicant was laid off due to lack of work. She was unemployed until August 2013 when she was hired for her current position, which pays her about \$11 hourly. (Gx. 1; Tr. 33 - 35)

Applicant is the single mother of a 16-year-old daughter and receives \$330 in monthly court-ordered child support from the child's father. Applicant also is her mother's guardian and financially supports her. Her mother has significant medical problems and receives \$823 in monthly disability benefits. When Applicant was fired in 2009, she was having trouble getting to work on time due to her mother's medical needs. Applicant is her family's only driver and has to take her mother to doctor's appointments and physical therapy sessions. At the time, Applicant's car also required

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).

major repairs, which further hindered her ability to help her mother and get to work on time. (Gx. 2; Tr. 35 - 40)

In 2004, Applicant filed for Chapter 13 bankruptcy protection, declaring \$65,586 in liabilities against \$41,698 in assets. Most of the debts declared were for past-due loans, credit cards, and other personal obligations. Applicant sought bankruptcy protection because most of her money was being used to pay for co-payments and medications for her mother. In her petition, she reaffirmed her car loan and the loan that financed her mobile home. Applicant successfully completed a wage earners repayment plan in September 2009. (Answer; Gx. 1 - 5)

From 2009 until June 2013, Applicant worked for a large financial corporation making about \$15 hourly. However, her employer-sponsored medical coverage had an \$800 limit. She was liable for most of her own medical costs and those of her mother and daughter. Additionally, Applicant lost time and income from work because she had to care for her mother. During this time, Applicant developed serious back problems and required specialized treatment, including two operations. Only a small portion of the costs of Applicant's care was covered by her medical insurance. (Answer; Gx. 1; Gx. 2; Tr. 40 - 42)

When Applicant submitted her EQIP, she disclosed her 2004 bankruptcy and several past-due medical bills. Subsequent credit reports obtained by the Government revealed all of the debts alleged in the SOR. Only the debt at SOR 1.kk, an unpaid car insurance bill for \$226, is for something other than a medical bill. Applicant has no unpaid credit card or other discretionary debts. In June 2014, Applicant again filed for Chapter 13 bankruptcy protection. She declared \$40,848 in liabilities against \$11,321 in assets. Her listed debts consisted of all of her medical bills and she reaffirmed her car loan and her mobile home loan. Applicant pays \$425 each month in a wage earners repayment plan. This time, her mother is contributing half of the bankruptcy payment and is now paying half of their rent and utilities, as well. (Answer; Gx.1 - 5; Tr. 35 - 36)

Applicant is now making about three dollars less per hour than in her previous job, but her medical insurance now covers 80% of her family's medical care. Applicant has about \$200 remaining each month after paying her regular monthly expenses. She regularly communicates with the billing representatives of her health care providers when new expenses arise. Her personal references have known her between 10 and 15 years, and they vouch for her honesty, generosity, and reliability. (Ax. A; Tr. 46 - 61)

Policies

Positions designated as ADP I/II/III are classified as "sensitive positions."⁴ 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

⁴ Regulation, ¶ C3.6.15.

“clearly consistent with the interests of national security” to do so.⁵ The Regulation also requires that DOD contractor personnel are entitled to the procedural protections in the Directive before any adverse determination may be made.⁶

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

⁵ Regulation, ¶ C6.1.1.1.

⁶ Regulation, ¶ C8.2.1.

⁷ Directive. 6.3.

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 has been unable, not unwilling, to repay her past-due debts.

I have also considered 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, 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.

Applicant's debts are the combined result of limited income, unexpected layoffs, inadequate medical insurance, and medical problems for herself and those for whom she is responsible. Before 2004, she relied on personal credit to make ends meet, but she soon found herself unable to meet her repayment obligations. At the time, she was able to satisfy her past-due debts through Chapter 13 bankruptcy. This also allowed her to keep her home and her car. More recently, Applicant's new debts are again due to medical costs not covered by her insurance. Ironically, the job she had until June 2013 paid her more than her current job but afforded her inadequate medical benefits. Rather than use credit cards and payday loans to make ends meet, she has tried, albeit with little success, to work with her medical providers to resolve her debts. Her decision to again file for Chapter 13 bankruptcy protection was reasonable and well-considered under the circumstances shown in this record. Applicant feels a responsibility to pay her

past-due debts and her bankruptcy petition was her best available option. Applicant is able to pay down her debts and meet her current financial obligations. The foregoing supports application of AG ¶¶ 20(b) and (c). Applicant's actions to resolve her past-due debts, along with her positive work performance and reputation for reliability and honesty support a conclusion that the trustworthiness concerns raised by her finances are mitigated.

Whole-Person Concept

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). Applicant is acting reasonably and responsibly under adverse circumstances to resolve her past-due debts, which arose from circumstances beyond her control. As a single-mother, and as her mother's only care giver, Applicant showed good judgment and reliability in response to her financial problems. 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.aaa:	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.

MATTHEW E. MALONE
Administrative Judge