



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



In the matter of:)	
)	
[NAME REDACTED])	ADP Case No. 14-02255
)	
Applicant for Position of Trust)	

Appearances

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

12/12/2014

Decision

MALONE, Matthew E., Administrative Judge:

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

Statement of the Case

On November 27, 2012, 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, 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 July 30, 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 30, 2014, and I convened a hearing on October 22, 2014. Department Counsel for the Defense Office of Hearings and Appeals (DOHA) presented Government Exhibits (Gx.) 1 - 5. Applicant testified and presented Applicant's Exhibits (Ax.) A - H. All exhibits were admitted without objection. DOHA received the hearing transcript (Tr.) on November 7, 2014.

Findings of Fact

Under Guideline F, the Government alleged that in 2005, Applicant filed for Chapter 13 bankruptcy protection and completed a repayment plan in March 2010 (SOR 1.a); and that she owed \$8,424 for 11 delinquent or past-due debts (SOR 1.b - 1.i). Applicant admitted, with explanations, the allegations at SOR 1.a - 1.f and 1.h - 1.i. She denied SOR 1.g because she could not verify that it was her debt. 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 51 years old and was hired by her current employer in March 1994. She has been eligible for a position of trust since at least June 2003. Applicant has a good record at work and was promoted to a supervisory position in 2012. She holds a bachelor's degree in business management with a minor in marketing. (Gx. 1; Gx. 2; Tr. 9, 25, 27)

Applicant was married from December 1997 until obtaining a divorce in August 2013. She has two children, ages 15 and 9. She and her husband separated in December 2005, because he had become addicted to drugs, had lost his job, and routinely stole money from her that would otherwise have been used for family expenses. In 2007, Applicant's ex-husband was ordered to pay her \$147 weekly for child support. To date, he is nearly \$60,000 in arrears on that obligation. (Answer; Gx. 1; Gx. 2; Ax. H; Tr. 24, 34)

As a result of her husband's conduct, Applicant filed for Chapter 13 bankruptcy protection in 2005. The petition declared \$169,000 in liabilities against \$130,000 in assets. Applicant successfully completed a wage earner's debt repayment plan in 2010. (Answer; Gx. 1; Gx. 2; Gx. 5; Ax. A; Tr. 36 - 39)

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).

When she submitted her EQIP in 2012, she disclosed her Chapter 13 bankruptcy and she listed eight new past-due medical debts she had incurred since 2010. In 2009, Applicant underwent hip replacement surgery to correct a congenital muscular-skeletal condition that became debilitating. She was out of work for nearly four months for the surgery and subsequent rehabilitation. In 2010, she required emergency surgery and was again out of work, this time for about two months. In 2011, her son required emergency surgery and Applicant lost more time from work to care for him. Applicant had little paid time off each year and quickly used up her paid leave after each of these medical events. Additionally, she was only covered for about 80% of the costs of the medical services required over this three-year period. The debts alleged at SOR 1.b - 1.i are for medical bills she could not pay in addition to her regular living expenses (e.g., rent, car insurance, utilities, etc.), which have always been current. Applicant and her family have not experienced any additional medical problems since 2011. (Answer; Gx. 1 - 4; Tr. 39 - 41, 58 - 60)

In early 2013, Applicant started contacting creditors to arrange repayment plans. However, she was only able to make nominal payments on one of her debts, not alleged in the SOR. However, as of the hearing, she had paid the debts alleged at SOR 1.e, 1.f, and 1.h - 1.i. She also has begun repaying the debts at SOR 1.b - 1.d through structured repayment plans. The debt at SOR 1.g no longer appears on Applicant's credit report and she has been unable to find any information about that debt. (Answer; Ax. A - G; Tr. 41 - 48)

Applicant's current finances are sound. She estimates that she has about \$250 remaining each month after expenses. Her expenses include \$100 in combined monthly payments to the SOR 1.b - 1.d creditors. Applicant has about \$6,200 in retirement savings; her car is paid for; she timely pays her rent and other regular monthly obligations; and she has always filed and paid her income taxes on time. Applicant volunteers in her community and at her church, and there is no indication she has ever mishandled sensitive information at work. (Answer; Tr. 48 - 56)

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 "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

⁴ Regulation, ¶ C3.6.15.

⁵ Regulation, ¶ C6.1.1.1.

⁶ Regulation, ¶ C8.2.1.

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.

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

⁷ Directive. 6.3.

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:

(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.

All of these mitigating conditions apply. Applicant's bankruptcy petition was necessitated by the deterioration of her marriage when her husband became addicted to drugs. She successfully completed her obligations under a repayment plan. Her more recent debts resulted from unforeseen emergency medical procedures for her and one of her children between 2009 and 2011. She was only partially covered for those services. Because she lost significant time from work due to her medical issues, she did not have enough income to pay her medical bills while also supporting her family. Her family's medical problems are not likely to recur and Applicant has now satisfied all but three of the debts alleged in the SOR. She also has established regular payment plans for the other three debts. Applicant's response to her financial problems was reasonable given her circumstances and are reflective of good judgment. While she has not received financial counseling, the record shows her financial problems are under control. All of the foregoing supports application of the mitigating conditions at AG ¶¶ 20(a) - (c). The trustworthiness concerns raised by Applicant's financial problems 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 has paid or otherwise resolved her past-due debts, which arose from circumstances that are not likely to recur. As a single-mother receiving none of the court-ordered child support from her ex-husband, Applicant has demonstrated sound judgment and reliability in response to her financial problems. She is active in her community and her church, and she was candid and forthright in response to the Government's information. 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.l: 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