



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



In the matter of:)	
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SSN: -----)	ADP Case No. 07-18423
)	
)	
Applicant for Public Trust Position)	

Appearances

For Government: Ray T. Blank, Esquire, Department Counsel
For Applicant: Pro Se

October 30, 2008

Decision

MALONE, Matthew E., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, Applicant's request for eligibility for a public trust position is denied.

On January 19, 2007, Applicant submitted a Questionnaire for Public Trust Positions (SF 85P) to request eligibility for an ADP I/II/III position¹ involving access to sensitive information as part of her employment with a defense contractor. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding² that it is clearly consistent with the national interest to grant Applicant's request. On June 19, 2008, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns addressed in the Revised

¹ As defined in Appendix 10 of DoD Regulation 5220.2-R, as amended.

² Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.

Adjudicative Guidelines (AG)³ under Guidelines F (financial considerations) and E (personal conduct).

Applicant timely responded to the SOR and requested a hearing. The case was assigned to me on August 6, 2008, and I convened a hearing on September 3, 2008. The parties appeared as scheduled. The government presented five exhibits (Gx. 1 - 5).⁴ Applicant testified in her own behalf, offered two exhibits admitted without objection as Applicant's Exhibits (Ax.) A and B, and presented one witness. DOHA received the transcript (Tr.) on September 18, 2008.

Findings of Fact

Under Guideline F, the government alleged she owed approximately \$19,003 for 19 delinquent debts listed in SOR ¶¶ 1.a - 1.s. Applicant admitted without explanation all of the Guideline F allegations. Under Guideline E, the government alleged that, by answering "no" to question 22 (debts greater than 180 days past due) of the SF 85P she submitted, Applicant had deliberately made a false statement to the government. Applicant admitted she had answered "no" but denied any intent to falsify her answer or to mislead the government about her finances. In addition to the facts admitted through her response to the SOR, I make the following findings of fact based on my review of the pleadings, transcript, and exhibits.

Applicant is 23 years old and employed by a health care and medical insurance company contracted to manage medical insurance claims and information for TRICARE, the Department of Defense (DoD) medical insurance system for military personnel and their families. She has held her current position since January 2007, and has performed well in all her assigned duties. Friends, family, and co-workers hold Applicant in high regard for her trustworthiness, hard work and reliability. (Gx. 1; Ax. A; Ax. B; Tr. 74 - 77) Appellant is currently attending school to study surgical technology as part of her plan to become a nurse. (Tr. 6 - 7)

Applicant graduated from high school in June 2003. Thereafter, she attended technical and vocational schools through at least January 2007. She financed her tuition through student loans and she has always lived at home with her mother and step-father. She has accrued numerous other delinquent or past due debts. The background investigation included a check of her credit (Gx. 3), which revealed she owed at least \$10,273 for 11 delinquent accounts (SOR ¶¶ 1.a - 1.l). The same credit report also showed she had five student loans totaling approximately \$7,308, which were in deferral as of February 2007 (SOR ¶¶ 1.o - 1.s). She admitted in response to the SOR that, as

³ Adjudication of this case is controlled by the Revised Adjudicative Guidelines, approved by the President on December 29, 2005, which were implemented by the Department of Defense on September 1, 2006. Pending official revision of the Directive, the Revised Adjudicative Guidelines supercede the guidelines listed in Enclosure 2 to the Directive.

⁴ I excluded Gx. 4 and Gx. 5 because they did not meet the authentication requirements of Directive Enclosure 3, ¶ E3.1.20. (Tr. 22 - 33)

of January 2008, those loans were delinquent. In response to DOHA interrogatories (Gx. 2), Appellant also conformed she owed the debts listed in SOR ¶¶ 1.m and 1.n.

Aside from occasional minimal payments of \$10 or \$20 depending on available cash, Applicant has not paid or otherwise resolved any of the debts listed in the SOR. She earns about \$1,200 in take home pay each month. Aside from expenses related to her car,⁵ miscellaneous purchases and occasional dining out, and payments on a line of credit (World Finance) and a personal loan (Sunset Finance) (Tr. 67 - 69), Applicant has no major expenses. Gx. 3 contains multiple account entries for both Sunset and World Finance. This suggests that Applicant uses these creditors as a source of funds to pay other debts on a recurring basis. Additionally, her mother and step-father have struggled financially due to employment problems and, most recently, her step-father's poor health. Applicant contributes between \$300 and \$500 each month (sometimes much more) to help her parents with mortgage, utilities, and other necessities. Applicant estimates she has about \$40 or \$50 remaining after expenses each month. (Tr. 61 - 67)

The debt listed at SOR ¶ 1.c arose when Applicant's brother wrecked her car. Because Applicant did not carry enough insurance to fix the car, it was a total loss and Applicant stopped paying on the note. However, the creditor forgave the debt, resulting in a taxable benefit to Applicant reflected in an IRS Form 1099 for the 2007 tax year. There is no indication she did not pay her taxes for 2007. (Tr. 45 - 46)

Applicant contacted a credit counseling and debt consolidation company in September 2007. She made one payment on a debt repayment plan, but left the program in October 2007 when her step-father became ill. (Gx. 2) She also made inquiries about financial counseling through her employer but never actually enrolled in any program. (Tr. 52, 69 - 71)

On January 19, 2007, Applicant signed and submitted her SF 85P. In response to question 22.b, which asked if she was, at that time, more than 180 days past due on any loan or other financial obligation, she answered "no." Applicant denied intentionally falsifying her answer to mislead the government about her finances, claiming she had never looked at her credit report before she submitted the SF 85P. However, she admitted in her testimony that she was aware at the time she completed the form that she had several past due debts. (Tr. 49 - 50, 58 - 59) She further claimed that she contacted her company's human resources department after she saw her credit report and asked if she could make changes to the form. She was told it was too late to do so. (Gx. 2; Tr. 50)

Policies

Each trustworthiness decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the Revised

⁵ Applicant has paid off her car. (Tr. 64)

Adjudicative Guidelines (AG).⁶ 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 factor 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 determinative of a conclusion for or against an applicant. 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 access to sensitive information. In this case, the pleadings and the information presented by the parties require consideration of the security concerns and adjudicative factors addressed under Guideline F (financial considerations), at AG ¶ 18, and Guideline E (personal conduct), at AG ¶ 15.

A trustworthiness determination is intended to resolve whether it is clearly consistent with the national interest⁷ for an applicant to either receive or continue to have access to automated sensitive information. 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.

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 each applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the national interests as his or her own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the government.⁸

⁶ Directive. 6.3.

⁷ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁸ See *Egan*; Revised Adjudicative Guidelines, ¶ 2(b).

Analysis

Personal Conduct.

Applicant's personal conduct may be a concern because, as stated in AG ¶ 15, is that

[c]onduct 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.

The government's information shows Applicant answered "no" to questions about her finances. Gx. 1 reflects she answered the questions as alleged in SOR ¶ 2.a; however, to be disqualifying, it must be shown Applicant knowingly intended it as a false answer so as to mislead the government by concealing her financial problems. Because Applicant denied this allegation, the government bore the burden of "presenting witnesses and other evidence to establish facts that have been controverted." (Directive, Enclosure 3, Section E3.1.14) In this case, there is sufficient evidence showing Applicant has had debts that have been unresolved for well more than 180 days. It is also clear from her testimony that she was aware of her delinquent debts when she completed the SF 85P, even if she did not have a complete and detailed record of her debts that could be found in a credit report.

Applicants are required to provide truthful answers at all times during the investigative and adjudicative process. Withholding relevant information about one's background can potentially impede the government's ability to make an accurate decision about granting access to sensitive information. To satisfy her obligation to be truthful, Applicant could have simply answered "yes" without providing any factual detail. Yet her failure to do so and the information available information bearing on this issue support application of the disqualifying condition in AG ¶ 16(a) (*deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*).

Applicant claimed she wanted to correct her answers after she saw her credit report, but was told it was too late. Her claim requires consideration of the mitigating condition at AG ¶ 17(a) (*the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts*). Her statement in this regard is credible. Applicant's testimony was straightforward, and her demeanor was sincere. It does not appear that Applicant was interviewed by a government agent during her background investigation, so there was no confrontation until DOHA adjudicators sent her interrogatories. While she knew about her debts and deliberately answered "no" to question 22, her subsequent intent to correct must be considered and that she is entitled to some benefit from AG ¶ 17(a). In light of all of the available information about the allegation in SOR ¶ 2.a, I conclude the security concerns about Applicant's personal conduct are mitigated.

Financial Considerations.

The security concern about Applicant's finances, as stated in AG ¶ 18, is that

[f]ailure 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.

Notwithstanding the exclusion of Gx. 4 and Gx. 5, the government presented sufficient information to support the allegations in the SOR. However, SOR ¶ 1.i appears to be a duplicate of the debt listed at SOR ¶ 1.j. Further, the debt listed at SOR ¶ 1.c is no longer a debt. Accordingly, I find for the Applicant as to SOR ¶¶ 1.c and 1.i. Otherwise, available information shows she still owes at least \$14,600 in past due debts. As to her student loans, (SOR ¶¶ 1.o - 1.s total \$7,308), available information shows that they are no longer in deferral and are now past due. Available information also shows that Applicant does not have the means to satisfy her debts. She helps support her parents, leaving her with less than \$100 to spare each month. Accordingly, available information requires application of the disqualifying conditions listed at AG ¶ 19(a) (*inability or unwillingness to satisfy debts*) and AG ¶ 19(c) (*a history of not meeting financial obligations*).

In response to the government's information, Applicant has been unable to show she has acted to resolve her debts, that her financial problems are past and will not recur, or that she is getting any financial help and/or counseling to help improve her finances. In short, there is no information before me that supports application of any of the mitigating conditions in AG ¶ 20. Applicant has failed to overcome the adverse information about her finances on which DOHA adjudicators relied when they issued the SOR.

Whole Person Concept.

I have evaluated the facts presented and have applied the appropriate adjudicative factors under Guidelines E and F. I have also reviewed the record before me in the context of the whole person factors listed in AG ¶ 2(a). Applicant is 23 years old. She is a reliable worker for her company and a devoted daughter to her parents. While she is sincere in her desire to resolve her financial problems, she is simply unable to do so. There is no information about her finances that suggests her circumstances will change in the near term. It is laudable that she is helping her parents through difficult times, but the fact remains that her personal circumstances undermine the government's confidence about her suitability for a sensitive position. In short, the favorable information in her background is insufficient to overcome the security concerns about her already (at age 23) lengthy history of bad debt. The facts and circumstances of Applicant's finances present an unacceptable risk were she to be granted access to sensitive information.

A fair and commonsense assessment⁹ of all available information bearing on Applicant's finances shows there are still doubts about her ability or willingness to protect the government's interests as her own. Because protection of the national interest is paramount in these determinations, such doubts must be resolved for the government.¹⁰

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
Subparagraph 1.a - 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d - 1.k:	Against Applicant
Subparagraph 1.l:	For Applicant
Subparagraph 1.m - 1.s:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a	For Applicant

Conclusion

In light of all of the foregoing, it is not clearly consistent with the national interest to grant Applicant eligibility for a position of trust. Eligibility for access to sensitive information is denied.

MATTHEW E. MALONE
Administrative Judge

⁹ See footnote 6, *supra*.

¹⁰ See footnote 8, *supra*.