



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



In the matter of:	)	
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	)	ADP Case No. 14-02298
Applicant for Public Trust Position	)	

**Appearances**

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

01/22/2015

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**Decision**

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LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to deny her eligibility for a public trust position. The evidence shows Applicant has a history of financial problems or difficulties, which is ongoing and unresolved. Applicant did not present sufficient evidence to explain and mitigate the concern stemming from her unfavorable financial history. Accordingly, this case is decided against Applicant.

**Statement of the Case**

On August 1, 2014, the Department of Defense (DOD) sent Applicant a statement of reasons (SOR) detailing a trustworthiness concern under Guideline F for financial considerations.<sup>1</sup> The action was taken under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Review Program* (Jan. 2, 1992), as

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<sup>1</sup> The SOR was issued by the DOD Central Adjudications Facility, Fort Meade, Maryland. It is a separate and distinct organization from the Defense Office of Hearings and Appeals, which is part of the Defense Legal Services Agency.

amended (Directive); Department of Defense Regulation 5200.2-R, *Personnel Security Program* (Jan. 1987), as amended (Regulation); and the adjudicative guidelines (AG)<sup>2</sup> implemented by the DOD on September 1, 2006. The SOR recommended submission of Applicant's case to an administrative judge to determine her eligibility to occupy an automated data processing (ADP) position to support a contract with the DOD.

Applicant answered the SOR on August 20, 2014; she admitted the matters alleged in SOR ¶¶ 1.a–1.o; she denied the allegation in SOR ¶ 1.h without explanation; she denied the allegation in SOR ¶ 1.p, stating the debt was a duplicate of SOR ¶ 1.j; she denied the allegation in SOR ¶ 1.q, stating that her federal income tax return for 2012 was now filed; and she indirectly admitted the allegation in SOR ¶ 1.r, stating that her federal income tax debt of about \$7,819 was on a payment plan. She also provided a brief explanation for her financial situation, stating that most of the delinquent debts in the SOR were due to medical bills.

The case was assigned to me November 12, 2014. The hearing was held December 9, 2014. At the hearing, Department Counsel presented Exhibits 1–5, which were admitted. Applicant presented Exhibit A, which was admitted. The record was kept open until December 23, 2014, and then extended further to January 6, 2015, to allow her to present additional documentary evidence. Those matters were timely submitted and they are admitted with objections as Exhibits B–J. The transcript of the hearing (Tr.) was received December 17, 2014.

### **Ruling on Procedure**

As stated by Applicant, Department Counsel conceded that the debt in SOR ¶ 1.p duplicates the debt in SOR ¶ 1.j.<sup>3</sup> On that basis, I will find in Applicant's favor on SOR ¶ 1.p.

### **Findings of Fact**

Applicant is a 45-year-old employee of a health care contractor for the Defense Department. She is seeking to obtain eligibility to occupy a position of public trust for her job working in a customer-service call center. Eligibility is necessary because her job involves access to sensitive but unclassified information known as personally identifiable information, which is commonly abbreviated as PII.

Applicant has had this job since February 2014. She earns \$13 per hour and has no significant financial assets. Her employment history includes working in other customer-service call centers and three periods of unemployment as follows: July–August 2013, from November 2011 to January 2012, and during March–May

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<sup>2</sup> The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replaced the guidelines in Enclosure 2 to the Directive.

<sup>3</sup> Tr. 19.

2006.<sup>4</sup> Her ability to earn an income was negatively effected due to her unemployment and medical problems (discussed below). For example, she had an annual income of about \$50,000 for 2006–2010; \$43,000 in 2011; \$33,489 in 2012; and \$26,283 in 2013.<sup>5</sup>

Applicant is twice married and divorced. She has one child, a 24-year-old son from her first marriage. Her son lives with her because he was born with both mental and physical disabilities and “functions more like a 14 to 15-year-old level in cognitive ability and communication.”<sup>6</sup> Her son receives about \$600 monthly from various resources, including his father.<sup>7</sup> His father has been paying about \$200 monthly, although that has not been the case in the past. Her son does have health care insurance through his father’s coverage as a military retiree.<sup>8</sup> Applicant and her son live with her parents, ages 68 and 67, both of whom are retired and receiving monthly Social Security benefits; her father also receives a monthly income as a military retiree.<sup>9</sup> She does not pay rent to her parents, but she pays for other expenses, such as groceries, as well as her own personal expenses.

Applicant has had ongoing medical problems since about 2010.<sup>10</sup> She had a stroke in 2011 or 2012, which led to the discovery that she is iron and vitamin B deficient, both of which require periodic treatments.<sup>11</sup> She has also experienced some short-term memory issues, personality issues, and depression.<sup>12</sup> Her medical problems prevented her from working a full-time schedule since about August 2014, including a period of hospitalization in early October.<sup>13</sup> She estimated that she is facing about \$15,000 in new medical bills, and she consulted her former bankruptcy attorney who recommended she file another bankruptcy case given her income and the medical bills.<sup>14</sup>

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<sup>4</sup> Exhibit 1.

<sup>5</sup> Exhibit A.

<sup>6</sup> Tr. 34.

<sup>7</sup> Tr. 34–35.

<sup>8</sup> Tr. 34, 48–49.

<sup>9</sup> Tr. 63.

<sup>10</sup> Tr. 36.

<sup>11</sup> Tr. 36–37.

<sup>12</sup> Tr. 37.

<sup>13</sup> Tr. 37–38.

<sup>14</sup> Tr. 61–62.

The available documentary evidence shows Applicant has a history of financial problems or difficulties.<sup>15</sup> As alleged in the SOR and largely admitted by Applicant, that history includes the following: (1) a Chapter 7 bankruptcy case in 2005; (2) seven medical collection accounts; (3) six collection or charged-off accounts; (4) a student loan account in collection; (5) failure to timely file a federal income tax return for tax year 2012; and (6) \$7,819 in back taxes owed to the IRS for multiple tax years. In her answer to the SOR, Applicant identified three of the collection accounts are also medical collection accounts and they will be treated as such, for a total of ten medical collection accounts and three collection or charged-off accounts.

(1) Applicant filed for Chapter 7 bankruptcy protection in 2005 and received a discharge that same year (SOR ¶ 1.a).<sup>16</sup> She estimates that about \$70,000 in liabilities were discharged. She attributed the bankruptcy case to the aftermath of her second divorce.

(2) The ten medical collection accounts amount to about \$2,849 (SOR ¶¶ 1.b–1.g, 1.i, 1.k–1.m). None of the accounts are paid, settled, in repayment, forgiven, or otherwise resolved.<sup>17</sup> Applicant attributes the accounts to necessary medical expenses she incurred as a result of a stroke she suffered in 2011 or 2012 as well as ongoing medical problems, which are discussed further below. She estimated having an additional \$15,000 in medical bills due to the ongoing medical problems.<sup>18</sup>

(3) The three collection or charged-off accounts amount to about \$1,579 (SOR ¶¶ 1.h, 1.j, and 1.n). None of the accounts are paid, settled, in repayment, forgiven, or otherwise resolved.<sup>19</sup>

(4) Applicant also has a \$5,363 account in collection stemming from a student loan (SOR ¶ 1.o). In her answer to the SOR, she stated the account was being paid by an ex-husband. She did not present any paperwork from the account to support her statement.

(5) Applicant failed to timely file a federal income tax return for tax year 2012 (SOR ¶ 1.q). She did so because she owed so much at the time she put off filing a return.<sup>20</sup> She has since filed returns for both 2012 and 2013, and, after the hearing, she

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<sup>15</sup> Exhibits 2–5.

<sup>16</sup> Tr. 49–50.

<sup>17</sup> Tr. 60–61, 64–65.

<sup>18</sup> Tr. 61–62.

<sup>19</sup> Tr. 60–61, 64–65.

<sup>20</sup> Tr. 50–51.

presented copies of those returns.<sup>21</sup> The returns showed she overpaid her taxes for each year (\$2,071 and \$537, respectively), entitling her to a refund absent any money subject to interception by the IRS. On that basis, the failure-to-file allegation in SOR ¶ 1.q will be decided for Applicant.

(6) Applicant admits owing back taxes to the IRS for multiple tax years, and that matter is ongoing (SOR ¶ 1.r). To address the problem, Applicant entered into a repayment arrangement (known as an installment agreement) with the IRS wherein she agreed to pay \$50 monthly. Her October 9, 2014 annual installment agreement statement, covering the period July 8, 2013 to July 7, 2014, shows (1) a beginning balance of \$7,850 for tax years 2006–2010, (2) three payments for a total of \$175, (3) a credit of \$2,983, and (4) an ending balance of \$4,870.<sup>22</sup> The account balance in her July 2, 2014 monthly statement is also \$4,870.<sup>23</sup> Her October 1, 2014 and November 5, 2014 monthly statements have account balances of \$4,954 and \$4,965, respectively, and the monthly payment changed from \$50 to \$30.<sup>24</sup>

In December 2014, the IRS notified Applicant of its intent to terminate the installment agreement due to nonpayment.<sup>25</sup> The IRS demanded payment of \$3,280 in total for tax years 2006, 2007, and 2008. She did not present evidence showing that she cured the default of her installment agreement by payment of the demanded sums or is otherwise in compliance with the installment agreement.

## Discussion

Under Guideline F for financial considerations,<sup>26</sup> the suitability of an applicant may be questioned or put into doubt when that applicant has a history of excessive indebtedness or financial problems or difficulties.<sup>27</sup> The overall concern is:

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<sup>21</sup> Exhibits B and C.

<sup>22</sup> Exhibit D.

<sup>23</sup> Exhibit E.

<sup>24</sup> Exhibits F and G.

<sup>25</sup> Exhibits H, I, and J (IRS CP523 Notice).

<sup>26</sup> AG ¶¶ 18, 19, and 20 (setting forth the concern and the disqualifying and mitigating conditions).

<sup>27</sup> ISCR Case No. 95-0611 (App. Bd. May 2, 1996) (It is well settled that “the security suitability of an applicant is placed into question when that applicant is shown to have a history of excessive indebtedness or recurring financial difficulties.”) (citation omitted); and see ISCR Case No. 07-09966 (App. Bd. Jun. 25, 2008) (In security clearance cases, “the federal government is entitled to consider the facts and circumstances surrounding an applicant’s conduct in incurring and failing to satisfy the debt in a timely manner.”) (citation omitted).

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.<sup>28</sup>

The concern is broader than the possibility that a person might knowingly compromise sensitive information to obtain money or something else of value. It encompasses concerns about a person's self-control, judgment, and other important qualities. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding sensitive information.

The evidence supports a conclusion that Applicant has a history of financial problems or difficulties, which is ongoing and unresolved. The facts indicate inability or unwillingness to satisfy debts<sup>29</sup> and a history of not meeting financial obligations<sup>30</sup> within the meaning of Guideline F. The facts are sufficient to establish these two disqualifying conditions, and the facts also establish that she failed to timely file a federal income tax return for tax year 2012.<sup>31</sup>

With that said, I attach minimal weight to the ten medical collection accounts for a total of \$2,849. First, that is a relatively small amount of money. Second, it is clear that a good part of Applicant's financial problems are linked to her medical problems, which is a circumstance largely beyond her control. She incurred the medical collection accounts due to necessary medical care, and the collection accounts do not indicate poor self-control, questionable judgment, unreliability, or untrustworthiness. On that basis, the debts in SOR ¶¶ 1.b–1.g, 1.i, 1.k–1.m are decided for Applicant.

The same cannot be said for the three collection or charged-off accounts, the student loan account, and the back taxes owed to the IRS, all of which are unresolved. In particular, I attach great weight to the back taxes given the nature of the obligation for every taxpayer. According to her recent annual installment agreement statement, Applicant has a poor record of adherence to the agreement, making only three payments for a total of \$175 over the course of a year. And in December 2014, the IRS notified Applicant that she was in default and demanded payment in full for three of the five tax years. Those circumstances demonstrate a lack of good faith and militate against eligibility for a position of public trust. In sum, based on the available evidence,

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<sup>28</sup> AG ¶ 18.

<sup>29</sup> AG ¶ 19(a).

<sup>30</sup> AG ¶ 19(c).

<sup>31</sup> AG ¶ 19(g).

none of the six mitigating conditions under Guideline F are sufficient to fully mitigate the concern stemming from the unresolved accounts and the back taxes.<sup>32</sup>

Of course, the purpose of this case is not aimed at collecting debts or enforcing tax laws.<sup>33</sup> Rather, the purpose is to evaluate an applicant's judgment, reliability, and trustworthiness consistent with the guidelines in the Directive. In evaluating Guideline F cases, the Appeal Board has established the following standard:

The Board has previously noted that the concept of a meaningful track record necessarily includes evidence of actual debt reduction through payment of debts. However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has established a plan to resolve his financial problems and taken significant actions to implement that plan. The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payments of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.<sup>34</sup>

Here, the evidence does not support a conclusion that Applicant has established a plan and taken steps to implement that plan sufficient to mitigate the concern.

To conclude, the evidence leaves me with doubt about Applicant's eligibility and suitability for a public trust position. In reaching this conclusion, I weighed the evidence as a whole and considered if the favorable evidence outweighed the unfavorable evidence or *vice versa*. I gave due consideration to the whole-person concept.<sup>35</sup> In particular, I considered Applicant's unemployment and medical problems and the effect they had on her ability to earn an income, and I considered Applicant's obligation to care for her disabled adult son. Those are certainly difficult circumstances. But they do not rise to a level that is sufficient to explain, extenuate, or excuse her failure to repay the back taxes. For all these reasons, I conclude Applicant did not mitigate the financial considerations concern.

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<sup>32</sup> AG ¶¶ 20(a)–(f).

<sup>33</sup> ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010).

<sup>34</sup> ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008) (citations and quotations omitted).

<sup>35</sup> AG ¶ 2(a)(1)–(9).

## Formal Findings

The formal findings on the SOR allegations are as follows:

Paragraph 1, Guideline F:	Against Applicant
Subparagraph 1.a:	Against Applicant
Subparagraphs 1.b–1.g:	For Applicant
Subparagraphs 1.h, 1.j., 1.n, 1.o:	Against Applicant
Subparagraphs 1.i, 1.k, 1.l, 1.m:	For Applicant
Subparagraph 1.p:	For Applicant
Subparagraph 1.q:	For Applicant
Subparagraph 1.r:	Against Applicant

## Conclusion

In light of the record as a whole, it is not clearly consistent with the interests of national security to grant Applicant eligibility for an ADP position. Eligibility for access to sensitive information is denied.

Michael H. Leonard  
Administrative Judge