



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



In the matter of: )  
 )  
 ) ADP Case No. 14-04088<sup>1</sup>  
 )  
Applicant for Public Trust Position )

**Appearances**

For Government: Robert J. Kilmartin, Esq., Department Counsel  
For Applicant: *Pro se*

08/07/2015

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**Decision**

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COACHER, Robert E., Administrative Judge:

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

**Statement of the Case**

On October 17, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns under Guideline F, financial considerations, and Guideline E, personal conduct. The DOD acted under DOD 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 the SOR on December 4, 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 4,

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<sup>1</sup> Department Counsel informed me that this case was erroneously styled as an ISCR security clearance case when it should have been styled as an ADP trustworthiness determination. See Tr. at 12.

2015, and the hearing was convened as scheduled on May 19, 2015. The Government offered exhibits (GE) 1 through 4, which were admitted into evidence without objection. Applicant testified, but offered no exhibits at the hearing. The record was held open for Applicant to submit additional information and she submitted one exhibit (AE A), which was admitted without objection. DOHA received the hearing transcript (Tr.) on May 28, 2014.

### Findings of Fact

In her answer (Ans.) to the SOR, Applicant admitted all the Guideline F allegations, explaining that she filed for bankruptcy. She denied the Guideline E allegation (SOR ¶ 2.a). 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 37-year-old employee of a government contractor. She works as a customer service representative and has held that position since April 2013. She has a bachelor's degree. She is divorced and has four children. She receives monthly child support of \$500 for one child. She experienced unemployment from January to April 2013. She has no military background.<sup>2</sup>

The SOR alleges 27 delinquent debts for a total of approximately \$82,810. (The debts listed in SOR ¶¶ 1.h – 1.j are from the same underlying debt. Two of those debts are resolved in favor of Applicant). The debts were listed in credit reports from March 2013 and April 2014. Applicant also discussed the listed delinquent debts in her trustworthiness determination interview with an investigator in April 2013.<sup>3</sup>

Applicant claims her financial difficulties arose because of her medical issues and because she is a single mother raising four children. Other than the period of unemployment described above, she has been steadily employed since August 2009. She filed a *pro se* Chapter 7 bankruptcy petition and her debts were discharged by order dated September 2014. She provided a copy of the "Certificate of Notice" showing which creditors were notified either electronically or through the mail. Not all the creditors associated with the SOR debts were listed in the notice. She did not provide any schedules of debtors from the bankruptcy pleadings. As a general rule, as stated by the Chapter 7 bankruptcy explanation page, student loan debts are not dischargeable. She could not provide the total amount of discharged debt, but believed it was approximately \$40,000. She received credit counseling through the bankruptcy process.<sup>4</sup>

Applicant stated that her monthly disposable income and all deductions and expenses is about \$300. This does not account for her student loan payments which

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<sup>2</sup> Tr. at 5-6, 26-28; GE 1.

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

<sup>4</sup> Tr. at 28-29; Ans.

begin in July 2015. She does not know the monthly amount of her student loan payments. The total student loan debt is approximately \$40,000 to \$50,000. She acknowledged that she currently does not have sufficient funds to make those payments. Her plan is to seek forgiveness under a federal forgiveness program. She provided information from a student loan servicing company, but it did not contain specific information about a loan forgiveness program or whether she would qualify for it.<sup>5</sup>

Applicant answered “no” to two questions on her trustworthiness application concerning whether in the last seven years she had bills or debts turned over to a collection agency and whether she had been over 120 days delinquent on any debt. The answer to both questions should have been “yes.” In her answer, she responded that she believed she already answered these questions. At the hearing, she maintained the same position even though it was pointed out that there was no earlier question related to debt. She denied that she was trying to deliberately mislead the Government about her debt situation. I do not find Applicant’s testimony credible.<sup>6</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

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<sup>5</sup> Tr. at 31; AE A.

<sup>6</sup> Tr. at 24-25; GE 1; Ans.

[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 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 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. Two are potentially applicable in this case:

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

Applicant had numerous delinquent debts. She filed for Chapter 7 bankruptcy and had some of the debts discharged. 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; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's debts are recent, multiple, and cast doubt on her reliability, trustworthiness, and good judgment. AG ¶ 20(a) is not applicable.

Applicant's short period of unemployment, her medical expenses, and her single mother status could be considered beyond her control. She resolved those debts by filing for bankruptcy and having the debts discharged. AG ¶ 20(b) is partially applicable.

The only evidence of financial counseling is what Applicant received as required by her bankruptcy filing. However, seeking bankruptcy relief is not a good-faith effort to repay her debts.<sup>7</sup> Although AG ¶ 20(c) partially applies, ¶ 20(d) does not.

## **Guideline E, Personal Conduct**

AG ¶ 15 expresses the security concern for personal conduct:

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<sup>7</sup> The Appeal Board has previously explained what constitutes a "good-faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the predecessor mitigating condition to AG ¶ 20(d)], an Applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the Applicant's debts. The Directive does not define the term 'good-faith.' However, the Board has indicated that the concept of good-faith 'requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.' Accordingly, an Applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [AG ¶ 20(d)].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. Jun. 4, 2001)).

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect sensitive information. Of special interest is any failure to provide truthful and candid answers during the trustworthiness process or any other failure to cooperate with the trustworthiness process.

AG ¶ 16 describes conditions that could raise a trustworthiness concern and may be disqualifying in this case. The following disqualifying condition is potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire. . . .

I find her explanation for not providing the required information on her application implausible. After evaluating all the evidence, I find Applicant deliberately provided false information concerning her collection accounts and delinquent debts. AG ¶ 16(a) applies.

The guideline also includes conditions that could mitigate trustworthiness concerns arising from personal conduct. I have considered all of the mitigating conditions under AG ¶ 17 and considered the following as potentially applicable:

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

Falsification of material information on a trustworthiness application is a serious offense and calls into question Applicant's trustworthiness and good judgment. AG ¶ 17(c) does not apply.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility and suitability 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 judgment 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 and Guideline E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

I considered the circumstances by which Applicant's financial situation was affected by her unemployment, her medical expenses, and single mother status. However, I also considered that despite these factors, the debts were not paid, but were discharged through bankruptcy. Under her current financial circumstances, she cannot afford to make her student loan payments beginning in July 2015. She intends to seek forgiveness of those loans, but she did not provide sufficient information about how she qualifies for such a program. Her troublesome financial history causes me to question her ability to maintain financial stability.

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 and personal conduct 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.h:	Against Applicant
Subparagraphs: 1.i – 1.j:	For Applicant
Subparagraphs: 1.k – 1.aa:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph: 2.a:	Against Applicant

## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant eligibility for a public trust position. Eligibility for access to sensitive information is denied.

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Robert E. Coacher  
Administrative Judge