



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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[NAME REDACTED]) ADP Case No. 14-02667
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Applicant for a Position of Public Trust)

Appearances

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

06/01/2016

Decision

MALONE, Matthew E., Administrative Judge:

Applicant failed to mitigate the trustworthiness concerns about her financial problems. Her request for eligibility to occupy a public trust position is denied.

Statement of the Case

On September 17, 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 for the Department of Defense (DOD) 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

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

² Required by the Regulation, as amended, and by DOD Directive 5220.6, as amended (Directive).

On March 12, 2015, DOD issued a Statement of Reasons (SOR) alleging facts that raise trustworthiness concerns addressed under Guideline F (Financial Considerations).³ Applicant timely responded to the SOR and requested a decision without a hearing. On July 27, 2015, Department Counsel issued a File of Relevant Material (FORM)⁴ in support of the SOR. Applicant received the FORM on August 21, 2015. The record closed on September 20, 2015, after Applicant did not submit additional information during the 30 days allowed in Section E3.1.7. The case was assigned to me on December 10, 2015.

Findings of Fact

Applicant is 49 years old. At the time she submitted her EQIP, she was unemployed. In August 2013, she was hired for her current job with a defense contractor. Applicant's job requires she be eligible for a position of trust because her employer supports management of the health care system used by members of the military, and she must be found suitable to be entrusted with personally identifiable information (PII) associated with the health care system's constituents. Since 2004, Applicant has been unemployed four times for a total of 33 months. (FORM, Item 3)

Applicant has been married since July 1999. A previous marriage began in May 1987 and ended by divorce in February 1999. Applicant has four children between 19 and 28 years of age. Applicant's ex-husband did not pay child support as required. At one point, he owed her as much as \$100,000 for unpaid child support. (FORM, Item 4)

Under Guideline F, the Government alleged that Applicant owes \$39,601 for 26 delinquent or past-due debts (SOR 1.a - 1.z). In response to the SOR, Applicant admitted the tax debts alleged at SOR 1.b (\$10,310) and 1.c (\$10,124), claiming that she had an installment plan to repay both debts. She denied the remaining SOR allegations. Applicant disclosed several of the alleged debts in her EQIP. All of the debts are documented in the credit reports obtained during his background investigation. Additionally, Applicant discussed the alleged debts with a Government investigator during a personal subject interview on November 18, 2013. (FORM, Items 1 - 6)

In a March 2014 response to financial interrogatories from DOD adjudicators (FORM, Item 4), Applicant indicated that she is paying the SOR 1.b and 1.c tax liens. In support of her claim, she provided a November 21, 2012, letter from the IRS confirming a \$315 monthly payment plan beginning on December 28, 2012 to satisfy a \$20,150.35 debt for unpaid taxes from the 2001, 2004, 2009, and 2010 tax years. She provided a release of the tax lien for taxes due from 2009, but did not otherwise produce a record of regular payments under the aforementioned IRS agreement.

³ See Directive, Enclosure 2. See also 32 C.F.R. § 154, Appendix H (2006).

⁴ See Directive, Enclosure 3, Section E3.1.7. The FORM included six documents (Items 1 - 6) proffered in support of the Government's case.

Also in her response to interrogatories, Applicant claimed to have paid the debts alleged at SOR 1.i, 1.p, 1.w, and 1.y. However, she did not provide sufficient information to corroborate her claims. Of the 26 debts alleged in the SOR, eight (SOR 1.d, 1.e, 1.g - 1.j, 1.q and 1.y) are for less than \$100 each. All were addressed by the interrogatories, but none have been paid or otherwise resolved. Finally, as part of her response to interrogatories, Applicant provided a personal financial statement (PFS). She declared therein that after paying her regular monthly expenses, she had approximately \$2,827 remaining. (FORM, Item 4)

Policies

Positions designated as ADP I/II/III are classified as “sensitive positions.”⁵ 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.⁶ The Regulation also requires that DOD contractor personnel are entitled to the procedural protections in the Directive before any adverse determination may be made.⁷

The Directive requires that each decision be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,⁸ 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

⁵ Regulation, ¶ C3.6.15.

⁶ Regulation, ¶ C6.1.1.1.

⁷ Regulation, ¶ C8.2.1.

⁸ Directive. 6.3.

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

Applicant admitted two of the SOR allegations and denied the remaining 24 allegations. As required by section E3.1.14 of the Directive, the Government met its burden of production to establish the resulting controverted issues of fact. The facts thus established support all of the SOR allegations and raise a trustworthiness concern addressed, in relevant part, 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.

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 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;

(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.

As required by section E3.1.15 of the Directive, Applicant had the burden of persuasion to mitigate, extenuate, or refute the SOR allegations. In response to the SOR and the FORM, Applicant did not present any information to support her claims regarding resolution of her debts. Although her financial problems may have arisen from circumstances beyond her control (e.g., unemployment, loss of income, illness, unpaid child support, etc.), the onus was on her to show that she acted responsibly in the face of her financial problems. Her responses to the Government's information did not show that she has acted to resolve her debts in any identifiable, systematic way. Further, she has the resources to pay many of her smaller debts outright, but she has not done so. On balance, Applicant has not mitigated the trustworthiness concerns raised by the Government's information.

In addition to my evaluation of the facts and application of the appropriate adjudicative factors under Guideline F, I have reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a). I conclude that doubts remain about Applicant's trustworthiness. Because protection of the national interest is the principal focus of these adjudications, those doubts must be resolved against the Applicant.

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.a - 1.z: 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 eligibility is denied.

MATTHEW E. MALONE
Administrative Judge