



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



In the matter of: )  
)  
) ADP Case No. 14-01414<sup>1</sup>  
)  
Applicant for Position of Trust )

**Appearances**

For Government: Richard Stevens, Esq., Department Counsel  
For Applicant: *Pro se*

02/20/2015

**Decision**

DUFFY, James F., Administrative Judge:

Applicant failed to mitigate trustworthiness concerns under Guideline F, financial considerations. Trustworthiness concerns under the Guideline E, personal conduct, were withdrawn. Eligibility to occupy a position of trust is denied.

**Statement of the Case**

On August 19, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns under Guidelines F and E. DOD CAF took that action under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive); and the adjudicative guidelines (AG) implemented on September 1, 2006.

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<sup>1</sup> The SOR incorrectly indicated this was an ISCR case..

The SOR detailed reasons why DOD CAF could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant Applicant's access to sensitive information. On September 18, 2014, Applicant answered the SOR and requested a hearing. This case was assigned to me on November 17, 2014. On November 21, 2014, the Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing scheduling the hearing for December 8, 2014. The hearing was held as scheduled.

At the hearing, Department Counsel offered Government Exhibits (GE) 1 through 5, while Applicant testified and offered Applicant Exhibit (AE) A. All proffered exhibits were admitted into evidence without objection. The transcript (Tr.) of the hearing was received on December 17, 2014.

### **Procedural Matter**

Department Counsel made a motion to withdraw the sole Guideline E allegation. Applicant had no objection to that motion. Department Counsel's motion was granted and the Guideline E allegation was withdrawn.<sup>2</sup>

### **Findings of Fact**

Applicant is a 59-year-old mail sorter and data entry clerk working for a defense contractor. She has been working for that employer since December 2010. She graduated from high school in 1973. She is divorced and has no children. This is the first time Applicant has sought a position of trust.<sup>3</sup>

Excluding the withdrawn allegation, the SOR alleged that Applicant failed to file state (State A) income tax returns for 2005 through 2009 and pay state income taxes due for those years (SOR ¶ 1.a); that she failed to file state (State B) income tax returns for 2010 through 2012 and pay state income taxes due for those years (SOR ¶ 1.b); that she failed to file federal income tax returns for 2005 through 2012 and pay federal income taxes due for those years (SOR ¶ 1.c); and that she had ten delinquent debts totaling \$45,336 (SOR ¶¶ 1.d–1.m). In her Answer to the SOR, she admitted each allegation.<sup>4</sup>

In her Electronic Questionnaire for Investigations Processing (e-QIP) dated July 17, 2013, Applicant listed three periods of unemployment. These were from August 2007 to August 2008, September 2008 to February 2010, and October 2010 to December 2010. She received state disability benefits from August 2007 to August

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<sup>2</sup> Tr. 8-9.

<sup>3</sup> Tr. 4-5, 22; GE 1, 2.

<sup>4</sup> Applicant's Answer to the SOR.

2008. She indicated that she was terminated from a job in October 2010 because her recuperation from surgery took longer than her authorized medical leave.<sup>5</sup>

Applicant testified that she worked for one company for 20 years. She started as a dispatcher and worked her way up to being the office manager. She left that job in 2002. At some later point, she was working two jobs. While working in those jobs, she began suffering from depression. She stated that nothing mattered to her at that time. In about March 2007, her mobile home was repossessed. Later in 2007, a doctor placed her on disability for depression. She lived off of her savings, including a 401(k) account of about \$50,000. She eventually moved to another state to live with her sister and niece. Since about 2010, she has been receiving the help for her medical condition and stated she is getting better.<sup>6</sup>

In her e-QIP, Applicant indicated that she did not file her state or federal income tax returns for 2005, 2006, 2007, 2010, 2011, and 2012. She also estimated that she owed state and federal income taxes in the amount of \$5,000 for 2005; \$5,000 for 2006; \$25,000 for 2007; and \$100 per year for 2010, 2011, and 2012. She did not mention tax years 2008 and 2009 in her e-QIP because she did not earn enough income in those years to trigger the filing requirement. In her Office of Personnel Management (OPM) interview of August 2013, she indicated that she did not file tax returns for 2006 and later years because she was under the impression that she had to file her income tax returns for prior years before filing the current-year income tax return. During the interview, she also stated that she intended to seek the assistance of a tax attorney to resolve her tax issues.<sup>7</sup>

At the time of the hearing, she had not yet filed the delinquent income tax returns. She testified that she probably had the money to file and pay her taxes in 2005 and 2006, but she was not in the right mindset back then. She also testified that she wanted to file her delinquent tax returns, but did not have the money to do so. She stated that she planned to start filing the income tax returns for 2010 through 2013 using an electronic tax preparation program. She thought she might obtain a refund for some of those years and would use that money to pay the 2005 and 2006 income taxes that were due. She hoped to have that done by the end of 2014.<sup>8</sup>

The alleged debts included a loan of \$25,350 on her repossessed mobile home (SOR ¶ 1.d), two State A tax liens totaling \$7,811 (SOR ¶¶ 1.g and 1.h), two medical debts totaling \$1,209 (SOR ¶¶ 1.i and 1.j) as well as credit card and consumer debts. She presented no evidence that showed she offered or negotiated repayment

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<sup>5</sup> GE 1, 2.

<sup>6</sup> Tr. 22-23, 28; GE 2; AE A.

<sup>7</sup> Tr. 37; GE 1, 2.

<sup>8</sup> Tr. 23-39.

agreements, made payments, disputed, or took other actions to resolve the delinquent debts.<sup>9</sup>

Applicant has not received any financial counseling. In her current job, she earns \$10.51 per hour, which amounts to about \$21,000 per year. Applicant lives with her sister and niece and contributes to the monthly bills and living expenses.<sup>10</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.) In a memorandum dated November 19, 2004, the Deputy Under Secretary of Defense (Counterintelligence and Security) indicated that trustworthiness adjudications will apply the procedures contained in the Directive before making a determination. (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.

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 to obtain a favorable trustworthiness decision.

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<sup>9</sup> Tr. 23-39.

<sup>10</sup> Tr. 25, 35-37.

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 safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation of 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 [sensitive] 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. Three are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (g) failure to file annual Federal, state, or local income tax returns as required . . . .

Applicant failed to file her state and federal income tax returns from 2005 through 2008 and 2010 through 2012. She also accumulated delinquent debts that she was unable or unwilling to satisfy for an extended period. This evidence is sufficient to raise the above disqualifying conditions.

Four 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; and

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

Applicant's medical conditions led to periods of unemployment and financial problems. Nonetheless, she failed to establish that she acted responsibly under the circumstances. She still has not filed her delinquent state or federal income tax returns. Many of those income tax returns are years overdue. During her OPM interview, she stated that she was going to obtain professional help to assist in resolving her tax problems, but has failed to do so. Additionally, she failed to show that she is taking meaningful steps to resolve her delinquent debts. Her financial problems are ongoing and significant. From the evidence presented, I am unable to find that her financial problems are being resolved, are under control, and are unlikely to recur. AG ¶ 20(b) partially applies. AG ¶¶ 20(a), 20(c), and 20(d) do not apply.

### **Whole-Person Concept**

In the adjudication process, an administrative judge must carefully weigh a number of variables known as the whole-person concept. Available information about the applicant as well as the factors listed in AG ¶ 2(a) should be considered in reaching a determination.<sup>11</sup> In this case, I gave due consideration to the information about Applicant in the record and concluded the favorable information, including the mitigating evidence, does not outweigh the security concerns at issue. Applicant failed to meet her burden of persuasion. Her handling of her financial problems leaves me with doubts as to her current eligibility to occupy a position of trust. Following the "clearly consistent with national interest" standard, doubt about granting Applicant eligibility for a position of trust must be resolved in favor of national security.

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<sup>11</sup> The nine adjudicative process factors listed at AG ¶ 2(a) are:

(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.

## Formal Findings

Formal findings 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:	FOR APPLICANT
Subparagraphs 1.a – 1.m:	For Applicant
Paragraph 2, Guideline E:	WITHDRAWN
Subparagraph 2.a:	Withdrawn

## Decision

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

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James F. Duffy  
Administrative Judge