



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



In the matter of:)
)
) ADP Case No. 14-02212
)
Applicant for a Public Trust Position)

Appearances

For Government: Stephanie C. Hess, Esq., Department Counsel
For Applicant: *Pro se*

04/30/2015

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Defense Department’s intent to deny her eligibility for a public trust position to work in the defense industry. Applicant’s financial problems were not caused by irresponsible, reckless, or negligent behavior. Since she began working with her current employer in July 2013, Applicant has rehabilitated her delinquent student loans and has, through payment plans and a wage garnishment, reduced her delinquent debt by \$19,000. Her eligibility for access to sensitive information is granted.

Statement of the Case

On August 15, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing trustworthiness concerns under the financial considerations guideline.¹ DOD adjudicators were unable to find that it is clearly consistent with national security to grant or continue Applicant’s access to sensitive information and

¹ This case is adjudicated under DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). The *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply to this case. The AG replace the guidelines in Enclosure 2 to the Directive.

recommended that the case be submitted to an administrative judge for a determination whether to revoke or deny Applicant's eligibility to occupy a public trust position.

Applicant timely answered the SOR and requested a hearing.² At the hearing, convened on February 10, 2015, I admitted Government's Exhibits (GE) 1 through 5, and Applicant's Exhibit (AE) A, without objection. After the hearing, Applicant submitted AEs B through G, which were also admitted without objection.³ I received the transcript (Tr.) on February 19, 2015.

Findings of Fact

Applicant, 34, has worked for a federal contractor since July 2013. Her position requires access to personally identifiable information (PII). On her electronic questionnaire for investigations processing (e-QIP), dated July 2013, Applicant disclosed approximately \$98,500 in delinquent student loans. The ensuing investigation revealed that Applicant is indebted to four creditors for approximately \$72,000. Of the 14 accounts alleged, 13 are for delinquent student loans (SOR ¶¶ 1.b-1.n), 1 account is for a credit card (SOR ¶ 1.a).⁴

Applicant is the first member of her family to attend college. Initially, Applicant attended a large state school, but felt that the environment was not a good fit for her. She ultimately received her degree from a nationally-known, for-profit university. Applicant financed her education entirely with student loans. At the time, Applicant did not understand all the terms of her loan financing and repayment. She relied on the advice of the financial aid counselor assigned to her at the university. Applicant also relied on the assurances of her husband, on whom she was financially dependent, that they would repay her education debt together. However, shortly after receiving her bachelor's degree in 2009, Applicant left her husband to escape his alcoholism and domestic abuse and to protect their two young children. Applicant's divorce was finalized in September 2012, after nine years of marriage. Her ex-husband pays child support sporadically.⁵

Applicant tried to live on her own and support her children in a city 200 miles away from her family. Without family support, she soon became overwhelmed and felt she needed to regroup. In April 2012, Applicant moved back home, living on the reservation with her mother and working odd jobs when she was not caring for her elderly grandmother. In March 2013, Applicant got a job 50 miles from her home. After four months of the daily 100-mile, round-trip commute and the 10-to-12-hour shifts, Applicant realized that the income she earned was barely enough to cover her commuting costs, let alone support her children. She decided to find another job. Within

² The Government's discovery letter, dated December 11, 2014, is appended to the record as Hearing Exhibit (HE) I.

³ The e-mails regarding the admissibility of the applicant's exhibits are included in the record as HE II.

⁴ GE 1-5.

⁵ Tr. 15-16, 23-24, 28-32; GE 1.

two weeks, she secured her current job, earning \$15 an hour, with the possibility of overtime.⁶

By the time Applicant started her current job, her student loans were in default. Two of her student loan lenders began to garnish her wages. In October 2013, when she had her first interview with a background investigator, Applicant realized that the government was concerned about her delinquent debt. At hearing, Applicant testified that the wage garnishments and the background interview were turning points for her. She began contacting her creditors to rehabilitate her student loans and address her other delinquent accounts.⁷

To date, Applicant has entered into payment plans for each of her creditors. She has resolved her delinquent credit card account. (SOR ¶ 1.a, \$807). Applicant has also rehabilitated all of her student loans (SOR ¶¶ 1.b-1.n) and they are in good standing. Since starting employment in July 2013, Applicant has reduced her delinquent debt by \$19,000 or 27%.⁸

Applicant closely monitors her finances and maintains a strict budget. She lives within her means and has worked to reduce her living expenses. After her most recent performance evaluation in February 2015, Applicant received a merit increase and now earns \$15.54 per hour. She also has the opportunity to work 24 hours of overtime per week. Applicant plans to use the increase in income toward the resolution of her student loan debt.⁹

Policies

Positions designated as ADP I and ADP II are classified as “sensitive positions.”¹⁰ “The standard that must be met for . . . assignment to sensitive duties, is that, based on all available information, the person’s loyalty, reliability, and trustworthiness are such that . . . assigning the person to sensitive duties is clearly consistent with the interests of national security.”¹¹ Department of Defense contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination may be made.¹² An administrative judge’s

⁶ Tr. 16-19, 39-40; GE 1; AE G.

⁷ Tr. 19-20.

⁸ Tr. 25-27, 34; AEs A-F.

⁹ Tr. 27, 33-34, 37-38; AE G.

¹⁰ DOD Regulation 5200.2-R, *Personnel Security Program* (January 1987), as amended (Regulation) ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3.

¹¹ Regulation ¶ C6.1.1.1.

¹² See Regulation ¶ C8.2.1.

objective is a fair, impartial, and commonsense decision that embraces all available, reliable information about the person, past and present, favorable and unfavorable.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain a favorable decision.

A person who seeks access to a public trust position enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to sensitive information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of sensitive information.

Analysis

Guideline F, Financial Considerations

Unresolved delinquent debt is a serious concern because failure to “satisfy debts [or] 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 sensitive information.”¹³ Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding sensitive information.

Applicant admits that she is indebted to four creditors, three of whom are student loan lenders, for approximately \$72,000. Applicant’s admissions as well as the credit reports in the record establish the government’s *prima facie* case.¹⁴ Applicant has demonstrated an inability to pay her bills and a history of financial problems resulting in unresolved delinquent debts.¹⁵ However, Applicant has submitted sufficient information to mitigate the trustworthiness concerns raised by her finances.

Applicant’s financial problems did not occur under circumstances that raise doubts about her current trustworthiness. She incurred the debt as a young adult trying to finance her education. Years of underemployment and the loss of financial support caused by the dissolution of her marriage prevented her from paying her student loan accounts – all events beyond her control. After starting her job in July 2013, Applicant

¹³ AG ¶ 18.

¹⁴ Answer; GE 1-5.

¹⁵ AG ¶¶ 19(a) and (c).

acted responsibly by contacting her creditors, making payment arrangements with them, thus rehabilitating her student loan accounts, and resolving the credit card account alleged in SOR ¶ 1.a. Applicant has made a good-faith effort to resolve her delinquent accounts evidenced by her payment of \$19,000 to her creditors since the issuance of the SOR. Applicant has also established that with her budgeting efforts, her finances are under control.¹⁶

After reviewing the record, I have no doubts about her suitability for access to sensitive information. In reaching this conclusion, I have also considered the whole-person factors at AG ¶ 2(a). The Appeal Board has held that, “an applicant is not required to be debt-free or to develop a plan for paying off all debts immediately or simultaneously. All that is required is that an applicant act responsibly given her circumstances and develop a reasonable plan for repayment, accompanied by concomitant conduct,” that is, actions that evidence a serious intent to effectuate the plan.¹⁷ Applicant has done so. Accordingly, her request for access to sensitive information is granted.

Formal Findings

Formal findings for or against Applicant 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.n:	For Applicant

Conclusion

In light of all of the circumstances presented, it is clearly consistent with the interests of national security to grant Applicant access to sensitive information. Applicant’s eligibility to occupy a position of trust is granted.

Nichole L. Noel
Administrative Judge

¹⁶ AG ¶¶ 20(a) – (d).

¹⁷ See, e.g., ISCR Case No. 08-06567 at 3 (App. Bd. Oct 29, 2009).