



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



In the matter of: )  
)  
) ADP Case No. 18-01967  
)  
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Applicant for Public Trust Position )

**Appearances**

For Government: Mary M. Foreman, Esq., Department Counsel  
For Applicant: *Pro se*

03/04/2019

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**Decision**

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RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the financial considerations and personal conduct trustworthiness concerns. Eligibility for access to sensitive information is denied.

**Statement of the Case**

On August 15, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing trustworthiness concerns under Guideline F, financial considerations, and Guideline E, personal conduct. 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 (AG) effective within the DOD on June 8, 2017.

Applicant answered the SOR on September 12, 2018, and elected to have her case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's file of relevant material (FORM), and Applicant received it on October 23, 2018. The Government's evidence is identified as

Items 1 through 6. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. She did not provide a response, submit documents, or object to any of the Government's evidence. Items 1 through 6 are admitted into evidence. The case was assigned to me on February 11, 2019.

### **Findings of Fact**

Applicant admitted all of the SOR allegations except those in ¶¶ 1.x and 2.a, which she denied. Applicant's admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact.

Applicant is 38 years old. She married in 1999 and divorced in 2009. She has a 17-year-old child from the marriage. Her ex-husband pays court-ordered child support. She remarried in 2010. She has a 12-year-old stepchild. She has been employed by a government contractor since March 2011.<sup>1</sup>

In July 2017, Applicant completed an electronic Questionnaire for Investigations Processing (e-QIP). Section 26 inquired if in the past seven years Applicant had any property voluntarily or involuntarily repossessed or foreclosed; defaulted on any type of loan; had any bills or debts turned over to a collection agency; had a credit card suspended, charged off, or cancelled for failing to pay any as agreed; was evicted for nonpayment; had wages, benefits, or assets garnished or attached for any reason; had been over 120 days delinquent on any debt not previously entered; or was currently over 120 days delinquent on any debt? Applicant responded "no."<sup>2</sup>

In February 2018, Applicant was interviewed by a government investigator. She was confronted with each of the debts subsequently alleged in the SOR, except those in ¶¶ 1.d, 1.g, 1.i, and 1.q. She acknowledged each debt and explained she failed to disclose each one due to oversight. She did not know the amount of each debt or when each debt became delinquent. She said the reason for the delinquencies was because she did not have enough money due to her husband's unemployment. She told the investigator that she intended to pay each debt. She gave the investigator a time period for when each debt would be paid. It ranged from one week and up to five years. She also indicated she did not know when she would satisfy one of the debts.<sup>3</sup>

Applicant told the investigator that she paid the debt in SOR ¶ 1.x owed to an apartment complex for a broken lease from 2011. She provided a document to the investigator, but it did not confirm the debt was paid. The investigator told

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<sup>1</sup> Items 3, 4.

<sup>2</sup> Item 3.

<sup>3</sup> Items 3, 4.

her that she could provide additional information to show it was paid. None was provided.<sup>4</sup> This debt is not resolved.

Applicant told the investigator that the debt in SOR ¶ 1.b was for a car repossession from 2004. She said she had reached a settlement agreement with the creditor that required her to make monthly payments for six months. The investigator gave her an opportunity to provide documents after the interview to substantiate the settlement. She did not provide documents to the investigator or in her SOR answer.<sup>5</sup>

Applicant told the investigator that the debt in SOR ¶ 1.a was for a broken rental agreement from an apartment she lived in from June 2011 to July 2013. She intended to settle the debt with monthly payments for six months. She did not provide supporting documentation.<sup>6</sup>

In Applicant's answer to the SOR regarding her failure to disclose any delinquent debts on her e-QIP, she stated:

This information was entered in as an error due to multiple corrections being made to my e-QIP. I would never do anything that would falsify my facts. The mistake was made after the attempt to make several correct[ions] to my e-QIP.<sup>7</sup>

Applicant subsequently provided an additional statement where she admitted the allegation in SOR ¶ 2.a, but stated:

This information was entered in as an error due to corrections being made to my E-QIP. I would never intently falsify any information. Once again this mistake was made after correcting information (providing my address from 10 years ago) to my E-QIP.<sup>8</sup>

Applicant did not voluntarily disclose her delinquent debts when she was interviewed by the government investigator. She told the investigator that her failure to disclose each delinquent debt when confronted was due to an oversight. There is no evidence supporting her assertions that she told the investigator she had previously disclosed her delinquent debts on her e-QIP or that there was a problem when she tried to correct other mistakes. I do not find Applicant's statements credible. I find she intentionally failed to disclose delinquent debts on her e-QIP.

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<sup>4</sup> Items 3, 4.

<sup>5</sup> Item 4.

<sup>6</sup> Item 4.

<sup>7</sup> Item 2.

<sup>8</sup> Item 2.

Applicant's delinquent debts are corroborated by her admissions and credit reports from August 2017 and May 2018. Applicant did not provide evidence about when her husband lost his job; how long he was unemployed; her income; whether she has a budget; any proof that she paid any of the debts; or documents to substantiate that she paid a debt she disputed, or settlement agreements she indicated she had entered.<sup>9</sup>

In Applicant's answer to the SOR, next to each debt (except ¶ 1.x), she admitted owing that debt and said that she had hired a credit repair company. She provided a letter from the company from September 2018, stating that it had been retained by Applicant to remove several fraudulent and/or inaccurate accounts from her credit file. It stated that its fraud department was investigating her accounts. Applicant acknowledged to the credit repair company that any accounts that she is financially responsible for will be negotiated and paid.<sup>10</sup> Applicant did not provide any statements, explanations, or other evidence that any of the alleged accounts, which she admitted owing, were due to fraud or were inaccurate. There is no evidence Applicant has received financial counseling from this company or other entity.<sup>11</sup>

### **Policies**

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are to be used in determining an applicant's eligibility for a position of trust.

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(a), 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."

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<sup>9</sup> Items 2, 3, 4.

<sup>10</sup> Item 2.

<sup>11</sup> Item 2.

Directive ¶ E3.1.14, states that the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states that 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 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 of 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 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.

This concern is broader than the possibility that an individual might knowingly compromise sensitive information in order to raise money. It encompasses concerns about an individual’s self-control, judgment, and other qualities essential to protecting sensitive information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding sensitive information.<sup>12</sup>

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<sup>12</sup> See ISCR Case No. 11-05365 at 3 (App.Bd. May 1, 2012).

AG ¶ 19 provides conditions that could raise trustworthiness concerns. The following are potentially applicable:

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

Applicant has numerous delinquent debts that began accumulating in about 2004, which she has been unable to pay or resolve. There is sufficient evidence to establish the above disqualifying conditions.

The guideline also includes conditions that could mitigate trustworthiness concerns arising from financial difficulties. The following 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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated and is adhering to 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 documentary proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant did not provide evidence that she has paid or resolved any of her delinquent debts. Her debts are recent and ongoing. She has not established a reliable financial track record. There is insufficient evidence to conclude future financial problem are unlikely to recur. AG ¶ 20(a) does not apply.

Applicant attributed her financial problems to the loss of income due to her husband's unemployment. This was beyond her control. For the full application of

AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. She did not provide details as to when her husband lost his job; how long he was unemployed or if he is still unemployed. She told the government investigator that she had payment agreements with some creditors. She also said she would pay some debts within a week and other debts within future time periods. She did not provide proof that she paid any of the creditors. The evidence is insufficient to show she has acted responsibly regarding her delinquent debts since they began accumulating. AG ¶ 20(b) only partially applies.

Applicant did not provide evidence that she has participated in credit or financial counseling or has a budget to show responsible financial management. Although she recently hired a credit repair company, there is insufficient evidence to conclude that there are clear indications that her financial problems are being resolved or are under control. AG ¶ 20(c) does not apply.

Applicant did not provide sufficient evidence of good-faith efforts to resolve any of her debts. She disputed the debt in SOR ¶ 1.x, but did not provide evidence to substantiate her dispute and actions. AG ¶¶ 20(d) and 20(e) do not apply.

#### **Guideline E: Personal Conduct**

AG ¶ 15 expresses the trustworthiness concern for personal conduct:

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 classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a trustworthiness concern and may be disqualifying. I find the following potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant has had financial issues since at least 2004 when her car was repossessed. She accumulated numerous delinquent debts since then. She did not disclose any of the delinquencies on her e-QIP. She did not voluntarily disclose them when she was interviewed by a government investigator. When confronted with each delinquent debt, she told the investigator that her omissions

were due to oversight. She did not mention to the investigator that she had previously disclosed them on an earlier version of her e-QIP, but after editing the e-QIP the debts were not saved or entered. I did not find her explanation credible. I find Applicant deliberately failed to disclose her delinquent debts. The above disqualifying condition applies.

The guideline also includes conditions that could mitigate security concerns arising from personal conduct. I have considered the following mitigating conditions under AG ¶ 17:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and

(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;

There is insufficient evidence that Applicant made a prompt good-faith effort to correct the omissions and disclose her financial problems before being confronted by the government investigator. She told the investigator that she failed to disclose each of her delinquent debts was due to oversight. Applicant's failure to provide answers on her e-QIP truthfully is not minor. The Government relies on those seeking positions of trust to honestly disclose information, which may sometimes be derogatory. Failure to do so raises questions about a person's reliability, trustworthiness, and good judgment. I find AG ¶¶ 17(a) and 17(c) do not 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 Guidelines F and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is 38 years old. She has a history, beginning in 2004, of financial problems. She deliberately failed to disclose these issues on her e-QIP. She told the government investigator that she had settlement agreements with some of her creditors, but failed to produce documentary evidence to substantiate her statements. She recently hired a credit repair company to dispute fraudulent or inaccurate debts, but this action does not mitigate her failure to address or resolve the numerous delinquent debts she admitted she owed. She failed to provide information about her current finances or the period of time her husband was unemployed. Applicant has not established a sufficient reliable financial track record. There is insufficient evidence to overcome the trustworthiness concerns raised under Guideline F, financial considerations and Guideline E, personal conduct.

### **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.x:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

### **Conclusion**

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

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Carol G. Ricciardello  
Administrative Judge