



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



In the matter of:)	
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)	
[NAME REDACTED])	ADP Case No. 14-05657
)	
)	
Applicant for Position of Trust)	

Appearances

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

06/16/2015

Decision

MALONE, Matthew E., Administrative Judge:

Applicant incurred significant unpaid debt, in part, due to circumstances beyond her control. However, she has not tried to pay or resolve even the smallest of her debts, despite having the means to do so. Her ongoing financial problems raise trustworthiness concerns about her judgment and reliability that have not been mitigated by her response to the Government's information. Her request for eligibility to occupy a position of trust is denied.

Statement of the Case

On July 25, 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, 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.²

On December 16, 2014, DOD issued Applicant a Statement of Reasons (SOR) alleging facts which 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 March 3, 2015, and I convened a hearing on March 24, 2015. Department Counsel for the Defense Office of Hearings and Appeals (DOHA) presented Government Exhibits (Gx.) 1 - 4. Applicant testified and presented Applicant's Exhibits (Ax.) A and B. All exhibits were admitted without objections. DOHA received the hearing transcript (Tr.) on April 2, 2015. I left the record open after the hearing to receive from Applicant additional relevant information. The record closed on April 7, 2015, when I admitted, without objection, Ax. C - I.

Findings of Fact

Under Guideline F, the Government alleged that Applicant owes \$31,593 for 20 delinquent or past-due debts (SOR 1.a - 1.t). Applicant admitted all of the allegations except for SOR 1.I, a state tax debt, which she claims to have paid in February 2013. 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 49 years old and is employed by a defense contractor in an information technology (IT) position that requires eligibility for a position of trust. Her employer supports management of the health care system used by members of the military, and Applicant must be found suitable to be entrusted with personally identifiable information (PII) associated with the health care system's constituents. Prior to her current employment, Applicant worked in various IT jobs, including a systems administrator position at an accounting firm between May 2004 and October 2011. (Gx. 1)

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).

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).

Applicant did not graduate from high school, but obtained her General Education Diploma (GED) and later attended a vocational school from September 2002 until May 2005. She financed her post-GED education through four federally-subsidized student loans that became delinquent. The debts, which now total \$3,793, were purchased by a collection agency after she was unable to make her payments due to a period of unemployment. Applicant generally has made regular, albeit, nominal monthly payments on her student loans since August 2011. Two of her student loan debts alleged at SOR 1.c and 1.d, and are not delinquent. SOR 1.c and 1.d are resolved for the Applicant. (Answer; Gx. 2; Gx. 4; Ax. A)

Applicant has been married three times. Her first marriage began in February 1991, and ended by divorce in September 1994. A second marriage in November 1998 ended seven months later. Applicant married her third husband in May 2004, but they were divorced when he left her after she became pregnant in 2005. Their divorce became final in May 2007. (Gx. 1; Gx. 3)

Applicant has three children, ages 24, 20, and 8. The younger two children live with her and her boyfriend, with whom Applicant has cohabited since September 2011. Her boyfriend is a full-time student and is unemployed. Applicant was raised and lived in State A most of her life, but moved to State B in October 2011 to take a job with a large IT company. However, she was laid off in March 2013, and was unemployed for three months before starting her current job in July 2013. (Gx. 1; Tr. 26 - 27, 65 - 66)

When Applicant submitted her EQIP, she disclosed that she owed \$16,000 in unpaid taxes from 2004, but that she had paid the debt in 2010. Applicant also disclosed that she incurred a \$5,713 debt, alleged at SOR 1.i, for unpaid State A income taxes in 2004. Applicant stated this debt, which arose due to filing mistakes made during her third marriage, also had been paid. However, a credit report obtained during her background investigation showed she still owed the debt when she was interviewed by an investigator in August 2013. Available information shows that the debt is still active and that Applicant entered into a repayment agreement with State A the day after her hearing. (Gx.1 - 3; Ax. D - G; Tr. 32, 49 - 56)

Applicant also incurred the medical debts alleged at SOR 1.b, 1.e - 1.k, 1.n - 1.q, and 1.s. Most of these debts represent costs of medical care that are in excess of costs covered by her medical insurance. Many of Applicant's medical bills have, in recent years, stemmed from a series of unplanned surgeries. She also had to get unexpected medical treatment for her youngest child. There is no information in this record of any attempts to pay or otherwise resolve any of her past-due medical debts, including those that are under \$100. Applicant claimed to have paid other medical debts not alleged in the SOR, but she did not support her claims with any documentation. (Gx. 3; Tr. 28 - 29, 42 - 49)

Applicant also has defaulted on two mortgages since 2004. The debt at SOR 1.m represents the remaining debt after she relinquished a mobile home, purchased in 2004, for nonpayment in 2007. The loan was charged off in 2008. Applicant claims the

debt was forgiven and that she declared the amount as income on her 2012 taxes. She did not produce any documentation of that claim. (Gx. 3; Tr. 62 - 63)

The debt alleged at SOR 1.a is for a car loan, obtained in 2011, on which Applicant defaulted in 2014. Applicant has not been notified that she is obligated for any remainder after resale of the repossessed car. However, she also has not contacted that creditor to determine the status of that debt. The debt alleged at SOR 1.f is for a delinquent satellite television account from a former residence in State A. She has not taken any steps to resolve that debt. (Gx. 3; Tr. 58 - 62)

Aside from the 18 unresolved debts alleged in the SOR, Applicant's current finances appear sound. She is credited for continuing to make small payments on her student loans. Applicant estimates she has about \$400 remaining each month after expenses. She has reduced expenses in the past year by driving a cheaper car and, in September 2014, moving to an apartment with a lower monthly rent. Additionally, Applicant established that her monthly finances at her previous residence were adversely impacted by onerous utility costs. The residence she rented had an electrical configuration that used excessive amounts of power, resulting in monthly bills between \$600 and \$800. Her current utility bills are \$200, at most. (Ax. B; Tr. 28 - 32, 70 - 72)

Applicant has a good reputation in the workplace and in her community. She is well-regarded for her volunteer work in support of various local causes and in her church. Letters of recommendation contain praise for her generosity and good character. Applicant also testified that she handled PII without incident during her accounting firm employment. (Ax. H; Tr. 38 - 39)

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

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:

⁴ Regulation, ¶ C3.6.15.

⁵ Regulation, ¶ C6.1.1.1.

⁶ Regulation, ¶ C8.2.1.

⁷ Directive. 6.3.

(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 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 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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's financial problems are recent and ongoing, as most of her debts have not been addressed. Granted, many of her debts arose from unplanned medical needs, interruptions in her employment, unexpectedly high utility bills, and the break up of her third marriage. However, to mitigate the trustworthiness concerns raised by her financial problems, Applicant also had to show that she acted responsibly under those unforeseen circumstances. Applicant has been making small, regular payments on her student loans for about four years and they are current. But there is no indication she has tried to address even her smallest unpaid bills. A tax debt, which she claimed during her investigative interview to have satisfied, remains unresolved, as it has been for some time. Her initiation of a tax repayment plan the day after her hearing does not inspire confidence that Applicant has prioritized the resolution of her past-due debts. In the same vein, Applicant has not established that she has made good-faith efforts to repay her creditors. Nor has she established that her finances are under control in the sense that she has a budget and a track record of resolving her remaining debts. On balance, none of the AG ¶ 20 factors apply and Applicant has not mitigated the Government's concerns about her finances.

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). Specifically, I note the positive information about her reputation in the community and her previous exposure to PII when she worked for an accounting firm. However, that information is not sufficient to outweigh current concerns about Applicant's finances. Of particular concern is her lack of action to address her debts until at or after the time of her hearing. This circumstance sustains doubts about her judgment and reliability raised by her financial problems. Because

protection of the national interest is the principle concern in these adjudications, those doubts must be resolved in favor of the Government.

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.c and 1.d: For Applicant

Subparagraphs 1.a, 1.b, 1.e - 1.t 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