



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



In the matter of:	)	
	)	
	)	ADP Case No. 14-01582
	)	
Applicant for Public Trust Position	)	

**Appearances**

For Government: Ray T. Blank, Jr., Esq., Department Counsel  
For Applicant: *Pro se*

12/19/2014

**Decision**

COACHER, Robert E., Administrative Judge:

Applicant has not mitigated the financial considerations or personal conduct trustworthiness concerns. Eligibility for access to sensitive information is denied.

**Statement of the Case**

On June 13, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns under Guideline F, financial considerations, and Guideline E, personal conduct. The DOD acted under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); DOD Regulation 5200.2-R, *Personnel Security Program*, dated January 1987, as amended (Regulation); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

Applicant answered the SOR on July 8, 2014, and requested a hearing before an administrative judge. The case was assigned to another administrative judge on August 28, 2014, but because of workload reasons it was re-assigned to me on September 17, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on September 26, 2014, and the hearing was convened as scheduled on October 7,

2014. The Government offered exhibits (GE) 1 through 3, which were admitted into evidence without objection. Department Counsel's exhibit index was marked as hearing exhibit (HE) I. Applicant testified and offered two exhibits (AE), which were marked as AE A and B. Both were admitted into evidence without objection. The record was held open for Applicant to submit additional information, but she chose not to submit any additional evidence. DOHA received the hearing transcript (Tr.) on October 17, 2014.

### **Findings of Fact**

In her answer to the SOR, Applicant admitted all the Guideline F allegations, except for SOR ¶¶ 1.b, 1.c and 1.bb. She denied both Guideline E allegations (SOR ¶¶ 2.a and 2.b). The admissions are incorporated as findings of fact. After a review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is a 34-year-old employee of a government contractor. She works as an enrollment specialist and has held that position for one year. She has a high school diploma and has taken some trade school and college courses. She has never married, but has one son and is expecting another child. She has no military background.<sup>1</sup>

The SOR alleges 33 delinquent debts for a total of about \$82,163. The debts were listed in a credit report from December 2013. She also discussed the listed delinquent debts in her trustworthiness determination interview with an investigator in December 2013.<sup>2</sup>

Applicant testified that the two largest debts in the SOR (¶¶ 1.b (\$30,074) and 1.c (\$21,771)) were for student loans associated with her brother. She stated that their Social Security numbers were one digit apart and she believed that they appeared on her credit report by mistake. She claimed that her student loans only amounted to about \$6,000. She failed to produce documentary evidence to support her dispute of these student loans. A credit report from December 2013 lists both student loans under her name and with her correct Social Security number. She failed to admit or deny a medical debt in the amount of \$130 (SOR ¶ 1.bb), but again she failed to present documentation disputing this debt, which is also listed on the December 2013 credit report.<sup>3</sup>

Applicant claims her financial difficulties arose because of her medical issues when she was uninsured. She also stated she was unemployed for some time and that she had to care for her sick mother. Her trustworthiness application, however, indicated that she has been steadily employed since 2003 with gaps of employment no more than one month apart between jobs. In August 2014, after the issuance of the SOR, Applicant hired a credit repair company to review her credit reports and assist in

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<sup>1</sup> Tr. at 6, 25; GE 1, 3.

<sup>2</sup> GE 2-3.

<sup>3</sup> Tr. at 27, 29, 43; GE 2.

identifying and removing any inaccurate and erroneous accounts. She provided a letter from the company stating what services it provides, however, no documentation was included showing what results have been obtained through this company's efforts.<sup>4</sup>

The debt alleged in SOR ¶ 1.a is a judgment entered in 2012 in the amount of \$465. This judgment is for unpaid rent on an apartment. Applicant stated that this judgment is for the same debt that is listed in SOR ¶ 1.i. She failed to produce documentary evidence to support her assertion. The debt alleged in SOR ¶ 1.w is also for an apartment-related debt in the amount of \$345. Other than turning both debts over to the credit repair company, she has not taken any action to resolve these debts. These debts are unresolved.<sup>5</sup>

The allegations at SOR ¶ 1.d and 1.i are vehicle repossession debts in the amounts of \$12,789 and \$332. Both were voluntary repossessions. Applicant has not made contact with the creditor and no payments have been made. These debts are unresolved.<sup>6</sup>

The allegation at SOR ¶ 1.e is an overdue loan for Applicant's current automobile in the amount of \$2,507. She stated this amount is now current, however, she provided no supporting documentation. This debt is unresolved.<sup>7</sup>

The debts alleged in SOR ¶¶ 1.f, 1.g, 1.h, 1.j, 1.q, 1.y and 1.z are delinquent consumer and credit card accounts in the amounts of \$601, \$601, \$299, \$690, \$196 and \$194. Applicant admitted that she incurred credit card debt by living beyond her means. The debts are being reviewed by her credit repair company, but no payment plans have been established. These accounts are unresolved.<sup>8</sup>

The debts alleged in SOR ¶¶ 1.n, 1.o, 1.r, 1.v, and 1.y are delinquent telecommunication and utility accounts in the amounts of \$1,175, \$1,032, \$640, \$370, and \$196. The debts are being reviewed by her credit repair company, but no payment plans have been established. Although she asserted that SOR ¶ 1.r was paid, she did not present any supporting evidence. These accounts are unresolved.<sup>9</sup>

The debts alleged in SOR ¶¶ 1.k, 1.m, 1.p, 1.s through 1.u, 1.x and 1.aa through 1.gg are delinquent medical accounts in various amounts. The debts are being reviewed

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<sup>4</sup> Tr. at 27-29; AE A.

<sup>5</sup> Tr. at 30; GE 2.

<sup>6</sup> Tr. at 32, 35-36.

<sup>7</sup> Tr. at 33.

<sup>8</sup> Tr. at 34-36; GE 2; AE I.

<sup>9</sup> Tr. at 41-42.

by her credit repair company, but no payment plans have been established. These accounts are unresolved.<sup>10</sup>

Other than hiring a credit repair company, Applicant has not received financial counseling. She did not offer any budget information.<sup>11</sup>

Applicant answered “no” to two questions on her trustworthiness application concerning whether in the last seven years a judgment had been entered against her and whether she had any voluntary repossessed property or delinquent debts in the last seven years. The answer to both questions should have been “yes.” She admitted that she voluntarily returned two vehicles to the creditors and that she had received debt collection letters from creditors in 2009 through 2012. She also claimed that she was unaware of what was on her credit report and that she was confused by the application questions. I do not find Applicant’s testimony credible.<sup>12</sup>

Applicant offered a character letter from her current supervisor. He attested to her competence, character and dedication.<sup>13</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 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.”

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<sup>10</sup> Tr. at 37, 40-44.

<sup>11</sup> Tr. at 51; AE G.

<sup>12</sup> Tr. at 47-48, 50.

<sup>13</sup> AE B.

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 applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion as to obtaining 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.

## **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. Two are potentially applicable in this case:

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

Applicant has numerous delinquent debts that remain unpaid. The evidence is sufficient to raise the above disqualifying conditions.

Several financial considerations 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; 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 debts are recent, multiple, and cast doubt on her reliability, trustworthiness, and good judgment. AG ¶ 20(a) is not applicable.

Although Applicant's short periods of unemployment, her uninsured medical expenses, and her support for her mother could be considered beyond her control, she has done little to resolve the debts besides hiring a credit repair company. She has not put forth responsible efforts to resolve the issues associated with the remaining debts. AG ¶ 20(b) is partially applicable.

There is no evidence of financial counseling. Additionally, Applicant has not established payment plans for the unresolved debts. AG ¶¶ 20(c) and 20(d) do not apply.

Applicant failed to provide any documentation supporting disputes of any debts. AG ¶ 20(e) does not apply. At this point, Applicant's finances remain a concern despite the presence of some mitigation.

### **Guideline E, Personal Conduct**

AG ¶ 15 expresses the security concern for personal conduct:

Conduct 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. Of special interest is any failure to provide truthful and candid answers during the trustworthiness process or any other failure to cooperate with the trustworthiness process.

AG ¶ 16 describes conditions that could raise a trustworthiness concern and may be disqualifying in this case. The following disqualifying condition is potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire. . . .

Applicant admitted that she voluntarily returned two vehicles and thus knew that there were two repossessions. I find her explanation for not providing the required information on her application implausible. After evaluating all the evidence, I find Applicant deliberately provided false information concerning her judgment, delinquent debts, and repossessions. AG ¶ 16(a) applies.

The guideline also includes conditions that could mitigate trustworthiness concerns arising from personal conduct. I have considered all of the mitigating conditions under AG ¶ 17 and considered the following as potentially applicable:

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

Falsification of material information on a trustworthiness application is a serious offense and calls into question Applicant's trustworthiness and good judgment. AG ¶ 17(c) does not apply.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility and suitability for access to sensitive information 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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for access to sensitive information 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 relevant facts and circumstances surrounding this case. I have incorporated my comments under Guideline F and Guideline E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

I considered the circumstances by which Applicant's financial situation was affected by her unemployment, her uninsured medical expenses, and the assistance she provided to her mother. However, I also considered that despite these factors, the debts remain unaddressed. Her troublesome financial history causes me to question her ability to resolve her debts.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for access to sensitive information. For all these reasons, I conclude Applicant has not mitigated the financial considerations and personal conduct trustworthiness concerns.

### **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 – 1.gg:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs: 2.a – 2.b:	Against Applicant



## **Conclusion**

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

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Robert E. Coacher  
Administrative Judge