



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



In the matter of:	)	
	)	
	)	ADP Case No. 14-02852
	)	
Applicant for Public Trust Position	)	

**Appearances**

For Government: Robert J. Kilmartin, Esq., Department Counsel  
For Applicant: *Pro se*

12/08/2014

**Decision**

LYNCH, Noreen A., Administrative Judge:

On July 23, 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 October 17, 2014.<sup>1</sup> Applicant received the FORM on October 29, 2014. She submitted additional information for the record. I received the case assignment on November 21, 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 seven items in support of its case.

## Findings of Fact

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

Applicant is 30 years old. She is a personal care giver assistant employed with a home health care company. Applicant graduated from high school in June 2001. (Item 4) Applicant is single and has one child. (Item 4) She has been employed with her current employer since December 2012. This is her first application for a position of trust, which she completed on February 20, 2013. (Item 5)

The SOR alleges 15 delinquent debts totaling approximately \$34,000. These debts include charged-off accounts, collection accounts, involuntary repossession of a vehicle. (Item 1) Credit reports confirm the debts. (Items 5 and 6)

Applicant explained in her Answer that she has had multiple periods of unemployment. The record reflects that she was unemployed from August 2011 until November 2011; September 2012 until December 2012. She noted that one debt (SOR 1.f) has been settled, but she did not provide any proof. Applicant maintains that her medical debts are the result of not having health insurance coverage.

In 2013, during an investigative interview, Applicant explained that she contacted several collection agencies and intends to pay her bills through a repayment plan. She stated that her goal was to have things in payment status by 2013. Her student loans are in deferment.

As to the remaining SOR debts, Applicant did not provide any documentation to support that she has paid any accounts or is in a repayment plan for them. She admitted the debts, but thought that some may be duplicate accounts.

The record does not provide any personal financial information. 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 5, 2013 e-QIP, she answered "Yes" to Section 26 - Financial Record concerning any "delinquency over 120 days." She listed various accounts and noted the amounts and what she planned to do to resolve them. At the bottom of the summary section she answered "NO" to any delinquent 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. She put the government on notice that she had many delinquent accounts on her security clearance application. She told the investigator that she had not noticed that she checked the summary box incorrectly. This is reasonable in terms of the many accounts that she listed as delinquent in Section 26.

## 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 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:

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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).

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 her credit reports confirm the 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 documentation that 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 listed information concerning unemployment that caused financial difficulties beyond her control. She has every intention to pay her debts, but to date has not provided any documentation that she has addressed any of them. She 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 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 disclosed information about many delinquent accounts in Section 26 Financial Records on her application for a public trust position. Although she did not check the box at the very end of the section (summary) with regard to delinquent debts more than 120 days overdue, she had checked the "Yes" box in the beginning of the section. She also disclosed various accounts on the security clearance application. In her 2013 interview she admitted that she knew about her accounts. I find that she did not falsify her security clearance application or fail to disclose significant information. AG ¶16(a) is not applicable.

### **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 30 years old. She has worked for her current employer since 2012. With the exception of documented unemployment in August 2011 to November 2011 and September 2012 to December 2012, she has been employed. However, she has not shown that she has addressed the majority of the delinquent debts. She has not mitigated the security concerns under the financial considerations guideline.

Applicant disclosed her delinquent accounts on her security clearance application in response to Section 26. She has mitigated the security concerns under the personal conduct guideline.

Because Applicant chose to have this matter handled without a hearing, I am unable to evaluate her 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.o:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a-b:	For 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 a position of public trust is denied.

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NOREEN A. LYNCH.  
Administrative Judge