



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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----- ) ADP Case No. 14-00395  
 )  
Applicant for Public Trust Position )

**Appearances**

For Government: Jeff A. Nagel, Esq., Department Counsel  
For Applicant: *Pro se*

06/19/2014

**Decision**

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to deny her eligibility for a public trust position. The evidence shows Applicant has a history of financial problems or difficulties consisting of delinquent student loans and delinquent consumer debts, all of which are unresolved. Applicant did not present sufficient evidence to explain and mitigate the concern stemming from her unfavorable financial history. Accordingly, this case is decided against Applicant.

**Statement of the Case**

On March 26, 2014, the Department of Defense (DOD) sent Applicant a statement of reasons (SOR) detailing a trustworthiness concern under Guideline F for financial considerations. The action was taken under Executive Order 10865, *Safeguarding Classified Information with Industry* (Feb. 20, 1960), as amended;

Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Review Program* (Jan. 2, 1992), as amended (Directive); Department of Defense Regulation 5200.2-R, *Personnel Security Program* (Jan. 1987), as amended (Regulation); and the adjudicative guidelines (AG)<sup>1</sup> implemented by the DOD on September 1, 2006. The SOR recommended submission of Applicant's case to an administrative judge to determine her eligibility to occupy an automated data processing (ADP) position to support a DOD contract. Applicant answered the SOR on April 7, 2014, and then she requested a hearing on April 24, 2014.

The case was assigned to me May 8, 2014. The hearing was held May 29, 2014. At the hearing, Department Counsel presented Exhibits 1–3, which were admitted. Likewise, Applicant presented Exhibits A–C, which were admitted, and she testified on her own behalf. The transcript (Tr.) was received June 9, 2014.

The record was kept open until June 13, 2014, to allow Applicant to submit additional documentary evidence. Those matters were timely received, and they are marked and admitted without objections as Exhibit D–letter of recommendation, dated June 4, 2014, and Exhibit E–letter from federal student loan guarantor, dated May 29, 2014.

### **Findings of Fact**

The SOR alleged a history of financial problems or difficulties consisting of: (1) eight federal student loans that were past due or in collection for a total of about \$16,459; (2) two medical collection accounts for a total of about \$5,700; and (3) seven consumer accounts in collection for a total of about \$3,384. In her answer to the SOR, Applicant denied responsibility or ownership of three consumer accounts, but otherwise admitted the SOR allegations. Her admissions are accepted and adopted and incorporated herein as findings of fact. In addition, the following findings of fact are supported by substantial evidence.

Applicant is a 34-year-old employee who is seeking to obtain eligibility to occupy a position of public trust for her job as an intake representative doing data processing for a managed-care support contractor for the Defense Department. She is a temporary employee assigned to work for the contractor by a staffing/employment agency. She earns \$15.50 per hour; she has no other sources of income; and, aside from \$200 in cash savings, she has no financial assets.

Applicant has had this job since October 2013. Before that, she was unemployed (but received unemployment compensation) from August 2012 to September 2013. Before that, she worked as a medical assistant for a doctor's office from May 2010 to July 2012, when she was terminated.

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<sup>1</sup> The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines in Enclosure 2 to the Directive.

Applicant is about eight-months pregnant with her first child, and she planned to be on disability from June 18, 2014, to approximately August 27, 2014, due to pregnancy. (Exhibit C) Her boyfriend, and father of the child, attended the hearing but did not otherwise participate. He is suffering from a back injury and is unable to work.

The available documentary evidence shows that Applicant has eight federal student loans in the amounts of \$154, \$5,384, \$5,355, \$120, \$1,764, \$1,505, \$1,162, and \$1,015, all of which are in collection or past due. (Exhibits B and C) Applicant obtained the student loans during 2008–2010 when she was earning an associate’s degree in medical assisting. Other than a recent intercept of her 2013 federal income tax refund, Applicant has made no payments on the student loans. At the hearing, she estimated the balance due on the student loans was about \$28,000. (Tr. 38) After the hearing, she presented a May 29, 2014 letter from the guarantor of the student loans stating that her loans are about to default. (Exhibit E) There are handwritten notations on the letter suggesting that the default will occur on July 24, 2014, and that Applicant was making arrangements to establish a repayment plan before that date.

The available documentary evidence shows that Applicant has two medical collection accounts for a total of about \$5,700. (Exhibits B and C) Those debts are the direct result of uninsured medical expenses that Applicant incurred for necessary medical care due to an episode of diverticulitis. (Tr. 40–42) Applicant has been unable to make any payments on those debts.

The available documentary evidence also shows that Applicant has seven consumer accounts in collection for a total of about \$3,384. (Exhibits B and C) Applicant has not paid, settled, entered into repayment agreements, disputed, or otherwise resolved the consumer accounts, which were addressed individually during the hearing. (Tr. 42–49) Likewise, she did not present any documentation to support her denial of the collection accounts in SOR ¶¶ 1.m, 1.n, and 1.p.

Applicant presented a simplified monthly budget. (Exhibit A) It shows a positive net remainder of about \$200, but the budget does not account for all living expenses (e.g., groceries). She explained that she is currently living with her parents and they make up for any shortfall. Her parents also submitted a letter of recommendation on their daughter’s behalf. (Exhibit D) I found the letter to be both thoughtful and informative. Her parents observed that Applicant’s biggest flaw is her big heart, which has resulted in her being taken advantage of without understanding the consequences of her actions. Their observation is consistent with Applicant’s explanations for some of the consumer accounts.

## **Discussion**

Under Guideline F for financial considerations,<sup>2</sup> the suitability of an applicant may be questioned or put into doubt when that applicant has a history of excessive

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<sup>2</sup> AG ¶¶ 18, 19, and 20 (setting forth the concern and the disqualifying and mitigating conditions).

indebtedness or financial problems or difficulties.<sup>3</sup> The overall concern under Guideline F is:

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.<sup>4</sup>

Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding sensitive information within the defense industry.

The evidence supports a conclusion that Applicant has a history of financial problems or difficulties. The delinquent student loans and the delinquent consumer debts indicate inability or unwillingness to satisfy debts<sup>5</sup> and a history of not meeting financial obligations<sup>6</sup> within the meaning of Guideline F. The facts are sufficient to establish these two disqualifying conditions, and the facts also suggest a degree of financial irresponsibility.

With that said, I attach little security significance to the medical collection accounts. Applicant incurred those debts for necessary medical care without the luxury of health insurance as opposed to high-living or frivolous expenditures, and they do not indicate poor self-control, questionable judgment, unreliability, or untrustworthiness. On that basis, the debts in SOR ¶¶ 1.j and 1.k are decided for Applicant.

Based on the available evidence, none of the six mitigating conditions under Guideline F are sufficient to fully mitigate the concern stemming from the delinquent student loans and the delinquent consumer debts.<sup>7</sup> In reaching this conclusion, my primary concern is the student loans, which are delinquent and near default. I consider a student loan to be a high-priority debt, paying it back is not optional (e.g., the general rule is that a student loan cannot be discharged in bankruptcy), and failure to repay a student loan comes with serious consequences. And I am afraid that the decision here

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<sup>3</sup> ISCR Case No. 95-0611 (App. Bd. May 2, 1996) (It is well settled that "the security suitability of an applicant is placed into question when that applicant is shown to have a history of excessive indebtedness or recurring financial difficulties.") (citation omitted); and see ISCR Case No. 07-09966 (App. Bd. Jun. 25, 2008) (In security clearance cases, "the federal government is entitled to consider the facts and circumstances surrounding an applicant's conduct in incurring and failing to satisfy the debt in a timely manner.") (citation omitted).

<sup>4</sup> AG ¶ 18.

<sup>5</sup> AG ¶ 19(a).

<sup>6</sup> AG ¶ 19(c).

<sup>7</sup> AG ¶¶ 20(a)–(f).

is one of those consequences, because Applicant has done very little to resolve her delinquent student loans. Her last-minute effort to contact the guarantor of the loans and make payment arrangements are, at this point, simply a promise to take action in the future, a circumstance that is not entitled to much weight. She has not acted with reasonable diligence expected from someone under similar circumstances. It is too soon to tell if Applicant will follow through on the payment arrangements for her delinquent student loans as well as make a good-faith effort to resolve the delinquent consumer debts.

Of course, the purpose of this case is not aimed at collecting debts.<sup>8</sup> Rather, the purpose is to evaluate an applicant's judgment, reliability, and trustworthiness consistent with the guidelines in the Directive. In evaluating Guideline F cases, the Appeal Board has established the following standard:

The Board has previously noted that the concept of meaningful track record necessarily includes evidence of actual debt reduction through payment of debts. However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has established a plan to resolve his financial problems and taken significant actions to implement that plan. The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payments of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.<sup>9</sup>

Here, the evidence does not support a conclusion that Applicant has established a plan and taken steps to implement that plan sufficient to mitigate the concern.

To conclude, the evidence leaves me with doubt about Applicant's eligibility and suitability for a public trust position. In reaching this conclusion, I weighed the evidence as a whole and considered if the favorable evidence outweighed the unfavorable evidence or *vice versa*. I gave due consideration to the whole-person concept.<sup>10</sup> For all these reasons, I conclude Applicant did not mitigate the financial considerations concern.

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<sup>8</sup> ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010).

<sup>9</sup> ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008) (citations and quotations omitted).

<sup>10</sup> AG ¶ 2(a)(1)-(9).

## **Formal Findings**

The formal findings on the SOR allegations are as follows:

Paragraph 1, Guideline F:	Against Applicant
Subparagraphs 1.a–1.i:	Against Applicant
Subparagraphs 1.j and 1.k:	For Applicant
Subparagraphs 1.l–1.q:	Against Applicant

## **Conclusion**

In light of the record as a whole, it is not clearly consistent with the interests of national security to grant Applicant eligibility for an ADP position. Eligibility for access to sensitive information is denied.

Michael H. Leonard  
Administrative Judge