



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



In the matter of:)	
)	
[NAME REDACTED])	ADP Case No. 14-04763
)	
Applicant for a Position of Public Trust)	

Appearances

For Government: Robert J. Kilmartin, Esq., Department Counsel
For Applicant: *Pro se*

04/29/2015

Decision

MALONE, Matthew E., Administrative Judge:

Applicant incurred student loan and consumer debts she could not immediately repay when she had trouble finding steady employment. She has repaid several of her past-due consumer debts and her student loans are again in good standing. The trustworthiness concerns about her financial problems are mitigated, and her request for eligibility to occupy a public trust position is granted.

Statement of the Case

On February 7, 2014, 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

¹ 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.²

On October 30, 2014, DOD issued a Statement of Reasons (SOR) alleging facts that raise trustworthiness concerns addressed under Guideline F (Financial Considerations).³ Applicant timely responded to the SOR and requested a decision without a hearing. On January 26, 2015, Department Counsel issued a File of Relevant Material (FORM)⁴ in support of the SOR. Applicant received the FORM on February 9, 2015. The record closed on March 19, 2015, when Applicant timely submitted information in response to the FORM and Department Counsel waived objections to admission of Applicant's information. The case was assigned to me on April 1, 2015.

Findings of Fact

Under Guideline F, the Government alleged that Applicant owes \$49,814 for 15 delinquent or past-due debts (SOR 1.a - 1.o), nine of which are for past-due student loans. Applicant admitted all of the allegations except SOR 1.b, which she claimed was paid in November 2014. (FORM, Items 1 and 3). In addition to her admissions, I make the following findings of fact.

Applicant is a 31-year-old single mother of an 11-year-old child. Since January 2014, she has worked for a defense contractor and requires eligibility for a position of trust, because her employer supports management of the health care system used by members of the military. Applicant must be found suitable to be entrusted with personally identifiable information (PII) associated with the health care system's constituents. (FORM, Items 4 and 7)

From 2004 until January 2014, Applicant was employed intermittently while she either cared for her child or attended school. During that period, she was unemployed for a total of about 45 months. Since 2006, Applicant and her child have lived with Applicant's sister and her family. Between December 2007 and August 2008, and between July 2010 and September 2011, Applicant took college-level courses to become certified for positions in the health care field. She earned a certification and an associate's degree. Applicant funded her tuition and living expenses through student loans. After completing her studies, Applicant was unable to find consistent employment that would provide sufficient income for support, as well as for repayment of her debts. (FORM, Items 4 and 7)

When Applicant submitted her EQIP, she disclosed most of the past-due debts alleged in the SOR. Credit reports obtained during her background investigation also documented all of those allegations. The debts at SOR 1.c, 1.d, and 1.g - 1.m are

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

³ See Directive, Enclosure 2. See also 32 C.F.R. § 154, Appendix H (2006).

⁴ See Directive, Enclosure 3, Section E3.1.7. The FORM included seven documents (Items 1 - 7) proffered in support of the Government's case.

delinquent student loans totaling \$47,181. In response to the FORM, Applicant established that SOR 1.c and 1.d are consolidated into a single loan that is the subject of a student loan rehabilitation program. The remaining student loans are in forbearance. (FORM, Items 4 - 6)

The remaining SOR allegations consist of three delinquent cell phone accounts, a delinquent cable television account, and two delinquent credit card accounts. All were incurred before 2013. Applicant's response to the FORM established that she has paid or otherwise resolved all but two of those accounts. There is no indication that Applicant has incurred new unpaid debts since 2013, and she is now gainfully employed in a field related to her studies.

Policies

Positions designated as ADP I/II/III are classified as "sensitive positions."⁵ 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.⁶ The Regulation also requires that DOD contractor personnel are entitled to the procedural protections in the Directive before any adverse determination may be made.⁷

The Directive requires that each decision be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,⁸ 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.

⁵ Regulation, ¶ C3.6.15.

⁶ Regulation, ¶ C6.1.1.1.

⁷ Regulation, ¶ C8.2.1.

⁸ Directive. 6.3.

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 showed that Applicant incurred about \$47,000 in delinquent student loan debt between 2007 and 2011. She also incurred another \$2,600 in delinquent consumer debt before 2013. These facts raised a security concern addressed, in relevant part, 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.

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*).

Applicant was unable to repay her student loans and she fell behind on several consumer credit accounts, because she had difficulty finding consistent, suitable employment until January 2014. She has now repaid most of her consumer credit accounts; she has not incurred new delinquencies in the past two years; and she is working with her student loan lenders to bring her accounts current. Available information supports application of the following 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;
- (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; and

(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.

On balance, Applicant's efforts in this regard are sufficient to mitigate the trustworthiness concerns about her financial problems. In addition to my evaluation of the facts and application of the appropriate adjudicative factors under Guideline F, I 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, and her full disclosure of her debts in her EQIP. 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.o:	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