



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



In the matter of:

[NAME REDACTED]

Applicant for Position of Trust

ADP Case No. 15-06429

**Appearances**

For Government: Braden M. Murphy, Esq., Department Counsel  
For Applicant: *Pro se*

02/22/2017

**Decision**

MALONE, Matthew E., Administrative Judge:

Applicant mitigated the trustworthiness concerns raised by her financial problems. Her request for eligibility to occupy a position of trust is granted.

**Statement of the Case**

On March 11, 2015, 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, DOD adjudicators were unable to determine that it is clearly consistent with the interests of national security to grant Applicant's request for a position of trust.<sup>2</sup>

On February 23, 2016, DOD issued Applicant a Statement of Reasons (SOR) alleging facts which raise trustworthiness concerns addressed through the adjudicative

---

<sup>1</sup> As defined in Chapter 3 and Appendix 10 of DOD Regulation 5200.2-R, as amended (Regulation).

<sup>2</sup> Required by the Regulation, as amended, and by DOD Directive 5220.6, as amended (Directive).

guideline (AG)<sup>3</sup> 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, 2016, and I convened a hearing on August 11, 2016. Department Counsel for the Defense Office of Hearings and Appeals (DOHA) presented Government Exhibits (Gx.) 1 - 3.<sup>4</sup> Applicant testified and presented Applicant's Exhibits (Ax.) A - F. All exhibits were admitted without objection. I left the record open after the hearing to receive additional relevant information. The record closed on August 19, 2016, when I admitted, without objection, Applicant's post-hearing submission identified as Ax. D.<sup>5</sup> DOHA received the hearing transcript (Tr.) on August 17, 2016.

### **Findings of Fact**

Under Guideline F, the Government alleged that Applicant owed \$18,308 for six delinquent or past-due debts (SOR 1.a - 1.f), and that in September 2012, she lost a home to foreclosure after failing to pay her mortgage (SOR 1.g). In response, Applicant admitted, with explanations, SOR 1.a, 1.b, and 1.g. She denied, with explanations, the remaining SOR allegations. (Answer) In her EQIP, Applicant listed the debts at 1.a, 1.b, and 1.g. (Gx. 1) All of the debts listed in the SOR are documented in credit reports produced by the Government. (Gx. 2 and 3) In addition to the facts thus established, I make the following additional findings of fact.

Applicant is 54 years old. She is employed 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. Applicant has held her job since September 1999, and has held a position of trust during most of her career there. Her work evaluations reflect superior performance and reliability. (Gx. 1; Ax. A)

Applicant was married from June 1982 until divorcing in June 1993. She has two adult children, one of whom moved in with her after losing her job in the mortgage industry during the financial recession ten years ago. (Gx. 1; Tr. 56 - 58)

Applicant bought a house as her primary residence in September 1999 using a fixed rate 30-year mortgage. It was located in a seaside community. At the outset, she paid about \$725 monthly on principal, interest, taxes and insurance (PITI). The taxes and insurance were paid each month from escrow. However, starting in about 2007, Applicant's homeowners insurance premiums were raised drastically each year. When she bought the house, she paid about \$800 in annual premiums. In 2007, the annual premium increased to almost \$2,000. By 2013, the annual premium was \$4,453, thereby increasing her PITI by at least \$370. Over the same period, Applicant's pay did not increase nearly enough to keep up with her insurance premiums. These increases in premiums were not due to any great increase in the value of the property being insured. The value of the property in 2007 was about \$100,000. By 2013, it had increased to \$116,000. Further, Applicant never made a claim against the policy during this period. Rather, Applicant's insurance premiums rose because of the industry effects

---

<sup>3</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>4</sup> Department Counsel also provided a list identifying Gx. 1 - 3. It is included as Hearing Exhibit (Hx.) 1.

<sup>5</sup> Department Counsel's email forwarding Ax. D, and waiving objection thereto is included as Hx. 2. Ax. D is 14 pages in length and consists of her homeowner's insurance statements between 2007 and 2013.

of coverage for property near the ocean after Hurricane Katrina, even though Applicant's home was not in or near New Orleans. (Answer; Ax. E; Tr. 31 - 35, 48 - 50)

Also during this time, Applicant was attending college part-time. She received her bachelor's degree in December 2013. Her studies were mostly online, but every other weekend, she had to travel to a satellite campus for in-person lectures and exams. These trips required Applicant to pay for lodging and meals at a time when the increase in her property insurance was already hampering her ability to make her mortgage payments on time. She started falling behind in 2009 and tried to negotiate a mortgage modification as well as refinance her loan. These efforts proved unsuccessful because of the housing market collapse that was ongoing at the time. By 2011, Applicant had to move out pending foreclosure. That process was completed in September 2012. There is no indication in the record that Applicant owes any remainder after resale of the house. (Tr. 47 - 48)

Applicant used student loans to pay for the cost of her college degree. The debts alleged at SOR 1.a and 1.b represent delinquent student loans totaling \$17,674 being collected by a state education authority. She fell behind on these debts for the same reason she was unable to pay her mortgage. Since January 2015, Applicant has been making regular monthly payments under a repayment agreement with that creditor. Additionally, any state income tax refunds to which Applicant may be entitled will be diverted and applied to these debts until they are satisfied. (Answer; Ax. B; Tr. 25 - 29, 42 - 46)

Although not alleged in the SOR, Applicant owes at least another \$50,000 in student loans, some of which became delinquent after expiration of applicable grace periods. Applicant enrolled in a student loan rehabilitation program in the summer of 2015 and all of her loans are now in deferral until 2019, while she studies for her master's degree. (Answer; Ax. C; Tr. 25 - 29, 43)

Applicant also incurred medical expenses in 2010, when she was hospitalized for an allergic reaction. The debts alleged at SOR 1.c - 1.f total \$634 and represent outstanding co-payments and other expenses not covered by her medical insurance. Applicant was unaware until recently that she owed these debts. They remain unresolved. (Answer; Tr. 36, 40 - 42)

Applicant's current finances are sound. She brings home about \$2,200 each month after taxes and other deductions. Her regular monthly expenses (e.g., rent, utilities, insurance, cell phone, etc.) total about \$1,100. Applicant has a positive monthly cashflow and exhibited a good command of her finances in response to questions posed to her at the hearing. (Tr. 37 - 39)

### **Policies**

Positions designated as ADP I and 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

---

<sup>6</sup> Regulation, ¶ C3.6.15.

<sup>7</sup> Regulation, ¶ C6.1.1.1.

requires that DOD contractor personnel are entitled to the procedural protections in the Directive before any adverse determination may be made.<sup>8</sup>

Each decision must 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, commonly referred to as the “whole-person” concept, listed in the guidelines at AG ¶ 2(a).<sup>10</sup> 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*).

---

<sup>8</sup> Regulation, ¶ C8.2.1.

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

<sup>10</sup> (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.

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 medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances; and

(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.

Applicant's financial problems were caused by unexpected and unreasonable increases in her homeowners insurance between 2007 and 2013. She struggled to make her monthly mortgage payments as required, sometimes missing payments to pay for education-related travel. Although she eventually lost her house to foreclosure, she has no remaining obligations from that event four years ago.

As to her delinquent student loans, Applicant has established a repayment plan for those that are alleged in the SOR. She also was proactive in staying current on her other loans by taking advantage of deferment options while she completes her post-graduate education. The only unresolved debts are her medical accounts, of which she only recently became aware. They are the result of a shortfall in her insurance coverage, but are well within her ability to pay. Those unresolved debts comprise only about three percent of the total debt alleged.

Finally, there is no indication that Applicant's debts arose from misconduct or financial irresponsibility. There is no indication that she has resorted to excessive reliance on credit cards or other forms of personal credit. Applicant lives well within her means and has a good command of her personal finances. In summary, I find that the 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 mature and responsible, and she has a long record of solid employment while holding a position of trust. Although she is not debt-free, 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.g:	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