



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



In the matter of:

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ADP Case No. 14-03813

Applicant for Public Trust Position

**Appearances**

For Government: Caroline Heintzelman, Esquire, Department Counsel

For Applicant: *Pro se*

09/15/2015

**Decision**

HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, I conclude that Applicant's eligibility to occupy a public trust position is granted.

**Statement of the Case**

Applicant completed an Electronic Questionnaires for Investigations Processing (e-QIP) on January 17, 2014, which she signed on January 21, 2014. The Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) detailing the trustworthiness concerns under Guideline F, financial considerations, on March 18, 2015. The action was taken under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *Adjudicative Guidelines For Determining Eligibility for Access to Classified Information* (AG) implemented on September 1, 2006.

Applicant acknowledged receipt of the SOR on March 25, 2015. She answered the SOR in writing on April 8, 2015, and she requested a hearing before an administrative judge with the Defense Office of Hearings and Appeals (DOHA). Department Counsel was prepared to proceed on May 28, 2015, and I received the case assignment on June 8, 2015. DOHA issued a notice of hearing on June 24, 2015, and I convened the hearing as scheduled on July 14, 2015. The Government offered four exhibits (GE), 1 through 4, which were received, marked, and admitted into evidence without objection. Applicant testified. She submitted ten exhibits (AE), A through J, which were received, marked, and admitted into evidence without objection. DOHA received the transcript of the hearing (Tr.) on July 21, 2015. I held the record open until August 4, 2015, for the submission of additional matters. Applicant timely submitted four exhibits, AE K through AE N, which were received, marked, and admitted without objection. The record closed on August 4, 2015.

### **Findings of Fact**

In her Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.b and 1.g of the SOR, with explanations. She denied the factual allegations in ¶¶ 1.a and 1.c - 1.f of the SOR.<sup>1</sup> She also provided additional information to support her request for eligibility for a public trust position.

Applicant, who is 34 years old, works as a prior authorization and client administration coordinator for a DOD contractor. She began her current employment in January 2014. She has not been disciplined at work nor has she been fired from a job or left before being fired. Applicant works from home.<sup>2</sup>

Applicant graduated from high school. She enlisted in the United States Air Force in December 1999, and she received an honorable discharge in December 2007. After leaving the Air Force, Applicant worked for a contractor to a major university as a military enrollment advisor from January 2008 until April 2013. By this time, she had developed chronic migraine headaches. At her request, her employer placed her on leave under the Family and Medical Leave Act. In October 2013, she resigned from her job. During her leave, she paid her expenses with her military benefits, savings, and child support.<sup>3</sup>

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<sup>1</sup>When SOR allegations are controverted, the Government bears the burden of producing evidence sufficient to prove controverted allegations. Directive, ¶ E3.1.14. "That burden has two components. First, the Government must establish by substantial evidence that the facts and events alleged in the SOR indeed took place. Second, the Government must establish a nexus between the existence of the established facts and events and a legitimate security concern." See ISCR Case No. 07-18525 at 4 (App. Bd. Feb. 18, 2009), (concurring and dissenting, in part) (citations omitted). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 08-06605 at 3 (App. Bd. Feb. 4, 2010); ISCR Case No. 08-07290 at 2 (App. Bd. Nov. 17, 2009).

<sup>2</sup>GE 1; GE 2; Tr. 27, 45.

<sup>3</sup>GE 1; GE 2; Tr. 25.

Applicant began her college education while in the Air Force. She received her associate's degree in January 2003. She completed her bachelor's degree in 2012, after her discharge from the Air Force. She is currently working on a Masters of Business Administration (MBA), which she hopes to complete by February 2016.<sup>4</sup>

Applicant married in May 2001. She and her husband separated in December 2006 and divorced in December 2007. She has a an 11-year-old daughter, for whom she is the primary support. Her husband provides \$346 a month in child support.<sup>5</sup>

Applicant earns \$2,560 a month in income based on an hourly rate of pay of \$16. She currently works overtime on a regular basis and is paid \$24 an hour for overtime hours. Applicant provided a copy of her earnings statement for the pay dates of June 19, 2015, July 3, 2015, July 17, 2015, and July 31, 2015. Her earning statements reflect that she worked 34, 31, 4.5, and 16 hours of overtime during these pay periods. She received \$1,842, \$1,835, \$1,351, and \$1,444 for a total two-month net income of \$6,472 and an average net monthly income of \$3,236 with overtime. Without overtime, her net income is approximately \$2,600 plus \$346 in child support.<sup>6</sup>

Applicant's monthly expenses include \$854 for her mortgage, \$372 for a car payment, \$75 on credit cards, \$70 for water, \$140 for car insurance, \$300 for electricity, \$20 for gas, \$85 for internet and cable, \$110 for cell phone, \$25 for life insurance, \$200 for groceries, and \$50 for gasoline. Her monthly expenses total approximately \$2,300, leaving around \$646 for debt payment and unexpected expenses if she does not work overtime. She applies her overtime income to pay her outstanding debts. Since there is significant overtime available, Applicant plans to continue to work overtime to pay her debts.<sup>7</sup>

In 2013, Applicant met with a mortgage and financial counselor to discuss correcting her credit problems. He worked with her to resolve her past-due debts. The credit reports of record reflect that she paid three past-due debt by February 2014. The credit reports also show that Applicant incurred educational debt, which is currently deferred until July 2016.<sup>8</sup>

The financial and mortgage counselor helped Applicant qualify for a mortgage in April 2015. He advised, and she testified that they would attempt to refinance her mortgage loan in December 2015. He explained that when Applicant is eligible, she will complete a Department of Veterans Affairs loan cash out refinance to pay some of her

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<sup>4</sup>GE 1; Tr. 25-27.

<sup>5</sup>GE 1; Tr. 26, 30, 49.

<sup>6</sup>AE L; Tr. 45-47.

<sup>7</sup>AE K; Tr. 30-31.

<sup>8</sup>AE A; AE C; AE E; Response to SOR.

additional debts. Applicant also indicated that while going through the process she may miss one to two monthly payments, which will give her additional money for payments.<sup>9</sup>

The SOR identified seven past-due, charged-off collection accounts totaling \$26,297 based on the February 2014 credit report. The \$9,852 debt in SOR allegation 1.a relates to a credit card opened in 2007 with a default date of April 2009. Applicant did not recognize this debt and disputed the debt with one credit reporting company. After investigation, the credit reporting company concluded that this was her debt. She admitted this debt in her response to the SOR. She then contacted the creditor to resolve the debt. They did not reach an agreement because the creditor sought a lump sum payment of \$6,500 or a monthly payment of \$500. Applicant could not make either payment. The creditor refused to accept a payment of \$100 a month. Applicant indicated to the creditor an intent to pay the debt.<sup>10</sup>

SOR allegation 1.b concerns an electric bill of \$196. Applicant was unaware that she owed money to this creditor as she continues to be a customer. She paid this debt in full in March 2015.<sup>11</sup>

The \$640 debt in SOR allegation 1.c is an account belonging to Applicant. She contacted the creditor, which will settle the debt for \$450. She plans to pay the debt in September 2015 after resolving two other debts.<sup>12</sup>

The \$646 debt in SOR allegation 1.d concerns a credit card. Applicant contacted the creditor by letter dated June 25, 2015. She advised that she would pay the debt by September 30, 2015. She again contacted the representative for the creditor and agreed to pay \$350 as a settlement of the debt by August 6, 2015. She provided documentation on the agreement. The documentation included a copy of a cancelled check to allow the creditor to withdraw the money from her checking account. The agreement copy did not have a signature, but the representative of the creditor planned to electronically debit her account on August 3, 2015.<sup>13</sup>

Concerning SOR allegation 1.e (\$2,957), Applicant contracted with a health and wellness center in May 2007 in hopes of changing her body. She signed an agreement for 25 treatments at a cost of approximately \$3,000. Applicant made several payments and received two treatments, when the center ceased operation. She notified the current collection agency, in a letter dated June 25, 2015, that the center never completed the treatments for which she contracted. She told the collection agency that

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<sup>9</sup>AE A; AE B; Tr. 36-37, 43.

<sup>10</sup>Response to SOR; GE 3; GE 4; AE J; Tr. 34-35, 38-39.

<sup>11</sup>Response to SOR; AE F; Tr. 53.

<sup>12</sup>AE G; Tr. 42

<sup>13</sup>AE G; AE N.

she felt she had been defrauded and requested possible loan forgiveness or a resolution of the debt. She also disputed the debt with one credit reporting agency because she initially thought the debt did not belong to her. Upon further investigation, she agreed that this is her debt. Applicant has not resolved this debt. Her indebtedness is problematic because the company closed before the center completed the treatments it agreed to give her, which appears to be a breach of contract by the center and original creditor that could relieve her of any liability to the original creditor for the debt; however, state law may govern the question of whether the current holder of the debt would have a valid claim for payment of the debt.<sup>14</sup>

Applicant disputed the \$8,946 debt in SOR allegation 1.f with one credit reporting company on the grounds that it was not her account. After investigation, the credit reporting company determined that the account belonged to her. She later contacted the creditor, who requested a lump sum payment of \$5,500 or \$450 a month for six months with a final payment to settle the account. She could not make either payment. She wrote the creditor a letter on June 25, 2015, advising that she planned to use a home equity loan to pay the debt at the end of the year. At the hearing, Applicant said that if she could not get the equity loan, she would work with the creditor to pay the loan. The account remains unresolved.<sup>15</sup>

Both credit reports in the record show the debt in SOR allegation 1.g (\$3,060) as a past-due, charged-off account. Applicant provided documentation that she paid this debt in full by February 2011. Her payment has not been reported to the credit reporting companies.<sup>16</sup>

Applicant testified to two other debts not listed in the SOR, but one is listed on her May 28, 2015 credit report. The first debt (\$2,828) is to the university from which she seeks her MBA. She negotiated a settlement of \$1,415 to be paid in four installments beginning on June 18, 2015. Applicant provided proof of three payments by July 31, 2015.<sup>17</sup>

Applicant timely filed her federal and state income tax returns each year. She filed her 2014 tax returns as required. She recently received a letter from the Internal Revenue Service (IRS) advising that the IRS overpaid her \$500 in tax refund for 2014. The IRS gave her two options: 1) pay the amount or 2) allow the money to be withheld from her tax return for the tax year 2015. She had not decided on which option as of the hearing. Applicant advised that she usually receives a tax refund each year.<sup>18</sup>

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<sup>14</sup>Response to SOR; AE H; Tr. 32-34.

<sup>15</sup>Response to SOR; AE I; Tr. 34, 36-38.

<sup>16</sup>GE 3; GE 4; Response to SOR; AE E.

<sup>17</sup>AE D; AE M; Tr. 39-40.

<sup>18</sup>Tr. 54.

Applicant did not recognize two of the three debts she disputed. She believes her former husband opened the debts in her name without her knowledge. The 2014 and 2015 credit reports indicate that the debts in SOR allegations 1.c through 1.f became delinquent in early 2009.<sup>19</sup> The credit reports also reflect that Applicant has paid the majority of her debts since this time. Applicant spoke with a credit counseling group in February 2015. She was advised that she was “shaky” for enrollment and that if she enrolled she could not come out of the program for any reason. She chose not to hire this company.<sup>20</sup>

## **Policies**

Positions designated as ADP I and ADP II are classified as “sensitive positions.” 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 national interests. 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.

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 over-arching 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,

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<sup>19</sup>Under the state’s Statute of Limitations, creditors have six years to pursue, through the courts, debts arising out of a contract default or reach . The statute of limitations clearly and unequivocally ends an Applicant’s legal responsibility to pay the creditor after the passage of a certain amount of time, as specified in state law. In a series of decisions the Appeal Board has rejected the statute of limitations for debts generated through contracts, which is the law in all 50 states, as automatically mitigating financial considerations concerns under AG ¶ 20(d). See ISCR Case No. 08-01122 at 4 (App. Bd. Feb. 9, 2009); ISCR Case No. 07-08049 at 5 (App. Bd. Jul. 22, 2008); ADP Case No. 07-13041 at 5 (App. Bd. Sep. 19, 2008); ISCR Case No. 07-11814 at 2 (App. Bd. Dec. 29, 2008) ADP Case No. 06-14616 at 3 (App. Bd. Oct. 18, 2007) (stating, “reliance upon legal defenses such as the statute of limitations does not necessarily demonstrate prudence, honesty, and reliability; therefore, such reliance is of diminished probative value in resolving trustworthiness concerns arising out of financial problems. See, e.g., ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006).”). This opinion does not assert that the statute of limitations provides any mitigation under Guideline F. The Appeal Board has not defined how long after the statute of limitations expires an Applicant must wait before receiving a fresh start similar to that received under Chapter 7 of the Bankruptcy Code. As a general statement, under the Appeal Board’s jurisprudence, debts that are beyond the statute of limitations for collections cannot be mitigated solely because they are not collectable.

<sup>20</sup>GE 3; GE 4; Tr. 34, 48.

reliable information about the person, past and present, favorable and unfavorable, in making a decision. 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 to obtain 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 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 relating to the guideline for Financial Considerations is set out in AG ¶ 18:

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.

The guideline notes several conditions that could raise trustworthiness concerns. Under AG ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Applicant accumulated delinquent debt shortly after her divorce and has been unable to pay some obligations for a period of time. The evidence is sufficient to raise these disqualifying conditions.

The financial considerations guideline also includes examples of conditions that can mitigate trustworthiness concerns. I have considered mitigating factors AG ¶ 20(a) through ¶ 20(f), and the following are potentially applicable:

(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.

After her marriage ended, she fell behind in some of her bills. In 2013, her migraine headaches became severe enough that she stopped working for eight months. In 2010, she started slowly to repay her debts. Her hiatus from work in 2013 made it impossible to pay any bills except her normal living expenses. She is working towards the resolution of her debts one at a time and has been for sometime, as shown by her credit reports. Her decision to approach her debts one at a time is reasonable in light of her income. AG ¶ 20(b).

Applicant received some financial counseling from her mortgage and financial counselor about improving her finances. She followed his recommendations, which recently helped her qualify for a mortgage. She has paid several bills and contacted several creditors to resolve her debts. She has not reached a reasonable payment agreement to resolve all her debts. She has sufficient income to pay her monthly expenses and to work towards the resolution of her debts. AG ¶¶ 20(c) and 20(d) apply.

Applicant disputed the three largest debts because she did not recognize the debts and believed that the debts were not hers. She had a reasonable basis to dispute these debts, and has accepted responsibility for the debts when it was determined her name was on the accounts. AG ¶ 20(e) applies.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a public trust position by considering the totality of the



applicant's conduct and all the 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) 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 a public trust position must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. The decision to grant or deny a trustworthiness determination requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a trustworthiness concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a public trust position should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate trustworthiness concern.

In assessing whether an Applicant has established mitigation under Guideline F, the Appeal Board provided the following guidance in ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008):

In evaluating Guideline F cases, the Board has previously noted that the concept of “‘meaningful track record’ necessarily includes evidence of actual debt reduction through payment of debts.” *See, e.g.*, ISCR Case No. 05-01920 at 5 (App. Bd. Mar. 1, 2007). However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. *See, e.g.*, ISCR Case No. 02-25499 at 2 (App. Bd. Jun. 5, 2006). All that is required is that an applicant demonstrate that he has “. . . established a plan to resolve his financial problems and taken significant actions to implement that plan.” *See, e.g.*, ISCR Case No. 04-09684 at 2 (App. Bd. Jul. 6, 2006). The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. *See* Directive ¶ E2.2(a) (“Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.”) There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such

debts one at a time. See, e.g., ISCR Case No. 06-25584 at 4 (App. Bd. Apr. 4, 2008). Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

The evidence in support of granting a trustworthiness determination to Applicant under the whole-person concept is more substantial than the evidence in support of denial. In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant's financial problems developed from the decision of her former husband to open credit cards in her name during their marriage and by some choices she made after their marriage. She paid one SOR debt more than four years ago, and after meeting with her financial and mortgage advisor, she resolved three more debts before the SOR was issued. She has resolved several more debts and is working to resolve her remaining debts, one at a time. She is working her plan, and she has a track record of resolving debts. She is not required to pay all her debts at once nor is she required to be debt free to hold a position of trust. Several of her old debts have never been reduced to a judgment, and the statute of limitations has expired, making them uncollectible in the courts. (See AG ¶ 2(a)(8).) Thus, these debt cannot be a source of improper pressure or duress. Of course, the issue is not simply whether all her debts are paid: it is whether her financial circumstances raise concerns about her fitness to hold a public trust position. While some debts remain unpaid, they are insufficient to raise trustworthiness concerns as Applicant is working on the resolution of her debts one at a time.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a public trust position. For all these reasons, I conclude Applicant mitigated the trustworthiness concerns arising from her finances under Guideline F.

### **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:

FOR APPLICANT

Subparagraphs 1.a-1.g:

For Applicant

## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national interest to grant Applicant eligibility for a public trust position. Eligibility for access to sensitive information is granted.

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MARY E. HENRY  
Administrative Judge