



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



In the matter of: )  
)  
) ADP Case No. 18-02069  
)  
Applicant for Public Trust Position )

**Appearances**

For Government: Moira Modzelewski, Esq., Department Counsel  
For Applicant: *Pro se*

03/20/2019

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**Decision**

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LOUGHRAN, Edward W., Administrative Judge:

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

**Statement of the Case**

On August 29, 2018, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing trustworthiness concerns under Guideline F, financial considerations. Applicant responded to the SOR on September 28, 2018, and requested a hearing before an administrative judge.

The case was assigned to me on January 11, 2019. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January 29, 2019, scheduling the hearing for February 28, 2019. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 6 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A and B, which were admitted without objection. Applicant submitted two e-mails post-hearing that I have marked AE C and D and admitted without objection.

## Findings of Fact

Applicant is a 49-year-old employee of a defense contractor. She has worked for her current employer since 2007. She is a high school graduate, and she went to a trade school. She married in 1992 and divorced in 2004. She married again in 2011 and divorced in 2016. She does not have children.<sup>1</sup>

Applicant has a history of financial problems. She filed a Chapter 7 bankruptcy case in 1991, and her debts were discharged in 1992. She admitted that the bankruptcy resulted from her financial irresponsibility. She and her first husband filed a Chapter 7 bankruptcy case in 2001, and their debts were discharged the same year. Her first husband handled the family's finances. She is unsure what caused the second bankruptcy.<sup>2</sup>

Applicant's second husband was abusive. She moved out and filed for a restraining order against him in February 2014. She withdrew the petition after he pleaded with her that it could adversely affect his security clearance, and he agreed to go to counseling. They reconciled for a period, and then the abuse started again. He threatened to kill her. She moved out permanently in October 2015 with "a couch, a TV, four plates, [her] clothing, and [her] dog."<sup>3</sup>

Applicant essentially had to start all over. She used credit cards to get back on her feet. She received her health insurance from her second husband. She has health problems, and she had to start paying for her own health insurance. Her insurance premiums are high, and she has a large deductible. She missed a month of work because of her health, and she cared for her mother who has cancer. She was unable to maintain the credit card payments, and a number of debts became delinquent.<sup>4</sup>

The SOR alleges the two Chapter 7 bankruptcy cases, a \$2,453 judgment, and 12 delinquent debts totaling about \$24,146. Applicant admitted owing all the debts, but she stated that the judgment was paid through garnishment of her wages. She indicated that the creditor for the \$4,263 and \$1,019 debts alleged in SOR ¶¶ 1.c and 1.j obtained a judgment and a garnishment order against her that was soon to go into effect. She also stated that her federal income tax refund of about \$500 was diverted toward the military exchange account alleged in SOR ¶ 1.b. The SOR debts are listed on a March 2018 credit report.<sup>5</sup>

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<sup>1</sup> Tr. at 16, 20, 22-23, 43-44; GE 1, 2.

<sup>2</sup> Tr. at 33-37; Applicant's response to SOR; GE 5, 6.

<sup>3</sup> Tr. at 16, 23; GE 1, 2.

<sup>4</sup> Tr. at 18-19, 26-27, 37, 41-43; GE 1, 2; AE C.

<sup>5</sup> Tr. at 26-33, 39-40; Applicant's response to SOR; GE 2-4.

Applicant has worked a second job since November 2016. She lives frugally. She traded her car in for a cheaper model. She lowered her cell phone and cable plans. She consulted with an attorney who advised her to file a Chapter 7 bankruptcy case. She wants to pay her debts, and insisted on a Chapter 13 bankruptcy case. She paid the attorney's retainer, and the Chapter 13 bankruptcy case was filed on March 13, 2019. She received financial counseling as a requirement of the bankruptcy. The monthly payment to the trustee will be \$375. She indicated that she will keep her second job, and she will be able to make her monthly payments. She credibly testified that she will continue with the Chapter 13 bankruptcy until resolution. She also stated that she is willing to provide the DOD with updates on the status of the bankruptcy.<sup>6</sup>

Applicant submitted a letter attesting to her excellent job performance at her second job. She is praised for her honesty, work ethic, trustworthiness, reliability, dependability, and integrity.<sup>7</sup>

### **Policies**

This case is adjudicated under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), which became effective on June 8, 2017.

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(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.

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 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

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<sup>6</sup> Tr. at 18-22, 25, 43, 46-47; GE 1, 2; AE A, C, D.

<sup>7</sup> AE B.

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 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 has a history of financial problems, including two bankruptcies and multiple delinquent debts. The evidence is sufficient to raise the above 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
- (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.

The bankruptcies in 1992 and 2001 are mitigated by time. Applicant's current financial problems resulted when she left an abusive marriage with next to nothing. The debts in the SOR were incurred in order for her to start over. With her health problems, high medical insurance premiums, and her mother's cancer, she was unable to maintain the monthly credit card payments.

Applicant obtained a second job, but it was still not enough to address her problems. She consulted an attorney, but she disregarded the attorney's advice to file a Chapter 7 case because she wanted to pay her debts. She paid the attorney and filed a Chapter 13 bankruptcy case that will enable her to pay her debts through a structured plan approved by the bankruptcy court and monitored by the trustee. The plan calls for monthly payments of \$375, which she credibly stated she will maintain until completion.

Applicant does not present a perfect case in mitigation, but a trustworthiness adjudication is not a debt-collection procedure. It is a procedure designed to evaluate an applicant's judgment, reliability, and trustworthiness. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). I believe Applicant is honest and sincere in her intentions to address her debts. I find that she has a plan to resolve her financial problems, and her payment of the attorney and filing a Chapter 3 bankruptcy case constitute actions to implement that plan. Her financial difficulties were the result of conditions that were beyond her control, and she acted responsibly under the circumstances. They do not cast doubt on her current reliability, trustworthiness, and good judgment. AG ¶¶ 20(b) and 20(c) are applicable. AG ¶ 20(a) is partially applicable. It may take time, but I am convinced that she will eventually resolve her financial problems.<sup>8</sup>

### **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.

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<sup>8</sup> See ISCR Case No. 08-06567 at 3 (App. Bd. Oct 29, 2009) and ISCR Case No. 09-08462 at 4 (App. Bd. May. 31, 2011): "Depending on the facts of a given case, the fact that an applicant's debts will not be paid off for a long time, in and of itself, may be of limited [trustworthiness] concern."

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. I also considered Applicant's favorable character evidence.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a public trust position. I conclude Applicant mitigated the financial considerations trustworthiness concerns.<sup>9</sup>

### **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.o:	For Applicant

### **Conclusion**

It is clearly consistent with national security to grant Applicant eligibility for a public trust position. Eligibility for access to sensitive information is granted.

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Edward W. Loughran  
Administrative Judge

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<sup>9</sup> Applicant stated that she is willing to provide the DOD with updates on the status of the bankruptcy. The adjudicative guidelines give me the authority to grant conditional eligibility "despite the presence of issue information that can be partially but not completely mitigated, with the provision that additional security measures shall be required to mitigate the issue(s)." I have not done so as I have concluded the issues are completely mitigated, and it is unnecessary to monitor Applicant's Chapter 13 bankruptcy case.