



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



In the matter of:	)	
	)	
[NAME REDACTED]	)	ADP Case No. 12-01337
	)	
Applicant for Public Trust Position	)	

**Appearances**

For Government: Chris Morin, Esquire, Department Counsel  
For Applicant: *Pro se*

05/05/2014

**Decision**

MALONE, Matthew E., Administrative Judge:

Applicant’s financial problems arose from unforeseen periods of unemployment and underemployment. Her husband’s medical problems also adversely impacted their household income. Applicant has incurred no recent unpaid debts, she manages her finances responsibly, and she lives well within her means. Applicant also has been proactive in trying to resolve her financial problems. Her request for a public trust position is granted.

**Statement of the Case**

On October 9, 2011, Applicant submitted an Electronic Questionnaire for Investigations Processing (EQIP) to obtain eligibility for an ADP I/II/III position<sup>1</sup> for her job with a defense contractor. After reviewing the results of the ensuing background investigation, which included her responses to Department of Defense (DOD)

<sup>1</sup> As defined in Chapter 3 and Appendix 10 of DOD Regulation 5220.2-R, as amended (Regulation).

adjudicators' interrogatories,<sup>2</sup> it could not be determined that it is clearly consistent with the interests of national security to grant Applicant's request for a position of trust.<sup>3</sup>

On November 20, 2013, DOD issued to Applicant a Statement of Reasons (SOR) alleging facts which raise trustworthiness concerns addressed in the adjudicative guideline (AG)<sup>4</sup> for financial considerations (Guideline F).

Applicant timely answered the SOR and requested a hearing. The case was assigned to me on March 10, 2014, and I convened a hearing in this matter on April 1, 2014. Department Counsel presented Government Exhibits (Gx.) 1 - 4.<sup>5</sup> Applicant testified and submitted Applicant's Exhibits (Ax.) A - E. All exhibits were admitted without objection. I left the record open to receive Applicant's post-hearing submissions; however, nothing further was submitted. DOHA received a transcript of the hearing (Tr.) on April 17, 2014.

### **Findings of Fact**

Under Guideline F, the Government alleged that Applicant owes \$19,001 for 16 delinquent or past-due debts (SOR 1.a - 1.p). Among the debts alleged were three IRS tax liens (SOR 1.a - 1.c) totaling \$9,377; a state tax lien for \$761 (SOR 1.d); a delinquent car loan for \$6,117 (SOR 1.k); and six unpaid medical bills (SOR 1.e, 1.g, 1.h, 1.l, 1.o and 1.p) totaling \$1,154. The remaining allegations (SOR 1.f, 1.i, 1.j, 1.m, and 1.n) are debts associated with bank accounts, unpaid utilities, and an unpaid car insurance. Applicant admitted SOR 1.a - 1.c, 1.e, 1.g, 1.h, 1.j, 1.l, 1.o and 1.p. Her 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 fact.

Applicant is 55 years old, has an associate's degree, and works as a medical claims reviewer for a defense contractor in support of the military's health insurance provider. She has been with her current employer since July 2008. Before that, she was a registered nurse for most of the preceding 30 years. Before working for her current employer, Applicant worked in nursing jobs outside of hospitals because she had become physically unable to work full hospital and emergency room shifts. (Gx. 1; Tr. 13, 50, 94)

Applicant has been married twice. Her first marriage began in June 1979 and ended by divorce in August 1998. Applicant and her first husband had two children, both

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<sup>2</sup> Authorized by DOD Directive 5220.6 (Directive), Section E3.1.2.2.

<sup>3</sup> Required by the Regulation, as amended, and by the Directive, as amended.

<sup>4</sup> 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).

<sup>5</sup> Also, Department Counsel produced a January 28, 2014, Discovery Letter and an index listing each exhibit. They have been included in the record as Hearing Exhibits (Hx.) 1 and 2, respectively.

now adults. Applicant married her current husband in May 2002. He has one adult child from a previous relationship. Applicant's stepson still relies on Applicant and her husband for financial support. Applicant and her husband separated in June 2010, but reconciled in April 2011. (Answer; Gx. 1 - 2; Tr. 14, 63 - 64)

In her eQIP, Applicant disclosed the debts alleged at SOR 1.a - 1.c, 1.k - 1.m, and other medical debts not alleged in the SOR. All of the SOR allegations are also documented in Applicant's responses to DOD interrogatories or in credit reports obtained during Applicant's background investigation. She began experiencing financial problems in 2003, when she became aware her second husband had past-due tax debts from before their marriage. This forced her to start filing her taxes as "married, filing separately" beginning with the 2004 tax year. This, in turn, resulted in larger annual tax liabilities than if she and her husband had filed jointly. In 2004, Applicant started paying the IRS \$80 each month to satisfy her past-due taxes from tax year 2003. However, she was unable to continue her payments past June 2007, when her husband lost his job. At the same time, she had incurred additional unpaid tax debts during subsequent years because she was unable to pay the higher taxes resulting from her filing status. In 2004, Applicant also contacted a law firm specializing in negotiating with the IRS on behalf of tax payers owing past-due taxes. She entered into a repayment agreement with the IRS, but the funds she submitted for payment via the law firm were not applied to her tax debts. She withdrew from that plan in May 2005. (Answer; Gx. 1 - 4; Ax. A - C; Tr. 32 - 40, 64 - 74, 100)

In June 2013, Applicant entered into another agreement with the IRS. Since then, she has been paying \$160 from each paycheck (26 times annually) for unpaid taxes from tax years 2003, 2005, 2006, and 2008 - 2012. Her current total tax debt (with interest) has grown to about \$15,000; however, she always has filed her annual returns on time or has timely requested an extension. (Gx. 1; Ax. A; Ax. B; Ax. D; Tr. 74 - 77)

The debt alleged at SOR 1.d was for unpaid state taxes from tax year 2003. Applicant's information established that the debt was attributable to her second husband and that the lien has been satisfied. (Answer; Gx. 2; Ax. D; Tr. 77 - 79)

Applicant's husband is a paramedic. He also is a Type 1 diabetic who has had several medical issues adversely impacting his ability to work as a paramedic, both because of actual medical symptoms and because he can no longer qualify to work as a first responder. Beginning in about February 2003, their household income was reduced when Applicant's husband suffered a diabetes-related mishap. He was subsequently laid off from a paramedic position after it was determined he was physically unqualified to perform his duties. Further complicating his loss of income was an April 2003 accident in which Applicant broke her ankle and was unable to work for several weeks. Her only source of income was a nominal disability payment from a private insurance policy. Applicant's husband found a new job as a medical transportation paramedic in April 2003. However, in 2007 he was again laid off because of his diabetic condition. Applicant's husband now works a minimum wage retail job that covers only his monthly prescription medications expenses. His income is not enough to help with rent, utilities, and other recurring bills. (Gx. 1; Gx. 2; Ax. A - C; Tr. 31, 52, 93)

In 2005 and 2006, Applicant's husband was again unable to work after having surgery on his shoulders and wrists. In addition to the financial impact from his loss of income, Applicant's husband became addicted to pain medications he was prescribed in relation to his operations. His addiction became so severe that they separated from June 2010 until April 2011. They reconciled when her husband's addiction was favorably resolved through treatment. Applicant's husband was unemployed during their separation and lived with his parents. But he and Applicant shared a bank account which became overdrawn several times due to mis-communication when it came to paying bills. Another account became overdrawn when it failed to receive her husband's paycheck and they tried to draw on it to pay bills. These circumstances led to the delinquencies alleged at SOR 1.f and 1.n. Applicant has been unable to determine which collection agency holds this account for payment. (Gx. 2; Ax. A; Tr. 60 - 63, 84 - 85)

Applicant and her husband also incurred unexpected expenses when he was laid off from his medical transportation job in 2007. To receive the correct level of worker's compensation, disability, and unemployment insurance benefits, they had to hire an attorney to appeal to the state employment commission challenging the denial of some of his benefits. Although he was successful on appeal, the cost of pursuing that appeal greatly exacerbated the loss of income from his lay off. (Answer; Gx. 2; Ax. A)

Aside from debts for past-due taxes, Applicant's largest delinquent debt is for a \$17,000 auto loan she obtained in 2003. She made payments as required each month until 2009. In 2011, the lender told her she could pay \$1,000 to resolve the remaining debt of \$6,117 alleged at SOR 1.k. However, she has not been able to make a payment that large. Applicant is still in possession of the car. (Answer; Gx. 1 - 4; Ax. E; Tr. 45 - 47, 101 - 102)

The debt at SOR 1.l is an unpaid medical insurance deductible for a 2006 emergency room care for Applicant's stepson. Applicant submitted information that shows she is not the responsible party for this debt. She further testified that her stepson's natural mother was responsible for the deductible and other medical expenses incurred while the stepson was a minor. In 2008, Applicant and her husband incurred additional expenses in obtaining custody of her husband's son. This was necessitated by the poor circumstances the boy was in while in his mother's care. (Answer; Gx. 2; Ax. E; Tr. 47 - 48)

Applicant and her husband live within their means, but they have less than \$200 remaining each month after expenses. They have not incurred any new unpaid debts, and they are meeting all of their regular monthly expenses, including repayment of her IRS debt. Applicant's modest monthly cash flow is also due, in part, to her practice of putting about \$200 each month into savings. Applicant has also used a recent work bonus and her 2013 tax refund to pay off some of her debts. At her hearing, Applicant exhibited an excellent command of her monthly finances. She and her husband attended a church-sponsored financial management course, but aside from closely budgeting their income, they do not have the income to follow many of the long-term recommendations from the course. (Gx. 2; Tr. 86 - 90, 92)

Applicant has an excellent record of performance in her current job. Over the past six years, she has established a solid reputation for trustworthiness and reliability. There is no indication that she has been unable or unwilling to protect personally identifiable information (PII) as a claims reviewer. As a registered nurse for nearly 30 years, Applicant also was required to protect PII. (Ax. F; Tr. 55 - 57, 106 - 107)

### **Policies**

Positions designated as ADP I/II are classified as “sensitive positions.”<sup>6</sup> 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.<sup>7</sup> The Regulation also requires that DOD contractor personnel are entitled to the procedural protections in the Directive before any adverse determination may be made.<sup>8</sup>

The Directive requires that each decision be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,<sup>9</sup> 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

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<sup>6</sup> Regulation, ¶ C3.6.15.

<sup>7</sup> Regulation, ¶ C6.1.1.1.

<sup>8</sup> Regulation, ¶ C8.2.1.

<sup>9</sup> Directive. 6.3.

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 and Applicant's admissions in response to the SOR, are sufficient to support all of the allegations in the SOR. The facts thereby established raised a trustworthiness concern addressed, in relevant part, 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.

Applicant has been experiencing financial problems for many years. Despite the fact she that has not incurred new delinquencies in the past two years, her other debts remained unresolved until recently. 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*). As to AG ¶ 19(a), the record shows she has been willing, but often unable, to pay her debts.

I have also considered the following pertinent mitigating conditions under 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;

(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; and

(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.

The record supports application of all of these mitigating conditions. Applicant's tax debts arose from her husband's pre-existing tax problems. That circumstance caused her to adopt a filing status that increased her annual liability, but insulated her from her husband's tax problems. She started repaying her past-due taxes, but her husband's poor health, his loss of at least three jobs because of his health, and his now-resolved addiction to pain medications kept Applicant from making more progress than she had hoped. Nonetheless, the record shows that Applicant has been as proactive as her resources have allowed in working with her creditors, particularly the IRS. She is now on a new repayment plan that pays about \$320 each month to her unpaid taxes. She has always complied with her annual filing requirements, and she now has sufficient taxes withheld from her pay so that she receives a tax refund after filing.

Applicant also established that she has paid several of the debts alleged in the SOR, such as the state tax lien alleged at SOR 1.d. She also showed that other debts, such as the unpaid medical bill for her stepson's emergency room treatment in 2006, alleged at SOR 1.i, was not her responsibility.

Applicant's husband is still dealing with medical problems, but his addiction to pain medications has been overcome and is no longer affecting their finances. He also has steady work that covers prescription costs that exceed their medical insurance. While he does not directly contribute to expenses such as rent and utilities, his income helps them avoid further debt related to medical issues.

Applicant and her husband have received financial counseling, albeit, of limited utility owing to their limited income. One result, however, has been that Applicant has effectively been budgeting their household finances in a way that meets their obligations, continues to repay some of their debts, and build a modest savings account. She and her husband live well within their means. Although Applicant has yet to resolve the auto finance debt and is still repaying her IRS debts, her record of trying to resolve her debts in a timely fashion indicates she will continue to resolve her remaining debts to the best of her ability. On balance, Applicant has mitigated the Government's concerns about her financial problems.

### **Whole-Person Concept**

I have evaluated the facts presented 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). Applicant is 55 years old and presumed to be a mature, responsible adult. Her long career in nursing and, more recently, her excellent record over the past six years as a defense contractor employee

support that presumption. Since 2003, Applicant has faced myriad obstacles that have either caused her to incur debts she could not pay, or that have impeded her ability to pay her financial obligations. Generally, her responses to her financial problems have been sound and exhibited good judgment and reliability. Many of the circumstances surrounding her financial problems are no longer present, and doubts about her suitability for a position of trust have been favorably resolved. A fair and commonsense assessment of available information shows that Applicant's finances no longer pose an unacceptable trustworthiness concern.

### **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:           FOR APPLICANT

Subparagraphs 1.a - 1.p:           For Applicant

### **Conclusion**

In light of all of the foregoing, it is clearly consistent with the interests of national security for Applicant to have access to sensitive information. Her request for a position of trust is granted.

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MATTHEW E. MALONE  
Administrative Judge