



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



In the matter of: )  
)  
) ADP Case No. 14-02910  
)  
Applicant for a Public Trust Position )

**Appearances**

For Government: Caroline E. Heintzelman, Esq., Department Counsel  
For Applicant: *Pro se*

03/09/2016

**Decision**

NOEL, Nichole L., Administrative Judge:

Applicant contests the Defense Department’s intent to deny her eligibility for a public trust position to work in the defense industry. Applicant’s financial problems were not caused by irresponsible, reckless, or negligent behavior. She has demonstrated a good-faith effort to resolve her delinquent student loan accounts and provided a legitimate basis for disputing the medical debts alleged in the SOR. Her eligibility for access to sensitive information is granted.

**Statement of the Case**

On September 8, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing trustworthiness concerns under the financial considerations guideline.<sup>1</sup> DOD adjudicators were unable to find that it is clearly consistent with national security to grant or continue Applicant’s access to sensitive information and

<sup>1</sup> This case is adjudicated under DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). The *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply to this case. The AG replace the guidelines in Enclosure 2 to the Directive.

recommended that the case be submitted to an administrative judge for a determination whether to revoke or deny Applicant's eligibility to occupy a public trust position.

Applicant timely answered the SOR and requested a hearing. On August 6, 2015, I issued a prehearing order to the parties regarding the exchange and submission of discovery, the filing of motions, and the disclosure of any witnesses.<sup>2</sup> The parties complied with the terms of the order.<sup>3</sup> At the hearing, convened on August 26, 2015, I admitted Government's Exhibits (GE) 1 through 5, without objection. Applicant did not submit any documents at the hearing, but timely submitted Applicant's Exhibit (AE) A, which was also admitted without objection.<sup>4</sup> I received the transcript (Tr.) on September 3, 2015.

### **Findings of Fact**

Applicant, 28, has worked for a federal contractor since August 2013. Initially hired as a temporary employee, Applicant obtained permanent status in February 2013. She is seeking eligibility to occupy a position of trust because her job requires access to personally identifiable information (PII). On her position of trust application, dated August 2013, she disclosed several delinquent accounts. The SOR alleges that Applicant owes \$24,000 on 22 delinquent accounts.<sup>5</sup>

The majority of Applicant's delinquent debts, SOR ¶¶ 1.h through 1.s are for student loans. Between January 2006 and August 2008, Applicant attended a school in the now-defunct, for-profit Corinthian College system. She did not obtain a degree. In 2015, a Department of Education (ED) investigation found that the company engaged in deceptive practices. Specifically, the corporation recruited low-income students using inflated job placement rates and encouraging students to finance their education with loans they would not likely be able to repay.<sup>6</sup> Corinthian Colleges closed the majority of its schools in November 2015 after the findings of the investigation became public. ED specifically created an expedited debt relief process for certain students who attended

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<sup>2</sup> The prehearing scheduling order is appended to the record as Hearing Exhibit (HE) I.

<sup>3</sup> The discovery letter, dated July 6, 2015 is appended to the record as HE II. Due to a change of address, Applicant did not receive the discovery letter. Department Counsel resent it to Applicant's new address on July 22, 2015. Applicant confirmed receipt of the letter.

<sup>4</sup> Correspondence related to Applicant's post-hearing submission is appended to the record as HE III.

<sup>5</sup> Tr. 16; GE 1.

<sup>6</sup> Department of Education, Department of Education and Attorney General Kamala Harris Announce Findings from Investigation of Wyotech and Everest Programs (Nov. 17, 2015), <http://www.ed.gov/news/press-releases/departments-of-education-and-attorney-general-kamala-harris-announce-findings-from-investigation-of-wyotech-and-everest-programs>

Applicant's school.<sup>7</sup> She did not qualify for the program and remains responsible for her student loans.<sup>8</sup>

Several of the SOR debts are related to the care of other family members. Between 2010 and 2015, Applicant was the only employed member of her family. In addition to bearing full financial responsibility for her son, she also supported her mother and older sister. When Applicant was unemployed between March 2012 and August 2013, she supported her family with the help of public assistance programs. After she began her current employment in 2013, her financial responsibilities increased. Applicant began providing some financial support to her father in 2013 after he was diagnosed with a terminal illness. She continued to do so until his death in June 2014. After her father passed, Applicant became financially responsible for her younger brother. She incurred the debts in SOR ¶¶ 1.f and 1.g (\$788) on her mother's behalf. Her mother promised to pay the accounts, but failed to do so. The debts alleged in SOR ¶¶ 1.b., 1.e, 1.t., 1.u (\$3,300) are medical debts for Applicant and her son. Applicant had insurance through a state-run medical insurance program at the time she and her son received medical treatment. She believes the debts were not covered due to some administrative error.<sup>9</sup>

Historically, Applicant has worked a series of low paying jobs. Now, earning \$14 per hour plus time-and-a-half for overtime, Applicant is earning the highest wage of her career. Initially, Applicant worked 16 hours days, 7 days a week until she developed an emergency medical issue that required a hospital stay. At the time, Applicant was still a temporary employee and did not have paid time off. She checked herself out of the hospital against her doctor's orders to return to work. Since then, her employer has made some accommodations for her medical condition and has limited her overtime hours to eight per week.<sup>10</sup>

Even with the reduction in her income caused by her limited hours, Applicant is taking steps to resolve her delinquent accounts. She is starting with her student loans. She has entered a program to return the loans to good standing. Applicant is working toward rehabilitating her finances. In April 2015, she stopped providing financial support to her family members. She has also improved her credit score by 100 points. Applicant is able to pay her recurring financial obligations on time. She does not have any credit cards or open consumer credit accounts.<sup>11</sup>

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<sup>7</sup> Department of Education, Fact Sheet: Protecting Students from Abusive Career Colleges (June 8, 2015), <http://www.ed.gov/news/press-releases/fact-sheet-protecting-students-abusive-career-colleges>

<sup>8</sup> Tr. 18, 25-29.

<sup>9</sup> Tr. 17-19, 23-24, 29-30, 34-40, 48-19.

<sup>10</sup> Tr. 30, 41-42, 58-63.

<sup>11</sup> Tr. 32-33, 42-43, 47-48, 56; AE A.

## Policies

Positions designated as ADP I and ADP II are classified as “sensitive positions.”<sup>12</sup> “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.”<sup>13</sup> 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.<sup>14</sup> An administrative judge’s objective is a fair, impartial, and commonsense decision that embraces all available, reliable information about the person, past and present, favorable and unfavorable.

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 the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain a favorable decision.

A person who seeks access to 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. 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 safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of sensitive information.

## Analysis

Unresolved delinquent debt is a serious concern because failure to “satisfy debts [or] 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.”<sup>15</sup> Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding sensitive information.

Applicant admits that she owes the delinquent debts alleged in the SOR. Applicant argues, however, that the debts alleged in SOR ¶¶ 1.n through 1.s are duplicates of the student loans allegations in SOR ¶¶ 1.h through 1.m. A review of the

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<sup>12</sup> DOD Regulation 5200.2-R, *Personnel Security Program* (January 1987), as amended (Regulation) ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3.

<sup>13</sup> Regulation ¶ C6.1.1.1.

<sup>14</sup> See Regulation ¶ C8.2.1.

<sup>15</sup> AG ¶ 18.

credit reports in the record supports Applicant's contention. The credit reports also show that the student loan account alleged in SOR ¶ 1.k is a duplicate of SOR ¶ 1.i.<sup>16</sup> Accordingly, SOR ¶¶ 1.k and 1.n through 1.s, totaling \$9,800 are resolved in Applicant's favor. However, she remains responsible for the \$14,400 in delinquent debt in the SOR. Applicant's admissions and the credit reports in the record establish a *prima facie* case that Applicant had a history of not meeting her financial obligations and that she demonstrated an inability to pay his bills.<sup>17</sup> However, Applicant has submitted sufficient information to mitigate the trustworthiness concerns raised by her finances.

Applicant's financial problems did not occur under circumstances that raise doubts about her current trustworthiness. She incurred the debt as a young adult trying to finance her education and support her family members on low wages. Now, Applicant is saddled with debts from opening accounts for her mother and student loans for a college known to engage in deceptive practices against its students. However, Applicant is taking responsibility for the outstanding accounts and is initiating a good-faith effort to resolve them, starting with her student loan accounts. Applicant has entered into a rehabilitation program to restore her \$9,400 in delinquent student loans to good-standing.<sup>18</sup> In addition, Applicant presented evidence establishing a reasonable basis to dispute the medical debts alleged in SOR ¶¶ 1.b, 1.e, 1.t, 1.u, totaling \$3,300. The debts should have been covered by the state-sponsored insurance plan she had at the time she received treatment.<sup>19</sup> The remaining \$1,600 in unresolved delinquent debt, while not insignificant, is not a likely source of exploitation or vulnerability for Applicant.

After reviewing the record, I have no doubts about her suitability for access to sensitive information. In reaching this conclusion, I have also considered the whole-person factors at AG ¶ 2(a). Applicants are not held to a standard of perfection. Although it will take some time for Applicant to completely rehabilitate her finances, she is putting forth her best effort to resolve her debt given her limited resources. Accordingly, her request for access to sensitive information is granted.

### 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:	FOR APPLICANT
Subparagraphs 1.a – 1.u:	For Applicant

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<sup>16</sup> GE 3-5.

<sup>17</sup> AG ¶¶ 19(a) and (c).

<sup>18</sup> AG ¶ 20(d).

<sup>19</sup> AG ¶ 20(e).

## **Conclusion**

In light of all of the circumstances presented, it is clearly consistent with the interests of national security to grant Applicant access to sensitive information. Applicant's eligibility to occupy a position of trust is granted.

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Nichole L. Noel  
Administrative Judge