



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



In the matter of:)	
)	
[NAME REDACTED])	ADP Case No. 09-05295
)	
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 \$160,000 in delinquent debt, primarily through unpaid student loans and a failed real estate venture. She also deliberately made a false statement to the Government about her finances when she submitted her application for a position of trust. Applicant 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 February 7, 2007, 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. She re-certified that application by re-signing it on April 30, 2007, and again on June 19, 2007. Applicant submitted another SF 85P on September 23, 2008. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) issued to Applicant

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

interrogatories² to clarify or augment information obtained in her background investigation.

After reviewing the results of the ensuing background investigation and Applicant's 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 September 1, 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. On December 28, 2010, DOHA received a transcript of the hearing.

The Government presented ten exhibits that were admitted without objection as Government Exhibits (Gx.) 1 - 10. Applicant testified and submitted two exhibits that were admitted without objection as Applicant's Exhibits (Ax.) A and B. At the hearing, Applicant claimed that she had additional relevant information to submit, including letters of recommendation, and documents to corroborate her testimony as well as her response to the SOR. Without objection, I left the record open after the hearing to allow Applicant time to make a post-hearing submission. (Tr. 16 - 20, 52 - 54, 104 - 105) However, she failed to timely submit any further information.

Findings of Fact

Under Guideline F, the Government alleged that Applicant owed \$166,331 in delinquent debt for 28 unpaid accounts (SOR 1.a - 1.bb). Applicant admitted SOR 1.a, 1.c - 1.e, 1.h, 1.p, 1.s, 1.t, 1.v, 1.w, and 1.bb. She denied the remaining allegations, although she acknowledged at hearing that she did not deny owing the creditors listed at SOR 1.l - 1.r, and 1.u. Rather, she is disputing the balance owed on these debts and admits that they were delinquent. (Tr. 13 - 15).

Under Guideline E, the Government alleged that when Applicant answered "no" to SF 85P question 22.b (Are you now over 180 days delinquent on any loan or financial obligation?), she knowingly and willfully made a false statement to the Government by trying to conceal her debts. Applicant denied this allegation.

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

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.

Applicant's admissions are incorporated as findings of fact. Based on a review of the pleadings, exhibits, and the transcript, I have made the following additional findings of relevant fact.

Applicant is 36 years old and is employed by a defense contractor for work that requires access to sensitive automated information to perform her duties as a business analyst. She graduated from college in 1997 with a degree in English. Applicant financed her college education with more than \$60,000 in student loans. She has been steadily employed since graduating, except for a period of involuntary unemployment from June 2006 until February 2007 after being laid off from a previous job. Applicant and her husband have been married since September 2000. They have two children (ages 12 and 8). (Gx. 1)

In about 2004, Applicant and her husband decided to invest in real estate to supplement their income. They partnered with a co-worker, who invested \$8,000 with the understanding that he would receive \$12,000 in return. The investment involved the purchase of four houses, which they would rent out until it was profitable to sell them. For a time, this venture was profitable enough that Applicant and her husband quit their regular jobs. Their spending also increased along with their income. Applicant and her husband bought a 6,000 square foot home and increased their use of personal credit through credit cards. Unfortunately, the housing market declined precipitously in about 2006. When they could not find renters to keep the properties filled and producing sufficient income to pay the mortgages, Applicant and her husband lost the homes to foreclosure and struggled to keep up with their personal financial obligations. A credit report obtained in October 2008 attributed to Applicant 25 accounts in collection or seriously past-due. (Gx. 8) This and two other credit reports obtained in July 2009 (Gx. 9) and June 2010 (Gx. 10) document all of the debts alleged in the SOR.

One of the debts (SOR 1.u) is for the amount owed to Applicant's investment partner in their failed real estate venture. The partner referred the matter to a debt collection agency and Applicant has been paying him back through monthly \$400 payments. (Answer to SOR; Tr. 83 - 85) Two other debts totaling \$160 (SOR 1.z and 1.aa) are likely not valid. Also, the creditor in SOR 1.x has no record that Applicant is indebted to that company. (Ax. B)

Of the total debt alleged in the SOR, about 85% is comprised of Applicant's unpaid student loans (SOR 1.n - 1.p totaling \$69,676), remaining mortgage obligations on one of their investment properties (SOR 1.l, 1.m, 1.q and 1.r totaling \$61,223), and the remainder after resale of a repossessed car (SOR 1.s for \$9,742). As to the student loans, in January 2009, Applicant entered into a repayment agreement with a collection agency to whom the Department of Education referred the debt. (Ax. A) Applicant estimates that the current balance due on all of her student loans is about \$48,000. She claimed that her student loans are no longer delinquent. (Tr. 74 - 75)

As to her remaining delinquent mortgages and related debts, Applicant claimed that all of the properties have been foreclosed and that she has no further obligation. She also averred that she had a contract for the sale of her last investment property for

a profit, but claimed the sale fell through. (Tr. 48 - 53) She did not, however, document any of her claims regarding her mortgage debts.

Applicant further stated that she has been trying to negotiate with the car repossession creditor to establish a repayment plan. Applicant claimed the creditor has demanded \$7,000 as a settlement payment. (Answer to SOR; Tr. 95 - 102)

Applicant claimed in her SOR Answer and at the hearing, that she has paid or otherwise settled numerous other debts. However, despite being given extra time in which to do so, she presented no corroborating documents.

In March 2009, Applicant and her husband hired a debt management specialist to help them repair their credit and resolve their delinquent debts. Applicant asserted that they were able to resolve several debts, not all of which were alleged in the SOR. However, Applicant and her husband have not been able to completely resolve their debts through this specialist because Applicant's husband was laid off in December 2009. (Tr. 41, 92 - 94) No documentation of those resolutions was presented.

In response to her financial problems, Applicant and her husband have cut costs, including selling their home and moving into a small rented apartment. They have also not taken a vacation in several years. (Tr. 43 - 45) To increase their income, she and her husband started a small information technology business in September 2010. Applicant testified that they are working on a state government contract worth \$1 million. (Tr. 89 - 90) Again, no corroborating information was submitted.

After Applicant submitted her first SF 85P (Gx. 2), she was interviewed on October 11, 2007, by a Government investigator. That interview covered, among other topics, Applicant's debts that were past-due at that time. In response to question 22.b (Debts greater than 180 days delinquent), she answered "no." When she submitted her September 2008 SF 85P, in response to the same question, she answered "no" and stated "none that I am aware of." (Gx. 1)

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

In addition to Applicant's admissions, and despite her denials, the Government submitted sufficient information to support all of the allegations in SOR 1.a - 1.bb. The facts established 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

⁸ Directive. 6.3.

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, the ongoing presence of significant amounts of unpaid debt since 2005 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*).

Despite the apparent resolution of the debts at 1.x, 1.z, and 1.aa, Applicant still carries significant past-due debt. 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 because Applicant's debt is a current concern. It also casts doubt on her judgment, largely because it appears she deliberately omitted information about her debts from her SF 85P, as discussed under Guideline E, below, and because she did not corroborate her claims that she no longer owes most of her debts.

Applicant's financial problems arose through a business downturn. Such circumstances require consideration of the mitigating condition at 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*). To some extent, Applicant has acted responsibly under the circumstances by cutting costs. However, she is not entitled to the full benefit of AG 20(b) because she has not sufficiently corroborated her efforts to resolve her debts.

Applicant is also entitled to some benefit from 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*) because she and her husband used a debt management professional in 2009. However, she has not sufficiently documented the results of that effort. Nor has she established that her current finances are sound. Her lack of documentation also undermines application of the mitigating condition at AG ¶ 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*). Additionally, 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

Although Applicant denied the SOR 2.a allegation of deliberate falsification, all of the information probative of Applicant's intent at the time she completed her 2008 SF 85P shows that her omissions were intentional. Accordingly, available information raises

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, after discussing her debts with an investigator in 2007, Applicant still omitted adverse financial information. Such conduct 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. Her failure to provide corroborating information about her efforts to resolve her finances also undermines her claims that she did not think she had any debts that should have been listed in response to the question at issue. Each time she certified her answers to the SF 85Ps in evidence, Applicant made a false statement to the Government. Thus, 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 36 years old, has been married for 10 years, is a college graduate, and mother of two. Such information supports a presumption that she is a mature, responsible adult. However, 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.m:	Against Applicant
Subparagraphs 1.n - 1.p:	For Applicant
Subparagraphs 1.q - 1.w:	Against Applicant
Subparagraph 1x:	For Applicant
Subparagraph 1.y:	Against Applicant
Subparagraphs 1.z, 1.aa:	For Applicant
Subparagraph 1.bb:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

Conclusion

In light of all of the foregoing, it is not clearly 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