



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ADP Case No. 12-08414  
)  
Applicant for Public Trust Position )

**Appearances**

For Government: Richard Stevens, Esquire, Department Counsel  
For Applicant: *Pro se*

09/04/2015

**Decision**

HEINY, Claude R., Administrative Judge:

Applicant has unpaid taxes, delinquent debts following a home foreclosure and a repossession, and eight collection and charged-off accounts, which together total more than \$57,000. The delinquent accounts have not been resolved. Applicant failed to rebut or mitigate the financial considerations trustworthiness concerns. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to sensitive information and eligibility for a public trust position is denied.

**Statement of the Case**

On July 29, 2014, the Department of Defense (DoD) issued an SOR detailing financial consideration trustworthiness concerns. DoD adjudicators could not find that it is clearly consistent with the national interest to grant or continue Applicant a public trust position.

In an undated response Applicant answered the SOR and on September 17, 2014 elected to have the matter decided without a hearing. Department Counsel

submitted the Government's case in a File of Relevant Material (FORM), dated March 5, 2015. The FORM contained four attachments. On April 27, 2015, Applicant received a copy of the FORM, along with notice of her opportunity to file objections and submit material to refute, extenuate, or mitigate the potentially disqualifying conditions. No response was received from Applicant by the due date. On August 27, 2015, I was assigned the case.

### **Findings of Fact**

Applicant admits with explanation all the SOR debts. Applicant's admissions to the SOR allegations are incorporated herein. After a thorough review of the record, pleadings, and exhibits, I make the following findings of fact:

Applicant is a 46-year-old customer service representative who has been working for a defense contractor since February 2012, and is seeking to maintain a public trust position. She was unemployed from October 2007 through January 2011. She then had a full-time job until her hours were reduced when she moved to a different state with the same employer. She worked for a temporary agency before securing her current job. She has been married since 2006 and has two children ages 11 and 18. (Item 2)

On Applicant's February 2012 Electronic Questionnaires for Investigations Processing (e-QIP), she indicated she was more than \$12,500 delinquent on her mortgage, owed more than \$18,000 on her student loans, owed \$12,000 in state property tax, and was delinquent on three other accounts totaling approximately \$15,000. (Item 2)

In February 2007, Applicant purchased a home for \$119,000 with \$820 monthly payments. In 2009, mortgage payments stopped. In June 2011, she explained her situation to the lender and during the summer of 2011 the home went to foreclosure and was sold. She indicated on her February 2012 e-QIP she owed the mortgage company \$12,500. In November 2011, the lender obtained a judgment against her for an amount not listed in the record. (Item 4)

Also in 2007, Applicant purchased a \$6,208 golf cart (SOR 1.c, \$10,436) and in October 2007, just before being laid off, she purchased an \$8,070 camper (SOR 1.i). (Item 3) The camper was repossessed in July 2010. Both accounts remain unpaid.

In October 2007, Applicant became unemployed. In January 2008, she returned to school incurring student loans (SOR 1.e, \$21,027). In 2010, repayment on the loans was to commence. In February 2012, repayment was deferred for an additional year. She provided no documentation showing payment on her student loans.

Also in 2007, marital difficulties arose sufficiently severe that Applicant separated from her husband and he attempted suicide. They later reconciled and moved to a state closer to her parents. In July 2013, her father died of cancer. She had a retail sales job before the move and was to continue employment with the same department store after

she arrived in the new state. A delay in the paperwork prevented her from immediately starting to work at the new location. When she did start working it was for less than 15 hours per week. In 2012, she started working with her current employer.

In 2008, 2009, and 2010, Applicant did not pay her state property tax resulting in a \$12,000 tax debt. She asserted her federal income tax refund was intercepted and applied to this debt. (Item 3) However, she provided no documentation showing her tax refunds were so applied. She did provide federal tax documents showing the household's adjusted gross income (AGI) for 2008 was \$67,134 and she was entitled to a \$6,122 refund. (Item 3) There is no indication on the IRS form that any amount of the refund was applied to her state property tax. For 2009 the household AGI was \$51,378 and the refund was \$5,297; for 2010 the AGI was \$42,633 and the refund \$6,245; for 2011 the AGI was \$81,870 and the refund was \$3,005; and, for 2012 the AGI was \$40,244 and the refund \$2,797. None of the IRS documents indicate any of the refunds had been sent to the state to address the state property tax bill or for payment on her student loan obligations.

In Applicant's May 2014 response to written financial interrogatories (Item 3) she attached two pay statements for two-week periods in March and April 2014. Noteworthy on those statements is the fact she was having zero federal income tax withheld from her pay and had approximately \$6 per week withheld for state income tax. (Item 3)

The financial interrogatories also contain Applicant's budget indicating her net monthly income (monthly income less monthly expenses and debt payment) was \$87. Her budget lists the debts in SOR 1.a (\$1,481), SOR 1.c (\$10,436), SOR 1.d (\$538), and SOR 1.e (\$21,027). (Item 3) However, the budget indicates she was making no payments on these debts. The only monthly debt payment she was making was \$225 on an automobile loan. (Item 3) In response to the financial interrogatories, she provided an April 2014 receipt indicating she had paid a \$19 medical bill. (Item 3)

In either February 2009 or February 2010,<sup>1</sup> Applicant was driving in a snow storm when the minivan she was driving rolled over and was totally destroyed. The insurance company paid all but \$214 (SOR 1.b) of the amount owed on the vehicle loan. The \$214 has yet to be paid.

In March 2012, Applicant was interviewed about her delinquent obligations and completed a Personal Subject Interview (PSI) in which her delinquent accounts were reviewed. At that time, she acknowledged some debts and was unfamiliar with other debts. She explained how some of the debt came about and that none of them were paid. She never indicated that she intended to pay her debts.

Applicant has not documented any credit or financial counseling. She provided no work or character references, or evidence of civic or community involvement.

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<sup>1</sup> The record lists the accident occurred in February 2009 and also as February 2010. Therefore, the year of the accident is uncertain. (Item 3)

## 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 Defense Office of Hearings and Appeals (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 overarching adjudicative goal is a fair, impartial, and commonsense decision. 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.

The protection of sensitive information 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 applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion as to obtaining 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 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.

## **Analysis**

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

Adjudicative Guideline (AG) ¶ 18 articulates the trustworthiness concerns relating to financial problems:

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. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding sensitive information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a public trust position. Applicants are not required to be debt free, but are required to manage their finances so as to meet their financial obligations.

The evidence supports a conclusion that Applicant has a history of financial problems. Applicant has a judgment, repossession, foreclosure, unpaid taxes, and eight other collection and charged-off accounts, which together total more than \$57,000. Disqualifying Conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts" and AG ¶19(c), "a history of not meeting financial obligations," apply.

Five Financial Considerations Mitigating Conditions under AG ¶¶ 20(a) – (e) 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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(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;

(d) the individual initiated 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.

Applicant meets none of the mitigating factors for financial considerations. Her financial difficulties are both recent and multiple. She produced limited evidence of circumstances beyond her control. She indicated she became unemployed in 2007 and experienced a few periods of separation from her husband. They have now reconciled and she has been full-time employed since February 2012.

The only document showing payment provided by Applicant was a \$19 payment in April 2014 on a medical debt. Her remaining delinquent obligations remain unpaid. Even the \$214 auto loan obligation from February 2010 remains unpaid. She has not acted responsibly in addressing her debts. She provided no evidence she has received credit or financial counseling. She has not demonstrated that her financial problems are under control or that she has a plan to bring them under control. There is no showing of a good-faith effort to satisfy the debts.

AG ¶ 20(a) does not apply because the delinquent debts remain unpaid and because they remain unpaid, they are considered recent. There is nothing in the record supporting that the debts were incurred under unusual conditions not likely to recur. Applicant has failed to act timely or responsibly under the circumstances, which casts doubt on his current reliability, trustworthiness, and good judgment.

AG ¶ 20(b) does not apply. Applicant was unemployed in 2007 and returned to school in 2008. However, she has been fully employed since February 2012. The period of unemployment before obtaining her current job and the period of separation from her husband are events beyond her control. However, AG ¶ 20(b) requires the individual to act reasonably under the circumstances. Having paid only \$19 on her delinquent debt in the past three and a half years, I am unable to find she has acted responsibly and reasonably under the circumstances.

The mitigating condition listed in AG ¶ 20(c) does not apply. There is no clear showing that her financial obligations are being addressed or that she received financial counseling. The mitigating condition listed in AG ¶ 20(d) does not apply because Applicant has failed to document any payments on any of the SOR delinquent accounts. The mitigating condition listed in AG ¶ 20(e) does not apply for Applicant is not disputing the delinquent debts.

### **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(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.

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. The only evidence of payment on any debt was a \$19 payment on a medical bill not listed in the SOR. Applicant experienced family problems resulting in her separation from her husband and also related to the death of her father. However, these events do not excuse nonpayment of her legal obligations. She failed to pay her state tax for three years. A judgment was obtained against her following the foreclosure on her home. Delinquent debts remain on the golf cart purchase and the repossessed trailer. The other debts also remain unpaid. There is no documentation she has maintained contact with her creditors or reached a repayment agreement with any of them.

Applicant has been aware of the Government's concern about her unpaid taxes and delinquent obligations for more than three years. In 2012, she listed some of the SOR debts on her e-QIP. In March 2012, she was questioned about her delinquent obligations during her personal subject interview. In May 2014, she again answered questions about her delinquent debts in her response to financial interrogatories. In July 2014, she received the SOR listing each delinquent debt of concern. Having known of the Government concern for more than three years, she provided evidence that she made a \$19 payment.

In requesting an administrative determination, Applicant chose to rely on the written record. In so doing, however, she failed to submit sufficient information or evidence to supplement the record with relevant and material facts regarding her circumstances and facts which would mitigate the financial considerations security concerns. She failed to provide documentation regarding her past efforts to address her delinquent debt. She failed to provide such information and failed to mitigate the financial considerations security concerns.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of true reform and rehabilitation necessary to justify the award of a position of trust. The awarding of a public trust position is not a once in a lifetime occurrence, but is based on applying the factors, both disqualifying and mitigating, to the evidence presented. Under Applicant's current circumstances, a clearance is not warranted. In the future, if Applicant has paid her delinquent obligations, established compliance with a repayment plan, or otherwise substantially addressed her past-due obligations, she may well demonstrate persuasive evidence of her trustworthiness.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a public trust position. For all these reasons, I conclude Applicant did not mitigate the financial considerations trustworthiness concerns.

### **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, Financial Considerations:	AGAINST APPLICANT
Subparagraphs 1.a – 1.k:	Against Applicant

### **Conclusion**

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

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CLAUDE R. HEINY II  
Administrative Judge