



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



In the matter of:

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ADP Case No. 14-04461

Applicant for Public Trust Position

Appearances

For Government: Caroline E. Heintzelman, Esq., Department Counsel

For Applicant: *Pro se*

02/09/2016

Decision

Noel, Nichole L., Administrative Judge:

Applicant contests the Defense Department’s intent to deny her eligibility for a public trust position in the defense industry. Applicant’s financial problems were not caused by irresponsible, reckless, or negligent behavior. She is making a good-faith effort to resolve her delinquent accounts and presented a legitimate basis for challenging several of the alleged delinquent debts. Her eligibility for access to sensitive information is granted.

Statement of the Case

On February 3, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing trustworthiness concerns under the financial considerations guideline.¹ DOD adjudicators were unable to find that it is clearly consistent with

¹ This case is adjudicated under DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). The *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (AG)*, effective within the Defense Department on September 1, 2006, apply to this case. The AG replace the guidelines in Enclosure 2 to the Directive.

national security to grant or continue Applicant's access to sensitive information and recommended that the case be submitted to an administrative judge for a determination whether to revoke or deny Applicant's eligibility to occupy a public trust position.

Applicant timely answered the SOR and requested a hearing. On August 6, 2015, I issued a pre-hearing order to the parties regarding the exchange and submission of discovery, the filing of motions, and the disclosure of any witnesses.² The parties complied with the terms of the order.³ At the hearing, convened on August 25, 2015, I admitted Government's Exhibits (GE) 1 through 5. I received the transcript (Tr.) on September 2, 2015.

Findings of Fact

Applicant, 27, has worked for a federal contractor since January 2014. Initially hired through a temporary staffing agency, Applicant became a permanent employee of the federal contracting company in February 2015. Applicant's position requires access to personally identifiable information (PII). On her electronic questionnaire for investigations processing (e-QIP), dated February 2014, Applicant disclosed that she failed to pay federal income taxes for the years 2008 to 2012, that a state agency secured a judgment against her, and five delinquent accounts. The ensuing investigation confirmed Applicant's disclosures. Ultimately, the SOR alleges that Applicant owes \$20,600 in delinquent debts.⁴

The majority of Applicant's financial problems occurred when she was between the ages of 18 and 20. Applicant lived with her mother until 2006 when her mother died. She was 47 years old. Applicant moved into her own apartment, but relied on her father for financial help. He died in 2008 at 41 years old. Applicant, who was pregnant with her first child, could no longer afford the apartment and moved without providing the required notice. As a result, she incurred a \$1,481 debt to the apartment complex. (SOR ¶ 1.f) Applicant also voluntarily surrendered the car she had recently purchased with her father as the guarantor. That action resulted in a \$3,000 deficiency balance on her auto loan. (SOR ¶ 1.g)⁵

From 2007 to 2012, Applicant worked as a child care provider for her sister's children. She was paid through a municipal program. However, at 20 years old, Applicant did not understand that she was considered an independent contractor and that federal income taxes were not withheld from her pay. After receiving the SOR in February 2015, Applicant contacted the IRS. In addition to the \$11,373 she owed in outstanding federal taxes (SOR ¶ 1.b), she learned that a clerical error on her 2008 and 2009 tax returns resulted in an additional tax liability. Applicant filed amended returns in

² The prehearing scheduling order is appended to the record as Hearing Exhibit (HE) I.

³ The discovery letter, dated July 6, 2015 is appended to the record as HE II.

⁴ Tr. 14-15; GE 1 -4.

⁵ Tr. 16-17, 27-28.

May 2015 and is waiting to hear from the IRS about her adjusted federal tax liability so that she can make payment arrangements.⁶

In 2012, Applicant became pregnant with her second child. She stopped working and returned to school full-time. She supported herself and child with unemployment compensation and a small monthly payment from her father's pension. She earned her associate's degree in January 2014. After she returned to full-time employment, she learned that the state overpaid her unemployment compensation benefits, resulting in a \$2,725 judgment against her. (SOR ¶ 1.a) When she made inquiries with the state agency about repaying the overpayment, she was informed that the account was too old for the agency to accept a payment plan.⁷

To date, Applicant has paid five accounts, SOR ¶¶ 1.d, 1.h, 1.l, 1.j, 1.n, totaling \$1,200. She has also successfully challenged the seven medical debts alleged in SOR ¶¶ 1.c, 1.e, 1.k – 1.m, 1.o – 1.p, totaling \$872, and they have been deleted from her credit report. She has been in contact with the IRS and in the process of resolving her federal tax liability. She contacted the creditor to resolve the outstanding account owed to the apartment complex (SOR ¶ 1.f), but they refused to accept a payment plan. She has not taken any steps to resolve the auto loan deficiency balance alleged in SOR 1.g.⁸

Applicant currently earns \$ 16.58 per hour. She is the only source of income for her household, which includes her boyfriend and her two children. Applicant's boyfriend, with whom she has lived for eight years and is the father of her youngest child, has not worked since 2010. Applicant does not receive child support for either child. After paying her recurring bills, Applicant has approximately \$ 400 in disposable income. She plans to continue to resolve her delinquent accounts as she is able.⁹

Policies

Positions designated as ADP I and ADP II are classified as "sensitive positions."¹⁰ "The standard that must be met for . . . assignment to sensitive duties, is that, based on all available information, the person's loyalty, reliability, and trustworthiness are such that . . . assigning the person to sensitive duties is clearly consistent with the national interests."¹¹ Department of Defense contractor personnel are afforded the right to the procedures contained in the Directive before any final

⁶Tr. 18, 28-29, 36-39.

⁷ Tr. 24-26.

⁸ Tr. 19-23, 26-27, 30-32; GE 5.

⁹ Tr. 23-24, 33.

¹⁰ Regulation ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3.

¹¹ Regulation ¶ C6.1.1.1.

unfavorable access determination may be made.¹² An administrative judge's objective is a fair, impartial, and commonsense decision that embraces all available, reliable information about the person, past and present, favorable and unfavorable.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to a public trust position enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of sensitive information.

Analysis

Guideline F, Financial Considerations

Unresolved delinquent debt is a serious concern because failure to "satisfy debts [or] 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 sensitive information."¹³ Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding sensitive information.

Applicant admits that she is indebted to 16 creditors for approximately \$ 20,600. Applicant's admissions as well as the credit reports in the record establish the Government's *prima facie* case. Applicant has demonstrated an inability to pay her bills, including \$11,000 in federal income taxes, and a history of financial problems resulting in unresolved delinquent debts.¹⁴ However, Applicant has submitted sufficient information to mitigate the trustworthiness concerns raised by her finances.

Applicant's financial problems did not occur under circumstances that raise doubts about her trustworthiness, but began after the deaths of her parents just as she was transitioning into adulthood. Her federal tax liability was not incurred as a result of irresponsible or avoidant behavior, but through a misunderstanding of her employment

¹² See Regulation ¶C8.2.1.

¹³ AG ¶ 18.

¹⁴ AG ¶¶ 19(a) and (c).

status. Although she does not have a payment plan in place with the IRS, Applicant has taken definitive steps toward doing so. Now, earning less than \$ 35,000 annually, she is solely responsible for a family of four. Applicant is making a good-faith effort to resolve her delinquent debt. With only \$400 in disposable income each month, Applicant has managed to resolve \$1,200 in delinquent accounts. She also successfully challenged the seven medical debts alleged in the SOR.¹⁵

After reviewing the record, I have no doubts about her suitability for access to sensitive information. In reaching this conclusion, I have also considered the whole-person factors at AG ¶ 2(a). Applicants are not held to a standard of perfection. Although Applicant still has a significant amount of unresolved delinquent debt, her efforts to resolve them are not immaterial. She has established a history of debt repayment and shown her intent to resolve her delinquent accounts. Given this record, it is likely that Applicant will continue to make payments toward her delinquent accounts. Accordingly, her request for access to sensitive information is granted.

Formal Findings

Formal findings for or against Applicant 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.q:	For Applicant

Conclusion

In light of all of the circumstances presented, it is clearly consistent with the interests of national security to grant Applicant access to sensitive information. Applicant's eligibility to occupy a position of trust is granted.

Nichole L. Noel
Administrative Judge

¹⁵ AG ¶¶ 20 (d) – (e).