



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



In the matter of:)
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[NAME REDACTED]) ADP Case No. 14-04817
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Applicant for Position of Trust)

Appearances

For Government: Gina Marine, Esq., Department Counsel
For Applicant: *Pro se*

02/09/2016

Decision

MALONE, Matthew E., Administrative Judge:

Applicant mitigated the trustworthiness concerns raised by her financial problems. Her request for eligibility to occupy a position of trust is granted.

Statement of the Case

On January 30, 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 January 9, 2015, DOD issued Applicant a Statement of Reasons (SOR) alleging facts which 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 August 26, 2015, and I convened a hearing on October 22, 2015. Department Counsel for the Defense Office of Hearings and Appeals (DOHA) presented Government Exhibits (Gx.) 1 - 5.⁴ Applicant testified and presented Applicant's Exhibits (Ax.) A - D. DOHA received the hearing transcript (Tr.) on November 2, 2015.

Findings of Fact

Under Guideline F, the Government alleged that Applicant owed \$27,174 for 17 delinquent or past-due debts (SOR 1.a - 1.q). In response, Applicant denied the debts at SOR 1.m, 1.o, and 1.q. She admitted the remaining allegations and provided an explanatory letter with her response. In addition to the facts established by Applicant's admissions, and based on all available information, I make the following findings of fact.

Information presented at hearing shows that the debt at SOR 1.a is the same as the civil judgment debt at SOR 1.n. SOR 1.a is resolved for Applicant. Also, it was established that SOR 1.m and SOR 1.p are the same debts. Accordingly, SOR 1.m is resolved for Applicant. The total amount in controversy, therefore, is \$19,358.

Applicant is 42 years old. In December 2012, she was hired by a defense contractor to work as a data preparation technician. In August 2014, she was promoted to work as a customer service advocate, which at \$11 an hour, is \$4 an hour more than she earned when she was hired. Applicant's job requires she be eligible for a position of trust because her employer supports management of the health care system used by members of the military, and she must be found suitable to be entrusted with personally identifiable information (PII) associated with the health care system's constituents. Applicant has done well and has a good reputation for reliability and hard work at her place of employment. (Gx. 1; Gx. 2; Ax. A; Tr. 60 - 62)

Applicant and her husband have been married since June 2011. She was also married twice before. She has one child, now age 23, from her first marriage, which ended in March 1996. Applicant's second marriage began in July 2000 and ended by divorce in January 2006. She and her second husband had two children, now ages 17

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).

⁴ Department Counsel also provided a list identifying Gx. 1 - 5. It is included as Hearing Exhibit (Hx.) 1.

and 18. Both children live with Applicant. The older child is attending college. The younger child is autistic and requires medical and related educational services at his high school. Applicant's second husband was often abusive, sometimes violent and suicidal, and has not paid child support since he and Applicant separated. The only money she receives from him are partial social security payments diverted from his own social security benefits. Applicant had to obtain at least two protective orders against him during the late stages of their marriage. The credit card debts alleged in the SOR were obtained during the marriage and used primarily by her ex-husband, who had no ability or intention of paying them. (Gx. 1; Gx. 2; Ax. B; Tr. 54 - 55)

In January 2009, Applicant was fired from a telephone marketing and sales job. She did not meet her quota of sales over a month or two, in part, because of the national economic slowdown. The product she sold is a discretionary purchase for most people and demand had declined steadily starting in 2007. Also, Applicant lost time in the workplace because her autistic child had been placed in residential care in another state. Applicant missed more work than usual traveling to and from the facility to visit her child, to meet with service providers, and to try to resolve child custody disputes with the child's father.

Applicant subsequently was unemployed until October 2009, when she started a retail sales job. She had to leave that job in July 2010 because of the lengthy commute at a time when gas prices were too high and she could not reconcile her work schedule to accommodate her children's needs. After being unemployed until October 2010, Applicant was hired as a part-time bank teller, where she worked until her position was eliminated in September 2012. From then until being hired for her current job, Applicant worked in retail sales and as a stock clerk or cashier for different employers, never making more than a minimum wage. She was unemployed between September and November 2012, and between May and August 2013. She continued to work part-time at a large retail store for a few months after she started her current job. (Gx. 1; Gx. 2; Tr. 26 - 38, 52 - 54, 57 - 61)

When Applicant submitted her EQIP, she disclosed 17 delinquent or past-due debts. Credit reports obtained during her background investigation further document all of the debts listed in the SOR. Applicant admits that, in addition to debts she incurred as a result of her second marriage and other unforeseen circumstances, she did not manage her personal finances properly until about 2012, when she and her current husband moved to the state where they now live. For example, she acknowledged that she should not have bought the car that is the subject of the SOR 1.n repossession debt. Despite being able to make payments on it for three years, she eventually realized that she was incurring other debts so she could make her car payments. (Gx. 1 - 5; Tr. 33 - 35, 41 - 45)

Since 2012, Applicant and her husband have not used personal credit other than to try and rebuild their credit score. They have a store credit card they used periodically but only when they are able to pay it off immediately. Applicant has attended financial management classes at work and is starting to save, albeit in small amounts, for

retirement. Most of her spare income is put in a savings account for her youngest child's benefit. Nonetheless, they do not have the means to resolve the debts alleged in the SOR. A financial counselor also advised them that some of the debts are so old that, if they contacted those creditors to set up repayment plans, collection actions would be renewed and the accounts would again be transferred among collection agencies. Currently, none of the listed creditors are actively trying to collect their debts. Applicant and her husband also cannot afford bankruptcy filing fees. They file and pay their taxes on time each year. (Gx. 2; Ax. C and D; Tr. 38 - 41, 62 - 72)

Policies

Positions designated as ADP I and II 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

Each decision must 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, commonly referred to as the "whole-person" concept, listed in the guidelines at AG ¶ 2(a).⁹ 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.

⁵ Regulation, ¶ C3.6.15.

⁶ Regulation, ¶ C6.1.1.1.

⁷ Regulation, ¶ C8.2.1.

⁸ Directive, 6.3.

⁹ "(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."

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

Aside from the duplicate debts alleged at SOR 1.a and 1.p, 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 is clear that Applicant's failure to resolve her debts is due solely to an inability to do so and not any unwillingness on her part.

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;

(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.

Most of the alleged debts are still outstanding. However, the circumstances that gave rise to those debts no longer exist. Applicant's indebtedness no longer reflects poor judgment or unreliability. She and her current husband are now managing their finances soundly and have not generated any new unpaid debts. They meet all of their regular obligations, and have started saving for retirement. Applicant has benefitted from employer-sponsored financial counseling. Her current finances are characterized by prudent use of personal credit and an improved ability to properly manage her finances. Based on the foregoing, the mitigating conditions at AG ¶¶ 20(a) - (c) apply.

The presence of ongoing unpaid debts is not, by itself, disqualifying. Attention is also paid to a person's judgment, trustworthiness, and reliability in light of adverse background information. In this case, Applicant has established that she is now managing her finances responsibly, that the circumstances underlying her earlier financial problems (unemployment, abusive husband, etc.) are not likely to recur, and that her indebtedness no longer reflects adversely on her trustworthiness. On balance, the concerns raised by Applicant's debts is mitigated. I also 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). A fair and commonsense assessment of the record evidence as a whole shows that Applicant is unlikely to again experience such financial problems, and that she has the requisite good judgment and trustworthiness for a position of trust.

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.q:	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