



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



In the matter of:)	
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)	
[NAME REDACTED])	ADP Case No. 14-03099
)	
)	
Applicant for Public Trust Position)	

Appearances

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

04/09/2015

Decision

MALONE, Matthew E., Administrative Judge:

Applicant accrued significant debt over the past ten years. She presented evidence of payments made on three student loans and she satisfied a satellite television account the day after her hearing. In 2010, Applicant was convicted of a drug-related offense after buying marijuana for a friend. The record as a whole reflects continued poor financial decisions, a lack of action to resolve her debts, a willingness to commit criminal conduct, and a deliberate misuse of personally identifiable information (PII) in her personal affairs. Applicant's request for eligibility to occupy a position of trust is denied.

Statement of the Case

On February 5, 2013, Applicant submitted an Electronic Questionnaire for Investigations Processing (EQIP) to obtain eligibility for a public trust position as part of

for her job with a defense contractor. 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.¹

On August 13, 2014, DOD issued to Applicant a Statement of Reasons (SOR) alleging facts which, if proven, raise trustworthiness concerns addressed through the adjudicative guidelines (AG)² 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 January 19, 2015, and I convened a hearing on February 11, 2015. Department Counsel for the Defense Office of Hearings and Appeals (DOHA) presented Government Exhibits (Gx.) 1 - 4.³ Applicant testified, but did not present any documents at her hearing. I held the record open after the hearing to receive additional relevant information. The record closed on February 23, 2015, when I received Applicant's Exhibits (Ax.) A - E. All exhibits were admitted without objection.⁴ DOHA received the hearing transcript (Tr.) on February 27, 2015.

Findings of Fact

Under Guideline F, the Government alleged that Applicant owes \$27,664 for 24 delinquent or past-due debts (SOR 1.a - 1.x). Applicant admitted the allegations at SOR 1.a - 1.c, 1.e - 1.g, 1.k, 1.l, 1.n, 1.s, and 1.u. The debts alleged at SOR 1.h - 1.j are for student loans. Applicant did not deny owing those debts, but asserted they were in deferment as of June 2014. Applicant also claimed the debt at SOR 1.v is a duplicate of SOR 1.c. She denied the remaining allegations under Guideline F.

During the hearing, Department Counsel acknowledged that the allegations at SOR 1.m, 1.t, and 1.v are duplicates of the debts alleged at SOR 1.g, 1.d, and 1.c, respectively. Accordingly, SOR 1.m, 1.t, and 1.v are resolved for the Applicant. Additionally, the allegation at SOR 1.w was amended to conform to the evidence to reflect a \$90 balance due. Accordingly, the total amount of debt at issue is actually \$26,136. (Answer; Tr. 9 - 10)

Under Guideline E, the Government alleged that Applicant was arrested in February 2010 for misdemeanor possession of marijuana and hashish; and that she was convicted of that charge and was fined. (SOR 2.a) Applicant admitted this

¹ Required by DOD Regulation 5200.2-R, as amended (Regulation), and by DOD Directive 5220.6, as amended (Directive).

² 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).

³ A *Government's Exhibit List* is included in the record as Hearing Exhibit (Hx.) 1.

⁴ Department Counsel's memorandum identifying Ax. A - E and waiving objections to their admissibility is included as Hx. 2.

allegation. 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 30 years old and is employed by 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. Applicant was hired for her current job in February 2013. (Gx. 1 and 2)

When Applicant submitted her EQIP, she disclosed that she had lost a home to foreclosure in June 2010. During her background investigation, the Government obtained credit reports that document that debt, as well as the debts alleged at SOR 1.a - 1.x. Also during her background investigation, Applicant was interviewed about her debts by a Government investigator on March 23, 2013.

Applicant is a high school graduate and the single mother of three children, ages 8, 9, and 14. She also took college-level courses from August 2003 to May 2004 and between February and June 2011. She has been enrolled at a third college since December 2012. (Gx. 1)

Applicant acknowledged that she was "young and dumb" in her past decisions about money and her personal behavior. In large measure, she also attributes her financial problems to periods of unemployment or underemployment between about January 2003 and February 2013, when she started working in her current job. From January 2003 until May 2004, Applicant did not work while she attended a technical school. In May 2006, she left a support analyst job she had held for two years when she became pregnant with her youngest child. (Gx. 1)

Applicant returned to work as a customer service representative and technical support representative between September 2006 and July 2008. At that time, she resigned from her job to care for her ailing grandfather. She remained unemployed and supported by family members until returning to work in September 2009. She worked for 14 months before leaving to seek better pay and benefits in November 2010. After being unemployed for three months she found a temporary job in January 2011, but had to leave in February 2011 because of unsatisfactory performance. For the next 20 months, she was either unemployed or earned money as a babysitter. In September 2012, she went to work at a hotel, the job she held immediately before being hired for her current job. Starting in January 2003, Applicant was unemployed or underemployed for a total of about 40 months. (Gx. 1)

Applicant obtained the student loans listed in SOR 1.h - 1.j to pay for the college courses she has been taking since 2012. Those loans are either still in deferment or are being repaid through an agreement that runs through February 2016. Other student loans, listed in SOR 1.a, 1.b and 1.e, were obtained for college courses she took between 2003 and 2011. Ax. A shows Applicant's handwritten notes about SOR 1.a and

1.b and purports to show those loans are “no longer past due.” Applicant refers to a printout as support for that claim, but the only printout showing paid or current student loans is in Ax. B, and refers to the repayment of SOR 1.h - 1.j. Applicant did not provide any information showing resolution of the student loan at SOR 1.e. At hearing, she testified that she has not acted on that debt. (Gx. 2; Gx. 3; Ax. A; Ax. B; Tr. 36 - 37, 58 - 59)

The debt alleged at SOR 1.c is for an unpaid satellite television account. It was placed for collection in July 2012. The day after her hearing, Applicant paid this debt. (Ax. A; Ax. C)

The debts alleged at SOR 1.d, 1.n, 1.o, 1.p, and 1.q are for delinquent cell phone accounts. Applicant personally used some of those accounts; but she has also acknowledged that she allowed her Social Security number to be used by friends to open cell phone accounts. She erroneously assumed that they were paying for their phone service. Applicant has not acted to resolve these accounts. (Tr. 51 - 54)

Applicant did not establish that she has paid or tried to resolve any of the other debts alleged in the SOR. In some cases, she is waiting for delinquencies to fall off her credit history after seven years, as provided for by the Fair Credit Reporting Act. (Tr. 28)

Applicant earns about \$1,300 in net monthly income. To save money, she and her children live with Applicant’s mother, whose house is paid for. Applicant pays her mother \$200 each month to help with expenses and utilities. After expenses, such as insurance, food, and child care, Applicant estimates she has between \$100 and \$200 remaining each month. She does not have an organized budget and lives paycheck to paycheck. (Tr. 30 - 32, 39)

At the hearing, Applicant disclosed that in November 2013, she bought a new car for about \$20,000. Applicant paid \$520 each month on her car loan, and she estimated that with insurance premiums the car cost her about \$700 each month. She was unable to consistently make her payments and the car was repossessed in August 2014. Applicant does not know what she owes for the remainder of the loan after resale of the car. (62 - 64)

Applicant also disclosed at hearing that she was recently audited by the IRS, and that she owes about \$1,000 as a result of the audit. Further, Applicant stated that she defaulted on an \$800 signature loan in June 2014. As with the debt alleged at SOR 1.i, this was a loan obtained so that she could repay other debts. Neither the loans nor the IRS debt have been paid. (Ax. D; Tr. 25 - 26, 60, 65)

In February 2010, at age 26, Applicant bought a small amount of marijuana to give to a friend. During a subsequent traffic stop, Applicant was found to still have the marijuana on her person. She was arrested and charged with misdemeanor drug possession. In March 2010, she pleaded guilty to a lesser included offense of possessing drug paraphernalia. Applicant paid a fine but was not jailed. Applicant insists

she does not use drugs and there is no information in this record showing she has engaged in any other drug-related conduct. (Answer; Gx. 1; Gx. 3)

Policies

Positions designated as ADP I/II/III⁵ are classified as “sensitive positions.”⁶ 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.⁷ The Regulation also requires that DOD contractor personnel are entitled to the procedural protections in the Directive before any adverse determination may be made.⁸ Each decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,⁹ 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 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.

⁵ As defined in Chapter 3 and Appendix 10 of the Regulation.

⁶ Regulation, ¶ C3.6.15.

⁷ Regulation, ¶ C6.1.1.1.

⁸ Regulation, ¶ C8.2.1.

⁹ Directive. 6.3.

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 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(f) is not pertinent here as 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 student loan debts are being paid, available information does not show a history of payment. As with her repayment of the SOR 1.c debt the day after her hearing, and the lack of action to repay any of her other debts, it is not unreasonable to assume that Applicant did not start her repayments until sometime after she received the SOR.

The circumstances surrounding her financial problems were only partially to blame here. On one occasion, she left a job to give birth to one of her children. But in 2008, she voluntarily left employment to care for a relative. This is otherwise an admirable decision, but Applicant did not establish that she was forced to give up her job and put her mortgage at risk. Further, Applicant lost a job in 2011 due to unsatisfactory performance. Even allowing that such events were beyond her control. Applicant did not show that she acted responsibly to resolve her debts once she started working again. It appears any such action has occurred only around the time of her hearing. Available information also shows she has not made good financial decisions since being hired by her current employer. Applicant bought a new car she clearly could not afford; she owes unpaid taxes; and she recently defaulted on a signature loan.

Applicant is not expected to debt free; however, she failed to timely act on her past-due debts, and she more recently is still experiencing financial problems. Also, Applicant has shown a willingness to let others use her social security number, the same sort of PII for which she seeks access through a position of trust, to obtain goods and services for which they otherwise might not be qualified. All of this information reasonably undermines the Government's confidence in Applicant's trustworthiness. Applicant has not mitigated the trustworthiness concerns raised by her financial problems.

Personal Conduct

Available information also is sufficient to support the SOR allegation under this guideline. The facts established raise a trustworthiness concern about Applicant's finances 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.

Applicant exhibited poor judgment when she decided to commit a crime for a friend. This information, standing alone, is dated and isolated as criminal conduct. However, when taken in context with the adverse information raised in the record as a whole, this record requires application of the disqualifying condition at AG ¶ 16(c):

credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information.

Applicant allowed her personal information to be used by others. She also decided to break the law for a friend by purchasing and possessing illegal drugs. Applicant attributes this conduct to being “young and dumb.” I disagree. She was 26 years old and working full time as a data entry clerk. Applicant just decided to make one of many poor decisions.

Of the AG ¶ 17 mitigating conditions, only AG ¶ 17(c)

the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

is potentially applicable. However, as an example of poor judgment and lack of trustworthiness, Applicant's 2010 drug arrest does not stand alone. On balance, Applicant has not mitigated the trustworthiness concerns raised under this guideline.

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). The Government's information raised reasonable doubts about Applicant's suitability for a position of trust that was not countered by any information from Applicant about her professional or personal reputation. 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.m, 1.t, and 1.v:	For Applicant
Subparagraphs 1.a - 1.l, 1.n - 1.s, 1.u, 1.w - 1.x:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 1.a:	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