



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



In the matter of:)	
)	
[NAME REDACTED])	ADP Case No. 14-04922
)	
Applicant for Position of Trust)	

Appearances

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

04/13/2015

Decision

MALONE, Matthew E., Administrative Judge:

Applicant’s financial problems arose when she lost her job as a result of her company’s unexpected relocation in 2010. However, her current financial stability and her efforts to resolve her past-due debts reflect well on her judgment and reliability. Applicant’s request for eligibility to occupy a position of trust is granted.

Statement of the Case

On April 3, 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 investigation, adjudicators for the Department of Defense (DOD) were unable to

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

determine that it is clearly consistent with the interests of national security to grant Applicant's request for a position of trust.²

On November 3, 2014, DOD issued 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 and 2.⁴ Applicant testified and presented Applicant's Exhibits (Ax.) A - D. I held the record open after the hearing to receive additional relevant information. Applicant's timely post-hearing submissions are included in the record as Ax. E - L. All exhibits were admitted without objection.⁵ DOHA received the hearing transcript (Tr.) on April 1, 2015.

Findings of Fact

Under Guideline F, the Government alleged that Applicant owes \$60,223 for eight delinquent or past-due debts (SOR 1.a - 1.h). The debt at SOR 1.b is for a student loan and comprises about 85 percent of the total debt at issue. Applicant admitted all of the allegations. 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 37 years old and is employed as an information technology (IT) systems support technician by a defense contractor. It is 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 related personally identifiable information (PII). Applicant studied computer science in college between 1997 and 2001 but did not finish her degree. She financed her education through student loans, which became delinquent due to non-payment in 2010. Her total student loan debt is alleged at SOR 1.b. (Gx. 1; Gx. 3; Tr. 10, Tr. 37)

Applicant and her husband have been married since April 2003 and have one child, age 10. Applicant's husband was laid off shortly after they were married, but since

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 The Government's Exhibit List is included in the record as Hearing Exhibit (Hx.) 1.

⁵ Department Counsel's email forwarding Ax. E - L and waiving objections to their admission is included as Hx. 2.

2011 he has been self-employed as a delivery truck driver. He averages about \$14,000 in annual income after expenses. (Gx.1; Tr. 28 - 29, 34 - 35, 37, 45 - 47)

Between 2002 and 2010, Applicant held an IT position with a national business technology corporation. She left that job because the company moved her job to a different state and Applicant was unable to relocate for personal reasons. At the end of her employment in 2010, she was earning about \$45,000 annually. After a few months of unemployment in 2011, Applicant was hired for an IT job that paid about half of what she had previously earned. Her situation improved somewhat in November 2011, when her husband started earning a steady income and she obtained an IT job that paid her about \$32,000 annually until she was hired for her current job in 2013. She now earns about what she was making before she lost her job in 2010. (Gx. 1; Tr. 29 - 33)

When Applicant submitted her EQIP, she disclosed most of the debts alleged in the SOR. A credit report obtained by the Government during Applicant's background investigation documents all of the SOR allegations. (Gx. 1; Gx. 2)

When Applicant became unemployed at the end of 2010, she was unable to keep paying her student loans and several other obligations. The \$2,211 state tax debt alleged at SOR 1.a has been reduced to about \$1,600 through diversion of subsequent income tax refunds. The \$50 debt for medical services alleged at SOR 1.h was incurred for ambulance services and is being collected as part of her state tax debt. Additionally, Applicant has established a monthly repayment plan. Although not alleged in the SOR, Applicant disclosed she is in an income-based repayment plan to satisfy a federal income tax debt of about \$7,000. (Answer; Ax. A; Ax. F; Tr. 25 - 26, 39, 43 - 44)

As to her student loan debt, Applicant is now participating in an income-based student loan rehabilitation program. After she makes several months of minimum payments to a collection agency, her loan will again be listed as current and she will begin making larger payments to the original creditor. (Answer; Ax. B; Ax. E; Tr. 26)

The delinquent credit card debt alleged at SOR 1.c has been cancelled by the creditor; however, the value of the debt will be attributable to Applicant and her husband as income for the 2014 tax year. Applicant is also making minimum payments each month to the creditors listed in SOR 1.d and 1.f. The latter is a delinquent cell phone account and SOR 1.d is a delinquent personal loan. Applicant has been unable to obtain information about the debts at SOR 1.e, another delinquent cell phone account, or SOR 1.g, a delinquent medical account. (Answer; Ax. C)

Applicant's current finances appear stable. She is able to pay all of her regular monthly expenses, and she has not incurred any new unpaid debts since being hired for her current job. According to a personal financial statement (PFS) provided after the hearing, she has about \$800 remaining each month. (Ax. L; Tr. 39 - 47)

Applicant has established a solid performance record in her current job. She has been recognized several times for her excellent work through small monetary awards, and her performance evaluations are superior. (Ax. G - K)

Policies

Positions designated as ADP I/II/III are classified as “sensitive positions.”⁶ 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.⁷ The Regulation also requires that DOD contractor personnel are entitled to the procedural protections in the Directive before any adverse determination may be made.⁸

The Directive requires that each decision be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,⁹ 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

⁶ Regulation, ¶ C3.6.15.

⁷ Regulation, ¶ C6.1.1.1.

⁸ Regulation, ¶ C8.2.1.

⁹ 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 the latter condition, available information strongly suggests this is a case of inability rather than unwillingness to pay her debts.

The following AG ¶ 20 mitigating conditions are available¹⁰ to Applicant if based on sufficient information:

- (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;

¹⁰ The mitigating conditions at AG ¶¶ 20(e) (*the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue*) and 20(f) (*the affluence resulted from a legal source of income*) are not pertinent to these facts and 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.

All of these mitigating conditions apply. Applicant's financial problems are being addressed, she has no new unpaid debts, and her debt resolution efforts reflect well on her judgment and reliability. The conditions from which they arose are not likely to recur. Available information shows Applicant's financial problems started in 2010, when she could not relocate her family to stay employed. For the next few years, she was either unemployed or underemployed. Since she has regained her previous level of income, Applicant has either resolved or is in the process of repaying most of her past-due debts. Applicant's current finances show that she is able to continue making her payments while maintaining enough positive cash flow to avoid future unforeseen circumstances. On balance, Applicant has mitigated the trustworthiness concerns about her financial problems.

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 candor in disclosing her financial problems and her positive record of performance at work. In combination with her improved finances and her efforts to resolve her past-due debts, this positive information supports a fair and commonsense determination that Applicant is suitable to occupy 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.h: 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