



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



In the matter of: )  
)  
) ADP Case No. 12-06057  
)  
)  
Applicant for Position of Trust )

**Appearances**

For Government: Jeff A. Nagel, Esq., Department Counsel  
For Applicant: *Pro se*

04/30/2015

**Decision**

CURRY, Marc E., Administrative Judge:

Applicant’s ongoing financial problems and her failure to address them render her an unacceptable candidate for occupying an automatic data processing (ADP) position.

**Statement of the Case**

On September 19, 2014, the Department of Defense Consolidated Adjudications Facility (DODCAF) issued Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns under Guideline F, financial considerations.<sup>1</sup> 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* (Directive) (January 2, 1992), as amended, and the adjudicative guidelines (AG) implemented on September 1, 2006.

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<sup>1</sup>The SOR caption mistakenly identifies this case as an Industrial Security Clearance Review case.

Applicant answered the SOR on October 6, 2014, admitting subparagraphs 1.e through 1.n, and denying the remainder. She requested a decision on the written record. On December 22, 2014, Department Counsel prepared a File of Relevant Materials (FORM). Applicant received the FORM on January 8, 2015 and did not submit a reply. The case was assigned to me on March 10, 2015.

### **Findings of Fact**

Applicant is a 34-year-old woman with four children, ranging in age from 3 to 18. She has been married since 2012. She is a veteran of the U.S. Air Force, serving from 1999, shortly after finishing high school, to 2008. (Item 4 at 16) She has spent her career working at various banks and health insurance companies as a professional service representative. She has been working with her current employer since June 2011. (Item 5 at 7)

Over the past nine years, Applicant has incurred approximately \$18,000 of delinquent debt. She first began having problems in 2007, when she lost her job and was subsequently unemployed for six months. (Item 4 at 10) While unemployed, she decided to use credit cards “not wanting to deny [her] growing family the lifestyle they had become accustomed.” (Item 3 at 2)

Applicant again experienced a period of financial difficulties in 2010 after being fired after her application for extended medical leave before undergoing major reconstructive knee surgery was rejected. (Item 5 at 4) She was unemployed for the next 18 months.

Subparagraphs 1.a through 1.c, and 1.o through 1.r are primarily medical bills. Applicant denies these allegations, contending that the credit reporting agencies removed them from her credit reports after she disputed them. (Item 3) She provided neither any explanation as to why these debts were removed, nor any updated credit reports supporting her contention that they were removed.

Applicant’s responsibility to pay the debt listed in SOR subparagraph 1.d was formally cancelled. (Item 5 at 17) As for the remainder of the SOR debts, Applicant is either contending that the statute of limits governing their collectability has tolled, or she is waiting for the statute of limitations governing their collectability to toll. (Item 3)

### **Policies**

When evaluating an applicant’s trustworthiness, 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.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied together with the factors

listed in the adjudicative process. According to AG ¶ 2(c), 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 as to obtaining a favorable trustworthiness determination.

## **Analysis**

### **Guideline F, Financial Considerations**

Under this guideline, “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 classified information.” (AG ¶ 18) Over the years, Applicant has incurred more than \$18,000 of delinquent debt, which remains outstanding. AG ¶ 19(a), “inability or unwillingness to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations,” apply.

Applicant’s debt listed in subparagraph 1.d was formally cancelled. I resolve subparagraph 1.d in her favor.

Applicant’s financial problems stem from lengthy periods of unemployment. Her most recent unemployment occurred shortly after she underwent major reconstructive knee surgery. Conversely, Applicant admits that she used her credit cards irresponsibly after the 2007 job loss. As for the debts she incurred after the 2010 job loss, she has done nothing other than wait for the statute of limitations governing their collectability to toll. Under these circumstances, 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,” only partially applies.

Applicant’s failure to take any steps to either pay or otherwise resolve her debts also renders AG ¶¶ 20(c), “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,” and 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” inapplicable.

Applicant’s denial of subparagraphs 1.a through 1.c, and 1.o through 1.r is not supported by any documentary evidence. Consequently, AG ¶ 20(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,” does not apply.

### **Whole-Person Concept**

Under the whole-person concept, 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) 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.

The circumstances surrounding Applicant’s accrual of delinquent debts are partially mitigating. However, merely waiting for the period that her debts are legally collectable to expire is not a strategy that mitigates the trustworthiness concern. Similarly, Applicant may have actually paid the disputed medical bills. However, absent any substantiating documentation, I cannot reach this conclusion. Ultimately, Applicant’s unsettled financial problems continue to raise issues regarding her reliability and trustworthiness.

### **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.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraphs 1.e-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 the national security to grant Applicant eligibility to occupy an ADP position. Applicant's eligibility to occupy an ADP position is denied.

MARC E. CURRY  
Administrative Judge