



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



In the matter of:	)	
	)	
	)	
[NAME REDACTED]	)	ADP Case No. 14-03259
	)	
	)	
Applicant for Position of Trust	)	

**Appearances**

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

04/13/2015

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**Decision**

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MALONE, Matthew E., Administrative Judge:

Although Applicant’s current ability to resolve her debts has been hindered by the unexpected loss of her home by fire, she has been experiencing financial problems for at least ten years and most of her debts did not arise from circumstances beyond her control. She did not document efforts to pay or otherwise resolve any of her past-due debts. Applicant’s request for eligibility to occupy a position of trust is denied.

**Statement of the Case**

On January 24, 2013, 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

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

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 August 11, 2014, DOD issued Applicant a Statement of Reasons (SOR) alleging facts which, if proven, raise trustworthiness concerns addressed through the adjudicative 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 January 19, 2015, and I convened a hearing on February 11, 2015. Department Counsel for the Defense Office of Hearings and Appeals (DOHA) presented Government Exhibits (Gx.) 1 - 4.<sup>4</sup> Applicant testified and presented Applicant's Exhibit (Ax.) A, a compilation of seven character reference letters. DOHA received the hearing transcript (Tr.) on March 2, 2015.

### **Findings of Fact**

Under Guideline F, the Government alleged that Applicant owes \$53,447 for 20 delinquent or past-due debts (SOR 1.a - 1.t). Applicant denied SOR 1.t and admitted the rest. At hearing, Department Counsel acknowledged that the \$30,000 owed for a delinquent mortgage account alleged at SOR 1.t, is not reflected in the credit reports presented. (Tr. 84) Accordingly, SOR 1.t is resolved for Applicant, and the actual amount of debt at issue here is \$23,447.

In addition to the facts established by Applicant's admissions, and based on all available information, I make the following findings of fact. Applicant is 61 years old and is employed by a defense contractor in a position 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 must be found suitable to be entrusted with personally identifiable information (PII) contained in that health care system. (Gx. 1; Gx. 3)

Applicant and her husband have been married since August 1994. Applicant was previously married from April 1973 until the marriage ended by divorce in June 1993. She had one child, now 38 years old, with her first husband. Applicant is a high school graduate and took online college courses between 2005 and 2007 and between August 2010 and March 2011. Applicant financed her studies with student loans. Three such loans, alleged as past-due in SOR 1b - 1.e, were shown at hearing to be in deferment until April 2015. A fourth student loan (SOR 1.p) remains unpaid. (Gx. 1; Tr. 83)

From 1979 until 2009, Applicant worked at a county public works agency. She left in 2009 to help her husband run a trucking business, which he started after being

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

<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> The Government's Exhibit List is included in the record as Hearing Exhibit (Hx.) 1.

laid off from a long-term job in 2005. At the time she left her job, Applicant's credit history reflected delinquent debts, including credit cards, car notes and personal loans, incurred as far back as 2006 (SOR 1.g 1.h, 1.i, and 1.m). One debt, not alleged in the SOR, was a delinquent mortgage in the amount of \$41,078. Soon after Applicant left her county job, she and her husband realized they were having trouble paying their medical costs. Additionally, her husband's business struggled and they soon had trouble paying additional credit card accounts (SOR 1.f, 1.m, and 1.n) and one personal loan (SOR 1.j). Applicant also incurred debts for overdrawing her checking account (SOR 1.o and 1.r), and became delinquent on a cell phone account (SOR 1.k) and a satellite television account (SOR 1.q). (Answer; Gx. 1 - 4)

Finally, available information shows Applicant owes \$29 for an unpaid medical bill incurred in late 2012. This debt is alleged at SOR 1.a. Applicant has been in contact with this creditor and knows that all she needs to do is take payment to an office near her residence. Another debt, the delinquent personal loan at SOR 1.h, can be settled for \$75. But to date, she has not acted on either of these debts, or any of the other debts alleged in the SOR. (Answer; Gx. 2; Gx. 4; Tr. 57, 71 - 72)

Applicant has been steadily employed since January 2013. In March 2013, Applicant's house was destroyed by fire. The dwelling, a mobile home, was not insured because Applicant and her husband had let the policy lapse. Most of their income after the fire was devoted to replacing all of their belongings and obtaining a new mobile home. She earns about \$1,600 each month after deductions. Her husband now earns about \$4,000 net each month. A review of her monthly finances at the hearing showed she has about \$200 remaining each month after expenses. She further estimated that when the deferment of her student loans ends, the required monthly payment will be about \$150 each month. Applicant also stated that when her husband finishes paying off the truck he owns for his business, their available monthly cash flow will increase by \$500. They are meeting all of their current monthly obligations, they pay their taxes as required, and generally live within their means. (Gx. 1; Tr. 57, 59 - 60, 62 - 66, 76)

Applicant has a good reputation among past and current coworkers, as well as in her community. While working for the county, and in subsequent jobs before she went to work for her current employer, Applicant reliably handled the personal information of others and developed a reputation for reliability and trustworthiness. (Ax. A)

### **Policies**

Positions designated as ADP I/II/III 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

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<sup>5</sup> Regulation, ¶ C3.6.15.

<sup>6</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>7</sup>

The Directive requires that each decision 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 listed in ¶ 2(a) of the new guidelines. Commonly referred to as the “whole-person” concept, those factors are:

- (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.

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 is sufficient to support all of the SOR allegations, except for SOR 1.t. The facts established raise a trustworthiness concern about Applicant's finances that is addressed at AG ¶ 18, as follows:

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<sup>7</sup> Regulation, ¶ C8.2.1.

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

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 classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

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*).

The following AG ¶ 20 mitigating conditions are available<sup>9</sup> to Applicant if based on sufficient information:

(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;

(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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

None of these mitigating conditions fully apply. Applicant's financial problems are multiple, recent, and ongoing. And while her ability to resolve her debts was impeded by the 2013 house fire, her financial problems have been present since at least 2006 and were not the result of circumstances beyond her control. Inexplicably, in 2009 Applicant voluntarily left a job she held for 30 years to help her husband run a small business at a time when she already owed several past-due and delinquent debts. Further, Applicant now appears to have the resources with which to have paid or settled some of her

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<sup>9</sup> The mitigating conditions at AG ¶¶ 20(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*) and 20(f) (*the affluence resulted from a legal source of income*) are not pertinent to these facts and circumstances.

smaller debts. Yet there is no record of good-faith resolution of any of her debts. Finally, Applicant did not establish that she is receiving financial counseling or other professional help with her debts, and a fair interpretation of the record as a whole regarding her finances does not show her debts are under control. On balance, the trustworthiness concerns raised by the adverse information about Applicant's history of indebtedness remain.

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). Specifically, I note Applicant's positive reputation among her many friends and associates. However, without some information that shows Applicant is working to repay even her smallest debts, the positive information in her background is not sufficient to satisfy the doubts about her suitability for a position of trust. Because protection of the interests of national security is the principal goal of these adjudications, any remaining doubts must be resolved against the individual.

### **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.b - 1.e, 1.t:	For Applicant
Subparagraphs 1.a, 1.f - 1.s:	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 ADP eligibility is denied.

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MATTHEW E. MALONE  
Administrative Judge