



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 June 6, 2015, and I convened a hearing on August 9, 2015. Department Counsel for the Defense Office of Hearings and Appeals (DOHA) presented Government Exhibits (Gx.) 1 - 4.⁴ Applicant testified and presented Applicant's Exhibits (Ax.) A - F. All exhibits were admitted without objection. DOHA received the hearing transcript (Tr.) on August 17, 2016.

Findings of Fact

Under Guideline F, the Government alleged that Applicant owed \$25,839 for 23 delinquent or past-due debts (SOR 1.a - 1.w). In response, Applicant admitted, with explanations, SOR 1.a - 1.e, and 1.g. She denied, with explanations, the remaining SOR allegations. In addition to the facts established through Applicant's admissions, I make the following additional findings of fact.

Applicant is 35 years old. She is employed as a licensed practical nurse (LPN) by a defense contractor in work that requires she be eligible for a position of trust. Her employer supports management of the health care system used by members of the military, and Applicant might be entrusted with personally identifiable information (PII) associated with the health care system's constituents. (Gx. 1)

Applicant was married from October 2001 until divorcing in February 2010. She has three children, ages 14, 9, and 5. Applicant remarried in April 2010. Her current husband is a lineman for a local utility company. Applicant has worked as an LPN since 2003, and she was hired by her current employer in December 2012. (Gx. 1; Tr. 34 - 35, 37)

When Applicant submitted her EQIP, she disclosed the delinquent debts alleged at SOR 1.l, 1.m, 1.p, 1.v, and 1.w. Credit reports obtained during the ensuing background investigation documented all of the debts alleged in the SOR. (Gx. 1 - 4; Tr. 16)

Applicant attributes her financial problems to a combination of her divorce, periods of unexpected unemployment (and associated lack of medical insurance coverage), and medical costs not completely covered by medical insurance. From August 2011 until February 2012, she was unemployed after she was laid off following medically-necessary extended maternity leave. More recently, she had to leave work to care for her husband after he was injured at work. Most of the medical bills alleged in the SOR are for her own care after pregnancies, back surgeries, and conditions related to a pending hysterectomy (scheduled for the week following her hearing). Additionally, her oldest child was diagnosed with a terminal illness (unspecified in the record), and was not expected to reach the age he has. Medication costs for that child have sometimes exceeded Applicant's ability to pay. A week before this hearing, Applicant's medical insurance was cancelled with no advance warning. (Answer; Gx. 1; Tr. 31 - 33, 36)

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).

⁴ Department Counsel also provided a list identifying Gx. 1 - 4. It is included as Hearing Exhibit (Hx.) 1.

Applicant has been making contact with her creditors, albeit with mixed success, to resolve her debts. In response to the SOR and in the information she provided at hearing, Applicant established that she has paid, or is making payments on, the debts listed at SOR 1.a, 1.b, 1.k, 1.m, 1.q, and 1.r. A credit report she provided does not list the debts at SOR 1.l, and 1.s - 1.w. Applicant also disputes the debt at SOR 1.h - 1.j, claiming that the creditors for those medical bills told her the accounts are ten years older than she is. This suggests the possibility of identification theft or confusion with another account. The medical debt at SOR 1.c remains unresolved because Applicant cannot afford the terms of settlement offered by the creditor when she contacted them. Except for the debt at SOR 1.l, Applicant has been unable to obtain information about the remaining debts. (Answer; Ax. A - F; Tr. 19 - 26, 40 - 41)

The \$15,275 debt at SOR 1.l is for the remainder after resale of a car that was purchased with her first husband. Credit reports show this was a debt for which they both were liable. Applicant received the car after her divorce but did not receive spousal support for six months thereafter and voluntarily relinquished the car to the dealer, who was the lien holder. The dealer resold the car and demanded payment of the unsatisfied balance from Applicant. The dealer indicated a willingness to accept payment in two equal installments, but Applicant never has been unable to make such payments. The debt does not appear on any credit reports after 2012, and there is no information showing whether Applicant's ex-husband was approached by the creditor to resolve this debt. (Answer; Gx. 1; Gx. 2; Tr. 40, 44 - 47)

Applicant's current finances have improved since she remarried. Medical issues for her and her children persist, but they are able to meet their current expenses. They have little money left over each month after expenses, but are managing their finances responsibly. At one point, Applicant and her husband considered Chapter 13 bankruptcy but were advised it would wiser for them to pay off their debts without such assistance. (Gx. 3; Gx. 4; Ax. F; Tr. 31, 34, 38, 47 - 48)

Policies

Positions designated as ADP I and II 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

Each decision must 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, commonly referred to as the "whole-

⁵ Regulation, ¶ C3.6.15.

⁶ Regulation, ¶ C6.1.1.1.

⁷ Regulation, ¶ C8.2.1.

⁸ Directive, 6.3.

person” concept, listed in the guidelines at AG ¶ 2(a).⁹ 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 was sufficient to support all of the SOR allegations. The facts thus established reasonably raise a trustworthiness concern about Applicant's finances that is 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 [sensitive] information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

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*). As to AG ¶ 19(a), the record reflects an inability to pay, as opposed to an unwillingness to do so.

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

⁹ (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.

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 began when one of her children was diagnosed with a life-threatening illness and she had insufficient health insurance coverage. They were compounded when she divorced in 2010, and have been further exacerbated by unexpected periods of unemployment and loss of medical insurance. Applicant has acted responsibly in contacting and negotiating with her medical creditors. The debt at SOR 1.I constitutes about 60 percent of the total debt at issue. It also was a shared obligation with her ex-husband and is not being actively collected. Otherwise, Applicant is resolving her debts to the best of her ability, and there is no indication she has been irresponsible in managing her personal finances. Despite the ongoing presence of unpaid debts, Applicant's efforts in trying to resolve her financial problems reflect positively on her judgment and reliability. Further, her current finances are stable and she is managing her monthly finances in a prudent manner. All of the foregoing supports application of the named mitigating conditions. In summary, I find that available information is sufficient to mitigate the trustworthiness concerns about Applicant's financial problems.

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). Applicant is a mature and responsible mother of three who has dealt with her personal and financial problems as well as can be expected given her circumstances. Although she is not debt-free, her debts are not the result of misconduct or irresponsible financial management. She has demonstrated the requisite judgment and reliability required for safeguarding sensitive information. A fair and commonsense assessment of all available information shows she is suitable for eligibility for a position of trust.

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.w: For Applicant

Conclusion

In light of all of the foregoing, it is clearly consistent with the interests of national security for Applicant to occupy a position of trust. Applicant's request for ADP eligibility is granted.

MATTHEW E. MALONE
Administrative Judge