



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



In the matter of:	)	
	)	
	)	ADP Case No. 13-01347
	)	
Applicant for Public Trust Position	)	

**Appearances**

For Government: Gregg A. Cervi, Esq., Department Counsel  
For Applicant: *Pro se*

09/23/2014

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**Decision**

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LYNCH, Noreen A., Administrative Judge:

On February 24, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant listing trustworthiness concerns arising under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). The action was taken under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), implemented in September 2006.

Applicant timely answered the SOR and requested a decision based on the written record in lieu of a hearing. Department Counsel submitted a File of Relevant Material (FORM), dated April 30, 2014.<sup>1</sup> Applicant received the FORM on May 7, 2014. She did not submit additional information for the record. I received the case assignment on September 12, 2014. Based on a review of the case file, I find Applicant has not mitigated the trustworthiness concerns raised. Eligibility for a position of trust is denied.

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<sup>1</sup>The Government submitted eight items in support of its case.

## Findings of Fact

In her answer to the SOR, Applicant admitted allegations under Guideline F, ¶¶ 1.a-1.t with explanations. She also admitted the allegation of falsification under Guideline E. (Item 4)

Applicant is 48 years old. She is a referral specialist employed with an insurance company. Applicant graduated from high school in 1985. (Item 6) She received an associates degree in 2012. Applicant is married and has one adult child. (Item 4) Applicant has been employed with her current employer since February 2013. This is her first application for a position of trust, which she completed on February 23, 2013. (Item 5)

The SOR alleges 20 delinquent debts totaling approximately \$25,310. These debts include federal and state tax liabilities and charged-off accounts. (Item 1) Credit reports confirm the debts. (Items 7, and 8)

Applicant explained in her Answer that unemployment caused several debts and that she had no money to pay the debts. She also stated that the creditors would not work with her. She acknowledged that she had collection accounts for several credit cards. However, she explained that she did not list other accounts on her official application because they were "old" or that she was unaware of them. She stated that she is in the process of paying her bills as best as she can.

In 2013, during an investigative interview, Applicant explained that she was unemployed from June 2011 until December 2012. The record reflects that she was employed in other positions from 1996. (Item 6) She acknowledged that she had defaulted on an auto loan. (Item 6)

Applicant provided documentation that she paid her state tax obligation (SOR 1.a). She submitted a satisfaction of judgment from 2013 and 2014. (Item 4) The amount in question was \$674 for delinquent state income taxes.

As for SOR 1.b, Applicant is in repayment status for her federal tax obligation. She owed approximately \$3,527 for delinquent income taxes. Applicant submitted an 2013 agreement to begin installment payments with the IRS to repay arrears for tax years 2006-2008 and 2010. She also provided a document showing a \$50 payment that was made in February 2014. A handwritten note was submitted for the March 2014 payment. (Item 4)

As to the remaining SOR debts, Applicant did not provide any documentation to support that she has paid or is in a repayment plan for them. She admitted the debts and claimed that SOR 1.i was paid on February 9, 2009. She also stated that she disputed that debt with the credit bureaus. Applicant noted that she was not sure why the debts 1.p-1.r are listed as three accounts. As to SOR debts 1.c-1.t, no evidence has been provided to support Applicant's assertions, especially when she claims a debt is paid.

Applicant's net monthly income is about \$1,698. Her net remainder is -\$170. She has no savings. Applicant did not list any financial counseling or use of a budget. There is no record of use of a credit counseling organization.

When Applicant completed her February 26, 2013 e-QIP, she answered "No" to Section 26 - Financial Record concerning any "delinquency involving routine accounts." She acknowledged in her 2013 interview that she knew that she had accounts that were in collection or charged-off. She also noted a default on an auto loan. When confronted with a list of the collection accounts that she did not disclose on the e-QIP, she admitted that she did not include them. One reason given was that they were so old that she did not think about them. She deliberately failed to disclose the information.

### **Policies**

When evaluating an applicant's suitability for a public trust position, an 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, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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.

The Government must present evidence to establish controverted facts alleged in the SOR. 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. . . ." <sup>2</sup> The burden of proof is something less than a preponderance of evidence. <sup>3</sup> The ultimate burden of persuasion is on the applicant. <sup>4</sup>

A person seeking access to sensitive information enters into a fiduciary relationship with the Government based on trust and confidence. This relationship

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<sup>2</sup> See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

<sup>3</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

<sup>4</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

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 classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

## **Analysis**

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

The trustworthiness concern for Financial Considerations is set out in AG ¶ 18:

Failure or an 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.

Applicant's admissions and credit reports establish her delinquent debts and federal and state tax debts. Consequently, Financial Considerations Disqualifying Conditions (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations) apply. With such conditions raised, it is left to Applicant to overcome the case against her and mitigate trustworthiness concerns.

The nature, frequency, and relative recency of Applicant's financial difficulties make it difficult to conclude that it occurred "so long ago." An unpaid debt is a continuous course of conduct for the purposes of DOHA adjudications. See, ISCR Case No. 10-11083 at 2 (App. Bd. Dec. 17, 2012). Applicant still has unresolved delinquent debt that she intends to pay, but has not provided documentation to support her assertion. She has not provided sufficient documentation that other than the Federal and state tax obligations, any accounts are paid or are in a repayment plan. The delinquent obligations remain. Consequently, Financial Considerations Mitigating Condition (FC MC) 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) does not apply.

FC MC AG ¶ 20(b) (the conditions that resulted in the behavior 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) partially applies. Applicant provided information concerning unemployment and tax problem that caused financial difficulties beyond her control. She has been addressing the IRS tax debt and the state tax

obligation and has acted responsibly in that matter. However, she still has a large unresolved amount of debt that she has not provided evidence that she has resolved or is in the process of resolving them. In response to the FORM, Applicant did not present new information presenting more documentation or an update on the status of her debts.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) partially applies. Applicant has been paying her tax debts. She did not present evidence that she received financial counseling. AG ¶ 20(c) (the person has received or is receiving counseling for the problem) does not apply. She has not addressed the other debts in a timely manner. Consequently, I find that there are not clear indications that her financial problems are being resolved and are under control.

### **Guideline E, Personal Conduct**

AG ¶ 15 expresses the trustworthiness concern for personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect [sensitive] information. Of special interest is any failure to provide truthful and candid answers during the [public trustworthiness] process or any other failure to cooperate with the [trustworthiness] process.

AG ¶ 16 describes conditions that could raise a trustworthiness concern and may be disqualifying:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualification, award benefits or status, determine public trust positions eligibility, or award fiduciary responsibilities.

Applicant did not disclose relevant information on her 2013 application concerning delinquent accounts in Section 26 Financial Records. Although she listed information concerning her federal and state tax obligations, she did not disclose any routine delinquent accounts. She admitted that she did not disclose the information, but in her 2013 interview she admitted that she knew about them but thought the accounts were too "old." She did not provide a reasonable explanation especially since she admitted them in her Answer. I find that she deliberately failed to disclose significant information. This affects her judgment, trustworthiness, and reliability. AG ¶16(a) is applicable.

After considering the mitigating conditions under AG ¶ 17, I find that none of them 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 an applicant's conduct and all the 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 position of trust must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. As noted above, the ultimate burden of persuasion is on the applicant seeking a public trust position.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors. Applicant is 48 years old. She has worked for her current employer since 2013. With the exception of documented unemployment in June 2011 until December 2012, she has worked in the field for many years. She has been making payments to the IRS. She claims that many of the debts are due to unemployment and an inability to pay the debts. However, she has not shown that she has addressed the majority of the delinquent debts. She has paid the state tax obligation.

Applicant disclosed her tax obligations on her 2013 application, but she failed to disclose any routine delinquent accounts in response to Section 26. She knew that she had delinquents accounts and admitted as much in her Answer. When confronted during an interview, she noted that she did not list the accounts because they were too "old." She admitted that she deliberately failed to disclose significant information.

Because Applicant chose to have this matter handled without a hearing, I am unable to evaluate her demeanor or credibility. In relying on the written record, she failed to submit sufficient information or evidence to supplement the record with relevant and material facts regarding her circumstances, articulate her position, and fully mitigate the financial considerations concerns.

The clearly consistent standard indicates that trustworthiness determinations should err, if they must, on the side of denials. A denial of her trustworthiness does not necessarily indicate anything adverse about Applicant's character or loyalty. It means that the individual has presented insufficient mitigation to meet the strict standards controlling access to sensitive information.

## 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.b:	For Applicant
Subparagraphs 1.c-1.t:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	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 Applicant a position of public trust. Eligibility for access to sensitive information is denied.

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NOREEN A. LYNCH.  
Administrative Judge