



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



In the matter of: )  
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----- ) ADP Case No. 14-00988  
 )  
Applicant for Public Trust Position )

**Appearances**

For Government: Pamela Benson, Esq., Department Counsel  
For Applicant: *Pro se*

01/06/2015  
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**Decision**  
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Harvey, Mark, Administrative Judge:

Applicant’s statement of reasons (SOR) alleges 17 delinquent collection or charged-off debts or judgments totaling \$33,571. She failed to provide sufficient documentation of her progress resolving her financial problems. Financial considerations concerns are not mitigated. Eligibility for access to sensitive information is denied.

**Statement of the Case**

On October 24, 2013, Applicant signed an Electronic Questionnaires for Investigations Processing (e-QIP) (SF 86). (Item 5) On April 30, 2014, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued an SOR to Applicant, pursuant to Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended, and modified; DOD Regulation 5200.2-R, *Personnel Security Program*, dated Jan. 1987, as amended (Regulation); and the adjudicative guidelines (AG) as revised by the Under Secretary of Defense for Intelligence on August 30, 2006, which became effective on September 1, 2006.

The SOR alleges trustworthiness concerns under Guideline F (financial considerations). (Item 1) The SOR detailed reasons why DOD was unable to find that it

is clearly consistent with the interests of national security to grant or continue Applicant's eligibility to occupy a public trust position, which entails access to sensitive information. (Item 1) DOHA recommended referral to an administrative judge to determine whether such access to sensitive information should be granted, continued, denied, or revoked.

Applicant provided an undated response to the SOR allegations and waived her right to a hearing. (Item 4) A complete copy of the file of relevant material (FORM), dated October 7, 2014, was provided to her on October 21, 2014. Applicant did not respond to the FORM. On December 15, 2014, the case was assigned to me.

### **Findings of Fact<sup>1</sup>**

In her Answer to the SOR, Applicant admitted the debts in SOR ¶¶ 1.d, 1.f-1.j, 1.l, and 1.m.<sup>2</sup> She denied responsibility for the other SOR debts for various reasons. Her admissions are accepted as findings of fact.

Applicant is 43 years old, and she is seeking employment by a defense contractor involved with medical records.<sup>3</sup> From April 2012 to October 2013, she worked as a customer service representative, associate, and technical associate. From August 2011 to April 2012, she worked as a benefits administrator. From June 2010 to August 2011, and from June 2007 to August 2009, she was unemployed. From August 2009 to June 2010, she worked in bilingual customer service. She attended a community college from 2006 to 2007. She has not served in the military. She married in 1992, and her children were born in 1992 and 1994. There is no evidence of alcohol or drug abuse, or violations of her employment rules.

### **Financial Considerations<sup>4</sup>**

Applicant's history of delinquent debt is documented in her October 24, 2013 SF 86, two credit reports, and SOR response. Her SOR alleges 17 delinquent collection or charged-off debts or judgments totaling \$33,571.

Applicant owed \$700 to her landlord, and her landlord obtained a judgment against her. (SOR ¶ 1.a) She moved out of her residence; however, her husband remained in the rental dwelling. She said she paid her landlord cash in June 2013, resolving the debt.

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<sup>1</sup>Some details have been excluded in order to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

<sup>2</sup> The source for the facts in this paragraph is Applicant's response to the SOR. (Item 4)

<sup>3</sup> The source for the information in this paragraph is Applicant's SF 86. (Item 5)

<sup>4</sup> The source for the information in this section is Applicant's SOR response. (Item 4)

Applicant denied responsibility for the judgment in SOR ¶ 1.b for \$13,242. (SOR ¶ 1.b) The debt was being collected for a vehicle Applicant did not own. She requested proof from the creditor of her responsibility for the debt; however, the creditor did not provide any documentation.

Applicant said the credit card debt for \$639 in SOR ¶ 1.c was paid in 2009 through garnishment of her pay.

Applicant accepted responsibility for the debt in SOR ¶ 1.d (\$12,152) and explained she was going through a separation from her spouse. She planned to resolve this debt when able to do so.

Applicant received some equipment when she opened a telecommunications account. (SOR ¶ 1.e (\$951)) She closed the account and returned the equipment. However, the telecommunications company sought payment for the equipment. The telecommunications company is investigating her responsibility for the debt.

Applicant accepted responsibility for the telecommunications debt in SOR ¶ 1.f (\$1,945) which was owed for equipment. The telecommunications company refused to accept the equipment, and Applicant said she intended to pay the debt.

Applicant agreed that she owed \$969 to the power company. (SOR ¶ 1.g) She moved out of her residence, and her husband remained in the residence. Her husband failed to pay the power bill. Applicant said she paid the creditor \$50.

Applicant agreed that she received medical services from the creditors in SOR ¶¶ 1.h (\$931), 1.i (\$615), and 1.l (\$299). She believed her medical insurance company was responsible for paying these bills. On May 5, 2014, she provided her medical insurance information to the creditor. At the time she responded to the SOR, she was waiting for the creditor to respond to her inquiry about the status of the debts.

Applicant accepted responsibility for the debt in SOR ¶ 1.j (\$468). She said she gave her pin to someone who took the funds without her authorization. She intended to make a payment in July 2014.

The three debts in SOR ¶¶ 1.k (\$391), 1.n (\$63), and 1.o (\$50) originated from the same telecommunications account and are being collected by the same collection agent. Applicant contacted the creditor in SOR ¶ 1.k (\$391) and verified the debt was paid in June 2012. She said the creditor also verified the other two debts were paid or satisfied. Applicant contacted the creditor and indicated she intended to pay the debt in SOR ¶ 1.m (\$77) at the end of June 2014.

Applicant called the creditor for the medical debt in SOR ¶ 1.p (\$41), which was based on her husband's failure to show up for a medical appointment, and the creditor agreed to release her from responsibility for the debt. She called the creditor for the music-related debt in SOR ¶ 1.q (\$38), which was based on an order for compact discs, and the creditor agreed to release her from responsibility for the debt.

Applicant's October 3, 2014 credit report lists negative financial entries relating to the following delinquent SOR debts: 1.a judgment for \$700; 1.b judgment for \$13,242; 1.f debt for \$1,945; 1.g debt for \$969; 1.h debt for \$931; 1.i debt for \$615; 1.n debt for \$63; 1.o debt for \$50; and 1.q debt for \$38. (Item 7) The debt in SOR ¶ 1.d for \$12,152 is listed with a high credit of \$12,152 and a past due amount of \$6,339. (Item 7)

Applicant did not provide any supporting or corroborating documentation to establish her claims of payment or other resolution of any of the SOR debts. She did not provide any evidence of financial counseling or of her budget.

## Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a [public trust position]." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). The Government's authority to restrict access to classified information applies similarly in the protection of sensitive, unclassified information. As Commander in Chief, the President has the authority to control access to information bearing on national security or other sensitive information and to determine whether an individual is sufficiently trustworthy to have access to such information. See *Id.* at 527.

Positions designated as ADP I and ADP II are classified as "sensitive positions." 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." Regulation ¶ C6.1.1.1. 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, an 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 an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

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.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant which may disqualify the applicant from being eligible for access to sensitive information. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s suitability for a public trust position. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her access to sensitive information.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance [or trustworthiness] determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

The protection of the national security and sensitive records is of 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.” 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.”

## Analysis

### Financial Considerations

AG ¶ 18 articulates the trustworthiness concern relating to financial problems:

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 provides two disqualifying conditions that could raise a trustworthiness concern and may be disqualifying in this case: “(a) inability or unwillingness to satisfy debts;” and “(c) a history of not meeting financial obligations.” In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government's obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.

(internal citation omitted). Applicant's history of delinquent debt is documented in her credit reports and hearing record. Applicant's SOR alleges 17 delinquent collection or charged-off debts or judgments totaling \$33,571. The Government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c), requiring additional inquiry about the possible applicability of mitigating conditions.

Five 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;<sup>5</sup> 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

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<sup>5</sup>The Appeal Board has previously explained what constitutes a "good faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the "good faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term "good-faith." However, the Board has indicated that the concept of good-faith "requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation." Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [the "good faith" mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

The Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's eligibility [for a public trust position], there is a strong presumption against the grant or maintenance of a [public trust position]. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990) . . . . After the Government presents evidence raising [trustworthiness] concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in [public trust position] decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to [sensitive] information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

Applicant is credited with mitigating the following SOR debts: 1.c, 1.e, and 1.j to 1.q. The following SOR debts are not listed as delinquent, charged off, under collection, or as judgments in Applicant's October 3, 2014 credit report: 1.c, 1.e, 1.j, 1.k, 1.l, and 1.m. She said the credit card debt for \$639 in SOR ¶ 1.c was paid in 2009 through garnishment of her pay. She disputed the debt in SOR ¶ 1.e (\$951). She accepted responsibility for the debt in SOR ¶ 1.j (\$468), and she said she was going to pay it. The three debts in SOR ¶¶ 1.k (\$391), 1.n (\$63), and 1.o (\$50) originated from the same telecommunications account; they were being collected by the same collection agent; and she said the three debts were resolved. She turned the debt for medical services in SOR ¶ 1.l (\$299) over to her medical insurance company. Applicant said she intended to pay the debt in SOR ¶ 1.m (\$77) at the end of June 2014. The medical debt in SOR ¶ 1.p (\$41) and the music-related debt in SOR ¶ 1.q (\$38) are for small amounts; she states the creditor verbally agreed that the debts were resolved; and obtaining documentation from a creditor on such modest debts is unlikely.

Applicant's conduct in resolving her delinquent debt does not warrant full application of any mitigating conditions to the SOR debts in ¶¶ 1.a, 1.b, 1.d, and 1.f to 1.i. She did not provide sufficient information about her finances to establish her inability to make greater progress paying her creditors. Her underemployment, unemployment from June 2010 to August 2011, and from June 2007 to August 2009, and separation from her spouse damaged her family finances and are circumstances largely beyond her control; however, she did not establish that she acted responsibly under the circumstances. She did not establish her income over the last three years or show what her spouse earned or how her spouse contributed to the family financial situation. She did not provide a family budget. She presented insufficient evidence about what she has done over the last three years to pay her SOR debts or her other debts.

Applicant did not provide any of the following documentation relating to her SOR creditors: (1) proof of payments such as checking account statements, photocopies of checks, or a letter from the creditor proving that she paid or made any payments to the creditor; (2) correspondence to or from the creditor to establish maintenance of contact with the creditor;<sup>6</sup> (3) a credible debt dispute; (4) attempts to negotiate payment plans, such as settlement offers or agreements to show that she was attempting to resolve these SOR debts; (5) evidence of financial counseling; or (6) other evidence of progress or resolution of her SOR debts. There is insufficient evidence that she was unable to make greater progress resolving her delinquent debts, or that her financial problems are being resolved, are under control, and will not recur in the future. Under all the circumstances, she failed to establish that financial consideration concerns are mitigated.

### **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) 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.

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. AG ¶ 2(c). I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

There is some evidence supporting approval of Applicant's clearance. Applicant is 43 years old, and she is seeking employment by a defense contractor involved with medical records. From June 2010 to August 2011, and from June 2007 to August 2009, she was unemployed. Underemployment, unemployment, and separation from her spouse are circumstances beyond her control that contributed to her financial problems.

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<sup>6</sup> "Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current.



There is no evidence of alcohol or drug abuse, or violations of her employment rules. She disclosed her financial problems on her October 24, 2013 SF 86.

The financial evidence against approval of Applicant's clearance is more substantial at this time. Applicant has a history of financial problems. Her SOR alleges 17 delinquent collection or charged-off debts or judgments totaling \$33,571. She is credited with mitigating the debts in SOR ¶¶ 1.c, 1.e, and 1.j to 1.o, which reduces her delinquent SOR debt total to \$30,554. She failed to provide sufficient documentation of progress to resolve her financial problems. She was well aware of her financial problems, as she listed them in her October 24, 2013 SF 86. Her failure to provide more corroborating documentation shows lack of financial responsibility and lack of judgment and raises unmitigated questions about Applicant's reliability, trustworthiness, and ability to protect sensitive information. See AG ¶ 18. More information about inability to pay debts or documented financial progress is necessary to mitigate security concerns.

It is well settled that once a concern arises regarding an applicant's eligibility for a public trust position, there is a strong presumption against the grant or renewal of a security clearance. See *Dorfmont*, 913 F. 2d at 1401. Unmitigated financial considerations concerns lead me to conclude that grant of a public trust position to Applicant is not warranted at this time. This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary to justify the award of a public trust position in the future. With more effort towards resolving her past-due debts, and a track record of behavior consistent with her obligations, she may well be able to demonstrate persuasive evidence of her worthiness for a public trust position.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude financial considerations concerns are not mitigated. Eligibility for a public trust position is denied.

### **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 and 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraphs 1.f to 1.i:	Against Applicant
Subparagraphs 1.j to 1.q:	For Applicant

## **Conclusion**

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

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Mark Harvey  
Administrative Judge