



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



In the matter of: )  
 )  
----- ) ADP Case No. 14-02165  
 )  
Applicant for Public Trust Position )

**Appearances**

For Government: Caroline E. Heintzelman, Esq., Department Counsel  
For Applicant: *Pro se*

06/10/2015

**Decision**

HARVEY, Mark, Administrative Judge:

Applicant’s statement of reasons (SOR) alleges 25 delinquent, collection, or charged-off accounts, totaling \$15,446. She failed to provide sufficient documentation of her progress resolving her financial problems. Financial considerations concerns are not mitigated. Her eligibility to occupy a public trust position is denied.

**Statement of the Case**

On February 13, 2013, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) version of an application for a public trust position (SF 86). (Item 5) On August 8, 2014, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued an SOR to Applicant, pursuant to DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended, and modified; DOD Regulation 5200.2-R, *Personnel Security Program*, dated Jan. 1987, as amended (Regulation); and the adjudicative guidelines (AG), which became effective on September 1, 2006.

The SOR alleges trustworthiness concerns under Guideline F (financial considerations). (Item 1) The SOR detailed reasons why DOD was unable to find that it is consistent with the national interest to grant or continue Applicant’s eligibility to occupy a public trust position, which entails access to sensitive information. (Item 1)

The DOD CAF recommended referral to an administrative judge to determine whether access to sensitive information should be granted, continued, denied, or revoked.

On September 24, 2014, Applicant responded to the SOR allegations, and she did not request a hearing. (Item 4) A complete copy of the file of relevant material (FORM), dated January 27, 2015, was provided to her on March 12, 2015.<sup>1</sup> Applicant did not respond to the FORM. The case was assigned to me on May 22, 2015.

### **Findings of Fact<sup>2</sup>**

In her Answer to the SOR, Applicant admitted the SOR allegations in ¶¶ 1.a-1.c, 1.f, 1.g, 1.i, 1.k, 1.n-1.t, 1.x, and 1.y. (Item 4) She also provided mitigating information. Her admissions are accepted as findings of fact.

Applicant is a 34-year-old military service representative who has been employed by a defense contractor since February 2013.<sup>3</sup> In 2005, Applicant married, and in 2011, she divorced. In 2011, her son was born. She has never served in the military. There is no evidence of felony or misdemeanor charges, alcohol abuse, or use of illegal drugs. She attended college for four months in 2004, for four months in 2007, and for 14 months from 2010 to 2011. There is no evidence of security or rule violations.

From May 2002 to September 2006, she was employed as a vocational associate. From September 2006 to July 2007, she was employed as a support facilitator. From July 2007 to October 2009, she was employed as an inspection report analyst. From October 2009 to January 2010, Applicant was unemployed. From January 2010 to January 2013, Applicant was employed as a receptionist at a clinic.

### **Financial Considerations**

Applicant's credit reports and SOR allege 10 delinquent non-medical debts, totaling \$5,457 as follows: bank collection debts in ¶ 1.a (\$1,308), ¶ 1.m (\$679), ¶ 1.n (\$894), ¶ 1.o (\$831), ¶ 1.r (\$453), and ¶ 1.s (\$307); utilities collection debts in ¶ 1.g (\$126) and ¶ 1.l (\$472); a store collection debt in ¶ 1.q (\$312); and a library collection debt in ¶ 1.x (\$75).

Applicant's credit reports and SOR include 15 medical collection debts, totaling \$9,989 as follows: ¶ 1.b (\$301); ¶ 1.c (\$1,744); ¶ 1.d (\$256); ¶ 1.e (\$65); ¶ 1.f (\$110); ¶

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<sup>1</sup>The Defense Office of Hearings and Appeals (DOHA) transmittal letter is dated February 23, 2015, and Applicant's receipt is dated March 12, 2015. The DOHA transmittal letter informed Applicant that she had 30 days after her receipt to submit information.

<sup>2</sup>Some details have been excluded in order to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

<sup>3</sup>The source of the information in this paragraph and the next paragraph is Applicant's February 13, 2013 Electronic Questionnaires for Investigations Processing (e-QIP) version of an application for a public trust position (SF 86). (Item 1)

1.h (\$610); ¶ 1.i (\$1,422); ¶ 1.j (\$103); ¶ 1.k (\$245); ¶ 1.p (\$256); ¶ 1.t (\$1,422); ¶ 1.u (\$69); ¶ 1.v (\$2,169); ¶ 1.w (\$100); and ¶ 1.y (\$1,117).

In her SF 86, Applicant disclosed the following negative financial entries: one monthly \$30 garnishment to address a \$791 medical debt; three unpaid credit card debts for \$1,176, \$679, and \$759; one mortgage debt for \$223,000 and foreclosure of her residence in 2010;<sup>4</sup> four unpaid medical bills for \$237, \$1,607, \$278, and \$100; and one utility bill for \$116. (Item 5) For three of the medical debts, she said she called the creditors to set up payments; for the medical debt for \$116, she said she was making payments; and for the three credit card debts, she said she lacked the financial resources to address these debts. (Item 5)

In her SOR response (Item 4), Applicant addressed each SOR debt as follows.

Applicant disputed her responsibility for the debts in ¶¶ 1.a and 1.m because she believes her husband is responsible for them in her divorce decree; however, she did not provide a copy of her divorce decree. She believed her former husband had paid the debt in SOR ¶ 1.m.

The creditor in SOR ¶ 1.c garnished \$75 monthly from Applicant's pay, and this debt is paid. She said the medical debts in SOR ¶¶ 1.d and 1.p, both for \$256, are duplications of each other. She said she had arranged payment plans of \$10 each month for the debts in SOR ¶¶ 1.b and 1.p.

Applicant disputed her responsibility for the debt in SOR ¶ 1.e because she had a receipt from an insurance company indicating the debt was paid. Applicant said the creditor in SOR ¶ 1.f agreed to defer her payments until a garnishment was paid. She planned to contact the creditors in SOR ¶¶ 1.n and 1.o to arrange payment plans three months after her garnishment is completed. She planned to contact the creditors in SOR ¶¶ 1.q, 1.r, 1.s, and 1.t to arrange payment plans six months after her garnishment is completed.

Applicant contacted the creditors in SOR ¶¶ 1.g and 1.k, and she offered to arrange a monthly payment plan of \$10 for ¶ 1.g, \$25 for ¶ 1.k, and \$10 for 1.p.

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<sup>4</sup>Applicant's SOR does not allege that she failed to pay her mortgage, and her house was foreclosed. In ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006), the Appeal Board listed five circumstances in which conduct not alleged in an SOR may be considered stating:

- (a) to assess an applicant's credibility; (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole person analysis under Directive Section 6.3.

*Id.* (citing ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003)). The allegations that she failed to pay her mortgage will not be considered for any purpose because Applicant has not had adequate notice and a full opportunity to collect and present evidence of mitigation regarding this allegation.

Applicant was unable to contact the creditors in SOR ¶¶ 1.h, 1.j, 1.u, 1.v, and 1.w, and she was unable to verify her responsibility for these five debts.

Applicant said the debt in SOR ¶ 1.i was being resolved with a \$257 monthly garnishment, and two payments were made and two remain. Applicant said the debt in SOR ¶ 1.l related to someone else, and she was disputing her responsibility for it.

Applicant made arrangements to pay the debt in SOR ¶ 1.x by September 12, 2014. She intended to contact the creditor in SOR ¶ 1.y to make payment arrangements.

The FORM correctly noted that Applicant's file contained no evidence of: financial counseling; no evidence that she took reasonable actions to address her debts after her unemployment from October 2009 to January 2010; and no evidence that she made any payments to creditors. (FORM at 4-5) The FORM advised Applicant that she had 30 days "to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation, as appropriate." (FORM at 5-6) The February 23, 2015 DOHA letter conveying the FORM to Applicant reiterated that Applicant had a 30-day opportunity to submit evidence supporting her approval or continuation of access to sensitive information.

### **Policies**

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). The Government's authority to restrict access to classified information applies similarly in the protection of sensitive, unclassified information. As Commander in Chief, the President has the authority to control access to information bearing on national security or other sensitive information and to determine whether an individual is sufficiently trustworthy to have access to such information. See *Id.* at 527.

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, 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." Regulation ¶ C6.1.1.1. 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, an 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 an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial

and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

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.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant which may disqualify the applicant from being eligible for access to sensitive information. See *Egan*, 484 U.S. at 531. "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security and trustworthiness suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

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 ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance [or access to sensitive information]." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). "[S]ecurity clearance [or trustworthiness] determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; see AG ¶ 2(b). The protection of the national security and sensitive records is of 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."

## **Analysis**

### **Financial Considerations**

AG ¶ 18 articulates the trustworthiness concern relating to financial problems:

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.

AG ¶ 19 provides two disqualifying conditions that could raise a trustworthiness concern and may be disqualifying in this case: “(a) inability or unwillingness to satisfy debts;” and “(c) a history of not meeting financial obligations.” Applicant’s SOR and credit reports allege 25 delinquent, collection, or charged-off accounts, totaling \$15,446.

In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government’s obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply. (internal citation omitted).

The Government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c), requiring additional inquiry about the possible applicability of mitigating conditions.

Five 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;<sup>5</sup> and

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<sup>5</sup>The Appeal Board has previously explained what constitutes a “good faith” effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the “good faith” mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant’s debts. The Directive does not define the term “good-faith.” However, the Board has indicated that the concept of

(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.

The Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

Applicant's conduct in resolving her delinquent debt does not warrant full application of any mitigating conditions to all of her SOR debts; however, she provided some mitigating information. From October 2009 to January 2010, Applicant was unemployed, and in 2011, Applicant and her husband divorced. These are circumstances largely beyond her control that adversely affected her finances; however, she did not provide sufficient evidence that she acted responsibly under the circumstances.

Applicant receives some credit for the funds paid to her creditors through a \$75 monthly garnishment<sup>6</sup> to address the debt in SOR ¶ 1.c, and a \$257 monthly garnishment to address the debt in SOR ¶ 1.l. The debts in SOR ¶¶ 1.d and 1.p, both for \$256, are duplications of each other. Applicant is credited with mitigating the debts in SOR ¶¶ 1.c, 1.d, and 1.l.

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good-faith "requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation." Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [the "good faith" mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

<sup>6</sup>Of course, Applicant loses some mitigating credit because some debt payments were made through garnishment of her salary even though her opportunity to establish a payment plan was limited because of her limited income and other financial commitments. Payment of a debt "though garnishment rather than a voluntary effort diminishes its mitigating force." Compare ISCR Case No. 08-06058 at 4 (App. Bd. Aug. 26, 2010) with ISCR Case No. 04-07360 at 2-3 (App. Bd. Sept. 26, 2006) (payment of two of four debts through garnishment did not bar mitigation of financial considerations concerns).

Applicant did not act responsibly under the circumstances. She received ample notice of her delinquent debts raising trustworthiness concerns. Applicant did not provide sufficient information about her finances to establish her inability to make greater progress paying her SOR creditors. She did not receive financial counseling.

There is no financial documentation relating to any of her SOR creditors showing maintenance of contact with creditors,<sup>7</sup> establishment of payment plans, disputes of debts, payments to creditors, or other evidence of progress or resolution of her SOR debts. There is insufficient evidence that her financial problems are being resolved, are under control, and will not occur in the future. Financial considerations concerns are not mitigated.

### **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 the 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 public trust position must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

There is some evidence supporting approval of Applicant's application for a public trust position. Applicant is a 34-year-old military service representative who has been employed by a defense contractor since February 2013. Some circumstances beyond her control adversely affected her finances, including unemployment from October 2009 to January 2010, and divorce in 2011. In 2011, her son was born. She is a single parent. Applicant is credited with mitigating the debts in SOR ¶¶ 1.c, 1.d, and

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<sup>7</sup>“Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties.” ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current.



1.l. The debts in SOR ¶¶ 1.c and 1.l were addressed through garnishment of her salary, and the debt in SOR ¶ 1.d is a duplication of another SOR debt. There is no evidence of felony or misdemeanor charges, alcohol abuse, use of illegal drugs, or of rule violations. She contributes to her company and the Department of Defense.

The financial evidence against approval of Applicant's clearance is more substantial at this time. Applicant has a history of financial problems. Applicant's credit reports and SOR allege 25 delinquent, collection, or charged-off accounts, totaling \$15,446. As a result of mitigating SOR ¶¶ 1.c, 1.d, and 1.l, she has 23 SOR debts totaling \$12,974. She failed to provide sufficient documentation of her progress resolving her financial problems, which shows lack of financial responsibility and judgment and raises unmitigated questions about Applicant's reliability, trustworthiness, and ability to protect sensitive information. See AG ¶ 18. More financial progress and time without criminal offenses is necessary to mitigate trustworthiness concerns.

It is well settled that once a concern arises regarding an applicant's eligibility for a public trust position, there is a strong presumption against the grant or renewal of a public trust position. Unmitigated financial considerations concerns lead me to conclude that grant or reinstatement of a public trust position to Applicant is not warranted at this time. This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary to justify the award of a public trust position in the future. With more effort towards resolving her past-due debts, and a track record of behavior consistent with her obligations, she may well be able to demonstrate persuasive evidence of her worthiness for access to sensitive information.

I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. Financial considerations concerns are not mitigated. For the reasons stated, I conclude Applicant is not eligible for a public trust position at this time.

### **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 and 1.b:	Against Applicant
Subparagraphs 1.c and 1.d:	For Applicant
Subparagraphs 1.e to 1.k:	Against Applicant
Subparagraph 1.l:	For Applicant
Subparagraphs 1.m to 1.y:	Against Applicant

## **Conclusion**

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

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Mark Harvey  
Administrative Judge