



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



In the matter of: )  
)  
) ADP Case No. 14-00585  
)  
)  
Applicant for Public Trust Position )

**Appearances**

For Government: Candace Le'i Garcia, Esq., Department Counsel  
For Applicant: *Pro se*

11/28/2014

**Decision**

COACHER, Robert E., Administrative Judge:

Applicant did not mitigate the financial considerations trustworthiness concerns, but did mitigate the criminal conduct concerns. Eligibility for access to sensitive information is denied.

**Statement of the Case**

On March 11, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns under Guideline F, financial considerations, and Guideline J, criminal conduct. DOD acted under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); DOD Regulation 5200.2-R, *Personnel Security Program*, dated January 1987, as amended (Regulation); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

Applicant answered (Answer) the SOR on April 2, 2014, and elected to have her case decided on the written record. Department Counsel submitted the Government's

File of Relevant Material (FORM) on August 14, 2014. The FORM was mailed to Applicant and she received it on August 27, 2014. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. She declined to submit any additional information. The case was assigned to me on November 3, 2014.

### **Findings of Fact**

In her answer to the SOR, Applicant admitted all SOR allegations (she noted that SOR ¶¶ 1.q, 1.s, and 1.tt had been paid). The admissions are incorporated as findings of fact. After a review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is a 32-year-old employee of a government contractor. She works as a customer service representative and has held that position since November 2013. She also works part-time for a retail store. She has a high school diploma and has taken some college courses. She is single and has no children. She has no military background.<sup>1</sup>

The SOR alleges 46 delinquent debts for a total of about \$8,744 and writing a worthless check in 2005. The debts were listed in a credit report from November 2013. There is no evidence supporting payment towards any of the listed debts. The debts are unresolved.<sup>2</sup>

Applicant stated in her security clearance background interview that her financial difficulties came about because she opened up several credit card accounts when she was younger and stopped paying the amounts due when she could not afford to do so. She also admitted that none of the delinquent debts accrued because of circumstances beyond her control and she has not received any type of financial counselling. In her answer, she stated that she had paid three debts (SOR ¶¶ 1.q, 1.s, and 1.tt), but she failed to supply any documentation supporting her payment claims.<sup>3</sup>

In September 2012, she was with a friend having a few beers at a restaurant. She proceeded to drive home after consuming approximately four beers in a four-hour timeframe. She was stopped at a sobriety checkpoint and took a breathalyzer test. The test result was .84 percent, which is over the legal limit. She was arrested for driving under the influence of alcohol (DUI). She entered a plea bargain and pleaded guilty to reckless driving. She was sentenced to a fine, probation, attendance at alcohol awareness classes, DUI level one and level two classes for 12 weeks (three hours per week), and attendance at Alcoholics Anonymous (AA) meetings. She has fulfilled all of

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<sup>1</sup> Items 4-5.

<sup>2</sup> Item 6.

<sup>3</sup> Item 5; Answer.

her sentencing obligations so far. Records also reflect that she was arrested for issuing a worthless check in March 2005.<sup>4</sup>

## Policies

Positions designated as ADP I and ADP II are classified as “sensitive positions.” (See Regulation ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3.) “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.” (See Regulation ¶ C6.1.1.1.) The Deputy Under Secretary of Defense (Counterintelligence and Security) Memorandum, dated November 19, 2004, indicates trustworthiness adjudications will apply to cases forwarded to DOHA by the Defense Security Service and Office of Personnel Management. 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. (See Regulation ¶ C8.2.1.)

When evaluating an applicant’s suitability for a public trust position, the administrative judge must consider the disqualifying and mitigating conditions in the AG. 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 the adjudicative process. The administrative judge’s overarching 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 [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. 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 trustworthiness decision.

A person who seeks access to sensitive information 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

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<sup>4</sup> Item 5, 7.

grants access to sensitive information. Decisions include, by necessity, consideration of the possible risk 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.

## **Analysis**

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

The trustworthiness concern for financial considerations is set out in AG ¶ 18 as follows:

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 classified 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 under AG ¶ 19. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant has numerous delinquent debts that remain unpaid. The evidence is sufficient to raise the above disqualifying conditions.

Several financial considerations mitigating conditions under AG ¶ 20 are potentially applicable:

- (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;
- (b) 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;
- (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant's debts are recent, multiple, and cast doubt on her reliability, trustworthiness, and good judgment. AG ¶ 20(a) is not applicable. Applicant admitted that all the debts were within her control at the time she incurred them. AG ¶ 20(b) is not applicable.

There is no evidence of financial counseling and Applicant has not offered proof that she paid any of the debts or established payment plans for them. AG ¶ 20(c) and ¶ 20(d) do not apply.

Applicant failed to provide any documentation supporting disputes of any debts. AG ¶ 20(e) does not apply. At this point, Applicant's finances remain a concern.

#### **Guideline J, Criminal Conduct**

The security concern relating to the guideline for criminal conduct is set out in AG ¶ 30:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying in this case. The following are potentially applicable:

(a) a single serious crime or multiple lesser offenses; and

(c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted.

Applicant's DUI and writing worthless checks offense constitute criminal action on her part. I find that both disqualifying conditions apply.

I have also considered all of the mitigating conditions for criminal conduct under AG ¶ 32 and considered the following relevant:

(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(d) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.

Applicant's DUI occurred in 2012 and she has had no similar incidents since then. She completed her court-required counseling and alcohol education sessions. Her worthless check charge occurred in 2005. Sufficient time has passed for both offenses and there is evidence of successful rehabilitation. AG ¶¶ 32(a) and 32(d) apply.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a trustworthiness determination by considering the totality of the applicant's conduct and all 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 trustworthiness determination 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 relevant facts and circumstances surrounding this case. I have incorporated my comments under Guideline F and Guideline J in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under these guidelines, but some warrant additional comment.

All of Applicant's debts remain unaddressed. Her troublesome financial history causes me to question her ability to resolve her debts. However, I find that enough time has passed without recurrence to mitigate the criminal conduct concerns.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for access to sensitive information. For all these reasons, I conclude Applicant has not mitigated the financial considerations trustworthiness concerns.

### **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.uu:	Against Applicant
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraphs: 2.a – 2.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 interests of national security to grant Applicant eligibility for a public trust position. Eligibility for access to sensitive information is denied.

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Robert E. Coacher  
Administrative Judge