



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



In the matter of:	)	
	)	
	)	ADP Case No. 14-02306
	)	
Applicant for Public Trust Position	)	

**Appearances**

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

02/27/2015

**Decision**

COACHER, Robert E., Administrative Judge:

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

**Statement of the Case**

On July 2, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns under Guideline F, financial considerations. The DOD CAF 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 (Answer) the SOR on August 7, 2014, and requested a hearing before an administrative judge. The case was assigned to me on September 17, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on September 28, 2014, and the hearing was convened as scheduled on December 3, 2014. The Government offered exhibits (GE) 1 through 4, which were

admitted into evidence without objection. Department Counsel's exhibit index was marked as hearing exhibit (HE) I. Applicant testified and offered three exhibits (AE), which were marked as AE A through C. All were admitted into evidence without objection. The record was held open for Applicant to submit additional information, she submitted AE D through Q which were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on December 16, 2014.

### **Findings of Fact**

In her answer to the SOR, Applicant admitted the allegation, with explanations. The admission is incorporated as a finding of fact. After a review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is a 52-year-old employee of a government contractor. She works as a computer operator and has held that position since April 2013. She has a high school diploma, received a diploma from a trade/technical/vocational school in 2007, and has taken some college courses. She is divorced and has a 20-year old daughter who has some mental-health issues. She has no military background, but previously held a security clearance in 1990.<sup>1</sup>

The SOR alleges one charged-off student loan in the amount of \$17,754. This debt was listed in credit reports from July 2013, March 2014, and September 2015. She also listed the delinquent debt in her trustworthiness determination application in June 2013.<sup>2</sup>

Applicant acknowledges that she incurred the student loan debt in 2006 when she attended a jewelry school. She attended for a year and received a certificate of diploma for completing the course. Thereafter, she worked in the industry from September 2007 to December 2007 until she resigned. She believes she was defrauded by the jewelry school owner into applying for a federal student loan when she thought she was receiving state retraining benefits. She admitted signing the student loan paperwork, but claimed she was tired and wasn't sure what she was signing. She also claims she contacted the student loan agency to cancel the loan, but was not permitted to do so. She made payments of approximately \$154 per month until 2012 when the payments became too burdensome. She contacted the student loan agency in an attempt to reduce her monthly payments to \$25, but the agency refused to accept this lower payment amount. She has not had any further contact with her student loan creditor.<sup>3</sup>

Applicant has the ability to pay the full amount of the loan. She has an investment account that contains approximately \$82,000. She testified that, "If I have to

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<sup>1</sup> Tr. at 5, 24, 32, 36, 43; GE 1.

<sup>2</sup> GE 1-4.

<sup>3</sup> Tr. at 25-28, 40-43, 47; AE B-D; Answer.

pay it to keep my job, I will.” She presented no evidence of payment at the hearing or in her post-hearing document submission. She is current on her mortgage and all other debts. Her annual income is approximately \$44,000 from her primary job. She also has a supplementary job as a seamstress where she makes a wage of \$10 per hour. She has not received financial counseling.<sup>4</sup>

Applicant offered numerous character letters from friends and coworkers. They all reflect the writers’ opinions that Applicant is a person of high character with positive traits such as integrity, trustworthiness, professionalism, and job dedication.<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.” 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

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<sup>4</sup> Tr. at 28, 30, 33, 39, 40, 48-49.

<sup>5</sup> AE A.

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 a delinquent student loan that remains unpaid. Although she may have a dispute with the school that she obtained the student loan to attend, it is undisputed that she received the student loan money, attended and graduated from the school, obtained a job in the industry that the schooling was for, and made payments on the student loan for a number of years through 2012. The evidence also supported that she has the ability to pay the debt, but refuses to do so. 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 nonpayment of her delinquent student loan when she has the ability to pay it casts doubt on her reliability, trustworthiness, and good judgment. AG ¶ 20(a) is not applicable.

Although Applicant's has had to deal with some of her daughter's medical issues and her claim that she was defrauded by the school could be considered circumstances beyond her control, she has done little to resolve the debt besides seeking a reduction of her payment amount to total \$25 monthly. However, she has the current resources to pay the entire debt outright. She has not put forth responsible efforts to resolve her student loan. AG ¶ 20(b) is partially applicable.

There is no evidence of financial counseling. Additionally, Applicant has not paid or established a payment plan for the debt. AG ¶¶ 20(c) and 20(d) do not apply.

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

### **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 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 daughter's medical issues. However, I also considered that the debt remains unpaid, despite her present ability to pay it. Her unwillingness to address her student loan debt causes me to question her trustworthiness, reliability, and good judgment.

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 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
Subparagraph: 1.a:	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