



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



In the matter of:	)	
	)	
[NAME REDACTED]	)	ADP Case No. 14-07056 <sup>1</sup>
	)	
Applicant for Position of Trust	)	

**Appearances**

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

02/25/2016

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**Decision**

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MALONE, Matthew E., Administrative Judge:

Applicant did not mitigate the trustworthiness concerns raised by her financial problems. Her request for eligibility to occupy a position of trust is denied.

**Statement of the Case**

On April 24, 2014, Applicant submitted an Electronic Questionnaire for Investigations Processing (EQIP) to obtain eligibility for an ADP I/II/III position<sup>2</sup> for her job with a defense contractor. After reviewing the results of the ensuing background

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<sup>1</sup> The case number listed on the SOR (14-07506) is a typographic error.

<sup>2</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>3</sup>

On June 3, 2015, DOD issued Applicant a Statement of Reasons (SOR) alleging facts which raise trustworthiness concerns addressed through the adjudicative guideline (AG)<sup>4</sup> 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 21, 2015. Department Counsel for the Defense Office of Hearings and Appeals (DOHA) presented Government Exhibits (Gx.) 1 - 5.<sup>5</sup> Applicant testified and presented Applicant's Exhibits (Ax.) A<sup>6</sup> - E. DOHA received the hearing transcript (Tr.) on October 30, 2015.

### **Findings of Fact**

Under Guideline F, the Government alleged that Applicant owed \$79,398 for 20 delinquent or past-due debts (SOR 1.a - 1.t). In response, Applicant denied, with explanations, the debts at SOR 1.c - 1.f, 1.h, 1.i, 1.l - 1.n, and 1.p - 1.t. Applicant admitted, with explanations, the remaining allegations.

All of the debts alleged in the SOR are documented by credit reports produced by the Government (Gx. 3 - 5), by Applicant's disclosures in her admissions to the SOR, in her EQIP (Gx. 1), and during a personal subject interview with a Government investigator in May 2014 (Gx. 2). However, it was established at hearing that SOR 1.s alleged the same debt as SOR 1.a, and that SOR 1.t alleged the same debt as SOR 1.f. Applicant further established that the debt at SOR 1.f was not properly attributed to her and has been resolved. (Ax. E) Accordingly, the allegations at SOR 1.f, 1.s, and 1.t are concluded for Applicant, and the total amount of indebtedness at issue in this case is \$29,485. Based on all available information, I make the following additional findings of fact.

Applicant is 48 years old. Since January 2013, she has been employed by a defense contractor as a data preparation technician. Her job requires eligibility for a position of trust because 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. Applicant has a good reputation at work. Her supervisor regards her as "responsible, sincere, and trustworthy." (Gx. 1; Ax. A; Ax. B)

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<sup>3</sup> Required by the Regulation, as amended, and by DOD Directive 5220.6, as amended (Directive).

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

<sup>6</sup> Ax. A consists of the documents included with Applicant's Answer. See Tr. 9 - 12.

Applicant was married from December 1993 until divorcing in October 2008. She and her ex-husband had one child, who is now 20 years old and attending college. Applicant remarried in October 2014. Her second husband was a mechanic, but is now disabled and receiving about \$600 weekly in state and federal benefits. (Answer; Gx. 1; Gx. 2; Tr. 72 - 73, 75 - 76, 80)

Applicant worked as an office manager in a non-governmental business from April 2004 until December 2012. Applicant did not have health insurance during this time. It was not until she started her current position in January 2013 that she had effective medical insurance; however, her current medical insurance covers only eighty percent of her medical costs. Applicant is responsible for the other twenty percent. (Gx. 2; Tr. 29 - 35, 37 - 38)

In May 2012, she was in a car accident caused by a drunk driver. Her car was totaled and she broke her neck in two places. Applicant was unable to work for about 11 weeks and had no income during that time. She received a \$35,000 settlement in September 2012. (Gx. 1; Gx. 2; Tr. 42 - 44, 48 - 51)

When she submitted her EQIP, Applicant disclosed two past-due debts for medical services. Subsequent credit reports obtained by Government investigators documented the rest of the debts attributed to Applicant. This information served as the basis for a discussion of her financial problems during Applicant's May 2014 subject interview with a Government investigator. During her subject interview, and in her response to the SOR, Applicant stated that she would contact her creditors and make arrangements to pay them to the extent her resources would allow. She presented information at her hearing showing that the debt at SOR 1.f was for her ex-husband's vehicle loan and that the lien on that vehicle was satisfied and released in March 2014. Applicant did not present any other information showing that she has contacted her creditors or established repayment plans for any of her debts. (Answer; Gx. 1; Gx. 2; Ax. E; Tr. 74)

Applicant did not apply any of the \$35,000 settlement funds to the resolution of her medical bills, the single largest of which is \$15,855, as alleged at SOR 1.g. Applicant was aware of that debt when she received her settlement. Applicant used the settlement proceeds to put a \$7,000 down payment on a new car to replace the one that was totaled in the car accident. She also claims to have paid a \$1,000 medical bill, which she did not otherwise identify. Applicant and her husband also received a refund from their 2014 income taxes of about \$5,848. None of that money was used to repay any of her past-due medical bills, five of which (SOR 1.e, and 1.o - 1.q) are for less than \$100 each. Five other medical debts (SOR 1.j - 1.n) are for less than \$200 each. (Gx. 2 - 5; Ax. C; Tr. 51 - 57, 65 - 66, 78, 81 - 82)

Applicant claimed that the \$597 debt alleged at SOR 1.i for a delinquent Sears credit card was paid several years ago. She did not present any documentation to support her claim, but this debt does not appear on the most recent credit reports available. (Answer; Gx. 5; Ax. D; Tr. 69)

The \$170 debt at SOR 1.j arose when Applicant let a friend use her social security number to qualify for a new cell phone account. Applicant's friend then failed to pay the bill as required. Applicant acknowledged that this is her responsibility to pay. (Answer; Gx. 2 - 5; Tr. 70)

Applicant is a Type 1 diabetic. In the past two years, she has incurred numerous debts for the costs of related treatments and surgeries that are not covered by her insurance. She submitted information about her current financial standing. A personal financial statement she submitted with her Answer shows that she has little left over each month after meeting her current expenses and recurring medical costs, which Applicant covers using her income. Applicant's husband pays for their groceries, utilities, and other household expenses. Together, they live in a house owned by her parents for little or no rent. As of the hearing, Applicant was a month past due on her monthly car payment. Applicant has consulted with two financial counseling and debt management companies, but she did not use their services because she could not afford the repayment plans they proposed. (Answer; Gx. 2; Ax. A; Tr. 35 - 36, 38, 41, 76 - 78)

## **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>

Each decision must 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. 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 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

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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."

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 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 was sufficient to support all of the SOR allegations, except for SOR 1.f, 1.s, and 1.t. The facts established by the remaining allegations reasonably 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 [sensitive] 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*).

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;

(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;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(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.<sup>12</sup>

Applicant's information was only sufficient to establish AG ¶ 20(e), but only as to the duplicate debts and her ex-husband's car loan debt alleged at SOR 1.f. Her other claims that some of the debts might not be valid were not supported by any reliable information.

None of the other mitigating conditions under this guideline apply based on the information presented. Applicant continues to accrue unpaid medical debts, but she is not in contact with her creditors. The past-due debts alleged in the SOR remain largely unaddressed, despite her receipt of sufficient funds from her 2012 settlement and an income tax refund in early 2015 to pay most of the debts alleged. At a minimum, she could have addressed the ten alleged debts of less than \$200 each. It is true that Applicant's financial problems have been caused or exacerbated by events beyond her control. But her failure to act responsibly when she had sufficient resources with which to resolve her debts reflects poorly on her judgment and reliability. She did not follow through in her consultations with credit counseling resources, and her current finances are not sound. Finally, one of her debts arose when she let a friend use her personal information to obtain a cell phone account. Such conduct runs contrary to the most fundamental expectations of one in whom sensitive personal information of others might be entrusted. On balance, Applicant has not mitigated the trustworthiness concerns about her failure to meet her financial obligations.

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). Applicant has a good reputation in the workplace for trustworthiness and reliability. However, that positive information is not sufficient, given the absence of other information showing financial responsibility and good-faith efforts to resolve her debts, to overcome the doubts raised by the Government's information. Because protection of the interests of national security is the principal purpose of these adjudications, any remaining doubts must be resolved against the Applicant.

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

## **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.f, 1.s, 1.t:               For Applicant

Subparagraphs 1.a - 1.e, 1.g - 1.r:       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.

MATTHEW E. MALONE  
Administrative Judge