



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



In the matter of: )  
)  
) ADP Case: 14-01169<sup>1</sup>  
)  
Applicant for Public Trust Position )

**Appearances**

For Government: Robert J. Kilmartin, Esquire, Department Counsel  
For Applicant: *Pro se*

March 3, 2015

**Decision**

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant accumulated two delinquent student-loan debts totaling \$19,675. Her delinquencies were due to unemployment and underemployment. She provided documentation to show she is addressing these debts. Based upon a review of the pleadings and exhibits, eligibility for a public trust position is granted.

**Statement of Case**

On December 11, 2012, Applicant submitted her Electronic Questionnaire for Investigations Processing (e-QIP). (Item 4.) On July 16, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR), detailing trustworthiness concerns under Guideline F (Financial Considerations). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *Adjudicative Guidelines for Determining Eligibility for*

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<sup>1</sup> Department Counsel’s Brief, dated November 12, 2014, incorrectly identifies this case as an ISCR case.

*Access to Classified Information* (AG), effective within the DOD after September 1, 2006.

Applicant responded to the SOR (Answer) in an undated submission, and requested that her case be decided by an administrative judge on the written record without a hearing. (Item 4.) Department Counsel submitted the Government's written case on November 17, 2014. A complete copy of the File of Relevant Material (FORM), containing seven items, was received by Applicant on December 12, 2014. She was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of her receipt of the FORM. On January 5, 2015, she submitted 14 pages of additional information (Reply). Department Counsel had no objection to her Reply, and it was admitted into the record. DOHA assigned the case to me on February 10, 2015.

### **Rulings on Evidence**

Item 5 is a Report of Investigation (ROI) from the background investigation of Applicant. The six-page document is a summary of an interview of Applicant conducted on February 19, 2013. An ROI may be received and considered as evidence when it is authenticated by a witness.<sup>1</sup> Although Applicant, who is representing herself, has not raised the issue via an objection, I am raising it *sua sponte*. Item 5 is not authenticated, and Applicant's failure to raise this issue in her reply to the FORM is not a knowing waiver of the rule.<sup>2</sup> Accordingly, Item 5 is not admissible and is not considered in this Decision.

### **Findings of Fact**

Applicant is 26 years old. She is unmarried and has no children. Applicant attended a state university from September 2006 through May 2007. She worked as a cashier for a fast-food restaurant from June 2007 to April 2008. She was employed as a sales associate for a retail clothing store from August 2008 to February 2012. She was unemployed from February 2012 through the date of her eQIP, December 2012. Her SOR-listed debts are student loans from the period she attended the state university. She was hired by her present employer, a government contractor, sometime after she submitted her eQIP. (Item 4; Item 7.)

The SOR alleges Applicant owes approximately \$19,675 in delinquent student-loan debts to two creditors. In her Answer, Applicant admitted both debts in SOR ¶¶ 1.a and 1.b, with explanations. (Item 3.) Her debts are also documented in the record credit

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<sup>1</sup> Directive, Enclosure 3, ¶ E3.1.20; see ISCR Case No. 11-13999 (App. Bd. Feb. 3, 2014) (the Appeal Board restated existing case law that a properly authenticated report of investigation is admissible).

<sup>2</sup> Wavier means "[t]he voluntary relinquishment or abandonment – express or implied – of a legal right or advantage; the party alleged to have waived a right must have had both knowledge of the existing right and the intention of forgoing it." *Black's Law Dictionary*, 1717 (Bryan A. Garner ed., 9<sup>th</sup> ed., West 2009).

reports dated December 20, 2012 and March 4, 2014. (Item 6; Item 7.) After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact.

Applicant attributes her delinquent student loans to underemployment while working for the retail clothing store from August 2008 to February 2012. She did not earn enough money to afford the payment the lender requested. Subsequently, she was unemployed from February 2012 through at least December 2012, which further limited her ability to repay the debts. (Item 4; Answer; Reply.)

In August 2014 Applicant contacted a federal student loan repayment program. It helped her to consolidate the delinquent student loans identified in allegations 1.a and 1.b with one lender, and created an income-based repayment program. She was required to make three payments of \$238 in August 2014, September 2014, and October 2014, in order to start the consolidation and rehabilitate her debt. She provided documentation she successfully made the three payments as required. The loans were then considered rehabilitated and placed into forbearance, while the consolidation was completed. The loans were in forbearance as of December 2014. Her principal balance is \$10,124.42, with a total of \$16,348.15 to be repaid. Documentation shows monthly payments of \$90.34 are scheduled to begin in February 2015 and will continue until February 2030. She intends to continue making her monthly payments on this debt until it is satisfied. She is currently employed. (Reply.)

Applicant failed to submit evidence of financial counseling, a budget, or income statement. She submitted no evidence concerning the quality of her professional performance, the level of responsibility her duties entail, or her track record with respect to protected information. She provided no character references describing her judgment, trustworthiness, integrity, or reliability.

### **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 the DoD and 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

AGs. 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 AG ¶ 2(a), describing 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 the applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion as to obtaining a favorable trustworthiness decision.

A person who applies for access to sensitive information seeks to enter 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 10865 provides that “Any determination under this order adverse to an applicant shall be a determination 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 concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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.

AG ¶ 19 describes two conditions that could raise trustworthiness concerns and may be disqualifying in this case:

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

During her time at a state university from 2006 to 2007, Applicant accumulated \$19,675 in student-loan debts that she has been unable to address until August 2014. The evidence raises trustworthiness concerns under both conditions, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate trustworthiness concerns arising from Applicant's financial difficulties:

- (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 delinquent debt began accumulating in 2007 and remained delinquent through July 2014. She did not have the ability to make payments prior to 2014, due to her underemployment and unemployment. However, she obtained a new job and, in August 2014, began addressing the student-loan debts. She has made three payments on her student-loan accounts. They have been rehabilitated and she has agreed to a new, affordable repayment plan. Future financial problems are unlikely to occur, as she has acted responsibly under the circumstances. The evidence supports the application of AG ¶¶ 20(a) and 20(b).

Applicant failed to provide evidence that she participated in financial counseling, but she has established a clear plan to fully resolve her debts. AG ¶ 20(c) has application as there are clear indications that her delinquent debt is now under control. AG ¶ 20(d) applies because Applicant made a good-faith effort to negotiate a payment she could afford.

Applicant admitted her student-loan debts. . AG ¶ 20(e) has no application.

### **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 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.

According to 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 pertinent facts and circumstances surrounding this case. Applicant is a 26-year-old employee of a defense contractor. She became delinquent on her student loans when she could not afford the required payments on her retail-sales job salary. Additionally, she experienced an extended period of unemployment. After finding another job, Applicant contacted a Federal program to help rehabilitate her delinquent student loans. She has relied on its expertise and followed their requirements for six months. She appears sincere in her resolve to repay her delinquencies and the accounts are no longer in a delinquent status. Overall, the record evidence leaves me without doubt as to Applicant's present eligibility and suitability for a position of trust. She met her burden to mitigate the trustworthiness concerns arising under the guideline for financial considerations.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a position of trust. Eligibility for access to sensitive ADP information is granted.

Jennifer I. Goldstein  
Administrative Judge