



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



In the matter of:	)	
	)	
[NAME REDACTED]	)	ADP Case No. 14-05463
	)	
Applicant for Position of Trust	)	

**Appearances**

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

11/21/2015

**Decision**

MALONE, Matthew E., Administrative Judge:

Applicant accrued significant delinquent debt as a result of unforeseen circumstances. However, in response to her financial problems she has not acted responsibly to resolve even the smallest of her debts. She did not establish that she will be able to avoid financial problems in the future. Her request for eligibility to occupy a position of trust is denied.

**Statement of the Case**

On February 19, 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 February 18, 2015, DOD issued Applicant a Statement of Reasons (SOR) alleging facts which 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 July 9, 2015, and I convened a hearing on August 6, 2015. Department Counsel for the Defense Office of Hearings and Appeals (DOHA) presented Government Exhibits (Gx.) 1 - 6.<sup>4</sup> Applicant testified and presented Applicant's Exhibits (Ax.) A - C. DOHA received the hearing transcript (Tr.) on August 12, 2015. I held the record open after the hearing to receive from Applicant additional relevant information. The record closed on August 18, 2015, when I received an 11-page submission that is included, without objection, as Ax. D.<sup>5</sup>

### **Findings of Fact**

Under Guideline F, the Government initially alleged that Applicant owes \$19,602 for 21 delinquent or past-due debts (SOR 1.a - 1.u). On March 16, 2015, Applicant responded by admitting with explanations the debts at SOR 1.a, 1.b, 1.d, 1.f - 1.h, 1.j and 1.k. She denied with explanations the remaining debts. On June 11, 2015, Department Counsel amended the SOR to add as SOR 1.v a past-due debt for \$8,024, which Applicant admitted.<sup>6</sup> 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 46 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) associated with the health care system's constituents. She was hired for her current position in April 2013. Applicant's record of performance at work has been satisfactory. She has a good reputation in the workplace for reliability and for being a team player. (Gx. 1; Ax. A; Ax. B; Tr. 60)

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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> For reasons stated at the hearing, I *sua sponte* excluded Gx 6. (Tr. 23 - 29) Department Counsel also provided a copy of the letter forwarding to Applicant advance copies of Gx. 1 - 7, included as Hearing Exhibit (Hx.) 1, and a list identifying Gx. 1 - 6 (Hx. 2).

<sup>5</sup> Department Counsel's memorandum forwarding Ax. D and waiving objection thereto is included as Hx. 3.

<sup>6</sup> Department Counsel's amendment and Applicant's response thereto are included as Hx. 4.

From September 1989 until January 2001, Applicant worked as a state employee at a mental health facility. She left that job for better pay as a certified nursing assistant (CNA), a field in which she worked until July 2009. At that time, she injured her back lifting a patient and was unable to continue working in that capacity. Applicant was out of work and receiving workmen's compensation until February 2010, when she tried to return to her old job but found it had been eliminated. She was unemployed from then until she was hired for her current position. (Answer; Gx. 1; Gx. 2; Tr. 47, 54 - 60)

Applicant was married from May 1994 until July 2009. She and her ex-husband, who is now deceased, separated in September 1998. An attempt at reconciliation a year later failed, and they eventually divorced. They had two children, now ages 15 and 17. (Answer; Gx. 1; Gx. 2)

Applicant and her children have lived with Applicant's sister since 1998. In January 2012, Applicant's sister lost her job of 21 years and was unemployed until September 2014. After Applicant was hired for her current job in April 2013, she was the sole income earner in their household. Several debts that Applicant owed before she was injured on the job fell into delinquency. (Answer; Gx. 2; Tr. 48 - 54, 62 - 63)

When Applicant submitted her EQIP, she disclosed one past-due debt for a credit card account she opened in 2007. Credit reports obtained during her background investigation reflect all of the debts alleged in the SOR. The debts at SOR 1.a and 1.b represent auto loans on which Applicant co-signed with her sister to purchase cars. The debt at SOR 1.f is for a personal loan Applicant obtained and later defaulted on in 2010. The debts at SOR 1.g, 1.h, and 1.k are for delinquent cell phone accounts, two of which Applicant opened for the benefit of others. The debts at SOR 1.m - 1.p and 1.t are each for less than \$50, but have been delinquent for several years. (Answer; Gx. 1 - 5; Tr. 40 - 45, 71 - 77)

Applicant was interviewed about her debts by a Government investigator in April 2013. At that time, she indicated she would seek credit counseling or other financial assistance. She stated that she wanted to buy a house and needed either to pay or verify the accuracy of the debts attributed to her in her credit report. In January 2015, Applicant retained for a monthly fee the services of a law firm specializing in credit report inquiries and disputes. In her post-hearing submission, Applicant provided an updated report of the actions taken by that firm. Several of the debts at issue here were listed as having been "suspended"; however, the record is silent as to what that means. Applicant has not taken any direct action to repay or otherwise resolve any of the debts alleged in the SOR. (Answer; Gx. 1 - 5; Ax. C; Ax. D; Tr. 67 - 68)

As to her current financial health, Applicant acknowledged that she lives paycheck to paycheck, with less than \$200 remaining each month after expenses. An income tax refund of about \$5,000 for tax year 2014 was used for shopping and other unspecified expenses. Applicant has not articulated a plan for resolving her debts other than to rely on the law firm to remove debts from her credit report. Applicant has taken

on-line college courses since February 2011. She anticipates her student loans, currently in deferment, will total about \$24,000. (Tr. 67, 88 - 101)

## Policies

Positions designated as ADP I and II are classified as “sensitive positions.”<sup>7</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>8</sup> The Regulation also requires that DOD contractor personnel are entitled to the procedural protections in the Directive before any adverse determination may be made.<sup>9</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>10</sup> and consideration of the pertinent criteria and adjudication policies in the adjudicative guidelines. 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. Decisions must also reflect consideration of the factors, commonly referred to as the “whole-person” concept, listed in the guidelines at AG ¶ 2(a).<sup>11</sup>

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.

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<sup>7</sup> Regulation, ¶ C3.6.15.

<sup>8</sup> Regulation, ¶ C6.1.1.1.

<sup>9</sup> Regulation, ¶ C8.2.1.

<sup>10</sup> Directive. 6.3.

<sup>11</sup> “(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.”

## Analysis

### Financial Considerations

Available information is sufficient to support all of the SOR allegations. This record shows that Applicant has accrued delinquent debts for a variety of reasons since about 2008, and that those debts have not yet been paid or otherwise resolved. These facts raise a trustworthiness concern about Applicant's finances that is expressed, 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*).

Additionally, I have 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;

(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.<sup>12</sup>

The mitigating condition at AG ¶ 20(a) does not apply because Applicant still has unresolved debts. AG ¶ 20(b) applies, in part, because Applicant's debts arose from, or were exacerbated by loss of income due to Applicant's injury, as well as her sister's loss of income until late 2014. However, full application of this mitigating condition requires

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<sup>12</sup> The mitigating conditions at AG ¶¶ 20(e) and 20(f) are not pertinent to these facts and circumstances.

that Applicant show she acted responsibly in trying to correct her financial situation. Applicant did not do so. After her subject interview in 2013, she did not take any action to resolve even the smallest of her debts. It was not until January 2015 that Applicant retained the assistance of a credit repair law firm. None of Applicant's information reflects a concerted effort to satisfy any of her creditors. AG ¶ 20(b) does not apply. For the same reasons, I find there has been no good-faith effort to repay her debts. Accordingly, the mitigating condition at AG ¶ 20(d) does not apply.

As to the application of AG ¶ 20(c), Applicant's use of the credit repair law firm does not mean she has sought help in managing her finances or resolving her debts. Applicant's approach may help raise her credit score so she can qualify for a mortgage. But it does not show that she her financial house is in order or that she will not experience similar problems in the future. AG ¶ 20(c) does not apply.

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 lack of response to her financial problems after her subject interview. Also, her chosen method of addressing her debts does not recognize the importance of actually repaying her debts, and making sound financial decisions based on available resources. The positive information about her workplace performance and reputation for reliability is not sufficient to overcome the doubts about her judgment that have been raised by her financial problems. Because protection of national security is the principal focus of these adjudications, any remaining doubts must be resolved against the Applicant.

### **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.a - 1.v:	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