



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



In the matter of:	)	
	)	
	)	ADP Case No. 14-00593
	)	
Applicant for Public Trust Position	)	

**Appearances**

For Government: Fahryn Hoffman, Esquire, Department Counsel  
For Applicant: *Pro se*

07/15/2014

**Decision**

HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, I conclude that Applicant’s eligibility for access to sensitive information is denied.

Applicant completed and signed a Questionnaire for Public Trust Position (SF 85P) on August 27, 2013. The Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing the trustworthiness concerns under Guideline F, financial considerations on April 2, 2014. The action was taken under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); Department of Defense Regulation 5200.2-R, *Personnel Security Program*, dated January 1987, as amended (Regulation); and the *Adjudicative Guidelines For Determining Eligibility for Access to Classified Information* (AG) implemented on September 1, 2006.

Applicant acknowledged receipt of the SOR on April 17, 2014. She answered the SOR, in writing, on April 24, 2014, and she requested a hearing before an

administrative judge with the Defense Office of Hearings and Appeals (DOHA). Department Counsel was prepared to proceed on May 14, 2014, and I received the case assignment on May 20, 2014. DOHA issued a notice of hearing on May 30, 2014, and I convened the hearing as scheduled on June 10, 2014. The Government requested that a letter of rights and obligations, dated May 14, 2014 and mailed to Applicant, be received as hearing exhibit (HE) 1. Applicant did not object, and HE 1 was received in the record. In its case in chief, the Government offered four exhibits (GE) 1 through 4, which were received, marked, and admitted without objection. Applicant testified. Applicant did not submit any exhibits. DOHA received the transcript of the hearing (Tr.) on June 27, 2014. I held the record open until June 30, 2014, for the submission of additional matters. She did not submit any additional documents. The record closed on June 30, 2014.

### **Procedural and Evidentiary Rulings**

#### **Notice**

At the hearing, Applicant indicated that she received the hearing notice a few days before the hearing. (Tr. at 8) I advised Applicant of her right under ¶ E3.1.8 of the Directive to 15 days notice before the hearing. Applicant affirmatively waived her right to 15 days notice. (Tr. at 8)

#### **Findings of Fact**

In her Answer to the SOR, Applicant admitted all the factual allegations in the SOR, with explanations. She also provided additional information to support her request for eligibility for a public trust position.

Applicant, who is 32 years old, works as a customer service representative for a DOD contractor. She began her current employment in September 2013. In May 2014, Applicant enrolled in a nursing program at a local college. She began her course work on May 8, 2014. She also attended a university between August 2009 and April 2010.<sup>1</sup>

Applicant is single and the mother of three children, a stepson age 17,<sup>2</sup> a daughter age 10 and a son age 7. Applicant lived with the father of her two children and stepson for 10 years. She was the primary source of income for the family as her children's father did not work. He does not provide child support, and he contacts her or the children infrequently. She believes he lives in another state, but she does not have definitive knowledge about his current residence.<sup>3</sup>

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<sup>1</sup>GE 2; Tr. 15, 34, 40.

<sup>2</sup>Applicant obtained legal custody of her stepson about five years ago. Tr. 34.

<sup>3</sup>GE 1; Tr. 15-17, 34-39.

On her SF 85P, Applicant provided her employment history from September 2003 until August 2013. During this time, she held 16 jobs, lasting between two months and two years. At times, she worked two jobs. She quit a cashier's job at a convenience store following a holdup. She quit or resigned many of these jobs. She was also involuntarily discharged from a number of jobs. One employer denied her maternity leave, then discharged her after the birth of her daughter. She lost one job due to a reduction-in-force, and she was discharged from three jobs for attendance issues, including missing work while caring for her seriously ill daughter. One employer moved her from her dispatcher job to a driver position. While working as a driver, she was involved in a car accident, which led to her discharge. She was fired from another position after she was accused of mishandling time cards. She denies this conduct and disputed the reason for her termination with her employer. During the last 10 years, she was unemployed five times for a total of 19 months. Sometimes she collected unemployment benefits, and sometimes she did not. Applicant entered all this information on her SF 85P. She discussed her employment history with the Office of Personnel Management (OPM) investigator and at the hearing.<sup>4</sup>

Between 2003 and 2013, Applicant's earnings ranged from \$2 an hour plus tips to \$14.75 an hour. Except for her restaurant jobs, Applicant jobs generally paid \$10 an hour. Her present job pays \$14.06 an hour.<sup>5</sup>

Applicant is currently on medical leave from her job and has applied for short-term disability leave. Her absence from work has resulted in a loss of income and created additional financial stress for her.<sup>6</sup>

The SOR identified 21 purportedly continuing delinquencies totaling approximately \$37,000, as reflected by credit reports from 2013 and 2014. Some accounts have been transferred, reassigned, or sold to other creditors or collection agents. Other accounts are referenced repeatedly in both credit reports, in many instances duplicating other accounts listed, either under the same creditor or collection agency name or under a different creditor or collection agency name. Some accounts are identified by complete account numbers, while others are identified by partial account numbers, in some instances eliminating the last four digits and in others eliminating other digits. After considering all the evidence, I find the following with respect to the alleged debts.

Applicant paid SOR allegation 1.c (\$438) as shown on the May 2014 credit report. The creditor in SOR allegation 1.a (\$1,398) obtained a judgment against Applicant and instituted garnishment proceedings. Her wages have been garnished at the rate of approximately 15% of her net pay each paycheck. Applicant states that this

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<sup>4</sup>GE 1; GE 2; Tr. 41-53.

<sup>5</sup>Tr. 41-49.

<sup>6</sup>Tr. 74-75.

debt is the same as the debt in SOR allegation 1.p (\$4,775) because the owners of the apartment complex changed. She did not provide proof of the ownership change or that the debts are the same. As of April 2014, she had paid \$833 on this debt. Applicant believes the education debt in SOR allegation 1.n (\$963) is the same as the federal education debts in SOR allegations 1.q (\$2,017) and 1.r (\$614) but she did not provide supporting documentation to support her belief.<sup>7</sup> Under a payment plan, she pays \$15 a month on allegation 1.r which, as of March 2014, has a remaining balance due of \$557 on a \$3,500 loan and \$50 a month on allegation 1.q which, as of March 2014, has a remaining balance due of \$1,843 on a \$6,000 loan, for a total monthly payment of \$66. She is current on her payments for these student loan debts. Applicant testified that the debt in SOR 1.e (\$205) is paid because she continues to have service with this creditor, and her bills are current. She has not provided documentation to support her claimed payment.<sup>8</sup>

SOR allegations 1.f (\$304) and 1.k (\$137) relate to the same utilities. Applicant believes that approximately one-half of the 1.f debt was resolved when she returned a company device. SOR allegation 1.h (\$1,285) is a cell phone debt, which Applicant believes has been reduced to \$435. She has spoken with the creditor, but is unable to pay the debt at this time. The debt in SOR allegation 1.l (\$788) is a cable bill incurred by her brother, whom she allowed to open the account in her name. He paid \$125 on the debt, but is currently unemployed. She has spoken to him about the debt. Applicant disputed the medical debt in SOR allegation 1.d (\$218), which is noted on the May 2014 credit report. She believes insurance should have paid the bill, but she has not received a response to her dispute. Applicant did not provide any documentation showing the status of these debts.<sup>9</sup>

Applicant has not paid the debts alleged in SOR allegations 1.b (\$613), 1.g (\$1,283), 1.j (\$173), 1.l (\$1,768), 1.m (\$12,806), 1.o (\$3,338), 1.s (\$100), 1.t (\$378), and 1.u (\$3,144). Her largest debt is the result of actions taken by her children's father. She has not received credit counseling nor has she developed a clear plan to resolve her debts.<sup>10</sup>

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<sup>7</sup>The September 2013 credit report lists two federal education loans: one for \$6000 with a balance due of \$2,017 and one for \$3500 with a balance due of \$614 and indicates that these loans were assigned to the government for collection. GE 3. The May 2014 credit report lists six education loans: three for \$6,000 with the same account number and three for \$3,500 with the same account number. It also indicates that four of the accounts have been transferred or sold. The remaining two accounts are not past-due. In her response to the SOR, Applicant provided a copy of one page from an April 23, 2014 credit report, which indicates both accounts are in good standing. The account numbers match those on the May 2014 credit report. I find that Applicant has two education loans with the government. GE 3; GE 4; Response to SOR.

<sup>8</sup>Response to SOR; GE 3; GE 4; Tr. 17-19, 21, 27, 29-32, 58, 60, 62, 65, 69-72.

<sup>9</sup>Response to SOR; GE 3; GE 4; Tr. 19, 21-24, 61-63.

<sup>10</sup>Tr. 18-19, 22-28, 32-33, 59, 63-64, 67, 72.

Applicant's April 2014 leave and earnings statement reflects that she earns approximately \$2,250 a month in gross income for an 80-hour work period. She also earns some shift differential, and in that pay period, she worked 5.5 hours of overtime. Her net income per month varies, depending upon the hours of overtime worked. Without overtime, her net monthly income is estimated at approximately \$1,750. Her monthly expenses are not fully shown in the record. She is paying \$66 a month on her education loan, but the amount she pays for rent, utilities, phones, food, and transportation is not shown. At the time of the hearing, Applicant had been without income because of her medical leave, and she was behind in her rent one month.<sup>11</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 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 [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,

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<sup>11</sup>Attachment to Response to SOR.

or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion to obtain 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 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.

Section 7 of Executive Order (EO) 10865 provides that 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**

### **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.

AG ¶ 19 describes the disqualifying conditions that could raise trustworthiness concerns. I have considered all the conditions, and the following are potentially applicable:

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

Applicant developed significant financial problems over the last ten years. She has been unable to satisfy many of her debts. Most of the debts have not been resolved. These two disqualifying conditions apply.

The Financial Considerations guideline also includes examples of conditions that can mitigate trustworthiness concerns. I have considered mitigating factors AG ¶ 20(a) through ¶ 20(f), and the following 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.

Some of Applicant's debts are old, but some of her debts are recent. The evidence of record reflects a long history of debt, some of which are resolved and much of which are not resolved. With her current lack of income, her financial problems are increasing. Her debts are continuing and ongoing, making AG ¶ 20(a) inapplicable.

Over the last ten years, Applicant has been unemployed five times for a total of 19 months. Her unemployment has been due at times to circumstances which were beyond her control and at other times, due to her own actions. Her financial problems are more the result of her relatively low income rather than her unemployment. During much of the last ten years, she earned approximately \$10 an hour, making it difficult for her to pay her current expenses and even more difficult for her to pay past-due debts, although she has paid a few. At times, she worked two jobs to pay her living expenses and the expenses related to raising three children. Given her efforts to resolve some of her debts and her ongoing payments on three debts (SOR ¶¶ 1.c, 1.q, and 1.r), AG ¶¶ 20(b) and 20(d) partially apply.

Applicant has not received financial counseling. Her finances are not under control and most of her debts are unresolved. As of the hearing, Applicant was on unpaid medical leave, creating further financial difficulties for her. At this time, there is

little evidence that her financial problems are under control or likely to be resolved in the near future. AG ¶ 20(c) is not applicable.

Applicant had a legitimate reason to dispute the debt in SOR ¶ 1.d because she had medical insurance which should have paid the bill. AG ¶ 20(e) applies only to this debt.

### **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) 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 public trust position must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. The decision to grant or deny a trustworthiness determination requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a trustworthiness concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a public trust position should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate trustworthiness concern.

In assessing whether an Applicant has established mitigation under Guideline F, the Appeal Board provided the following guidance in ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008):

In evaluating Guideline F cases, the Board has previously noted that the concept of “‘meaningful track record’ necessarily includes evidence of actual debt reduction through payment of debts.” See, e.g., ISCR Case No. 05-01920 at 5 (App. Bd. Mar. 1, 2007). 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. See, e.g., ISCR Case No. 02-25499 at 2 (App. Bd. Jun. 5, 2006). 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.” See, e.g., ISCR Case No. 04-09684 at 2 (App. Bd. Jul. 6, 2006). 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. See Directive ¶ E2.2(a) (“Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.”) 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 payment of such debts one at a time. See, e.g., ISCR Case No. 06-25584 at 4 (App. Bd. Apr. 4, 2008). 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant is a single mother, who is raising three children on her own without financial support from their father. She has recently returned to school to increase her education and to improve her earning capability. Her work history for the last 10 years reflects periods of unemployment, due in part to circumstances beyond her control and in part to her actions. While her unemployment contributed to her financial problems to some degree, her limited income during most of this time is the primary reason for her debts and inability to resolve her debts. Her financial problems are increasing because she has been on unpaid medical leave. At present, she does not have a plan to resolve her debts nor has she established a track record for debt resolution. She has a willingness to resolve her financial situation, but at this time she lacks the financial resources to pay her past-due debts and even some customary living expenses. Her debts remain a concern about her trustworthiness

Overall, the record evidence leaves me with questions and doubts as to Applicant’s eligibility and suitability for a public trust position. For all these reasons, I conclude Applicant has not mitigated the trustworthiness concerns arising from her financial issues under Guideline F.

**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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant

Subparagraph 1.d:	For Applicant
Subparagraphs 1.e -1.p:	Against Applicant
Subparagraph 1.q:	For Applicant
Subparagraph 1.r:	For Applicant
Subparagraphs 1.s-1.u	Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a public trust position. Eligibility for access to sensitive information is denied.

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MARY E. HENRY  
Administrative Judge