



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



In the matter of: )  
)  
) ADP Case No. 19-01755  
)  
)  
Applicant for Public Trust Position )

**Appearances**

For Government: Allison Marie, Department Counsel  
For Applicant: *Pro se*

November 18, 2019

**Decision**

LOKEY ANDERSON, Darlene D., Administrative Judge:

**Statement of Case**

DOHA provides adjudication of trustworthiness cases for ADP I, II, and III positions using the provisions of DoD Directive 5220.6 (Directive), pursuant to the memorandum from Carol A. Haave, Deputy Under Secretary of Defense for Counterintelligence and Security to DOHA Director, Adjudication of Trustworthiness Cases (Nov. 19, 2004).

Applicant submitted her Electronic Questionnaire for Investigations Processing (e-QIP) on January 9, 2018. (Government Exhibit 4.) On July 17, 2019, the Department of Defense (DoD), issued an SOR detailing the trustworthiness concerns under Guideline F, Financial Considerations regarding Applicant. The action was taken under the Directive. Specifically, Security Executive Agent Directive 4, (SEAD 4) and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position*, effective June 8, 2017. Applicant answered the SOR on August 15, 2019. She requested that her case be decided by an administrative judge on the written record without a hearing. (Item 3.) On

September 3, 2019, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing eight Items, was mailed to Applicant and received by her on September 9, 2019. The FORM notified Applicant that she had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. Applicant responded to the FORM. She objected to Item 5, the Personal Subject Interview. Her objection was sustained, and Item 5 was not admitted into evidence. Items 1, 2, 3, 4, 6, 7 and 8 were admitted into evidence with consideration of any noted corrections made by Applicant. The Items that were admitted into evidence are hereinafter referenced as Government Exhibits 1, 2, 3, 4, 6, 7 and 8.

### **Findings of Fact**

Applicant is 40 years old. She is married with four children. She has a Bachelor's degree in Nursing. She is employed as a Triage Nurse for Tricare. She 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 five delinquent debts totaling in excess of \$65,572. Applicant admitted allegations 1.a., and 1.b., and denied the remaining allegations under this guideline. However, credit reports of the Applicant dated April 23, 2019; and January 30, 2018, reflect that each of the debts are still owing. (Government Exhibits 6 and 7.)

Applicant's security clearance application indicates that she has worked as a pediatric care coordinator for Company A since December 2015, and has simultaneously worked as an on-call staff/triage nurse with Company B since February 2018.

Applicant was married in 2001 and has been employed in the nursing field since 2007. She attributes her delinquent debts to years of marital discord, including periods of separation from her spouse, since 2007, which led to significant fluctuations in her household income and rapidly compiling expenses. Over the years she has not been a good record keeper, and has not been aware of the specifics of what has been listed on her credit reports. The following debts became delinquent and owing:

1.a. Applicant is indebted to the Government for a student loan that was charged off in the approximate amount of \$28,043. (Government Exhibits 6 and 7.) Applicant stated that she does not have information from the creditor to verify the amount of the debt. Applicant has provided no documentary evidence to show that she has made any

payment toward resolving the debt or that she is not liable for the debt. (Response to FORM.) The debt remains outstanding.

1.b. Applicant is indebted to the Government for a student loan that was charged off in the approximate amount of \$13,167. (Government Exhibit 6.) Applicant stated that she does not have information from the creditor to verify the debt. Applicant has provided no documentary evidence to show that she has made any payment toward resolving the debt or that she is not liable for the debt. (Response to FORM.) The debt remains outstanding.

1.c. Applicant is indebted to a utility company for an account that was placed for collection in the approximate amount of \$245. (Government Exhibit 6.) Applicant initially denied the debt. She stated that she had secured a large deposit on the account with creditor that exceeded the amount of the debt the Government claims she owed. She planned to dispute the debt. On September 20, 2019, Applicant contacted the creditor and agreed to settle the account within 30 days. (Response to FORM.) Applicant has provided no documentary evidence to show that she has made any payment toward the debt or that she is not liable for the debt. The debt remains outstanding.

1.d. Applicant is indebted to an automotive lender for an account that was charged off in the approximate amount of \$24,014. (Government Exhibit 7.) Court records reveal that a judgment was entered against the Applicant on February 18, 2018, in the amount of \$21,978 plus interest and court costs. (Government Exhibit 8.) Applicant stated that she has spoken to the creditor regarding a payment plan, but they were not in agreement with terms of repayment. (Response to FORM.) Applicant stated that the creditor requested a lump sum in excess of \$20,000, which Applicant cannot afford. Applicant has provided no documentary evidence to show that she has made any payment toward resolving the debt or that she is not liable for the debt. The debt remains outstanding.

1.e. Applicant is indebted to an insurance company for an account that was placed for collection in the approximate amount of \$103. (Government Exhibit 7.) Applicant denied the debt, and stated that she has several accounts with this creditor, and would not be permitted to open a new insurance policy if she still owed money to the creditor. To her knowledge this debt has been resolved. She planned to dispute the debt. On September 20, 2019, Applicant stated that she contacted the creditor and they stated that they have no record of the debt. (Response to FORM.) Applicant has provided no documentary evidence to substantiate her claim. The debt remains outstanding.

Applicant admits that her family's finances have been challenging. For the most part, although she is married, she has been the primary financial provider for herself and her four children for many years. As a result, she has been unable to afford to pay her delinquent debts. She stated that she has the desire and willingness to pay her delinquent debts, she simply has not had the money to do so. She states that since working this new job, her compensation has been sufficient to move her through the financial rebuilding process and that she has made strides to repay her debts. She has

failed to provide any documentation to substantiate what financial rebuilding she has done, or what strides she made to repay her debts.

Applicant enjoys her profession as a nurse and is proud to do the work she does. She states that her performance evaluations from her former and current employers are highly rated and show examples of her leadership. Applicant stated that her current debt is better controlled than ever before. She stated that she has fully paid off a vehicle loan, and is paying down credit card balances, and has been on time with her current open Federal loans. (Government Exhibit 7.)

## **Policies**

When evaluating an applicant's suitability for a trustworthiness position, 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. Two are potentially applicable in this case:

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

Applicant has a history of financial distress. She is indebted to various creditors listed in the SOR that include delinquent student loans, a utility bill, a vehicle deficiency/repossession, and an insurance bill, which total approximately \$65,572. 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:

(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 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 documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

It can be argued that Applicant's financial problem was largely beyond her control, namely a result of her separations from her spouse. However, Applicant has not shown that she can resolve her debt. Applicant stated that in her new job, she is sufficiently compensated to be able to rebuild her credit. However, at this time, she remains indebted to each of the creditors listed in the SOR. Her indebtedness currently remains, she has not made a good-faith effort to resolve her debts, she has not received any financial counseling, nor has she provided any evidence to show that she has disputed any of her debts. She has provided no documentary evidence to show that she has made any payments toward her debts or that she is not liable for the debts. Applicant has done little to nothing to show that she can or will resolve her debts. She recently contacted several of the creditors in the SOR to set up a payment plan, but that never went anywhere. Knowing that the Government was concerned about her financial indebtedness, she did not even pay off the smallest of the debts, a debt for \$103 that is set forth in 1.e., of the SOR. It remains owing.

As Applicant stated, her priorities over the years have been to support herself and her children with food and a roof over their heads. Although she states that she intends to resolve the debts, it is simply too late for this current purpose. 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. Her inaction reflects unreliability,

untrustworthiness, and poor judgment. The record fails to establish 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 or are under control.

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. through 1.e.:	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 eligibility for a public trust position for the Applicant.

Darlene Lokey Anderson  
Administrative Judge