



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



In the matter of: )  
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----- ) ADP Case No. 12-09387  
 )  
Applicant for Public Trust Position )

**Appearances**

For Government: Ray T. Blank, Jr., Esquire  
For Applicant: *Pro se*

02/17/2016

**Decision**

MARSHALL, Jr., Arthur E., Administrative Judge:

Applicant failed to submit sufficient documentary evidence to mitigate Guideline F trustworthiness concerns. Applicant’s eligibility to occupy a position of trust is denied.

**Statement of the Case**

On January 12, 2015, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing concerns under Guideline F (Financial Considerations) regarding her eligibility to occupy an automated data processing (ADP) position designated ADP-I/II/III. 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); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006. On April 25, 2015, Applicant timely responded to the SOR, admitting 13 of the 24 allegations raised. She also requested a determination based on the written record.

On June 18, 2015, the Government issued a File of Relevant Material (FORM) with seven attachments. Applicant did not respond to the FORM within the 30 days provided. The case was assigned to me on October 1, 2015. Based on my review of the file and submissions, I find Applicant failed to mitigate financial considerations trustworthiness concerns.

## Findings of Fact

Applicant is a 41-year-old female who has been continuously employed for at least the past 10 years. She is married and has one stepchild. There is scant information available regarding her educational background, current finances, and any past difficulties directly linked to her 24 delinquent accounts (1.a-1.x) at issue. They amount to approximately \$69,000 in delinquent debts, ranging from \$78 to \$42,203.

Applicant has had financial issues for many years. Collection accounts date back a decade. She attributes some of her delinquent debts (SOR allegations 1.a, 1.i, 1.m, and 1.o) to a 2008 back surgery, for which she believed she was qualified for medical coverage. Little more is known about this procedure or how she may have tried to resolve the related bills. In response to SOR allegations 1.a-1.x overall, Applicant admitted the allegations at 1.b, 1.d-1.e, 1.g-1.j, and 1.p-1.u, amounting to about \$51,500. She either denied or noted "Do not recall" in response to the remaining allegations. Her commentary on the debts in her SOR response, which was submitted without supporting documentation, is limited:

As you can see most of my "Admits" [sic] are historical and if you review my current credit records you will see I've been responsible and I have been attempting to rebuild my credit. Some of these I was unable to Admit [sic] or deny as I do not recall. I would hate to deny or admit to something I do not recognize. I know I'm not a security threat to the DOD. . . .

With regard to her finances overall, Applicant offers no documentary evidence indicating how she has been responsible or how she has attempted to rebuild her credit. There is no evidence she has tried to work with her creditors on the debts she admits. There is no evidence she has disputed any of the accounts. She notes that in her three years working for a defense contractor she has been professional and an asset to her organization. She stresses that she is in need of her employment. The most recent credit reports in the FORM are from 2012 and 2014, respectively. A personal subject interview from 2012 adds little more to the record with regard to the debts at issue.

## Policies

When evaluating an applicant's suitability for a position of trust, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

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. Under 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 the national security is the paramount consideration.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and has the ultimate burden of persuasion to obtain a favorable decision.”

A person who seeks a public trust position 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. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard information. Section 7 of Executive Order 10865 provides that 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.”

## **Analysis**

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

Under Guideline F, AG ¶ 18 sets forth the applicable trustworthiness concern: 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.

Here, the Government introduced credible evidence showing Applicant has acquired about \$69,000 in delinquent debt. Some of the collection accounts date back 10 years. Applicant provided no evidence of efforts exerted toward resolving these delinquent debts or of otherwise addressing the related accounts. Such facts raise financial considerations disqualifying conditions:

AG ¶ 19(a) inability or unwillingness to satisfy debts, and

AG ¶ 19(c) a history of not meeting financial obligations.

Five conditions could mitigate these financial concerns:

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;

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;

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;

AG ¶ 20(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

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.

Multiple delinquent debts remain unpaid. While Applicant writes that four delinquent accounts are related to a back surgery, there is no documentary evidence showing how she handled the debts once they were attributed to her, or how she has addressed them since. She readily admits to over \$51,000 in debts with little further explanation. There is no documentary evidence of financial counseling, progress on any of the debts at issue, or disputes regarding any of the accounts. Indeed, there is no documentary evidence showing either a reasonable strategy for addressing the debts, or showing any progress on the debts.

At best, only AG ¶ 20(b) has any potential application here. While this could apply to her acquisition of some surgery-related debt, Applicant's failure to provide documentary evidence showing she acted responsibly at the time undermines its complete application. Given the scant information introduced by Applicant, none of the available mitigating conditions apply.

### **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(a). Under 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 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 incorporated my comments under the guideline at issue in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is a 41-year-old employee of a defense contractor who has been continuously employed for at least the past decade. She is married and has one stepchild. There is scant information available regarding her educational background, current finances, or any past difficulties shown to be directly linked to any of the 24 delinquent accounts (1.a-1.x) at issue. At issue are approximately \$69,000 in delinquent debts. Applicant admits to over \$51,000 of those debts.

In this case, Applicant requested a decision based on the scant written record. As noted in the analysis above, Applicant attributed four of her debts to a back surgery, but provided no documentation linking those bills to a surgery, or otherwise explaining the circumstances surrounding the surgery itself. She admitted responsibility for over \$51,000 in other debts. She presented no documentary evidence showing she has acted responsibly in handling her debts, devised a payment plan, or made progress on the debts. Indeed, no documentary evidence was offered reflecting her efforts to work with creditors or dispute the balances set forth. Her documentary evidence fails to give rise to any of the available financial considerations mitigating conditions.

This process does not require an applicant to address all debts at issue. It does, however, expect that an applicant articulate a workable plan to address their delinquent debts, show that their plan has been successfully implemented, and document that their financial outlook has improved. Here, Applicant provided insufficient documentary evidence to establish that such progress is being made on her delinquent debts. Lacking such proof, the financial considerations concerns remain.

### **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.x	Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interest of national security to permit Applicant to maintain a public trust position. Eligibility for a public trust position is denied.

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Arthur E. Marshall, Jr.  
Administrative Judge