



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



In the matter of:	)	
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	)	ADP Case No. 14-01255
Applicant for Public Trust Position	)	

**Appearances**

For Government: Braden M. Murphy, Esq., Department Counsel  
For Applicant: *Pro se*

09/17/2014

**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, including a Chapter 7 bankruptcy case in 2007, and she is planning to pursue another Chapter 7 case when she is eligible to do so. 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 June 5, 2014, the Department of Defense (DOD) sent Applicant a statement of reasons (SOR) detailing a trustworthiness concern under Guideline F for financial considerations and Guideline E for personal conduct. The action was taken under 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 contract with the DOD.

Applicant answered the SOR by admitting the financial allegations under Guideline F. She denied the falsification allegation under Guideline E, which alleged that she gave a deliberately false answer in response to Question 26 of her official application concerning whether she had any delinquent accounts in the past seven years.

The case was assigned to me on August 11, 2014. The hearing was held August 27, 2014. At the hearing, Department Counsel presented Exhibits 1–2, which were admitted. Likewise, Applicant presented Exhibits A–C, which were admitted, and she testified on her own behalf. The transcript (Tr.) was received September 8, 2014.

### **Findings of Fact**

Applicant's 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 28-year-old employee who is seeking to obtain eligibility to occupy a position of public trust for her job processing emergency-room admissions for a health care contractor for the Defense Department. She has had this job since December 2013, and she has a good record of employment.<sup>2</sup> She earns \$16 per hour; she has no other sources of income, although she shares living expenses with a boyfriend; and, aside from about \$200 in cash savings, she has no financial assets.

Before her current job, Applicant worked as a reimbursement specialist during October–December 2013; she was unemployed during June–October 2013, when she took time off to provide care for her mother; and she previously worked for her current employer during February–June 2013. In addition, her employment history from 2006 to February 2013 includes six different jobs and two periods of unemployment. The first period of unemployment was during 2008–2010, when she took time off to relocate, along with her parents, to her current state of residence. The second period of unemployment was during 2010–2011, when she had a baby.

Applicant married in 2010 and divorced in 2012. The marriage produced one child, a son, who is now about 3½ years old and lives with his mother. As explained by

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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.

<sup>2</sup> Exhibits B and C.

Applicant, the child's father is not required to pay child support, but does pay for his son's medical insurance.

The available documentary evidence shows that Applicant has a history of financial problems or difficulties.<sup>3</sup> That history consists of the following: (1) a Chapter 7 bankruptcy case that was filed and discharged in 2007; (2) seven medical accounts in collection for a total of about \$7,093; (3) seven past-due accounts, ranging from 60 to 120 days past due, in various amounts; and (4) two consumer accounts in collection for a total of about \$8,420.

Applicant stated that the 2007 Chapter 7 bankruptcy case resulted from her youth and inexperience in that she made mistakes in taking on more debt than she could repay.<sup>4</sup> She further stated that the medical collection accounts are the direct result of uninsured medical expenses she incurred in 2008 due to a miscarriage.<sup>5</sup>

Applicant has been in contact with creditors and she has made small payments (e.g., \$10) to several creditors in recent months in the absence of formalized repayment agreements.<sup>6</sup> Otherwise, none of the accounts have been paid, settled, disputed, or otherwise resolved. One of the past-due accounts (SOR ¶ 1.n) for a vehicle loan resulted in a voluntary repossession about a month before the hearing. Applicant intends to keep making the small payments until she is able to seek relief via a second Chapter 7 bankruptcy case, which she understands is sometime in 2015.<sup>7</sup>

Applicant disclosed the 2007 Chapter 7 bankruptcy case when she completed her application in December 2013, but she did not disclose her delinquent debts.<sup>8</sup> She denies any intent to withhold, conceal, or falsify her history of delinquent debts that should have been disclosed. At the hearing, she explained that she had forgotten about the medical debts from 2008 and that she was generally unaware of her more recent delinquent consumer debts.

## Discussion

Under Guideline F for financial considerations,<sup>9</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>3</sup> Exhibit 2.

<sup>4</sup> Tr. 41–42.

<sup>5</sup> Tr. 40, 66-67.

<sup>6</sup> Answer to SOR; Exhibit A.

<sup>7</sup> Tr. 30.

<sup>8</sup> Exhibit 1.

<sup>9</sup> AG ¶¶ 18, 19, and 20 (setting forth the concern and the disqualifying and mitigating conditions).

indebtedness or financial problems or difficulties.<sup>10</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>11</sup>

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

The evidence supports a conclusion that Applicant has a history of financial problems or difficulties. The 2007 Chapter 7 bankruptcy case, the past-due accounts, and the collection accounts indicate inability or unwillingness to satisfy debts<sup>12</sup> and a history of not meeting financial obligations<sup>13</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 seven medical accounts in collection for a total of about \$7,093. 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.c, 1.d, 1.e, 1.f, 1.o, 1.p, and 1.q 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>14</sup> Applicant has done little to resolve her delinquent consumer accounts. Her efforts at this point consist of making what are essentially token payments that have no material impact on debt reduction. Moreover, her plan to resolve her indebtedness is a second trip to bankruptcy court when she is

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<sup>10</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>11</sup> AG ¶ 18.

<sup>12</sup> AG ¶ 19(a).

<sup>13</sup> AG ¶ 19(c).

<sup>14</sup> AG ¶¶ 20(a)–(f).

eligible to do so in 2015. Although perfectly legal, bankruptcy does not qualify as a good-faith effort to resolve one's financial problems.

Of course, the purpose of this case is not aimed at collecting debts.<sup>15</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 a 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>16</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.

Under Guideline E for personal conduct, the concern is that "[c]onduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect [sensitive] information."<sup>17</sup> In addition to those general matters, a particular concern is any failure to provide truthful and candid answers.<sup>18</sup> A statement is false when it is made deliberately (knowingly and willfully). An omission of relevant and material information is not deliberate if, for example, the person genuinely forgot about it, inadvertently overlooked it, misunderstood the question, or genuinely thought the information did not need to be reported.

Here, the SOR alleges that Applicant falsified her December 2013 application by failing to disclose the various delinquent accounts. I am not persuaded that Applicant

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<sup>15</sup> ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010).

<sup>16</sup> ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008) (citations and quotations omitted).

<sup>17</sup> AG ¶ 15.

<sup>18</sup> *Id.*

deliberately omitted, concealed, or falsified material facts when answering the relevant question for two reasons. First, she disclosed her 2007 Chapter 7 bankruptcy case, which undercuts any effort to hide or conceal her unfavorable financial history. Second, she provided a plausible and credible explanation for her omission of the delinquent accounts. At bottom, I do not believe she was endeavoring to hide or misrepresent her unfavorable financial record.

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>19</sup> For all these reasons, I conclude Applicant did not mitigate the financial considerations concern.

### Formal Findings

The formal findings on the SOR allegations are as follows:

Paragraph 1, Guideline F:	Against Applicant
Subparagraphs 1.a–1.b:	Against Applicant
Subparagraphs 1.c–1.f, and 1.o–1.q:	For Applicant
Subparagraphs 1.g–1.n:	Against Applicant
Paragraph 2, Guideline E:	For Applicant
Subparagraph 2.a:	For 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

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<sup>19</sup> AG ¶ 2(a)(1)–(9).