



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



In the matter of: )  
)  
) ADP Case No. 14-02377  
)  
Applicant for Public Trust Position )

**Appearances**

For Government: Robert J. Kilmartin, Esq., Department Counsel  
For Applicant: *Pro se*

08/20/2015

**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 October 1, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns under Guideline F, financial considerations. DOD acted under Department of Defense 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 (Ans.) the SOR on January 7, 2015, and requested a hearing before an administrative judge. The case was assigned to me on April 22, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 4, 2015, and the hearing was convened as scheduled on May 20, 2015. The Government offered exhibits (GE) 1 through 4, which were admitted into evidence

without objection. Applicant testified and offered exhibits (AE) A through D, which were admitted into evidence without objection. The record was held open for Applicant to submit additional information. Applicant submitted AE E, which was admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on May 28, 2015.

### **Findings of Fact**

Applicant admitted the following SOR allegations: ¶¶ 1.a - 1.b, 1.d - 1.m, 1.o – 1.t, and 1.v – 1.x. She denied ¶¶ 1.c, 1.n, and 1.u. The admissions are incorporated as findings of fact. After a review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is a 26-year-old employee of a federal contractor. She has worked for this employer since September 2013. She is a high school graduate. She is married and has no children. She has no military service and this is her first time seeking a trustworthiness determination.<sup>1</sup>

The SOR alleges 23 delinquent debts and failure to file her 2012 state income tax return for a total amount of debt in excess of \$16,213. The debts were listed in credit reports from September 2013, May 2014, and April 2015.<sup>2</sup>

Applicant's financial problems arose because of periods of unemployment, the most recent was more than a month in 2010. Additionally, her husband suffered some mental health issues which caused him periods of unemployment, which affected their overall finances. Her husband is currently employed with the same contractor for whom she works. Applicant has looked into filing a Chapter 7 bankruptcy petition, but could not afford the attorney's fee. She provided a personal financial statement from April 2014 showing that she has \$20 left over every month after paying all expenses (not accounting for any debt payments). During her November 2013 trustworthiness interview, she acknowledged the debts and indicated that she would "take care" of the debts by 2014. The status of the SOR-related debts is as follows:<sup>3</sup>

#### **SOR ¶¶ 1.a and 1. c (past rent debt- \$1,921; \$1,000):**

Applicant was evicted from this property because of nonpayment of rent. She claims that both debts result from the same transaction. The most recent credit report shows that each debt has a different account number. She did not produce evidence indicating they are the same debt. These debts are unresolved.<sup>4</sup>

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<sup>1</sup> Tr. at 5, 6, 19, 28, 29; GE 1.

<sup>2</sup> GE 3-5.

<sup>3</sup> Tr. at 26-27; GE 2; Ans.

<sup>4</sup> Tr. at 60-61; GE 2; Ans.

**SOR ¶ 1.b (past rent debt- \$1,120):**

The date of last activity for this rent collection debt was January 2008. This debt has not been resolved.<sup>5</sup>

**SOR ¶ 1.d (credit card debt- \$948):**

The date of last activity for this credit card collection debt was October 2007. This debt has not been resolved.<sup>6</sup>

**SOR ¶ 1.e (car debt- \$854):**

The date of last activity for this collection debt was May 2012. Applicant explained that she was working toward paying this debt, but produced no evidence of results. This debt has not been resolved.<sup>7</sup>

**SOR ¶ 1.f (telecommunications debt- \$552):**

The date of last activity for this collection debt was December 2007. Applicant indicated this debt was not a priority for her to pay. This debt has not been resolved.<sup>8</sup>

**SOR ¶ 1.g (credit card debt- \$470):**

The date of last activity for this collection debt was January 2008. This debt has not been resolved.<sup>9</sup>

**SOR ¶¶ 1.h – 1.k and 1.p – 1.t (medical accounts \$294; \$282; \$100; \$95; \$56; 442; \$139; \$659; \$579; \$117):**

Applicant admitted these delinquent medical accounts. She stated in her background interview they would be paid by January 2015, but provided no proof of payment. These debts are unresolved.<sup>10</sup>

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<sup>5</sup> Tr. at 60-61; GE 2, 4; Ans.

<sup>6</sup> Tr. at 61-62; GE 4; Ans.

<sup>7</sup> Tr. at 62; GE 4; Ans.

<sup>8</sup> Tr. at 63; GE 4; Ans.

<sup>9</sup> Tr. at 63; GE 4; Ans.

<sup>10</sup> Tr. at 63-64, 66-67; GE 4; Ans.

**SOR ¶ 1.l (utility debt- \$56):**

The date of last activity for this collection debt was January 2013. Applicant indicated the debt would be paid a few weeks from April 2014. She failed to supply proof of payment. This debt has not been resolved.<sup>11</sup>

**SOR ¶ 1.m (past rent debt- \$748):**

A judgment against Applicant was entered April 2003. This debt has not been resolved.<sup>12</sup>

**SOR ¶¶ 1.n, 1.u (court-related debts \$739; \$331):**

Applicant provided documentary support showing she paid these two delinquent debts that resulted from traffic offenses. These debts are resolved.<sup>13</sup>

**SOR ¶ 1.o (telecommunications account \$1,132):**

The date of first delinquency for this account was February 2012. Applicant plans on seeking a settlement, but provided no details. This debt is unresolved.<sup>14</sup>

**SOR ¶¶ 1.v – 1.w (failure to file state income tax return for 2012 and state tax debt- \$1,635):**

Applicant admitted to failing to file her 2012 state income tax return. She stated that she now has filed that return. Evidence shows that she filed her 2012 federal tax return, and that she made three \$100 payments toward her state tax debt bringing the balance down to \$256. This debt is being resolved and the failure to file issue is resolved.<sup>15</sup>

**SOR ¶ 1.x (delinquent federal taxes \$2,000):**

Applicant provided documentation showing that her paycheck is garnished \$80 every two weeks to pay this federal tax debt. This debt is resolved.<sup>16</sup>

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<sup>11</sup> Tr. at 64; GE 4; Ans.

<sup>12</sup> Tr. at 65; GE 5; Ans.

<sup>13</sup> Tr. at 65, 68; AE A; Ans.

<sup>14</sup> Tr. at 66; GE 5; Ans.

<sup>15</sup> Tr. at 68; GE 2; AE B, C; Ans.

<sup>16</sup> Tr. at 68; GE 2; AE E; Ans.

Applicant's mother wrote a letter of support indicating that Applicant was a strong and responsible person who is trying to get her financial house back in order. She has seen growth and maturity in her daughter and asks that she be allowed to continue in her job.<sup>17</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 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

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<sup>17</sup> AE D.

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 classified 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. Three are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same

Applicant has numerous delinquent debts and she failed to file her 2012 state tax return. 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 debts are recent, multiple, and cast doubt on her reliability, trustworthiness, and good judgment. Although two debts were paid, one is being paid through involuntary garnishment actions, and she is making payments on her state tax debt, the remaining debts are unpaid. AG ¶ 20(a) is not applicable.

She was unemployed for periods of time, most recently for over a month in 2010 and her husband had medical problems that prevented his employment. This is a condition beyond her control. She has made minimal effort to resolve the debts. She paid two, is paying her federal tax debt through wage garnishment, and her state debt through payments. Overall, the record evidence does not support that Applicant's actions were responsible under the circumstances. AG ¶ 20(b) is partially applicable.

Other than inquiring into the possibility of filing a Chapter 7 bankruptcy petition, there is no evidence of financial counselling. Given the unpaid status of the SOR debts, there are not clear indications that Applicant's financial problems are under control. Although she paid two debts, is paying one through garnishment, and her state tax debt through a payment plan, evidence of good-faith efforts to pay or resolve the remaining debts is lacking. The debts that were paid are found in favor of Applicant. AG ¶ 20(c) does not apply and ¶ 20(d) partially applies.

Applicant failed to supply documentary evidence to support her dispute of SOR ¶ 1.c being duplicative with SOR ¶ 1.a. AG ¶ 20(e) does not apply.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility 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 assessment 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 that guideline, but some warrant additional comment.

I considered the circumstances by which Applicant became indebted and the character letter from her mother. However, I also considered that she has taken very little action to resolve her financial situation. She has not established a meaningful track record of financial responsibility, which causes me to question her ability to resolve her debts.

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:	<b>AGAINST APPLICANT</b>
Subparagraphs: 1.a– 1.m:	Against Applicant
Subparagraph: 1.n:	For Applicant
Subparagraphs: 1.o – 1.t:	Against Applicant
Subparagraphs: 1.u – 1.x:	For 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 access to sensitive information. Eligibility for access to sensitive information is denied.

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Robert E. Coacher  
Administrative Judge