



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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[NAME REDACTED]) ADP Case No. 09-05289
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Applicant for Security Clearance)

Appearances

For Government: Richard A. Stevens, Esquire, Department Counsel
For Applicant: *Pro se*

May 20, 2011

Decision

MALONE, Matthew E., Administrative Judge:

Applicant accrued more than \$20,000 in delinquent debt and deliberately made a false statement to the Government about her finances. She failed to mitigate the security concerns raised by her financial problems and her personal conduct. Applicant's request for a position of trust is denied.

On June 26, 2008, Applicant submitted a Questionnaire for Public Trust Positions (SF 85P) 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 Defense Office of Hearings and Appeals (DOHA) issued to Applicant interrogatories² to clarify or augment information obtained in her background investigation. After reviewing the results of the background investigation and Applicant's

¹ As defined in Chapter 3 and Appendix 10 of DoD Regulation 5220.2-R, as amended (Regulation).

² Authorized by DoD Directive 5220.6 (Directive), Section E3.1.2.2.

responses to the interrogatories, DOHA adjudicators were unable to make a preliminary affirmative finding³ that it is clearly consistent with the national interest to grant Applicant's request for a position of trust. On June 24, 2010, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts which, if proven, raise security concerns addressed in the adjudicative guidelines (AG)⁴ for financial considerations (Guideline F) and personal conduct (Guideline E).

Applicant timely answered the SOR and requested a hearing. The case was assigned to me on November 10, 2010. Pursuant to a Notice of Hearing issued on November 16, 2010, I convened a hearing in this matter on December 8, 2010. The parties appeared as scheduled. The Government presented five exhibits that were admitted without objection as Government Exhibits (Gx.) 1 - 5. Applicant testified on her own behalf. I left the record open after the hearing to allow Applicant time to submit additional relevant information. (Tr. 81 - 83) The record closed on December 20 when I received her post-hearing submission, which has been admitted without objection as Applicant's Exhibit (Ax.) A. DOHA received a transcript of the hearing (Tr.) on December 28, 2010.

Findings of Fact

Under Guideline F, the Government alleged that Applicant owed \$21,735 for 39 unpaid debts (SOR 1.a - 1.mm). Applicant denied SOR 1.m, 1.o, 1.q, and 1.o - 1.z. She admitted the remaining allegations, and claimed that the debts at SOR 1.e and 1.f are the same debt.

Under Guideline E, the Government alleged that she intentionally made a false statement to the Government when she answered "no" to SF 85P question 22B (*Are you now over 180 days delinquent on any loan or financial obligation? Include loans or obligations funded or guaranteed by the Federal Government.*) Applicant admitted this allegation. (Tr. 13 - 14) Applicant's admissions are incorporated in my findings of fact. Having reviewed Applicant's response to the SOR, the transcript, and exhibits, I make the following additional findings of relevant fact.

Applicant is 44 years old and is employed by a defense contractor for work that requires access to sensitive automated information to perform her duties as a customer service representative. She graduated from college in 1986 with a degree in computer science (Gx. 1; Tr. 10), and she has worked for her current employer since September 1999 in a variety of positions. In 2004, she submitted a security clearance application (SF 86) to acquire a clearance for one of those positions. In October 2003, she was interviewed by a Government investigator as part of the ensuing background investigation. However, she later moved to a position that did not require a clearance

³ Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.

⁴ The adjudicative guidelines were implemented by the Department of Defense on September 1, 2006. These guidelines were published in the Federal Register and codified through 32 C.F.R. § 154, Appendix H (2006). Pending official revision of the Directive, they take precedence over the guidelines listed in Enclosure 2 to the Directive.

and the investigation was terminated without a final decision about her suitability for access. (Gx. 1; Gx. 3; Tr. 6 - 7, 46 - 47, 77)

After Applicant submitted her SF 85P in June 2008, investigators obtained a credit bureau report, which attributed to Applicant numerous unpaid and past-due debts dating back to November 2001. Information obtained during the background investigation showed that Applicant owed the debts alleged in the SOR, which total \$21,735. (Gx. 4; Gx. 5) However, in response to the SOR and in her testimony at the hearing, Applicant asserted that the debts alleged at SOR 1.f, 1.n, and 1.r, which total \$980, are duplicates of other alleged debts. Department Counsel did not contest her assertions, and a review of Gx. 4 and Gx. 5 tends to show they are duplicate debts. Accordingly, SOR 1.f, 1.n, and 1.r are resolved for the Applicant.

Applicant also asserted that she was disputing the balance due for the debt at SOR 1.b, which is for past-due rent of \$2,842. Applicant claimed that she only owes one month unpaid rent of \$540, but that the landlord creditor is claiming, without justification, that she owes for the balance of her lease after she was evicted in June 2006. (Answer; Gx. 2; Tr. 34 - 37, 55 - 56) Applicant did not submit any documents to corroborate her dispute of this debt.

Applicant also denied the debt alleged at SOR 1.x. She claims that she paid this debt, which is a collection account for an unpaid cell phone account with a balance of \$1,347. However, she did not provide any information to corroborate her claim.

Applicant denied the debts at SOR 1.m, 1.o, 1.q, 1.v, 1.w, 1.y, and 1.z because she did not recognize the creditors. However, the debts are documented in her credit reports. Further, she discussed some of the creditors for these debts when she was interviewed in 2003, and when she was interviewed in 2009. (Answer; Gx. 2 - 5; Tr. 63 - 64)

Applicant owes past-due rent (SOR 1.b) for an apartment she leased from 2002 until she was evicted in June 2006. She had been absent from that apartment for several months as she recovered from an operation in another town. Most of her furniture and appliances were rented from a national chain, to whom the debts at SOR 1.aa, 1.bb, and 1.dd - 1.ii (totaling about \$4,208) are owed. When Applicant returned to her apartment it was empty and she was unable to determine whether she had been robbed or if the landlord had cleared the residence for re-let. Applicant's position regarding these debts is that the rental company has insurance, so she does not have to pay for the rentals. However, she did not corroborate her claim, and she did not explain why she did not make arrangements for her belongings (e.g., she did not have her own renter's insurance) if she knew she would be gone for such a long time. (Answer; Gx. 2; Gx. 4; Gx. 5; Tr. 40 - 41, 66 - 70)

Applicant also owes about \$1,388 for four medical debts (SOR 1.i - 1.l) incurred in 2008 when she had what she calls a "mild heart attack." These debts represent the costs that her medical insurance (an 80/20 plan) did not pay. They have been consolidated as one debt for which she intended to start paying \$20 monthly in January 2011. (Answer; Gx. 2; Ax. A; Tr. 38, 60 - 61, 74 - 75)

Applicant was interviewed about her debts on May 29, 2009, and discussed all of the debts listed in the SOR. She explained that her financial problems arose because of her obligation to care for her mother, who suffers from diabetes. Applicant further averred that she would make arrangements with all of her creditors to make what payments she could afford. (Gx. 2) Aside from the information about her medical debts, she has not corroborated her claims of multiple small monthly payments to several of her creditors. I left the record open for post-hearing submissions on this issue. (Tr. 81 - 83)

Applicant was also interviewed about her debts in 2003. In a signed, sworn statement, she stated that her financial problems began in 2000, when her mother was diagnosed with diabetes. Applicant stated that she had to take out several personal and payday loans to make ends meet. She indicated that she would obtain a credit report and make arrangements to repay her creditors. (Gx. 3)

In June 2008, in response to SF 85P question 22.b (*Are you now over 180 days delinquent on any loan or financial obligation?*), Applicant answered “no,” thereby omitting all of the past-due obligations documented in her credit history. She admitted the allegation (SOR 2.a) that she intentionally withheld this relevant, adverse information from the Government. However, in testimony, she denied any intent to deceive (Tr. 52 - 53) When she applied for a security clearance in 2003, Applicant apparently omitted her past-due debts from her SF 86. In her June 2003, Applicant denied intentionally omitting that information because she did not think she was delinquent on her debts at the time. (Gx. 3)

Applicant is a good employee. She has been recognized for her customer service work at least twice, and she receives above-average performance evaluations. Personal and professional references hold her in high regard for her hard work, generosity, and dedication to her job. (Ax. A)

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

⁵ Regulation, ¶ C3.6.15.

⁶ Regulation, ¶ C6.1.1.1.

⁷ 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,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 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

The Government's information is sufficient to raise a security concern about Applicant's finances, which is stated in AG ¶ 18, is that:

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

⁸ 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.

The Government's information, as well as Applicant's responses to DOHA interrogatories, and in response to the SOR established that Applicant has been experiencing financial problems characterized by chronic delinquent debt for several years. Even after reducing the total owed by subtracting the duplicates alleged at SOR 1.f, 1.n, and 1.r, which total \$980, and accepting that the debt at SOR 1.b is actually \$540 instead of \$2,842 as alleged, the record shows that Applicant currently owes nearly \$20,000 in delinquent debts. Some of her accounts have been past-due since 2002. Accordingly, the record 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*).

By contrast, the record does not support application of any of the mitigating conditions at AG ¶ 20. Because her debts are current, multiple, and have gone largely unaddressed since 2003, the mitigating condition at 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*) does not apply.

Applicant's claim that her financial problems were caused by the need to care for her mother, I have considered AG ¶ 20(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*). However, this condition does not apply because these circumstances have been ongoing since 2000, yet Applicant did not show how she has acted responsibly to adjust her finances to accommodate her circumstances. After a decade, she can reasonably be expected to do so.

The record does not support the application of the mitigating conditions at AG ¶ 20(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*) or AG ¶ 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*). As to AG ¶ 20(c), Applicant did not establish that she has sought or received any outside help with her finances. Nor did she show that her current finances are sound. As to AG ¶ 20(d), Applicant told investigators in 2003 and in 2008 that she would make and document arrangements to satisfy her debts. Aside from her information about her four medical debts, there is no reliable information to support her claims that she had reached agreements to resolve her debts.

Finally, Applicant did not corroborate the disputes she claimed to have with some of her creditors. Accordingly, the mitigating condition at AG ¶ 20(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*) does not apply. On balance, Applicant has not mitigated the security concerns about her finances.

Personal Conduct

The Government's information is also sufficient to raise a security concern about Applicant's personal conduct, which is stated 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.

Specifically, it is clear from this record that Applicant deliberately withheld from her SF 85P relevant information about her financial problems. Although in her testimony she denied any intent to deceive, it is unreasonable to conclude that she did not know that she had debts that were more than 180 days past-due when she completed her questionnaire. Her financial problems have been ongoing for ten years, and she was previously confronted about a similar omission from an SF 86 she submitted in 2003. The question she falsified is not complicated, and Applicant, a college graduate, did not indicate that she had trouble understanding the question. All of the information probative of her intent at the time she completed the SF 85P shows her omission of her debts was deliberate. Thus, the record requires application of the disqualifying condition at 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*).

By contrast, she has not done anything to correct her omission. If anything, she tried to hide her financial problems in 2003 and in 2008, so it cannot be safely said that she will not attempt to misrepresent herself to the Government in the future. Finally, deliberately making a false statement to the Government is not a minor infraction. It is potentially a violation of federal law, and it is inconsistent with basic tenets of DoD's personnel security system. Accordingly, this record does not support application of any of the mitigating conditions listed at AG ¶ 17. Applicant has failed to mitigate the adverse security concerns raised by the Government's information about her personal conduct.

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 47 years old, and she has worked for her current employer in a variety of positions since 1999. Although her references hold her in high regard, the positive information about her professional and personal circumstances is insufficient to outweigh the security concerns raised by her unpaid debts and her false statements about her finances. A fair and commonsense assessment of all of the available information shows that Applicant

has not resolved any of the doubts about her suitability for access to sensitive information. Because protection of the national interest is the primary concern here, such doubts must be resolved against the individual.

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.e, 1.g - 1.m, 1.o - 1.q, 1.s - 1.mm	Against Applicant
Subparagraphs 1.f, 1.n, 1.r:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

Conclusion

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

MATTHEW E. MALONE
Administrative Judge