



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



In the matter of:)	
)	
[NAME REDACTED])	ADP Case No. 14-03801
)	
Applicant for Position of Trust)	

Appearances

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

03/23/2015

Decision

MALONE, Matthew E., Administrative Judge:

Applicant’s financial problems arose from circumstances beyond her control. When she has had the means to do so, she has paid or otherwise resolved her debts. Information about her judgment and reliability is sufficient to mitigate the trustworthiness concerns raised by the Government’s information. Applicant’s request for eligibility to occupy a position of trust is granted.

Statement of the Case

On May 28, 2013, Applicant submitted an Electronic Questionnaire for Investigations Processing (EQIP) to obtain eligibility for an ADP I/II/III position¹ 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.²

On September 15, 2014, DOD issued to Applicant a Statement of Reasons (SOR) alleging facts which, if proven, raise trustworthiness concerns addressed through the adjudicative guideline (AG)³ 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 10, 2015. Department Counsel for the Defense Office of Hearings and Appeals (DOHA) presented Government Exhibits (Gx.) 1 - 4. Applicant testified and presented Applicant's Exhibits (Ax.) A and B. DOHA received the hearing transcript (Tr.) on February 26, 2015. The record closed on March 3, 2015, when I received Applicant's post-hearing submissions, which are included in the record as Ax. C - I. All exhibits were admitted without objection.

Findings of Fact

Under Guideline F, the Government alleged that Applicant owes \$41,653 for four delinquent or past-due debts (SOR 1.a - 1.d). Applicant admitted, with explanations, SOR 1.a and 1.b. 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 58 years old and is employed by a defense contractor as a customer service advocate. That position requires eligibility for a position of trust, because 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) associated with the health care system's constituents. Applicant was hired by her current employer in October 2013. (Gx. 1; Tr. 26)

Applicant and her current husband have been married since May 1999. A previous marriage began in February 1975 and ended by divorce in December 1994. Applicant's current husband has always been self-employed, averaging about \$25,000 in annual income until 2002. At that time, he was diagnosed with various debilitating

¹ As defined in Chapter 3 and Appendix 10 of Department of Defense (DOD) Regulation 5200.2-R, as amended (Regulation).

² Required by the Regulation, as amended, and by DOD Directive 5220.6, as amended (Directive).

³ 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).

illnesses, including arthritis and multiple sclerosis. He has been unable to work at all since about 2009. (Answer; Gx. 1; Gx. 3; Tr. 22. 35)

From August 1986 until June 2010, Applicant was employed by a small manufacturing business in State A. At the time she left that job, she was earning \$45,000 annually plus a three percent share of the business's net profit. However, between 2002 and 2010, her income declined due to the economic slowdown. Applicant admits that before 2002, she did not manage her money very well, and that she overused credit cards. Nonetheless, she generally was able to stay current on her credit payments and other financial obligations. Applicant disclosed several delinquent or past-due debts when she submitted her EQIP. Subsequent credit reports reflect the debts alleged in the SOR. Applicant estimated that her financial difficulties became acute around 2009. (Answer; Gx. 1; Gx. 3; 22 - 23, 30)

In 2010, at the behest of their doctors, Applicant and her husband moved to their current residence in State B. They also had a fire at their house in State A, for which they received sufficient insurance proceeds to pay off their mortgage. They subsequently sold the house for \$24,000 and bought a house outright in State B for \$15,000. The remaining \$9,000 was used for relocation expenses, medical expenses, and to pay off the debts at SOR 1.c and 1.d, as well as other debts not alleged in the SOR. During her background investigation interview with a Government investigator in June 2013, Applicant reviewed numerous debts, some of which she had paid but had not been updated in her credit report. (Answer; Gx. 1; Gx. 3; Tr. 36 - 42)

The debts at SOR 1.a and 1.b are for unpaid credit card accounts that became delinquent before 2010. Applicant has not used those, or any other credit cards, since before 2010. She avers the original amounts due are far less than is being reflected in her credit reports because of accruing interest and fees added on as the accounts are transferred among collection agencies. Applicant has received from each creditor offers of settlement; however, the terms of repayment in those offers are more than she can afford. (Answer; Gx. 2 - 4; Ax. G; Tr. 22, 29 - 31)

Applicant was unemployed from June 2010 until October 2013. She and her husband subsisted on State A unemployment benefits, personal savings, and the proceeds from insurance policies she liquidated. Her husband is completely disabled, but his requests for disability benefits from the Social Security Administration (SSA) have been denied because he has not contributed enough to the SSA from his self-employment over the years. Applicant now earns about \$11 per hour and takes home \$1,500 each month. After paying all of the household expenses, Applicant has very little money remaining each month. Applicant's decision to move resulted in a significant loss of income; however, the cost of living in State B is significantly lower than in State A. Applicant has no mortgage or rent payment, and her utilities now cost less than half what they paid in State A. (Gx. 1; Gx. 3; Ax. A; Ax. D; Ax. H; Ax. I; Tr. 44- 45)

Applicant has established an excellent record at her current job. She was also a highly-valued employee at her previous job. Over the course of about 24 years as a

virtual “jack-of-all-trades,” Applicant demonstrated that she is reliable, trustworthy, and dedicated. Applicant is also active in her community through her work at the local animal shelter. (Ax. B; Ax. E; Ax. F)

Policies

Positions designated as ADP I/II/III are classified as “sensitive positions.”⁴ 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.⁵ The Regulation also requires that DOD contractor personnel are entitled to the procedural protections in the Directive before any adverse determination may be made.⁶

The Directive requires that each decision be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,⁷ 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

⁴ Regulation, ¶ C3.6.15.

⁵ Regulation, ¶ C6.1.1.1.

⁶ Regulation, ¶ C8.2.1.

⁷ Directive. 6.3.

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. The facts established raise a trustworthiness concern about Applicant's finances that is addressed 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 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*). As to AG ¶ 19(a), the record shows Applicant has been unable, not unwilling, to repay her past-due debts.

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

(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.

Both of these mitigating conditions apply. Applicant's financial problems arose when her husband became totally disabled and they relocated for health reasons. Her husband does not receive any disability assistance, and employment and income opportunities in State B are much lower than State A. But their cost of living is now much lower, and Applicant is able to make ends meet without incurring new unpaid debts. When she has had the means to do so, she has resolved her past-due debts.

Unfortunately, the two remaining SOR debts require payments she simply is unable to make.

Applicant has demonstrated over the past 20 years that she is reliable and trustworthy. Her efforts to resolve her financial problems have been made in good-faith, and it is unlikely she will act irresponsibly or illegally to pay her debts. The record supports application of the mitigating conditions at AG ¶¶ 20(a) - (c), and the trustworthiness concerns raised by Applicant's financial problems are mitigated.

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 response to her financial problems, her complete candor about those problems, and her record of trustworthiness, hard work, and reliability. A fair and commonsense assessment of all available information shows that the Government's concerns about Applicant's trustworthiness have been satisfied.

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.d:	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