



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



In the matter of:)	
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)	
[NAME REDACTED])	ADP Case No. 17-00680
)	
)	
Applicant for Public Trust Position)	

Appearances

For Government: Allison Marie, Esq., Department Counsel
For Applicant: *Pro se*

01/16/2018

Decision

MALONE, Matthew E., Administrative Judge:

Applicant's information is sufficient to mitigate 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 June 22, 2016, Applicant submitted an Electronic Questionnaire for Investigations Processing (EQIP) to obtain eligibility for an ADP I/II/III position for his job with a defense contractor. After reviewing the results of the ensuing background investigation, Department of Defense (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.¹

On May 22, 2017, DOD issued Applicant a Statement of Reasons (SOR) alleging facts raising trustworthiness concerns addressed through the adjudicative guideline (AG)² for financial considerations (Guideline F). Applicant timely responded to the SOR (Answer) and requested a hearing.

I received the case on August 4, 2017, and scheduled the hearing for September 27, 2017. The parties appeared as scheduled. I admitted Government Exhibits (GX) 1 – 6 and Applicant's Exhibits (AX) A – I. Applicant also testified. I received a transcript of the hearing (Tr.) on October 6, 2017.

Findings of Fact

Under Guideline F, the Government alleged that Applicant filed for Chapter 13 bankruptcy in January 2016, and that the petition was dismissed later that year (SOR 1.j); and that she owed \$60,597 for 13 delinquent or past-due debts (SOR 1.a – 1.i, 1.k – 1.n). In response, Applicant denied, with explanations and supporting documents, the debts at SOR 1.a, 1.g – 1.i, 1.l – 1.n. She admitted, with explanations, the remaining allegations. In her e-QIP, she disclosed the Chapter 13 petition alleged at SOR 1.j and the debts alleged at SOR 1.c and 1.e. She further explained that she and her husband started experiencing financial problems in about October 2012. At hearing, the Government presented two credit reports and a summary of a September 2016 subject interview that established all of the SOR allegations.³ Additionally, Department Counsel moved to amend the SOR to conform to the record by withdrawing SOR 1.l as a duplicate of SOR 1.g. I granted the motion without objection.⁴ (Answer; Gx. 1 – 4; Tr. 81) In addition to the facts established by the Government's information and by Applicant's admissions, I make the following findings of fact.

Applicant is 50 years old, has a BS in mathematics, and works for a defense contractor in a position that requires eligibility for a position of trust. Applicant's employer supports management of the health care system used by members of the military, and her duties include safeguarding personally identifiable information (PII) associated with the health care system's constituents. Applicant has worked for her current employer

¹ Required by DOD Directive 5220.6, as amended (Directive).

² At the time they issued the SOR, DOD adjudicators applied the adjudicative guidelines implemented by the Department of Defense on September 1, 2006. On December 10, 2016, the Director of National Intelligence issued a new version of the adjudicative guidelines, to be effective for all adjudications on or after June 8, 2017. Publication of DOD Manual 5200.02 did not affect the adjudicative guidelines applicable to this case. In this decision, I have considered and applied the new adjudicative guidelines. My decision in this case would have been the same under either version.

³ See Directive, E3.1.14.

⁴ See Directive, E3.1.17.

since July 2001, and she has been eligible to hold a position of trust for most of her employment there. Her eligibility was last renewed in June 2006. Applicant's performance has been superior, and she enjoys an excellent reputation in the workplace for professionalism, reliability, and trustworthiness. She also is active in community and church affairs. (Answer; GX 1; GX 2; Ax. I; Tr. 37)

Applicant has been married twice. She separated from her first husband, with whom she had two children who are now adults, in September 1997. They divorced in December 1998. Shortly thereafter, Applicant married her current husband. Together they have two children, ages 18 and 16. Applicant's first husband did not meet his child support obligations for Applicant's two older children, something for which Applicant engaged him in civil litigation. (GX 1; AX A)

In 2012, Applicant experienced medical problems that caused her to miss work and income for extended periods. This resulted in difficulties meeting payments on some of her credit accounts. At the same time, her husband's income decreased. He was working in a sales position he had held successfully for several years. In late 2012, his income began to decline due to decreased sales and, as a result, decreased commissions. In January 2014, he left that job and started his own business hauling cars for automobile dealers. His business failed when he unexpectedly learned he would have to obtain a commercial driving license (CDL). He originally thought he did not need a CDL as the size and load of his truck did not meet the requirement for such a certification. He interrupted his business to study for his CDL but he was unable to pass the test. In March 2015, with the loss of his income, he also could not afford to take a CDL training course and had to abandon the business. Since then, he has worked a series of jobs to continue earning income, even if that income is greatly below pre-2014 levels. His current job began in August 2017 and represents an increase in his income. (GX 2; Tr. 47 – 48, 59 – 61)

In January 2016, Applicant and her husband filed a Chapter 13 bankruptcy petition as a means to resolve their debts. They declared \$362,000 in liabilities against \$251,000 in assets. They agreed to a repayment plan that required them to pay about \$1,800 each month, which they could afford. That plan was based on Applicant's income and whatever her husband was making at the time. A few months later, Applicant's husband found a job that paid significantly more than before. As a result, the required monthly payment increased by \$2,000. This they could not afford along with unexpected car repairs and a medical procedure for one of their children. In June 2016, Applicant and her husband voluntarily withdrew their Chapter 13 petition. (Answer; GX 1; GX 2; GX 6; Tr. 48 – 53, 73 – 74)

Through their bankruptcy petition, Applicant and her husband sought to reaffirm their car loan. Although they made their required payments to the bankruptcy trustee while the petition was active, most of that money went to pay their attorney fees before it was directed to their car loan. As a result, when they withdrew their petition, the car loan went into default. That creditor demanded payments to recoup the arrearage that Applicant could not afford. She and her husband returned the car to the dealer, and they incurred

the delinquency addressed at SOR 1.c. Applicant and her husband are now repaying the collection agency holding that account \$121 each month. (Answer; GX 2 – 4; GX 6; AX C; Tr. 54 – 55, 70 – 72)

The debts alleged in the SOR arose from Applicant's medical problems and her husband's loss of sufficient employment. The debts at SOR 1.a and 1.b represent their first and second mortgages, respectively. Applicant established that they have resolved the past-due amounts on their first mortgage through a mortgage modification. The lender on their second mortgage has not agreed to their requests to modify that mortgage account and has demanded repayment of the past-due amounts in terms Applicant cannot afford. Nonetheless, on the advice of a financial counselor Applicant is using, she and her husband recently resubmitted their request for a mortgage modification. (Answer; AX B; Tr. 30 – 31, 53 – 54, 70)

In addition to SOR 1.a and 1.b, Applicant established in response to the SOR and at hearing that she and her husband have paid or otherwise resolved the debts at SOR 1.g, 1.m, and 1.n. She also established that she is in regular and consistent repayment of the debts at SOR 1.c – 1.f, 1.h and 1.k. (Answer; AX C – H; Tr. 31 – 41, 81, 84 – 85)

Applicant's current finances are sound. She has worked with a financial advisor to establish a monthly budget to manage her household finances. After all expenses, including monthly debt payments documented in her exhibits, Applicant estimates she and her husband have about \$140 remaining each month. They have not incurred any new delinquencies since 2015. (Answer; AX A; Tr. 55 – 56, 68 – 69)

Policies

Eligibility for a position of public trust must be based on a determination that it is "clearly consistent with the interests of national security" to do so.⁵ All such adjudications must adhere to the procedural protections in the Directive before any adverse determination may be made. Each decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,⁶ 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(d).⁷ The presence or absence of a disqualifying or mitigating condition is not, by itself, conclusive. However,

⁵ Security Executive Agent Directive (SEAD) 4, Appendix A, Paragraph 1(d).

⁶ Directive, 6.3.

⁷ (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.

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

The facts established by this record reasonably raise a trustworthiness concern about Applicant's finances that is addressed, in relevant part, at AG ¶ 18, as follows:

Failure 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

More specifically, available information requires application of the disqualifying conditions at AG ¶¶ 19(a) (*inability to satisfy debts*); and 19(c) (*a history of not meeting financial obligations*). Applicant's financial problems arose in 2012 because of medical problems, and because of her husband's loss of income and failed business. Their debts persisted through 2016 with the failure of their Chapter 13 bankruptcy petition. One of their still unresolved debts is also one of their largest.

I have also considered the following AG ¶ 20 mitigating:

(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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances; and

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control.

AG ¶ 20(a) applies in part. Although some of her debts remain unresolved and must be considered as recent, all of her financial problems arose from unforeseen circumstances that are unlikely to recur. For the same reason, AG ¶ 20(b) applies. Applicant's financial troubles began in 2012 when she experienced medical problems that hindered her ability to work. Later that year, her husband began to lose income due to falling sales commissions. His attempt to restore his income through a small business start-up failed and he is only now beginning to earn a level of income close to what he earned previously. Available information further supports application of AG ¶ 20(b) because it shows Applicant has acted responsibly in addressing her financial problems. She and her husband likely would have successfully completed their Chapter 13 bankruptcy petition had the required payments not increased. After they withdrew their petition, they took steps to address their debts and have either resolved or are repaying all but one of their debts.

AG ¶ 20(c) also applies. Based on consultations with a financial counselor, Applicant and her husband have established a viable budget and a plan to resolve their debts. They have not incurred any new debts, and available information supports a conclusion that they will pursue their debt resolution efforts to completion. On balance, the record evidence as a whole is sufficient to mitigate the trustworthiness concerns raised under this guideline.

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(d). Applicant produced sufficient reliable evidence to resolve the doubts about her trustworthiness and judgment raised by the Government's information. Applicant has a solid reputation in the workplace, and a long and unblemished record of safeguarding sensitive information during her tenure as a defense contractor. All of the foregoing supports a fair and commonsense assessment that the Government's doubts about her trustworthiness have been satisfactorily addressed.

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.n: 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 public trust eligibility is granted.

MATTHEW E. MALONE
Administrative Judge