



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



In the matter of: )  
)  
) ADP Case No. 14-02364  
)  
Applicant for Public Trust Position )

**Appearances**

For Government: Richard Stevens, Esq., Department Counsel  
For Applicant: *Pro se*

03/16/2015

**Decision**

DUFFY, James F., Administrative Judge:

Applicant mitigated the trustworthiness concerns under Guideline F, financial considerations. Eligibility to occupy a position of trust is granted.

**Statement of the Case**

On September 2, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns under Guideline F. DOD CAF took that action under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive); and the adjudicative guidelines (AG) implemented on September 1, 2006.

The SOR detailed reasons why DOD CAF could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant Applicant access to sensitive information. On October 28, 2014, Applicant answered the SOR and requested a hearing. This case was assigned to me

on November 5, 2014. On November 21, 2014, the Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing scheduling the hearing for December 9, 2014. The hearing was held as scheduled.

At the hearing, Department Counsel offered Government's Exhibits (GE) 1 through 3, while Applicant testified and offered no exhibits. The record of the hearing was held open until December 16, 2014, to provide the Applicant the opportunity to submit documents. She submitted documents that were marked as Applicant's Exhibits (AE) A through K. All proffered exhibits were admitted into evidence without objection. The transcript (Tr.) of the hearing was received on December 17, 2014.

### **Findings of Fact**

Applicant is a 63-year-old employee working for a defense contractor. She has been working in that job since March 2013. She graduated from high school in 1969 and earned two associate's degrees between 1979 and 1988. She has been married for 41 years and has an adult daughter. This is the first time Applicant has sought a position of trust.<sup>1</sup>

The SOR alleged that Applicant had two delinquent debts totaling \$19,389 (SOR ¶¶ 1.a and 1.b). Both debts were charged-off credit card accounts. In her Answer to the SOR, she admitted both allegations. Her admissions are incorporated as findings of fact.<sup>2</sup>

In September 2009, Applicant was laid off from a job in which she earned \$73,000 annually. Her husband was laid off from his job in 2000. He is now 70 years old and is no longer physically able to work. After she was laid off from her job, Applicant and her husband began living off of their savings, her \$16,043 severance package, and his Social Security payments. She had credit card insurance on at least one of the delinquent credit card accounts that provided the insurance company would make the monthly payments if she lost her job. She did not immediately apply for the insurance payments when she lost her job because she had enough money to cover their monthly expenses. When the money began running out, she applied for unemployment compensation and contacted the insurance company. The insurance company refused to make the payments because she did not contact them immediately upon losing her job. In December 2011, she obtained a job earning the minimum wage as a sales representative at a large retail store.<sup>3</sup>

In April 2012, Applicant obtained a new job earning about \$36,000 annually. She attended technical training courses and received a computer programming certification

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<sup>1</sup> Tr. 5-6, 34-37; GE 1, 2.

<sup>2</sup> Applicant's Answer to the SOR.

<sup>3</sup> Tr. 26-27, 29-31, 33-34, 37-40, 42-43; GE 1; AE E, F.

in July 2012. She continued to struggle financially with her new job. She had only enough money to make partial payments on some of her bills, including the two alleged credit card debts. The two credit card companies made demands for full payment of the past-due amounts. Applicant did not have the money to make those payments. The credit card companies stopped sending her bills, and she stopped making the partial payments. In March 2013, she obtained her current job in which she earns about \$83,000.<sup>4</sup>

In November 2013, the creditor of the \$8,934 debt in SOR ¶ 1.b instituted legal action against Applicant. In March 2014, she reached a settlement agreement with that creditor. Under that agreement, she made a payment of \$500 and agreed to make monthly payments of \$388 until the debt was paid. Those payments are made by automatic deductions from her checking account. She provided proof of those payments from March through November 2014.<sup>5</sup>

Applicant testified that she had yet to hear from the creditor of the debt in SOR ¶ 1.a. She indicated that, when the creditors stopped sending her bills, she did not know what to do. At the hearing, she testified that she planned to contact that creditor in January 2015 because she would have some of her other debts paid off by then. She indicated that she will resolve the debt in SOR ¶ 1.a.<sup>6</sup>

Applicant's husband is the one who handles the paying of the bills. She has not received financial counseling. With the exception of the debt alleged in SOR ¶ 1.a, she testified that she had no other delinquent debts. Her credit report dated August 13, 2013, reflected that she had 25 accounts that were paid "as agreed." She and her husband never fell behind on their mortgage payments because that was always their first priority. She indicated that they no longer use credit cards.<sup>7</sup>

In her post-hearing submission, Applicant submitted a budget that reflected her and her husband's net monthly income was \$5,452, that their total monthly expenses were \$3,051, and that their total monthly debt payments were \$1,288, which left them a net monthly remainder of about \$1,113. In that budget, the monthly debt payments included a payment of \$388 for the debt in SOR ¶ 1.b. She has about \$47,000 in a 401(k) plan. For the past year, Applicant's and her husband's checking account has had an ending monthly balance that ranged between \$2,680 and \$6,343.<sup>8</sup>

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<sup>4</sup> Tr. 27-29; GE 1, 3; AE D.

<sup>5</sup>Tr. 27-28; 31-34, 39-40; GE 3; AE C, K. The payments for the debt in SOR ¶ 1.b are made to the attorney who represented the creditor in the legal proceeding.

<sup>6</sup> Tr. 28, 45-47; GE 3. Interestingly, Applicant has another credit card account from this same creditor as the one listed in SOR ¶ 1.a that was past-due for a period, but was current at the time of the hearing.

<sup>7</sup> Tr. 28, 40-45; GE 2, 3; AE G, H, I, J.

<sup>8</sup> Tr. 40-45; AE B, K.

## 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.) In a memorandum dated November 19, 2004, the Deputy Under Secretary of Defense (Counterintelligence and Security) indicated that trustworthiness adjudications will apply the procedures contained in the Directive before making a determination. (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.

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 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 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 accumulated delinquent debts that she was unable to satisfy for an extended period. This evidence is sufficient to raise the above disqualifying conditions.

Four 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; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's husband was laid off from his job in 2000. At some point, he began collecting Social Security payments. In 2009, Applicant was laid off from her job in

which she earned \$73,000 annually. She was unemployed for over a year and a half before obtaining a minimum wage job. Her and her husband's unemployment as well as her underemployment were conditions beyond her control that caused the alleged financial problems. In March 2013, she obtained a job in which she earned \$83,000 annually. In November 2013, the creditor of the debt in SOR 1.b instituted legal action against Applicant for that debt and she later reached a settlement agreement with that creditor. She has been making regular payments to the creditor under that agreement. Her husband handles the finances and she appears to lack a clear understanding of the debt collection process. She credibly testified that she did not know what to do when she stopped receiving bills from the creditors. She further testified that she planned to contact the creditor of the debt in SOR ¶ 1.a in January 2015 and take action to resolve that debt. AG ¶ 20(b) does not fully apply because of her delay in taking action to resolve the alleged debts after she obtained her current job. Nevertheless, her financial situation is now stable. She has no other delinquent debts. I am convinced that she will resolve the alleged debts and remain financially stable.<sup>9</sup> I find that her financial problems are being resolved, are under control, and are unlikely to recur. AG ¶¶ 20(a), 20(c), and 20(d) partially apply.

### **Whole-Person Concept**

In the adjudication process, an administrative judge must carefully weigh a number of variables known as the whole-person concept. Available information about the applicant as well as the factors listed in AG ¶ 2(a) should be considered in reaching a determination.<sup>10</sup> In this case, I gave due consideration to the information about

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<sup>9</sup> The Government can revalidate Applicant's financial status at any time through credit reports and investigations. Approval of a clearance now does not bar the Government from subsequently revoking it, if warranted. "The Government has the right to reconsider the security significance of past conduct or circumstances in light of more recent conduct having negative security significance." ISCR Case No. 10-06943 at 4 (App. Bd. Feb. 17, 2012). Violation of a promise made in a security context to pay legitimate debts also raises judgment concerns under Guideline E, and may support future revocation of a security clearance. An administrative judge does not have "authority to grant an interim, conditional, or probationary clearance." ISCR Case No. 10-06943 at 4 (App. Bd. Feb. 17, 2012) (citing ISCR Case No. 10-03646 at 2 (App. Bd. Dec. 28, 2011)). See also ISCR Case No. 04-03907 at 2 (App. Bd. Sep. 18, 2006) (stating, "The Board has no authority to grant [a]pplicant a conditional or probationary security clearance to allow her the opportunity to have a security clearance while she works on her financial problems."). This footnote does not imply that this Applicant's security clearance is conditional.

<sup>10</sup> The nine adjudicative process factors listed at AG ¶ 2(a) are:

(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.

Applicant in the record and concluded the favorable information, including the mitigating evidence, outweighs the security concerns at issue. Applicant met her burden of persuasion and mitigated the financial considerations security concerns. Overall, the record evidence leaves me with no questions or doubts as to her eligibility to occupy a position of trust.

### **Formal Findings**

Formal findings 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:	For Applicant
Subparagraphs 1.a – 1.b:	For Applicant

### **Decision**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility to occupy a position of trust. Eligibility to access sensitive information is granted.

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James F. Duffy  
Administrative Judge