



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



In the matter of:	)	
	)	
	)	
[NAME REDACTED]	)	ADP Case No. 17-01896
	)	
	)	
Applicant for Position of Trust	)	

Appearances

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

12/01/2017

Decision

MALONE, Matthew E., Administrative Judge:

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

Statement of the Case

On May 17, 2016, Applicant submitted an Electronic Questionnaire for Investigations Processing (EQIP) 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 June 7, 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 26, 2017.

The parties appeared as scheduled. I admitted Government Exhibits (GX) 1 - 4 without objection. Applicant testified but did not present any documentary evidence. I received a transcript of the hearing (Tr.) on October 5, 2017.

Findings of Fact

Under Guideline F, the Government alleged that Applicant owed \$20,982 for 20 delinquent or past-due debts (SOR 1.a - 1.t). The debts alleged at SOR 1.b, 1.c, 1.e, 1.f, and 1.h – 1.o are for unpaid medical bills. The debts alleged at SOR 1.k – 1.o are for less than \$100 each.

In response to the SOR, Applicant denied, with explanations, the debts at SOR 1.f, and 1.q – 1.s. She admitted, with explanations, all of the remaining allegations. Additionally, Applicant claimed that she has paid the debts at SOR 1.k – 1.o and 1.t; that she has disputed the debts at SOR 1.f, 1.q, and 1.r; that she is making regular payments for the debts at SOR 1.b, 1.c, 1.h – 1.j, and 1.p; and that she is working on a repayment plan for the debts at SOR 1.d, 1.e, 1.g, and 1.p. Finally, as to her largest debt, the \$9,249 remainder due on a car loan after repossession (SOR 1.a), Applicant stated she would not be able to repay it. (Answer)

Applicant's admissions in response to the SOR and in her testimony at hearing, her disclosures of debts in her e-QIP, her discussions of her financial problems during a February 2017 personal subject interview (PSI), and two credit bureau reports support all of the SOR allegations. (Answer; GX 1 – 4) Additionally, I make the following findings of fact.

Applicant is 44 years old and employed by a defense contractor in a position that requires eligibility for a position of trust. Applicant started working for her current

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.

employer in December 1996. Applicant's employer supports management of the health care system used by members of the military, and her job duties include safeguarding personally identifiable information (PII) associated with the health care system's constituents. (GX 1)

Applicant was married from August 1997 until divorcing in January 2004. She remarried in May 2006, but has been separated since November 2016. She has two children, a 19-year-old daughter and a 22-year-old son. Her son is in his last year of college. (GX 1 and 2)

Applicant has been experiencing financial problems since at least 2000. At hearing, she disclosed that during a previous application for eligibility for a public trust position, she and her first husband filed a Chapter 13 bankruptcy petition. She subsequently completed a three-year repayment plan under that petition. The credit reports included in this record document a period of unpaid debts beginning around 2010. (Tr. 8, 64 – 66)

Applicant provided little information about the causes of her current financial problems. The medical debts alleged represent expenses not covered by her medical insurance for surgery and other services she received between 2012 and 2014. Applicant also noted that she is supporting her son through loans and with the help of her mother. The debt at SOR 1.d is for one such loan on which Applicant has defaulted. (Tr. 23 – 24, 28 – 33)

Applicant's current finances are best described as tenuous. After expenses, which she claims include funds being directed at some of her debts, Applicant estimates she has about \$300 remaining each month. Applicant also has been as much as two months behind on her mortgage and car loan payments in the past year. The debt payments she claimed in response to the SOR occurred after the SOR was issued. Applicant testified that she is now able to address her debts, in part, because her mother is helping support Applicant's son. Applicant has had a 401(k) retirement account through work since 1996. The most she has saved was \$8,000; however, she has taken five hardship withdrawals over the past few years to meet some basic obligations, such as her mortgage and car payments. (Tr. 42, 48 - 63)

Applicant has not had any financial counseling. In 2016, she retained the services of a credit repair company, for which she paid \$40 a month. The services consisted mostly of researching and challenging entries in her credit history. She cancelled that service after a few months after realizing she could do the same thing on her own. (GX 2; Tr. 24 – 26, 60 – 63)

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:

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.

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*); 19(b) (*unwillingness to satisfy debts regardless of the ability to do so*); and 19(c) (*a history of not meeting financial obligations*). Applicant's financial problems span most of the past 20 years. She has been gainfully employed, with employee-sponsored medical insurance, the entire time. Even though her insurance did not cover portions of medical bills incurred between 2012 and 2014, Applicant did not act to resolve even the most modest of those debts until after she received the SOR. She does not intend to pay the largest of her debts.

I also have considered the following AG ¶ 20 mitigating conditions that are pertinent to these facts and circumstances:

(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;

(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;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant's longstanding financial problems remain largely unaddressed. Even were I to accept her claims of payment without any supporting documentation, she acted largely in response to the SOR. Her corrective actions cannot reasonably be considered as good-faith efforts. Applicant's financial problems are recent, in that they continue unresolved. Applicant's use of a credit repair firm does not comport with the type of financial counseling contemplated by AG ¶ 20(c). Applicant did not establish that her debts arose from circumstances beyond her control, and she did not establish a documented basis for her disputes of some of her debts. Applicant did not provide information that shows her current finances are sound and that she will be able to resolve her debts in the near future. On balance, she has not provided information sufficient to support application of any of the AG ¶ 20 mitigating conditions. Based on this record, I cannot conclude that Applicant has mitigated the trustworthiness concerns raised by the Government's information.

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 is not expected to be debt-free; however, she is expected to show that she is dealing responsibly with her financial problems. Absent such information, doubts remain about her suitability for a position of public trust. Because protection of the interests of national security is the principal focus of these adjudications, such doubts must be resolved against granting 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
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Subparagraphs 1.a - 1.t:	Against Applicant
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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