



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



In the matter of:

[NAME REDACTED]

Applicant for Position of Trust

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ADP Case No. 15-07236

**Appearances**

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

03/01/2017

**Decision**

MALONE, Matthew E., Administrative Judge:

Applicant mitigated the trustworthiness concerns raised by her financial problems. An allegation of intentional falsification was not supported by the record. Her request for eligibility to occupy a position of trust is granted.

**Statement of the Case**

On June 2, 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 April 7, 2016, DOD issued Applicant a Statement of Reasons (SOR) alleging facts which raise trustworthiness concerns addressed through the adjudicative

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<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).

guidelines (AG)<sup>3</sup> for financial considerations (Guideline F) and personal conduct (Guideline E). 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 10, 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 Exhibit (Ax.) A. All exhibits were admitted without objection. DOHA received the hearing transcript (Tr.) on August 19, 2016.

### **Findings of Fact**

Under Guideline F, the Government alleged that Applicant owed \$24,199 for three delinquent or past-due debts (SOR 1.a - 1.c). Under Guideline E, the Government alleged that Applicant knowingly and willfully made a false official statement to the Government in her EQIP when she answered "no" to a question in her section 26 (Financial Record: Delinquency Involving Routine Accounts), thereby omitting the debts alleged at SOR 1.a - 1.c (SOR 2.a). Applicant admitted SOR 1.a, but denied the remaining allegations. (Answer; Tr. 11)

Based on my review of the pleadings and the documents provided at hearing by the Government and the Applicant, I make the following additional findings of fact. The debts alleged at SOR 1.a and 1.c are for the same account. Accordingly, SOR 1.c is resolved for the Applicant, and the total debt at issue in this case is \$12,026. (Gx. 2; Tr. 48, 53)

Applicant is 41 years old. She is employed by a defense contractor in work that requires eligibility 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 October 1997, 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)

When Applicant last applied for a position of trust in 2005, the application process was much more streamlined than her most recent application through the EQIP. Applicant viewed her re-application in 2015 as a routine matter that did not command her full attention. She completed her personal and employment information but did not disclose the debts at 1.a and 1.b. Applicant testified credibly that she was unaware at that time of the medical debt at SOR 1.b, and she thought that the SOR 1.a debt did not have to be disclosed because it was more than seven years old. The credit report provided by the Government showed that account was opened in 2006 and that the last activity on that account was in 2009. (Answer; Gx. 2; Tr. 27 - 28, 36 - 40)

As to SOR 1.b, Applicant does not dispute that the debt is for medical care in August 2010. She is a diabetic and has experienced back problems, such as a herniated disc. She thought the debt was paid for by medical insurance, because at the time the care was provided, she had two medical insurance policies. This debt is not reflected on the April 2016 credit report Applicant submitted with her response to the SOR. (Answer; Tr. 29 - 30)

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<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.

Applicant admitted that the SOR 1.a credit card debt became delinquent through overspending. She used the card to cover routine expenses such as gas, food, and utilities at a time when those costs were exceeding her ability to keep up. She has not been contacted by, nor has she contacted, the collection agency holding that debt in several years. Applicant testified that she thought it may have been forgiven a few years ago, but she provided no documentation in support of that theory. Although the last activity on the account may have been more than seven years ago, it remains on her credit report because it was referred to a collection agency in 2012. The debt remains unresolved. (Answer; Gx. 2; Gx. 3; Tr. 11, 27 - 28, 30 - 33)

Applicant and her husband have been married since October 1999. They live with their two teenage children in a house they purchased in July 2000. Applicant's husband works for a local utility, but she does not know how much he earns. Applicant earns \$16.24 hourly, which translates to roughly \$650 weekly or \$3,000 monthly after taxes. Applicant and her husband manage their finances separately. He manages the household finances and pays the mortgage, car loans, utilities, and other major monthly expenses. Her income goes to groceries, clothes, and other personal expenses. Applicant recently borrowed money from her 401k account to pay off retail credit cards because she was concerned about her future employment if she is found ineligible for a position of trust. (Gx. 1; Tr. 33 - 34, 43 - 44)

Applicant has not sought or received financial counseling or other assistance regarding her personal finances. Aside from the SOR 1.a debt, she and her husband have good credit and are in good standing with multiple accounts. (Answer; Tr. 30)

### **Policies**

Positions designated as ADP I and II are classified as "sensitive positions."<sup>5</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>6</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>7</sup>

Each decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,<sup>8</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>9</sup> The presence or absence of a disqualifying or mitigating condition is not, by itself, conclusive. However, specific

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<sup>5</sup> Regulation, ¶ C3.6.15.

<sup>6</sup> Regulation, ¶ C6.1.1.1.

<sup>7</sup> Regulation, ¶ C8.2.1.

<sup>8</sup> Directive, 6.3.

<sup>9</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.

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 the SOR 1.a and 1.b allegations. Applicant has at least one outstanding unpaid debt (SOR 1.a). The absence of the SOR 1.b debt from the most recent available credit report supports Applicant's belief it was covered by medical insurance. Applicant acknowledged the SOR 1.a debt was the result of overspending and that she has not acted to resolve the debt. These facts 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*). 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; 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.

Although Applicant incurred the SOR 1.a debt through her own financial mismanagement, this debt does not make it likely she will engage in illegal acts or other misconduct in order to generate funds with which to pay her debt. Nor does the debt currently reflect adversely on her judgment and reliability. She has not incurred any

further past-due or delinquent debts, and her current finances appear sound. Applicant and her husband are meeting all of their monthly obligations and are living within their means. In summary, I find that the available information is sufficient to mitigate the trustworthiness concerns about Applicant's financial problems.

## **Personal Conduct**

The security concern under this guideline 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.

The only pertinent disqualifying condition is 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.

Applicant denied the SOR 2.a allegation that she deliberately withheld adverse information about her finances. Thus, the burden remained with the Government to prove that her EQIP answer was deliberate or intended to mislead or deceive.<sup>10</sup> Available information showed only that Applicant answered "no" to a question to which she should have answered "yes." All other information probative of her intent at the time she completed the EQIP shows that she reasonably thought the SOR 1.a credit card debt was outside the seven-year scope of the question, and that she was not aware the SOR 1.b medical debt had not been covered by her medical insurance. The record evidence as a whole did not establish any disqualifying security concerns under this guideline.

I have evaluated the facts and have applied the appropriate adjudicative factors under Guidelines E and 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, the presence of the one debt greater than seven years old is not, in this case, a security concern. Applicant's finances are otherwise sound and she lives a stable lifestyle within her means. 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.c:	For Applicant

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<sup>10</sup> Directive, E3.1.14.

Paragraph 2, Guideline E:

FOR APPLICANT

Subparagraphs 2.a:

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