



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



In the matter of:	)	
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	)	ADP Case No. 13-01366
	)	
Applicant for Public Trust Position	)	

**Appearances**

For Government: Pamela Benson, Esquire, Department Counsel  
For Applicant: *Pro se*

April 7, 2015

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**Decision**

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ROSS, Wilford H., Administrative Judge:

On February 5, 2014, in accordance with Department of Defense (DoD) Directive 5220.6, the DoD issued a Statement of Reasons (SOR) detailing the trustworthiness concerns under Guidelines F and E for Applicant. (Item 1.) The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense after September 1, 2006.

Applicant replied to the SOR in writing (Response) sometime after February 5, 2014, and she requested that her case be decided on the written record in lieu of a hearing. (Item 3.) On July 9, 2014, Department Counsel issued the Department's written case. A complete copy of the file of relevant material (FORM) was provided to Applicant. In the FORM, Department Counsel offered eight documentary exhibits. (Items 1-8.) Applicant was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. There is no written receipt from Applicant in the file. Department Counsel corresponded with Applicant by telephone and email on

January 14, 2015, concerning the lack of receipt. Applicant stated in an email, “I . . . received another package of Documents in regard to the case in about July 2014, again I had them returned within the requested period of time.” In another email of that same date she states, “I do not believe I have anything to add to this case.” Based on the available evidence I find that Applicant has had more than 30 days since receipt of the FORM and has elected not to submit any additional information.<sup>1</sup> The case was assigned to this Administrative Judge on February 10, 2015. Based upon a review of the pleadings and exhibits, eligibility to occupy a sensitive position is denied.

### **Findings of Fact**

Applicant is 37 years old. She is employed by a healthcare provider, and she seeks access to sensitive information in connection with her employment.

#### **Paragraph 1 - Guideline F, Financial Considerations**

The Government alleges in this paragraph that Applicant is ineligible for access because she has a history of financial irresponsibility, which shows poor self-control, lack of judgment, or untrustworthiness.

The SOR lists 23 delinquent debts and judgments, totaling approximately \$61,336. Applicant admitted all of the allegations under this paragraph except for 1.v. Those admissions are findings of fact. Regarding 1.v she says it is a duplicate of 1.u, which I deem a denial of that allegation.

Subparagraphs 1.a through 1.e of the SOR are judgments against Applicant. The existence and amounts of the judgments are supported by credit reports dated October 2, 2013; and July 8, 2014; and a state judgment and liens filings report. (Items 5, 6, and 7.)

Subparagraphs 1.f through 1.w of the SOR are delinquent debts. The existence and amount of the debts are supported by the same credit reports. (Items 5, and 6.)

With regard to all the admitted debts, Applicant failed to supply any evidence concerning responsibility for the debts, payments made, or the existence of payment arrangements. With regards to 1.v, it is a debt for the same amount as 1.u, \$111. Both are medical debts. Together with Applicant’s statement that they are the same debt, Government was put on notice that there was a factual issue with this debt. Under these circumstances, an entry in a credit report is not sufficient to support a finding that 1.v is a separate debt of Applicant’s. With the exception of 1.v being a duplicate allegation, I find that all of these debts have not been resolved.

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<sup>1</sup>Directive, “Additional Procedural Guidance,” ¶¶ E3.1.7, and E3.1.10.

## Paragraph 2 - Guideline E, Personal Conduct

The Government alleges in this paragraph that Applicant is ineligible for clearance because she engaged in conduct showing questionable judgment, lack of candor, or dishonesty. Applicant admitted allegation 2.c, which is a finding of fact. Her responses are deemed denials of the other two allegations.

2.a. Applicant was arrested on May 14, 2004, for several offenses related to use and possession of marijuana or drug paraphernalia. She was sentenced to a six month diversion program and fined. The FBI report, and a statement in Applicant's Response, also show that she received a "conditional discharge." (Item 8.)

2.b. Applicant filled out an e-QIP on September 3, 2013. She was asked under "**Section 22, Police Record:** Have you **EVER** been charged with an offense involving alcohol or drugs?" (Item 4.) (Emphasis in original.) Applicant answered, "No." This was a false answer to a relevant question concerning her criminal drug use. In her Response Applicant states, "I miss read [sic] the question." She does not specify how she misread the question. However, since the question is clear and direct, her explanation is not persuasive.

2.c. Section 26 of the same questionnaire asks, "In the past seven (7) years, have you had a judgment entered against you; defaulted on any type of loan; had bills or debts turned over to a collection agency; had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed; have you been over 120 days delinquent on any debt; [or] currently over 120 days delinquent on any debt?" She said, "No," which was a false answer to a relevant question concerning her financial situation. Applicant admitted this allegation.

Applicant provided no evidence concerning the quality of her professional performance, the level of responsibility her duties entail, or her track record with respect to handling sensitive information. She submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability. I was unable to evaluate her credibility, demeanor, or character in person since she elected to have her case decided without a hearing.

## Policies

When evaluating an applicant's suitability for access to a sensitive position, 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, which are useful in evaluating an applicant's eligibility for access to a sensitive position.

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 AG ¶ 2(a) describing the adjudicative process. The administrative

judge's over-arching 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 the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to [a sensitive position] 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 access decision.

A person who seeks access to a sensitive 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. 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 that 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 adverse 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." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Paragraph 1 - 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 and could potentially apply in this case. 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 trustworthiness concerns. I find that both of these disqualifying conditions apply to Applicant in this case. The evidence has established that Applicant accumulated significant delinquent debt, which she has been unable or unwilling to pay.

AG ¶ 20 provides conditions that could mitigate trustworthiness concerns from financial difficulties. AG ¶ 20(a) states it may be mitigating when the behavior happened so long ago, was infrequent, or is unlikely to recur. 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.” There is no evidence that Applicant’s personal situation fits these mitigating conditions.

Since there is no evidence that Applicant has undertaken any kind of counseling to better manage her finances, I do not find that AG ¶ 20(c) is applicable. Additionally, I do not find that AG ¶ 20(d) is applicable, since Applicant has not “initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” Finally, I do not find any other mitigating condition applies to this case since no evidence was introduced to establish that Applicant’s current financial status is stable and that she is able to resolve her debts. Therefore, I find Guideline F against Applicant.

## **Paragraph 2 - Guideline E, Personal Conduct**

The trustworthiness concern relating to Personal Conduct is set out in AG ¶ 15:

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

I have examined the disqualifying conditions under AG ¶ 16 and especially considered the following:

(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

qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing.

The following mitigating condition under AG ¶ 17 may apply to the facts of this case:

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

Applicant's falsifications of her e-QIP occurred about a year before the record closed. As stated, she admitted falsifying the question about her financial situation. In addition, the allegation in 2.a might have been mitigated by the time since the event happened. However, since she is found to have falsified her e-QIP about that offense, it still might create a vulnerability. The dearth of mitigating information of any type precludes a finding that she is a credible person. Paragraph 2 is found against Applicant.

### **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) 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 to occupy a sensitive 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. Based on the lack of evidence to establish that Applicant has made any attempt to resolve the past-due debts listed on the SOR, combined with the falsifications on her e-QIP, I find that the record evidence leaves me with significant questions and doubts as to Applicant's eligibility and suitability for access to sensitive information, under the whole-person concept. For all these reasons, I conclude Applicant has not mitigated the trustworthiness concerns under the whole-person concept.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a - 1.u:	Against Applicant
Subparagraph 1.v:	For Applicant
Subparagraph 1.w:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a - 2.c	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 eligibility to occupy a designated ADP I/II/III sensitive position. Eligibility for access to sensitive information is denied.

Wilford H. Ross  
Administrative Judge