



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



In the matter of:)	
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)	
[NAME REDACTED])	ADP Case No. 17-00850
)	
)	
Applicant for Position of Trust)	

Appearances

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

01/05/2018

Decision

MALONE, Matthew E., Administrative Judge:

Applicant's information is not sufficient to mitigate the trustworthiness concerns raised by her financial problems. Her request for eligibility to occupy a position of trust is denied.

Statement of the Case

On June 19, 2016, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain eligibility for an ADP I/II/III position 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.¹

On April 14, 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 7, 2017, and scheduled the hearing for September 26, 2017. The parties appeared as scheduled. I admitted Government Exhibits (GX) 1 – 4 and Applicant Exhibits (AX) A – C. Applicant and one witness for Applicant testified. I received a transcript of the hearing (Tr.) on October 4, 2017.

Findings of Fact

Under Guideline F, the Government alleged that Applicant owed \$22,781 for 22 delinquent or past-due debts (SOR 1.a – 1.l). In response, Applicant denied and disputed the debts at SOR 1.i and 1.l. She admitted, with explanations, the remaining SOR allegations. In her e-QIP, she disclosed a variety of adverse financial information, including the debts alleged at SOR 1.a, 1.f, 1.i, and 1.k. At hearing, the Government presented two credit reports and a summary of a December 2016 subject interview that established all of the SOR allegations. 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 45 years old and employed by 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 on that contract with her current employer and a previous employer since July 2011. (GX 1; GX 2; Tr. 37)

Applicant is a single mother of two, now ages 21 and 15. She has received little in the way of financial support from the children's fathers. She attributes her financial problems to the burdens of single parenting and a period of unemployment between July 2010 and June 2011 that resulted when the job she had held since June 2005 moved overseas and Applicant was laid off. Around the same time, Applicant's father fell ill with

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 the 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.

heart problems and required Applicant's assistance. Beginning in 2010, Applicant helped pay for her father's medicines, utilities, and groceries. She estimates she expended as much as \$250 a month to help her father until he died in 2013. During the first year of his illness, Applicant supported herself with unemployment benefits and savings. (GX 1; GX 2; Tr. 56 – 60)

Applicant claimed in her SOR response that the debts at SOR 1.a, 1.b, 1.d, and 1.k are being paid as part of her work with a credit repair and debt resolution company. She started working with that company in June 2016, just before she submitted her e-QIP. The information she presented about that company showed she is making modest monthly payments to two or three creditors not addressed in the SOR. Applicant also claimed that she had paid the debts at SOR 1.e and 1.j using state tax refunds. She did not provide any direct proof of payment, but those debts do not appear on the two most recent credit reports available. Applicant also claimed she would pay the SOR 1.f – 1.h debts by May 2017. Applicant did not provide proof of payment at hearing, and Applicant's credit reports still list those debts as unpaid. (Answer; GX 4; AX A; AX B; Tr. 35, 49, 55, 66)

The debts at SOR 1.a – 1.c each represent the balances due after resale of automobiles repossessed. The SOR 1.a debt arose when Applicant returned her car after losing her job in 2010. Applicant averred the creditor forgave that debt and reported the amount as income from a cancelled debt. Although she did not provide her tax reporting information for this debt, information in a 2017 credit report she provided shows the debt was resolved for less than the amount past-due. Applicant also averred that she will pay the SOR 1.b debt through the debt resolution company; however, she did not establish that she has started those payments. SOR 1.b represents a repossession debt for a car she bought for her older child. (Answer; AX B; Tr. 51)

Applicant insists her current finances are sound and that she has a newfound understanding of, and appreciation for, proper financial management. Her monthly net pay is about \$1,775, and she estimates she has about \$500 remaining each month after regular expenses. But most of her net cash each month is used for her younger child's school and athletic expenses. She is meeting her current obligations; however, she also acknowledged at hearing that she has about \$14,000 in student loans obtained for her own education and that of one of her children. Applicant testified she is paying her student loans as required each month. Some of her student loans are still in deferment.

Applicant's supervisor for the last 18 months testified in support of Applicant. She spoke positively of Applicant's job performance and overall reliability. The witness considers Applicant a friend, and testified that Applicant has confided in her about her finances and efforts to clean up her credit. The witness voiced confidence in Applicant's ability and willingness to protect sensitive information. (Tr. 38 – 42)

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.³ 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,⁴ 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).⁵ 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

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

³ Security Executive Agent Directive (SEAD) 4, Appendix A, Paragraph 1(d).

⁴ Directive, 6.3.

⁵ (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.

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 around the time of her unemployment in 2010 and 2011. They were exacerbated by the need to financially help her ailing father until 2013. Although Applicant claims to have paid several of the debts alleged in the SOR, she has not presented information to support those claims.

The following AG ¶ 20 mitigating conditions are potentially applicable here:

(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) does not apply. Applicant's debts and other financial problems are multiple and recent, in that most of her debts remain unresolved.

AG ¶ 20(b) does not apply. Applicant's financial troubles began in 2010 and were caused by circumstances beyond her control. Nonetheless, AG ¶ 20(b) can only be applied when it also is established that the individual acted responsibly in the face of those circumstances. Available information (which does not include corroboration of her claims of debts paid) shows Applicant did not start addressing any of her debts until just before she submitted her e-QIP.

AG ¶ 20(c) applies in part. Applicant is working with a company that is helping her with an organized repayment effort, despite having been gainfully employed since 2011. Given the amount of debt still outstanding, Applicant's repayment plan as documented does not reflect a reliable plan for resolving her debts. Again, Applicant did not provide information to support her claims that other smaller debts have been paid or otherwise resolved. She also did not establish that her financial problems are under control. On balance, it is too soon to conclude that Applicant's financial problems are behind her. My assessment of the record evidence as a whole leads me to conclude that Applicant has not mitigated 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 had the burden of producing sufficient reliable evidence to resolve doubts about her trustworthiness and judgment raised by the Government's information about her finances. Applicant claimed, but did not corroborate, that she has resolved several debts. Further, she did not explain why she did not act to resolve her debts until faced with the need to apply for public trust eligibility. Finally, Applicant did not establish that her financial problems are under control and unlikely to recur. All of the foregoing requires a conclusion that, in spite of the positive information about her work performance, doubts remain about her suitability to safeguard sensitive information. Because protection of the interests of national security is the principal focus of these adjudications, such doubts must be resolved against the granting of eligibility.

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:	AGAINST APPLICANT
Subparagraphs 1.a - 1.l:	Against Applicant

Conclusion

In light of all of the foregoing, it is not clearly consistent with the interests of national security for Applicant to occupy a position of trust. Applicant's request for public trust eligibility is denied.

MATTHEW E. MALONE
Administrative Judge