



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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----- ) ADP Case No. 06-20500  
SSN: ----- )  
 )  
Applicant for Public Trust Position )

**Appearances**

For Government: Nichole Noel, Esquire, Department Counsel  
For Applicant: *Pro Se*

January 28, 2008

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**Decision**

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WHITE, David M., Administrative Judge:

Applicant submitted her Questionnaire for Public Trust Positions (SF 85P), on May 27, 2005. On October 30, 2006, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the trustworthiness concerns under Guideline F (Financial Considerations) for 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); Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program*, dated Jan. 1987, as amended (Regulation), and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant acknowledged receipt of the SOR on November 2, 2006. She answered the SOR in writing on November 22, 2006, and requested that her case be

decided by an Administrative Judge on the written record without a hearing.<sup>1</sup> Department Counsel submitted the Government's written case on May 30, 2007. A complete copy of the file of relevant material (FORM)<sup>2</sup> was provided to Applicant on September 10, 2007, and she was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant signed the document acknowledging receipt of her copy of the FORM on September 27, 2007, and returned it to DOHA. She provided no further response to the FORM within the 30-day period she was given to do so, did not request additional time to respond, and made no objection to consideration of any evidence submitted by Department Counsel. The case was assigned to another Administrative Judge on November 9, 2007, and was reassigned to me on December 20, 2007. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to sensitive information is denied.

### **Findings of Fact**

Applicant is a 36-year-old employee of a defense contractor. She has worked as a billing representative for the company since 1998, and moved to a position requiring a trustworthiness determination shortly before she submitted her SF 85P in May 2005. She was divorced from her first husband in 2002 after he was convicted of a felony and incarcerated. She married her present husband after submission of her SF 85P.

In her Answer to the SOR, dated November 22, 2006, Applicant admitted the factual allegations in ¶¶ 1.a, 1.b, 1.m, 1.n, and 1.o of the SOR, with explanations. The first two allegations concern bankruptcies, and the last three involve unpaid medical bills, totaling \$3,984, assigned for collection. She denied the factual allegations in ¶¶ 1.c through 1.l, and 1.p through 1.r of the SOR. Applicant's admissions are incorporated herein as findings of fact.

In the two Chapter 7 bankruptcy proceedings, described in SOR ¶¶ 1.a and 1.b, Applicant discharged \$41,350 in debt in 1996, and another \$40,798 in debt in 2003. These debts resulted primarily from her former husband's serious medical condition, for which they had no insurance coverage, and the loss of his income after his incarceration. Applicant denied owing the debts alleged in SOR ¶¶ 1.c through 1.l because she said they were discharged in her 2003 bankruptcy. Department Counsel agreed this was true concerning the debts alleged in ¶¶ 1.e, 1.f, and 1.h. The 2003 bankruptcy creditor list in Item 11 confirms that the debts alleged in ¶¶ 1.d, and 1.g were also discharged. The creditor list does not include either the collection agent or the original retail creditor for the \$265 debt alleged in ¶ 1.d, but the dates associated with that debt support the contention that it was discharged. Furthermore, this debt is listed on Appellant's June 2005 credit bureau report (CBR),<sup>3</sup> but not on her September

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<sup>1</sup>Item 2.

<sup>2</sup>The government submitted 11 items in support of the allegations.

<sup>3</sup>Item 6 at 13.

2006,<sup>4</sup> or January 2007,<sup>5</sup> CBRs. The record evidence does not establish that Applicant owed this debt as alleged in the SOR.

The record does establish that Applicant owed the \$769 debt as alleged in ¶ 1.l of the SOR, contrary to her claim that it was also discharged in 2003. Neither the collection agent nor the original creditor bank were listed on the Item 11 bankruptcy creditor list, and the debt appears as undisputed and delinquent on all three record CBRs.<sup>6</sup> Applicant did not explicitly deny the two \$76 delinquent medical bills alleged in SOR ¶¶ 1.j and 1.k, but simply denied being aware of them. They appear as undisputed debts in collection on all three record CBRs, and Applicant submitted no evidence she either paid them or disputed the accuracy of the claims. In her SOR response, Applicant claimed that she paid the three medical bill collection accounts, totaling \$306, and the \$294 judgment debt, alleged in SOR ¶¶ 1.l, 1.p, 1.q, and 1.r, respectively. She provided no proof of payment concerning any of these debts, and each of them continues to appear on her January 2007 CBR. Accordingly, all of those debts are also established by the record evidence. Combined with the debts to which she admitted, Applicant has ten unresolved delinquent debts totaling \$5,505. Her personal financial statement<sup>7</sup> shows about \$200 per month in surplus income over regular expenses.

### **Policies**

Positions designated as ADP I and ADP II are classified as “sensitive positions.” (See Regulation ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3.) “The standard that must be met for . . . assignment to sensitive duties is that, based on all available information, 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.” (See Regulation ¶ C6.1.1.1.) The Deputy Under Secretary of Defense (Counterintelligence and Security) Memorandum, dated November 19, 2004, indicates trustworthiness adjudications will apply to cases forwarded to DOHA by the Defense Security Service and Office of Personnel Management. Department of Defense contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination may be made. (See Regulation ¶ C8.2.1.)

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 over-arching adjudicative goal is a fair, impartial and common sense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as

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<sup>4</sup>Item 7.

<sup>5</sup>Item 8.

<sup>6</sup>Item 6 at 10; Item 7 at 2; Item 8 at 2.

<sup>7</sup>Item 9.

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 access to [sensitive] information will be resolved in favor of 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 as to obtaining a favorable trustworthiness decision.

A person who applies for access to sensitive information seeks to enter 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 protect or 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 Executive Order 10865 provides that “Any determination under this order adverse to an applicant shall be a determination 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 concern relating to the guideline for Financial Considerations is set out in AG & 18:

Failure or inability 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 [sensitive] information. An individual who is financially

overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise trustworthiness concerns. Under AG & 19(a), an inability or unwillingness to satisfy debts is potentially disqualifying. Similarly under AG & 19(c), a history of not meeting financial obligations may raise security concerns. Applicant accumulated \$5,500 in currently delinquent debt since having discharged more than \$82,000 in debt she could not afford to pay through two bankruptcy proceedings in the past 11 years. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

The guideline also includes examples of conditions that could mitigate trustworthiness concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where 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. Applicant's history of inability to pay her debts spans more than a decade, and continues to date. She provided no evidence this would not continue or recur, so this mitigating condition is not supported by the record.

Under AG & 20(b), it may be mitigating where 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. All of Applicant's financial problems that were caused, in whole or in part, by her first husband's medical issues and incarceration on a felony conviction were resolved by her two bankruptcy cases. She has incurred more than \$5,500 in additional delinquent debt since then, without explanation or effort to document resolution. She has not demonstrated that this potentially mitigating condition is a factor for consideration in this case, except in mitigation of those former debts that were discharged in bankruptcy. The bankruptcy proceedings responsibly discharged all of her unpaid debt caused by her former husband's problems, and do not, standing alone, raise trustworthiness concerns. They do, however, provide historical context within which her more recent delinquent debts and financial irresponsibility must be evaluated.

Evidence that the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control is potentially mitigating under AG & 20(c). Similarly, AG & 20(d) applies where the evidence shows the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. AG ¶ 20(e) pertains to documentation of a legitimate basis to dispute the debts in question. Applicant documented neither financial counseling nor any effort to resolve or dispute her outstanding ten delinquent debts, totaling more than \$5,500. None of these potentially mitigating conditions apply to reduce security concerns arising from her present financial situation in light of her poor credit history and minimal solvency.

## 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 the circumstances. The Administrative Judge should consider the nine adjudicative process factors listed at AG ¶ 2(a): "(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) 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. Applicant is a mature and experienced financial employee who has had steady employment for almost ten years. Despite discharging more than \$82,000 in unpaid debts through two bankruptcies in 1996 and 2003, she again has more than \$5,500 in delinquent debt and, at most, \$200 in monthly surplus income to address them. Even if she arranged to apply all of that surplus to those debts, it would be more than two years before they were resolved. She has made no effort to arrange resolution, however, demonstrating neither rehabilitation nor permanent behavioral changes. The potential for pressure from her creditors leading to exploitation of, or duress to misuse sensitive information is substantial, particularly in light of recently toughened laws concerning repeated bankruptcy filings. Her ten-year pattern of significant financial delinquency makes continuation or recurrence of financial irresponsibility more likely than not.

Overall, the record evidence leaves me with substantial doubts as to Applicant's eligibility and suitability for a public trust position. For all these reasons, I conclude Applicant did not mitigate the trustworthiness concerns arising from her financial considerations.

## 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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant

Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	Against Applicant
Subparagraph 1.n:	Against Applicant
Subparagraph 1.o:	Against Applicant
Subparagraph 1.p:	Against Applicant
Subparagraph 1.q:	Against Applicant
Subparagraph 1.r:	Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a public trust position. Eligibility for access to sensitive information is denied.

DAVID M. WHITE  
Administrative Judge