



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



In the matter of:	)	
	)	
	)	ADP Case No. 18-00232
	)	
Applicant for Public Trust Position	)	

**Appearances**

For Government: Daniel F. Crowley, Esq., Department Counsel  
For Applicant: *Pro se*

03/14/2019

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**Decision**

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GARCIA, Candace Le'i, Administrative Judge:

Applicant mitigated the financial considerations trustworthiness concerns. Eligibility for access to sensitive information is granted.

**Statement of the Case**

On March 9, 2018, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing trustworthiness concerns under Guideline F (financial considerations). The action was taken under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by DOD on June 8, 2017.

Applicant responded to the SOR on June 10, 2018, and requested a hearing before an administrative judge. The case was assigned to me on September 12, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing (NOH) on September 17, 2018, scheduling the hearing for October 30, 2018. I convened the hearing as scheduled.

Government Exhibits (GE) 1, 3, and 4 were admitted in evidence without objection. Applicant objected to GE 2, on the basis that it was no longer an accurate representation of her credit profile since it was a 2016 credit bureau report. I overruled Applicant's objection and admitted GE 2 in evidence, noting that I would consider her objection in the weight that I gave GE 2. Applicant testified and submitted Applicant Exhibits (AE) A through G, which I admitted in evidence without objection. At Applicant's request, I kept the record open until November 13, 2018, for additional evidence. By that date, Applicant submitted additional documentation, which I marked collectively as AE H and admitted in evidence without objection. DOHA received the hearing transcript (Tr.) on November 7, 2018.

### **Findings of Fact**

Applicant admitted the allegations in SOR ¶¶ 1.b through 1.j, and she denied SOR ¶ 1.a. She is 34 years old. She has never married. She has three children, ages 14, 8, and 7.<sup>1</sup>

Applicant graduated from high school in 2003. As of the date of the hearing, she was attending college and expected to receive her bachelor's degree in 2022. She worked for a previous employer, a DOD contractor, from 2015 to 2016. She has worked for her current employer, a DOD contractor, since July 2016. She became a team lead medical appointment coordinator in August 2017. She was unsure whether she has ever had access to sensitive information.<sup>2</sup>

Applicant attributed her delinquent debts to losing her job, in which she earned \$20,000 annually, in August 2009, when she was pregnant with her second child. She was subsequently unemployed three times: from August 2009 to December 2012, May 2013 to September 2014, and July to October 2015. During these periods, she only received limited state unemployment benefits twice. She was otherwise underemployed, until she obtained a job with a DOD contractor in 2015. She is also a single parent, though she receives assistance from her eldest child's father. She attributed her delinquent debt in SOR ¶ 1.a to her stolen identity, discussed further below.<sup>3</sup>

The SOR alleges seven delinquent consumer debts totaling \$22,551 (SOR ¶¶ 1.a-1.d, 1.h.-1.j), two delinquent student loans totaling \$6,215 (SOR ¶¶ 1.e-1.f), and a \$22 delinquent state overpayment debt (SOR ¶ 1.g). The debts are established by the 2016 credit bureau report. The 2017 credit bureau report only reported the debts in SOR ¶¶ 1.a, 1.b, and 1.c. Applicant also disclosed and discussed her debts in her 2016 security clearance application (SCA) and 2017 background interview.<sup>4</sup>

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<sup>1</sup> Applicant's response to the SOR; Tr. at 32, 48-49, 59; GE 1.

<sup>2</sup> Tr. at 5, 7-9, 41, 57; GE 1, 3; AE A, G.

<sup>3</sup> Tr. at 31-65; GE 1, 3; AE A.

<sup>4</sup> GE 1-4.

SOR ¶ 1.a is for a \$1,247 wireless cellular account placed for collection. Applicant testified that her identity was stolen and used to open this account in her name. She testified that the same thing happened to her mother. She indicated that she disputed this debt for years with the credit reporting agencies. The debt was not reported on her April 2018 credit report. She indicated that she has a fraud alert on her credit report as a result of the identity theft incident.<sup>5</sup>

SOR ¶ 1.b is for a \$472 wireless cellular account placed for collection. Applicant provided documentation reflecting that she paid this debt in March 2018.<sup>6</sup>

SOR ¶ 1.c is for a \$153 cellular account placed for collection. Applicant co-signed this account for an ex-boyfriend. Applicant provided documentation reflecting that she paid this debt in November 2017.<sup>7</sup>

SOR ¶ 1.d is for a \$6,756 balance due for a voluntary car repossession, and SOR ¶ 1.h is for a \$13,423 collection account by the same creditor as SOR ¶ 1.d. Applicant indicated that SOR ¶¶ 1.d and 1.h are duplicate accounts for the balance due on the car that she voluntarily surrendered in August 2010, after she had lost her job and gave birth to her second child. She testified that she contacted the underlying creditor, from whom she obtained the car loan, by telephone in approximately 2017, and was told that they did not have any information because they placed the account for collection. She testified that she then contacted the collection agency with the intention of making payment arrangements, but was told that they too did not have any information because the debt was older than seven years. She indicated that she attempted to obtain documentation from the creditor reflecting that the debts were duplicates, but she did not receive a timely response.<sup>8</sup>

SOR ¶¶ 1.e and 1.f are for two student loans totaling \$6,215 placed for collection. Applicant testified that she obtained these loans when she went to school. She testified that her tax refunds were intercepted and applied toward the loans, and she paid the remaining \$100 balance in November 2016. She testified that she was able to obtain financial aid to finance her schooling as of the date of the hearing. She provided documentation reflecting that both student loans were resolved as of December 2017.<sup>9</sup>

SOR ¶ 1.g is for a \$22 state unemployment overpayment placed for collection. Applicant provided documentation reflecting that she paid this debt in November 2017.<sup>10</sup>

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<sup>5</sup> Tr. at 32, 42-44, 59; GE 2, 3; AE A, F, H.

<sup>6</sup> Tr. at 32-33; GE 3; AE A, E.

<sup>7</sup> Tr. at 32-33, 59-60; AE A, D.

<sup>8</sup> Tr. at 33-34, 44-46; GE 1, 3; AE A, F, H.

<sup>9</sup> Tr. at 34-35, 60; GE 1, 3; AE A, B.

<sup>10</sup> Tr. at 35-36; GE 3; AE A, C.

SOR ¶¶ 1.i and 1.j are for two parking tickets totaling \$500 placed for collection. Applicant testified that she paid these tickets in around 2014 or 2015, and they are no longer reported on her credit report. She testified that she registered her car with the jurisdiction's department of motor vehicles (DMV) in 2018, and she provided documentation from the DMV website reflecting that she would not have been able to do so if she had any outstanding tickets.<sup>11</sup>

Applicant testified that she has been promoted twice since she started her current job in July 2016. She earned \$47,000 annually since August 2017, but suffered a pay cut of \$800 monthly in April 2018 due to a contractor change, which has impacted her ability to pay her bills. As of the date of the hearing, she had fallen behind on her rent of \$1,095 monthly, as well as her gas and electric bill. However, she testified that she was in communication with her landlord; she sought energy assistance for her electric bill; and she was current on her \$470 monthly payments for her car she purchased in February 2018, as well as her cellular bill. She was also looking for part-time jobs to supplement her income. Her 2018 credit report does not reflect any delinquent debts. She receives budgeting advice from her mother, but she has not otherwise received financial counseling.<sup>12</sup>

Applicant's director of operations at her current job describe her as an excellent communicator, and an independent, organized, and detail-oriented worker. The director wrote that Applicant was responsible for supervising 10 medical appointment coordinators in her section, and she did so efficiently and in a manner that led them to quickly become "subject matter experts" in their respective procedures and operations. Applicant's supervisor of two years wrote that Applicant is a valuable asset, and her contributions are mission-essential.<sup>13</sup>

## **Policies**

The Under Secretary of Defense's Memorandum of November 19, 2004, treats ADP positions as sensitive positions, and it entitles applicants for ADP positions to the procedural protections in the Directive before any final unfavorable access determination may be made. The standard set out in the adjudicative guidelines for assignment to sensitive duties is that 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. AG ¶ 2.b.

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. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard sensitive information.

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<sup>11</sup> Tr. at 35-36, 46-47, 60; GE 3; AE A, H.

<sup>12</sup> Tr. at 39-41, 48, 50-54, 56-59, 62-63; AE F, H.

<sup>13</sup> AE G.

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 an evaluation of the whole person. The administrative judge's overarching adjudicative goal is a fair, impartial and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The protection of the national security is the paramount consideration. Under AG ¶ 2(b), "[a]ny doubt concerning personnel being considered for access to [sensitive] information will be resolved in favor of national security." The Government must present substantial evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). An applicant has the ultimate burden of demonstrating that it is clearly consistent with national security to grant or continue eligibility for access to sensitive information.

## **Analysis**

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

The trustworthiness concern for financial considerations is set out in AG ¶ 18:

Failure 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds . . . .

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

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

Applicant was unable to pay her debts. The evidence is sufficient to raise AG ¶¶ 19(a) and 19(c) as disqualifying conditions.

Conditions that could mitigate the financial considerations trustworthiness concerns are provided under AG ¶ 20. The following 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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances; and

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

Conditions beyond Applicant's control, as previously discussed, contributed to her financial problems. Thus, the first prong of AG ¶ 20(b) applies. For the full application of AG ¶ 20(b), she must provide evidence that she acted responsibly under her circumstances. She credibly testified that she made efforts to resolve her delinquent debts once she obtained stable employment in 2015, and she continued her efforts upon receipt of the SOR, in spite of the pay cut she received in April 2018.

Applicant provided documentation to show that she paid the debts in SOR ¶¶ 1.b, 1.c, 1.e, 1.f, and 1.g. The debts in SOR ¶¶ 1.d, 1.h, 1.i, and 1.j are not reported on her recent credit reports from 2017 and 2018, and the debt in SOR ¶ 1.a is not reported on her 2018 credit report. She credibly testified that she disputed SOR ¶ 1.a. I find that SOR ¶ 1.d is a duplication of SOR ¶ 1.h, in light of Applicant's credible testimony that the debt pertained to her car that she voluntarily surrendered in 2010, after she lost her job and gave birth to her second child. She also credibly testified that she attempted to resolve this debt with both the underlying creditor and the collection agency, but was told that she could not do so since the debt was older than seven years. She also credibly testified that she resolved the two parking tickets in SOR ¶¶ 1.i and 1.j, in light of her ability to successfully register her current car in 2018. I find that AG ¶¶ 20(a), 20(b), and 20(d) apply.

### **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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(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 a public trust position 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 the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility for access to sensitive information. I conclude Applicant 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:	FOR APPLICANT
Subparagraphs 1.a – 1.j:	For Applicant

### **Conclusion**

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

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Candace Le'i Garcia  
Administrative Judge