



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



In the matter of:

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ADP Case No. 15-03392

Applicant for Public Trust Position

Appearances

For Government: Caroline E. Heintzelman, Esq., Department Counsel

For Applicant: *Pro se*

06/13/2017

Decision

Noel, Nichole L., Administrative Judge:

Applicant contests the Defense Department's intent to deny her eligibility for a public trust position in the defense industry. Applicant's financial problems were not caused by irresponsible, reckless, or negligent behavior. She is making a good-faith effort to resolve her delinquent accounts and presented a legitimate basis for challenging several of the alleged delinquent debts. Her eligibility for access to sensitive information is granted.

Statement of the Case

On December 4, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing trustworthiness concerns under the financial considerations guideline.¹ DOD adjudicators were unable to find that it is clearly consistent with

¹ This case is adjudicated under DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). The *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply to this case. The AG replace the guidelines in Enclosure 2 to the Directive.

national security to grant or continue Applicant's access to sensitive information and recommended that the case be submitted to an administrative judge for a determination whether to revoke or deny Applicant's eligibility to occupy a public trust position.

Applicant timely answered the SOR and requested a hearing. On June 23, 2016, I issued a pre-hearing order to the parties regarding the exchange and submission of discovery, the filing of motions, and the disclosure of any witnesses. The parties complied with the order. At the hearing, which proceeded as scheduled on July 13, 2016, I admitted Hearing Exhibits I through III, Government's Exhibits (GE) 1 through 5, and Applicant's Exhibits (AE) A and B, without objection. I left the record open until August 31, 2016 to allow Applicant to submit additional documentation regarding her finances. On September 13, 2016, she submitted AE C through P, which are also admitted without objection. The Defense Office of Hearing and Appeals (DOHA) received the transcript (Tr.) on July 21, 2016.

Findings of Fact

Applicant has worked for a federal contractor since February 2012. Her position requires access to personally identifiable information (PII), and requires that she obtain eligibility to occupy a public trust position. Based on the disclosures in a January 2013 eligibility application, her March 2013 subject interview, and the credit reports in the record (ranging from January 2013 to March 2016), the SOR alleges that Applicant owes \$20,000 in delinquent debt on 17 accounts – including \$7,600 in unpaid federal taxes, and that she previously had debts discharged through Chapter 7 bankruptcy in 2003. Applicant denies all of the SOR allegations.²

Applicant has supported herself financially since she was a teenager. At 19, she became her younger brother's legal guardian and began supporting her brother and mother as the head of the household. Applicant's mother and brother remained members of Applicant's household after she married in 2004. Although Applicant's mother and brother were working full time, they did not earn enough to live on their own. In 2003, when she was 23 years old, Applicant filed for Chapter 7 bankruptcy protection. Her debts, mostly credit cards, were discharged in 2003.³

Between 2003 and 2008, Applicant's finances remained stable. She worked full time as did her husband, who also worked part time as a tow-truck driver. They earned a household income of approximately \$90,000. In May 2008, Applicant was laid off. Three months later, her husband was laid off from both of his jobs. Applicant was out of work for four months before she was able to find a part-time position. Applicant returned to full-time employment by August 2008, and continued working her part-time job. Her husband was unemployed for a year. In 2010, the couple decided to relocate with their

² GE 1-5; Answer.

³Tr. 17-21.

child to a location with a lower cost of living. They moved believing they could find jobs in their new city. Applicant's mother and brother did not relocate with Applicant.⁴

In this new location, Applicant found full-time employment after four months and her husband began working part-time. Applicant's husband secured full-time employment in 2012. That year, Applicant and her husband decided to file for bankruptcy protection. They retained an attorney, and began making payments toward the attorney's \$2,000 retainer fee. During her March 2013 subject interview, Applicant informed the investigator that she had a \$75 balance on the retainer fee and expected the attorney to file the bankruptcy petition in April 2013. However, when she tried to make the last payment, she could not find the attorney. Applicant later learned that he abruptly left the state. In December 2015, the state bar disbarred the attorney effective January 2016. Unbeknownst to Applicant, at the time she retained him, the attorney was practicing under a probationary order from the state bar for previous ethics violations.^{5, 6}

Applicant and her husband could not afford to pay another attorney and decided to resolve the debts on their own. In 2013, they resolved their \$7,600 in outstanding federal tax debt. In June 2016, Applicant obtained a credit report from each of the reporting agencies and began contacting her creditors reporting derogatory information. Deciding to resolve only those reported accounts, Applicant has arranged payment plans with the creditors alleged in ¶¶ 1.b and 1.p as well as two non-SOR accounts. She successfully disputed the debts alleged in SOR ¶¶ 1.d, 1.e, and 1.g. The remaining SOR debts do not appear on the most recent credit reports.⁷

Policies

Positions designated as ADP I and ADP II are classified as "sensitive positions."⁸ "The standard that must be met for . . . assignment to sensitive duties, is that, based on all available information, the person's loyalty, reliability, and trustworthiness are such that . . . assigning the person to sensitive duties is clearly consistent with the national interests."⁹ Department of Defense contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination may be made.¹⁰ An administrative judge's objective is a fair, impartial, and

⁴ Tr. 22 - 26.

⁵ As noted in the record, I have taken administrative notice of a press release issued by the state bar where this attorney was licensed to practice regarding his disbarment. The press release is appended to the record as HE IV.

⁶ Tr. 26-30, 40-41, 54-55; GE 2; AE D.

⁷ Tr. 30-32, 41-53, AE A-N.

⁸ Regulation ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3.

⁹ Regulation ¶ C6.1.1.1.

¹⁰ See Regulation ¶ C8.2.1.

commonsense decision that embraces all available, reliable information about the person, past and present, favorable and unfavorable.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to a public trust position enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of sensitive information.

Analysis

Guideline F, Financial Considerations

Unresolved delinquent debt is a serious concern because failure to “satisfy debts [or] 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.”¹¹ Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding sensitive information.

The SOR alleges that Applicant filed for bankruptcy protection in 2003 and that since then she has accumulated approximately \$20,000 in delinquent accounts, including \$7,600 in unpaid federal taxes. Although Applicant denies the SOR allegations, the credit reports in the record establish the Government’s *prima facie* case. Applicant has demonstrated an inability to pay her bills and a history of financial problems resulting in unresolved delinquent debts.¹² However, Applicant has submitted sufficient information to mitigate the trustworthiness concerns.

Applicant’s financial problems were caused by events beyond her control and she has acted responsibly to address them.¹³ Applicant experienced financial problems in her late teens and early 20s as she became head of household, supporting her younger brother and mother without the benefit of significant life or money management experience. Her most recent spate of financial problems were caused by a lengthy

¹¹ AG ¶ 18.

¹² AG ¶¶ 19(a) and (c).

¹³ AG ¶ 20(b)

period of unemployment and underemployment she and her husband experienced between 2008 and 2014. Applicant demonstrated a good-faith effort to resolve her delinquent accounts.¹⁴ Given her circumstances, Applicant's decision to seek bankruptcy protection again in 2012 was reasonable. Accumulating the funds for the \$2,000 retainer fee was a significant financial commitment demonstrating Applicant's intention to rehabilitate her finances. The loss of that fee represented a significant financial set back. Although it took Applicant some time to recover, she has since taken steps to resolve her delinquent accounts by establishing payment plans with the creditors reporting derogatory information on her June 2016 credit reports, including two non-SOR accounts. She also successfully disputed two accounts.¹⁵

After reviewing the record, I have no doubts about her suitability for access to sensitive information. In reaching this conclusion, I have also considered the whole-person factors at AG ¶ 2(a). Applicants are not held to a standard of perfection. Although Applicant has not taken action on the debts alleged in the SOR that no longer appear on her most recent credit reports, this does not detract from her efforts to rehabilitate her finances. Although Applicant remains responsible for these old debts, the fact that they are no longer being reported suggests that the creditors have ceased collection efforts and the accounts do not represent a current source of vulnerability or exploitation. Applicant has shown an intent to repair and rehabilitate her finances and has taken definitive actions to that end. Accordingly, her request for access to sensitive information is granted.

Formal Findings

Formal findings for or against Applicant 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.r:	For Applicant

Conclusion

In light of all of the circumstances presented, it is clearly consistent with the interests of national security to grant Applicant access to sensitive information. Applicant's eligibility to occupy a position of trust is granted.

Nichole L. Noel
Administrative Judge

¹⁴ AG ¶ 20(d).

¹⁵ AG ¶ 20(e)