



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



In the matter of:

Applicant for Public Trust Position

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ADP Case No. 14-03468

**Appearances**

For Government: Robert J. Kilmartin, Esq., Department Counsel

For Applicant: *Pro se*

08/27/2015

**Decision**

COACHER, Robert E., Administrative Judge:

Applicant has not mitigated the financial considerations trustworthiness concerns. Eligibility for access to sensitive information is denied.

**Statement of the Case**

On August 25, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns under Guideline F, financial considerations. DOD acted under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); DOD Regulation 5200.2-R, *Personnel Security Program*, dated January 1987, as amended (Regulation); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

Applicant answered (Ans.) the SOR on September 11, 2014, and requested a hearing before an administrative judge. The case was assigned to me on April 27, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 5, 2015, and the hearing was convened as scheduled on May 20, 2015. The Government offered exhibits (GE) 1 through 4, which were admitted into evidence

without objection. Applicant testified and offered exhibits (AE) A and B, which were admitted into evidence without objection. The record was held open for Applicant to submit additional information. Applicant submitted AE C, which was admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on May 28, 2015.

### **Findings of Fact**

Applicant admitted the following SOR allegations: ¶¶ 1.a - 1.g, 1.j - 1.l, 1.n - 1.o, 1.r - 1.t, 1.w - 1.z, and 1.bb. She denied ¶¶ 1.h - 1.i, 1.m, 1.p - 1.q, 1.u - 1.v, 1.aa, and 1.cc - 1.dd. The admissions are incorporated as findings of fact. After a review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is a 56-year-old employee of a federal contractor. She has worked for this employer since September 2014. She is a technical school graduate. She is married, has three adult children, and is raising her grandchild. She receives \$164 monthly from the state to help support her grandchild. She has no military service and this is her first time seeking a trustworthiness determination.<sup>1</sup>

The SOR alleges 29 delinquent debts totaling \$98,892 and a Chapter 7 bankruptcy case in 2007. The debts were listed in credit reports from March 2013 and April 2014.<sup>2</sup>

Applicant's financial problems arose because of a period of unemployment from November 2003 to February 2004 and having to move to a different location in 2009 to care for her ill father. She has not paid any of the debts listed in the SOR. She stated that she did not have the money to pay them or that she forgot about them. In addition to the Chapter 7 bankruptcy in 2007, which discharged approximately \$15,000 worth of debt, she also filed a Chapter 7 bankruptcy in 1999 and had her debts discharged. The status of the SOR-related debts is as follows:<sup>3</sup>

**SOR ¶¶ 1.b, 1.o, 1.x, and 1.y (student loan debt- \$18,305; \$32,006; \$17,857; \$17,648):**

Applicant's credit reports show that she has the above delinquent student loan accounts. She presented documentation showing the lender approved her request for forbearance for three of the accounts. According to the documents, the forbearance ends in August 2015. She did not provide information about her plans to pay the debts after the forbearance period ends. These accounts are not resolved.<sup>4</sup>

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<sup>1</sup> Tr. at 5, 22, 26, 27; GE 1.

<sup>2</sup> GE 3-4.

<sup>3</sup> Tr. at 23, 42, 45-46, 48, 56; Ans.

<sup>4</sup> Tr. at 32-33, 36; AE B, C.

**SOR ¶¶ 1.c - 1.e, and 1.u (consumer debts- \$1,820; \$1,369; \$988; \$1,125):**

SOR ¶¶ 1.e and 1.u are duplicate debts. SOR ¶ 1.u is found in favor of Applicant. Applicant failed to provide documentation of payments or payment plans for these admitted collection accounts. These debts, other than SOR ¶ 1.u, are unresolved.<sup>5</sup>

**SOR ¶¶ 1.f, 1.j – 1.k, 1.t, and 1.z (medical debts \$648; \$200; \$200; \$26; \$559):**

SOR ¶¶ 1.j and 1.k are duplicate accounts. SOR ¶ 1.k is found in favor of Applicant. Applicant failed to provide documentation of payments or payment plans for these admitted collection accounts. These debts, other than SOR ¶ 1.k, are unresolved.<sup>6</sup>

**SOR ¶¶ 1.g and 1.bb (telecommunications debts- \$533; \$1,820):**

Applicant failed to provide documentation of payments or payment plans for these admitted collection accounts. These debts are unresolved.<sup>7</sup>

**SOR ¶¶ 1.h, 1.i, 1.l, 1.m, 1.p, 1.q, 1.v, 1.aa, and 1.dd (miscellaneous debts- \$350; \$260; \$60; \$774; \$339; \$635; \$883):**

Applicant denied these accounts, but provided no supporting documentation. She also indicated SOR ¶¶ 1.p and 1.q were taken off her credit report, but she failed to provide evidence of payment or resolution. These debts are unresolved.<sup>8</sup>

**SOR ¶¶ 1.n, 1.r, 1.s, 1.w, and 1.cc (miscellaneous debts- \$33; \$87; \$73; \$116; \$33):**

SOR ¶¶ 1.n and 1.cc are duplicate accounts. SOR ¶ 1.cc is found in favor of Applicant. Applicant admitted these delinquent accounts. Applicant stated that she could pay many of these small-balance accounts immediately, but she failed to provide documentation of payments or payment plans for them. These debts, other than SOR ¶ 1.cc, are unresolved.<sup>9</sup>

According to her trustworthiness interview in March 2013, Applicant contacted a debt-relief company to resolve her debts. During her hearing testimony, she admitted that she declined to use that company. Instead, she contacted an attorney about filing a third Chapter 7 bankruptcy case. The attorney provided a letter in May 2015 stating he

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<sup>5</sup> Ans.

<sup>6</sup> Ans.

<sup>7</sup> Ans.

<sup>8</sup> GE 3-4; Ans.

<sup>9</sup> Ans.

had been retained, that a petition would be filed in the next 30 days, and that a discharge “should be entered within 6 months.” Applicant did not provide any documentation about her current financial status.<sup>10</sup>

## **Policies**

Positions designated as ADP I and ADP II are classified as “sensitive positions.” (See Regulation ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3.) “The standard that must be met for . . . assignment to sensitive duties is that, based on all available information, the person’s loyalty, reliability, and trustworthiness are such that . . . assigning the person to sensitive duties is clearly consistent with the interests of national security.” (See Regulation ¶ C6.1.1.1.) The Deputy Under Secretary of Defense (Counterintelligence and Security) Memorandum, dated November 19, 2004, indicates trustworthiness adjudications will apply to cases forwarded to DOHA by the Defense Security Service and Office of Personnel Management. Department of Defense contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination may be made. (See Regulation ¶ C8.2.1.)

When evaluating an applicant’s suitability for a public trust position, the administrative judge must consider the disqualifying and mitigating conditions in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to [sensitive] information will be resolved in favor of national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion as to obtaining a favorable trustworthiness decision.

A person who seeks access to sensitive information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The

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<sup>10</sup> Tr. 46; AE A; Ans.

Government reposes a high degree of trust and confidence in individuals to whom it grants access to sensitive information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of sensitive information.

### **Analysis**

#### **Guideline F, Financial Considerations**

The trustworthiness concern for financial considerations is set out in 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.

The guideline notes several conditions that could raise trustworthiness concerns under AG ¶ 19. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant has numerous delinquent debts and a Chapter 7 bankruptcy. The evidence is sufficient to raise the above disqualifying conditions.

Several financial considerations mitigating conditions under AG ¶ 20 are potentially applicable:

- (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;

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.

Applicant's debts are recent, multiple, and cast doubt on her reliability, trustworthiness, and good judgment. No evidence of debt payments was offered, rather Applicant intends to rely on a Chapter 7 bankruptcy discharge for the third time since 1999 to resolve these debts. No plan was offered about how she intended to repay her student loan debt once the forbearance period ends in August 2015. AG ¶ 20(a) is not applicable.

She was unemployed for a period and had to tend to her ill father in 2009. These are conditions beyond her control. She has made no effort to resolve the debts. The record evidence does not support that Applicant's actions were responsible under the circumstances. AG ¶ 20(b) is partially applicable.

Other than inquiring into the possibility of filing a Chapter 7 bankruptcy case, there is no evidence of financial counselling. Given the unpaid status of the SOR debts, there are not clear indications that Applicant's financial problems are under control. Evidence of good-faith efforts to pay or resolve the remaining debts is lacking. The debts that were duplicate are found in favor of Applicant. AG ¶ 20(c) does not apply and ¶ 20(d) partially applies.

Applicant failed to supply documentary evidence to support her dispute of any of the debts. AG ¶ 20(e) does not apply.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for access to sensitive information by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for access to sensitive information must be an overall commonsense assessment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

I considered the circumstances by which Applicant became indebted. However, I also considered that she has taken no action to resolve her financial situation. She has not established a meaningful track record of financial responsibility, which causes me to question her ability to resolve her debts.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for access to sensitive information. For all these reasons, I conclude Applicant has not mitigated the financial considerations trustworthiness concerns.

### **Formal Findings**

Formal findings for or against Applicant 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.j:	Against Applicant
Subparagraph: 1.k:	For Applicant
Subparagraphs: 1.l – 1.t:	Against Applicant
Subparagraph: 1.u:	For Applicant
Subparagraphs: 1.v – 1.bb:	Against Applicant
Subparagraph: 1.cc:	For Applicant
Subparagraph: 1.dd:	Against Applicant

### **Conclusion**

In light of all of the circumstances, it is not clearly consistent with national security to grant Applicant eligibility for access to sensitive information. Eligibility for access to sensitive information is denied.

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Robert E. Coacher  
Administrative Judge