



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



In the matter of: )  
)  
) ADP Case No. 18-01868  
)  
)  
Applicant for Public Trust Position )

**Appearances**

For Government: Tovah Minster, Department Counsel  
For Applicant: *Pro se*

March 6, 2019

**Decision**

LOKEY ANDERSON, Darlene D., Administrative Judge:

**Statement of Case**

On April 9, 1993, the Composite Health Care Systems Program Office (CHCSPO), the Defense Office of Hearings and Appeals (DOHA), and the Assistant Secretary of Defense for Command, Control, Communications and Intelligence (ASDC3I) entered into a memorandum of agreement for DOHA to provide trustworthiness determinations for contractor personnel employed in Information Systems Positions as defined in DoD Regulation 5200.2-R, Personnel Security Program (Regulation), dated January 1987. (Superseded by DoD Manual 5200.02.)

Applicant submitted her Electronic Questionnaire for Investigations Processing (e-QIP) on August 26, 2017. (Government Exhibit 3.) On July 16, 2018, the Department of Defense (DoD), issued an SOR detailing the trustworthiness concerns under Guideline F Financial Considerations regarding Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as

amended (Directive); and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), effective June 8, 2017.

Applicant answered the SOR on August 13, 2018. She requested that her case be decided by an administrative judge on the written record without a hearing. On August 23, 2018, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing five Items, was mailed to Applicant on August 28, 2018, and received by her on September 24, 2018. The FORM notified Applicant that she had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of her receipt of the FORM. Applicant responded to the FORM on October 24, 2018, and the documents are marked and admitted into evidence as Applicant's Exhibit A. Applicant did not object to Items 1 through 5, and they are admitted into evidence, hereinafter referenced as Government Exhibits 1 through 5. Based upon a review of the pleadings and exhibits, eligibility for a public trust position is denied.

### **Findings of Fact**

Applicant is 50 years old. She has been divorced three times: 1990, 1999, and 2009; and has six children, ages 30, 28, 25, 21, 19 and 11. She has two Master's degrees. She holds the position of Billing Manager and is seeking access to sensitive information in connection with her employment.

### **Guideline F - Financial Considerations**

The Government opposes Applicant's request for access to sensitive information on the basis of allegations set forth in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR.

The Government alleges that Applicant is not eligible for a public trust position because she is financially overextended and at risk of having to engage in illegal acts to generate funds. The SOR identified fourteen delinquent debts totaling in excess of \$59,000. Applicant admitted allegations 1.c., 1.e., 1.f., 1.g., 1.h., 1.i., totaling almost \$20,000 in debt. She denied the remaining allegations, or denied them in part, under this guideline. Credit reports of the Applicant dated September 22, 2017; and May 18, 2018, reflect that the debts are still owing. (Government Exhibits 4 and 5.) Applicant served in the United States Navy from June 1986 to December 1987 when she received an honorable discharge. She has worked for his current employer since May 2017.

When Applicant started working for her current employer, she states that she had every intention of developing a plan to resolve her debts. Since then, she has experienced a series of major life events that have hindered her progress. Over the last year, Applicant learned that her father's cancer returned. She took a leave of absence in January and again in February to be with him. He passed away in February 2018. Applicant's own failing health brought on by grief and stress took a toll on her, and she

underwent a surgery in August 2018, and a short period of disability. Her step mother is in her final stages of life, suffering from stage 4 brain cancer. Applicant states that these tragic life events prevented her from focusing on her financial issues. In her response to the FORM, Applicant stated that she has now taken the necessary step to rectify her financial delinquencies. In the way of documentary evidence, Applicant provided two pay stubs to show that she is making her child support payments, flight and funeral costs relating to her father's passing, her disability documentation, and two credit reports dated October 21, 2018. (Applicant's Exhibit A.)

The following debts set forth in the SOR became delinquent and owing:

1.a. Applicant is indebted to a creditor on an account that was charged off in the approximate amount of \$18,567. Applicant has satisfied this debt. (Applicant's Exhibit A, and credit report dated October 21, 2018, pg. 3.)

1.b. Applicant is indebted to a county for child support arrears in the approximate amount of \$15,549. Applicant stated that she has consistently made her child support payments through payroll deductions. Her arrearage has been reduced some but she still owes approximately \$13,138. (Applicant's Exhibit A, and credit report dated October 21, 2018, pg. 5.)

1.c. Applicant is indebted to a creditor for an account that was charged off in the approximate amount of \$6,763. Following her last divorce and custody matter in 2012, she could no longer afford the vehicle. The debt remains owing. (Applicant's Exhibit A, and credit report dated October 21, 2018, pg. 7.)

1.d. Applicant is indebted to a creditor for a medical account that was placed in collection in the approximate amount of \$3,689. The debt remains owing. (Applicant's Exhibit A, and credit report dated October 21, 2018, pg.11.)

1.e. Applicant is indebted to a creditor for an account that was past due in the approximate amount of \$3,419. The debt remains owing. (Applicant's Exhibit A.)

1.f. Applicant is indebted to a creditor for an account that was placed for collection in the in the approximate amount of \$1,689. The debt remains owing. (Applicant's Exhibit A, and credit report dated October 21, 2018, pg.6.)

1.g. Applicant is indebted to a creditor for an account that was placed for collection in the approximate amount of \$4,406. Applicant stated that she disputed the debt and it has been removed from her credit report. (Applicant's Exhibit A.)

1.h. Applicant is indebted to a creditor for an account that was placed for collection in the approximate amount of \$2,169. The debt remains owing. (Applicant's Exhibit A, and credit report dated October 21, 2018, pg. 9.)

1.i. Applicant is indebted to a creditor for an account that was placed for collection in the approximate amount of \$1,033. The debt remains owing. (Applicant's Exhibit A, and credit report dated October 21, 2018, pg. 9.)

1.j. Applicant is indebted to a creditor for an account that was placed for collection in the approximate amount of \$1,026. The debt remains owing. (Applicant's Exhibit A.)

1.k. Applicant is indebted to a creditor for a medical account that was placed for collection in the approximate amount of \$487. Applicant stated that the debt has been reduced to \$136. (Applicant's Exhibit A, and credit report dated October 21, 2018, pg. 10.)

1.l. Applicant is indebted to a creditor for a medical account that was placed for collection in the approximate amount of \$304. Applicant stated that the debt has been reduced to \$165. (Applicant's Exhibit A, and credit report dated October 21, 2018, pg. 10.)

1.m. Applicant is indebted to a creditor for a medical account that was placed for collection in the approximate amount of \$260. Applicant stated that she has disputed the debt, and it has been removed from her credit report. (Applicant's Exhibit A.)

1.n. Applicant is indebted to a creditor for an account that was placed for collection in the approximate amount of \$195. Applicant stated that this debt was paid in full on April 12, 2016. Although it still appears on Applicant's credit reports she plans to dispute the debt with the credit bureaus. (Applicant's Exhibit A.)

## **Policies**

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's eligibility for access to sensitive information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. 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 national security eligibility will be resolved in favor of the 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 the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain 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 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.

Section 7 of EO 10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline F - Financial Considerations**

The trustworthiness concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

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

- (a) inability or unwillingness to satisfy debts;
- (b) unwillingness to satisfy debt regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant has a history of financial distress. She is excessively indebted to a number of creditors totaling approximately \$59,000. The evidence is sufficient to raise the above disqualifying conditions.

The following mitigating conditions under the Financial Considerations guideline are potentially applicable under AG ¶ 20.

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

It is acknowledged that Applicant has had a tough year with the serious illness and death of her father, her illness, surgery, and related time off work, as well as her step mother's ongoing condition. These circumstances were admittedly beyond her control and obviously caused Applicant to spend more money than she could afford, which hindered her ability to pay her delinquent debt. However, Applicant has been working for her current employer since May 2017. She has done little in the way of showing that she can resolve her delinquent debts. In fact, she has not shown that she has even set up payment plans with the creditors that she is following, nor has she shown that she has made any effort to contact her creditors to resolve her debt.

Applicant stated that she has reduced a couple of her smaller debts. However, knowing that the Government was concerned about her excessive financial indebtedness, she has not demonstrated a good-faith effort to take control of her financial affairs. Most of the delinquent debt set forth in the SOR remains owing. Applicant has not demonstrated sufficient responsibility toward her delinquent debt. Now, she states that she is going to resolve the debt, but it is too late. In this case, none of the mitigating conditions are applicable. There is no clear evidence in the record that she has acted reasonably and responsibly. The record fails to establish sufficient mitigation of financial trustworthiness concerns under the provisions of AG ¶¶ 20(a) through 20(g).

## Whole-Person Concept

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

According to AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a position of trust must be an overall commonsense judgment based upon careful consideration of the applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant is a mature adult, who has failed to demonstrate that she can live within her means, budget her income accordingly, and pay her bills in a timely fashion. At this point, her financial problems continue as there is no evidence that they have been resolved.

Overall, the record evidence leaves me with serious doubt as to Applicant's judgment, eligibility, and suitability for a public trust position. She has not met her burden to mitigate the trustworthiness concerns arising under the guideline for Financial Considerations.

## Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a.:	For Applicant
Subparagraph 1.b.:	Against Applicant
Subparagraph 1.c.:	Against Applicant
Subparagraph 1.d.:	Against Applicant
Subparagraph 1.e.:	Against Applicant
Subparagraph 1.f.:	Against Applicant
Subparagraph 1.g.:	For Applicant
Subparagraph 1.h.:	Against Applicant

Subparagraph 1.i.:	Against Applicant
Subparagraph 1.j.:	Against Applicant
Subparagraph 1.k.:	Against Applicant
Subparagraph 1.l.:	Against Applicant
Subparagraph 1.m.:	For Applicant
Subparagraph 1.n.:	Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue national security eligibility for a public trust position for the Applicant.

Darlene Lokey Anderson  
Administrative Judge