



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



In the matter of:	)	
	)	
	)	ADP Case No. 14-01910
	)	
Applicant for Public Trust Position	)	

**Appearances**

For Government: Allison O’Connell Esq., Department Counsel  
For Applicant: *Pro se*

02/23/2015

**Decision**

LYNCH, Noreen A., Administrative Judge:

On July 17, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant listing trustworthiness concerns arising under Guideline F (Financial Considerations). The action was taken under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), implemented in September 2006.

Applicant timely answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on December 1, 2014. A notice of hearing was issued on December 16, 2014, scheduling the hearing for January 29, 2015. Government Exhibits. (GX) 1-9 were admitted into evidence without objection. Applicant testified, but did not submit any exhibits. I kept the record open until February 18, 2015, for Applicant to submit documentation, but she did not submit any documents to supplement the record. The transcript was received on February 5, 2015. Based on a review of the case file, I find Applicant has not mitigated the trustworthiness concerns raised. Eligibility for a position of trust is denied.

## Findings of Fact

In her answer to the SOR, Applicant admitted all of the allegations under Guideline F, ¶¶ 1.a-1.v with explanations.

Applicant is 42 years old, and works as an executive assistant for an insurance company. Applicant separated from her 2006 marriage in 2010. She has two adult children. She graduated from high school in 1990. Applicant has been employed with her current employer since 2012. On January 10, 2013, Applicant submitted an official application for eligibility for a position of trust. This is her first application for a position of public trust; however, she believes that she was denied a security clearance in January 2010. (Tr.68)

The SOR alleges 20 delinquent debts, and 2012 and 2014 state tax liens. These debts include a judgment, car loans, and credit card accounts. The total amount of delinquent debts is approximately \$30,000. Credit reports submitted by the Government confirm the debts. (GXs 2, 3, 6, and 8) <sup>1</sup>

Applicant explained in general that she knows that a large amount of debt is reflected on her credit report, but it was acquired by her husband who lost his job in 2009, and she is being held financially responsible. Applicant testified that when she left her husband and the home, she left behind documentation and personal papers. Also, some of the debts have been paid, but Applicant did not have any documentation to confirm payments. (Tr. 15)

As for the allegation in SOR 1.a, Applicant claims that the 2010 judgment, in the amount of \$7,046, was satisfied through a wage garnishment. (Tr. 15) The account was for a repossessed vehicle. Applicant did not submit any documentation to support this claim.

As for the allegation in SOR 1.b, Applicant explained the collection account, in the amount of \$104, was paid in February 2011. However, she did not provide any receipt to prove the payment.

The allegations in SOR 1.c and 1.d are medical accounts and she needs to research them as she does not know the origin of the accounts. (Tr. 19)

As to the allegation in SOR 1.e for \$174, Applicant claimed that was paid in full. (Tr. 19) There is no supporting documentation.

Applicant admits that the remaining delinquent debts in SOR allegations ¶¶ 1.f (\$1,292); 1.g (\$1,399); 1.h (\$462); 1.i (\$590); and 1.k (\$933) are not paid.

---

<sup>1</sup>At the hearing, the Government withdrew the SOR allegation 1.j, as Applicant was only an authorized user.

The medical accounts in SOR allegations ¶¶ 1.l, 1.m, and 1.n are not paid. Applicant believed they should have been paid by her husband's insurance, but she did not elaborate. (Tr. 21)

The accounts in SOR ¶¶ 1.o and 1.p are parking tickets in the amount of \$205 each. Applicant claims that her husband used her car and she did know about the tickets. (Tr. 21) Applicant also stated that 1.t is a parking ticket, but she thinks it might be a duplicate of 1.p. Applicant's explanations were vague and not credible.

As for the allegations in SOR ¶ 1.q (\$132) is a duplicate of a medical account in 1.c. and 1.r. This debt has not been paid. (Tr. 23) Allegations 1.s and 1.t are parking tickets and are not paid. Applicant believed her husband received the tickets. (Tr. 23)

Applicant noted that the 2012 state tax lien which is alleged in SOR 1.u in the amount of \$7,882 is unpaid. She is currently working with the state for back taxes from 2006. She believes that she does not owe as much as the state reports.(Tr. 23)

Applicant claimed that as for the 2014 state tax lien alleged in SOR 1.v in the amount of \$7,349, she was in a payment plan, but that has stopped. She was not sure but she believes the late taxes span from 2006 to 2012. (Tr. 24) She believed that the payment plan lasted about six months from April to August 2014. (Tr. 25) It is not clear why the plan stopped. Applicant provided no documentation to support the plan.

Applicant earns about \$75,000 yearly. This amount includes overtime. Her base salary is \$64,200 a year. Her net monthly income is about \$4,500. After expenses and debt payments, Applicant has a net monthly remainder of about \$750. (Tr. 59)

Applicant admitted that the cause of her delinquent debts was living beyond her means and lack of responsibility. (Tr. 63) She knows that the accounts are as old as 2005. She states that she now has a financial counselor. (Tr. 50) Applicant's goal is to repair her credit standing. She also is advised to use a budget. She does not like the idea but will do so. (Tr. 51) She does not want to file for bankruptcy. (Tr. 64) Applicant admitted that she has been on notice since July 2014 of the alleged debts, but did not believe that they would adversely affect her. (Tr. 66) She also admitted that she has not contacted any of the creditors since becoming aware of them. (Tr. 46) Applicant was candid in that she stated that since her credit score had plummeted, she was told that even if she paid the creditors, her score would not increase. (Tr. 64)

Applicant was unemployed from January 31, 2012 until May 2012. (Tr. 29) At the time she was earning about \$54,000. She received a severance package when she left the company. (Tr. 30) She was not sure of the lump sum amount that she received.

### **Policies**

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 the persons'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 entitled to the procedural protections in the Directive before any final unfavorable access determination may be made. Regulation ¶C8.2.1

A person who seeks access to sensitive information enters into a fiduciary relationship with the Government based on 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.

When evaluating an applicant’s suitability for a public trust position, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” An 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.” The Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. 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 burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). An applicant has the ultimate burden of demonstrating that it is clearly consistent with national security to grant eligibility for a public trust position.

## **Analysis**

### **Guideline F, Financial Considerations**

The trustworthiness concern for Financial Considerations is set out in AG ¶ 18:

Failure or an 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.

Applicant's admissions and credit reports establish her delinquent debts. Consequently, Financial Considerations Disqualifying Conditions (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations) apply. With such conditions raised, it is left to Applicant to overcome the case against her and mitigate trustworthiness concerns.

The nature, frequency, and relative recency of Applicant's financial difficulties make it difficult to conclude that it occurred "so long ago." An unpaid debt is a continuous course of conduct for the purposes of security clearance adjudications. See, ISCR Case No. 10-11083 at 2 (App. Bd. Dec. 17, 2012). Applicant still has unresolved delinquent debt from 2002 or 2004. She claims to have paid some debts, but she did not provide any documentation. The delinquent obligations remain. She also has two unresolved state tax liens. Consequently, Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(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) does not apply.

FC MC AG ¶ 20(b) (the conditions that resulted in the behavior 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) does not apply. Applicant admitted that she lived beyond her means. Her husband lost his job in 2009 and she separated in 2010, but these events occurred after some of the delinquent debts were incurred. She has not acted responsibly. She has two state tax liens that have not been resolved.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) partially applies. Applicant has not provided documentation that any accounts have been paid. She recently hired a financial advisor, but admits that she does not want to keep to a budget. AG ¶ 20(c) (the person has received or is receiving counseling for the problem) does not apply. She has not addressed any debts in a timely manner. Consequently, I find that there are not clear indications that her financial problems are being resolved and are under control.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a position of trust by considering the totality of an applicant's conduct and all the 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 a position of trust must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. As noted above, the ultimate burden of persuasion is on the applicant seeking a public trust position.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors. Applicant is 42 years old. She has worked for her current employer since 2012. She separated from her husband in 2010 and was unemployed in 2012 for a period of time. However, many of the debts are from 2002 or 2004. She also incurred federal and state tax liens. Applicant still has a significant amount of debt that she is responsible for. She claimed that some accounts are paid, but she did not provide any documentation or post-hearing submissions. Applicant also acknowledged that she lived beyond her means and was irresponsible. I have doubts about Applicant's judgment and reliability. She has not mitigated the trustworthiness concerns under the financial considerations guideline.

The clearly consistent standard indicates that trustworthiness determinations should err, if they must, on the side of denials. A denial of eligibility for a position of trustworthiness does not necessarily indicate anything adverse about Applicant's character or loyalty. It means that the individual has presented insufficient mitigation to meet the strict standards controlling access to sensitive information.

### **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.v:	Against Applicant

## **Conclusion**

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

---

NOREEN A. LYNCH.  
Administrative Judge