



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



In the matter of: )  
)  
) ADP Case No. 14-02170  
)  
Applicant for Public Trust Position<sup>1</sup> )

**Appearances**

For Government: Gregg A. Cervi, Esq., Department Counsel  
For Applicant: *Pro se*

01/12/2016

**Decision**

LOUGHRAN, Edward W., Administrative Judge:

Applicant did not mitigate the financial considerations trustworthiness concerns. Eligibility for access to sensitive information is denied.

**Statement of the Case**

On September 2, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing trustworthiness concerns 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); DOD Regulation 5200.2-R, *Personnel Security Program* (January 1987), as amended (Regulation); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.

Applicant submitted an undated response to the SOR. She did not indicate whether she wanted a hearing before an administrative judge or a decision on the written record. She later verified that she wanted a hearing. The case was assigned to

<sup>1</sup> The SOR inaccurately described this as a security clearance case. The caption was amended at the hearing to accurately reflect this as an ADP public trust position case.

another administrative judge on February 25, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on February 26, 2015, scheduling the hearing for March 26, 2015. The hearing was continued at Applicant's request because of medical reasons.

The case was reassigned to me on August 13, 2015. The hearing was convened as rescheduled on September 15, 2015. Government Exhibits (GE) 1 through 3 were admitted in evidence without objection. Applicant testified, but she did not submit any documentary evidence. DOHA received the hearing transcript (Tr.) on September 23, 2015.

### **Findings of Fact**

Applicant is a 28-year-old employee of a defense contractor. She has worked for her current employer since October 2013. She is applying for eligibility to hold a public trust position. She attended college for a period, but she did not earn a degree. She has never married. She has an eight-year-old child.<sup>2</sup>

Applicant had periods of unemployment and underemployment before she obtained her current job. She did not always have medical insurance, which resulted in medical debts. She does not receive child support from her child's father. She was unable to pay all her bills, and debts became delinquent.<sup>3</sup>

The SOR alleges 14 delinquent debts. Each debt is listed on a credit report from November 2013. Medical debts ranging from \$40 to \$759 and totaling about \$2,744 comprise eight of the SOR allegations. The remaining debts consist of a past-due car loan (\$796 past due; \$9,600 balance), a debt to a bank (\$408), a payday loan (\$758), a telecommunications debt (\$750), and two cable television debts (\$180 and \$179). Applicant admitted owing all the debts except for the two cable television debts, which she said she paid because the company would not provide her with cable television service if she did not pay the debts. She did not provide documentation of those payments. Applicant has had several cars repossessed. She also had a car that was wrecked and "totaled." In her background interview in November 2013, she stated that the past-due car loan alleged in the SOR resulted in the car being repossessed. At her hearing, she stated that the past-due car loan was for the wrecked car.<sup>4</sup>

Applicant has not received financial counseling. She stated that she did not have the money to pay her debts. She stated that she would like to go back to college, get a degree, and become a real estate agent. She stated that she would then have the extra

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<sup>2</sup> Tr. at 16; GE 1.

<sup>3</sup> Tr. at 15-17; GE 1-3.

<sup>4</sup> Tr. at 18-21, 24; Applicant's response to SOR; GE 1-3. The additional repossessed cars were not alleged in the SOR. Any matter that was not alleged in the SOR will not be used for disqualification purposes. It may be used in assessing Applicant's overall financial situation, in the application of mitigating conditions, and in the whole-person analysis.

income that she could use to pay her debts. She has a 2011 car. She is delinquent on a student loan. She stated that she will pay the student loan with her next income tax refund. She stated that she has “to pay that off so [she] can go back to school.”<sup>5</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.” 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.”

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.

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

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<sup>5</sup> Tr. at 15, 21-24; GE 2.

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:

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. The following are potentially applicable:

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

Applicant accumulated delinquent debts and was unable or unwilling to pay her financial obligations. The above disqualifying conditions are applicable.

Conditions that could mitigate financial considerations concerns are provided under AG ¶ 20. The following 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 had periods of unemployment and underemployment before she obtained her current job. She did not always have medical insurance, which resulted in medical debts. She does not receive child support from her child's father. Those events were beyond her control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances.

Applicant paid the two cable television debts because the company would not provide her with cable television service if she did not pay the debts. Those debts are mitigated. She stated that she will pay her delinquent student loan so that she will be able to go back to school. No other debts have been paid. She has a 2011 car, but she has not been able to pay a \$40 medical debt.

There is insufficient evidence for a determination that Applicant's financial problems will be resolved within a reasonable period. I am unable to find that she acted responsibly under the circumstances or that she made a good-faith effort to pay her debts. Her financial issues are recent and ongoing. They continue to cast doubt on her current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a), 20(c), and 20(d) are not applicable. AG ¶ 20(b) is partially applicable. I find that financial considerations concerns remain despite the presence of some mitigation.

### **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 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 public trust position 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 the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a public trust position. For all these reasons, I

conclude Applicant did not mitigate the financial considerations 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.j:	Against Applicant
Subparagraphs 1.k-1.l:	For Applicant
Subparagraphs 1.m-1.n:	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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Edward W. Loughran  
Administrative Judge