



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



In the matter of: )  
)  
) ADP Case No. 14-02382  
)  
Applicant for a Public Trust Position )

**Appearances**

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

02/18/2016

---

**Decision**

---

NOEL, Nichole L., Administrative Judge:

Applicant contests the Defense Department’s intent to deny her eligibility for a public trust position to work in the defense industry. Applicant’s financial problems were not caused by irresponsible, reckless, or negligent behavior. She is making a good-faith effort to resolve her delinquent accounts. To date, she has paid approximately \$8,000 toward her delinquent debts. Her eligibility for access to sensitive information is granted.

**Statement of the Case**

On September 23, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing trustworthiness concerns under the financial considerations guideline.<sup>1</sup> DOD adjudicators were unable to find that it is clearly consistent with national security to grant or continue Applicant’s access to sensitive information and recommended that the case be submitted to an administrative judge for a determination whether to revoke or deny Applicant’s eligibility to occupy a public trust position.

---

<sup>1</sup> This case is adjudicated under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). The *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (AG)*, effective within the Defense Department on September 1, 2006, apply to this case. The AG replace the guidelines in Enclosure 2 to the Directive.

Applicant timely answered the SOR and requested a decision without a hearing. In June 2015, Applicant elected to convert to a hearing.<sup>3</sup> On August 6, 2015, I issued a pre-hearing order to the parties regarding the exchange and submission of discovery, the filing of motions, and the disclosure of any witnesses.<sup>4</sup> The parties complied with the terms of the order.<sup>5</sup> At the hearing, convened on August 25, 2015, I admitted Government's Exhibits (GE) 1 through 4, and Applicant's Exhibits (AE) A through D, without objection. After the hearing, Applicant submitted AE E through I, which were also admitted without objection.<sup>6</sup> I received the transcript (Tr.) on September 2, 2015.

### **Findings of Fact**

Applicant, 49, has worked for a federal contractor since November 2011. She seeks to obtain eligibility to occupy a public trust position because her job requires access to personally identifiable information (PII). On her electronic questionnaire for investigations processing (e-QIP), dated December 2012, Applicant disclosed a number of delinquent accounts and a 2010 Chapter 7 bankruptcy petition. The ensuing investigation revealed that the Applicant owed approximately \$39,300 in delinquent debt, including \$27,000 in outstanding federal taxes, \$6,000 in state tax debt, now \$8,210 with interest, and a delinquent student loan.<sup>7</sup>

Applicant's financial problems began in May 2010 when she was laid off from the job she held for 13 years at a telecommunications company. At the time, Applicant earned \$26 per hour or \$54,000 per year. She received a \$52,000 severance package from her employer. Applicant did not realize that taxes were not taken out of the severance payment, resulting in a tax liability. Unsure about her job prospects, Applicant decided to file for Chapter 7 bankruptcy protection shortly after being laid off. The petition was successfully discharged in May 2011. Applicant was unable to secure another job as quickly as she would have liked, so she decided to open her own business – an ice cream truck. She operated the business for 18 months and closed it when the gas and maintenance costs on the truck became overwhelming.<sup>8</sup>

Applicant's financial problems were also exacerbated by her living situation. In 2012, the apartment Applicant had been renting for six years transitioned from a rent-control property to a market-price property, resulting in a rent increase that she could not afford. Applicant used some of her severance money to move to another home. Eighteen months later, Applicant was forced to move again because her landlord was

---

<sup>3</sup> The conversion memo is appended to the record as Hearing Exhibit (HE) III.

<sup>4</sup> The prehearing scheduling order is appended to the record as HE I.

<sup>5</sup> The discovery letter, dated July 6, 2015, is appended to the record as HE II.

<sup>6</sup> The e-mails regarding the admissibility of the Applicant's exhibits are included in the record as HE IV.

<sup>7</sup> Tr. 18; GE 1.

<sup>8</sup> Tr. 20-21, 27, 21, 52.

having financial issues that ultimately forced Applicant to vacate the property. This move depleted her savings.<sup>9</sup>

Applicant began working for her current employer through a temporary staffing agency in December 2011. She was hired at \$14 per hour. Although it was significantly less money than she made at her previous job, she accepted the employment because she needed the steady income it provided. When she became a permanent employee in 2012, her pay increased to \$15 per hour. Since then, Applicant has been promoted three times and now earns \$20 per hour. She also works overtime as it is offered. Despite the increase in income, Applicant continues to struggle to make ends meet.<sup>10</sup>

Applicant is the mother of three children, ages 27, 22, and 17. Her two older children moved out last year, and she no longer gives them financial support. Her youngest child is in his senior year of high school. Applicant receives sporadic child support for him. At the time of the hearing, she had at least three accounts that were 30 to 90 days past due. Despite the constraints on her income, Applicant has taken steps to resolve her delinquent debts. She tried to consult a credit counseling service, but could not afford their fees. She set up a voluntary wage garnishment of \$65 each pay period to resolve her outstanding state tax debt. As of September 2015, Applicant paid down the balance from \$8,210 (\$6,000 plus interest) to \$234. In August 2015, she established a payment plan of her federal taxes for \$250 each month. She provided proof of her first payment. Applicant has challenged two debts totaling \$509 with the creditor identified in SOR ¶¶ 1.b and 1.c. She currently has an active account with the creditor and does not believe that she owes the past-due balances alleged in the SOR. Applicant has also rehabilitated her student loan, which is no longer in default, but in a forbearance status.

### **Policies**

Positions designated as ADP I and ADP II are classified as “sensitive positions.”<sup>11</sup> “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.”<sup>12</sup> 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.<sup>13</sup> An administrative judge’s

---

<sup>9</sup> Tr. 22-23.

<sup>10</sup> Tr. 19.

<sup>11</sup> DOD Regulation 5200.2-R, *Personnel Security Program* (January 1987), as amended (Regulation) ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3.

<sup>12</sup> Regulation ¶ C6.1.1.1.

<sup>13</sup> See Regulation ¶ C8.2.1.

objective is a fair, impartial, and commonsense decision that embraces all available, reliable information about the person, past and present, favorable and unfavorable.

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 the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain a favorable decision.

A person who seeks access to a public trust position 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**

Unresolved delinquent debt is a serious concern because failure to “satisfy debts [or] 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>14</sup> Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding sensitive information.

The record establishes the SOR allegations that Applicant owed over \$39,000 in delinquent debts, including unpaid federal and state income taxes. The record also establishes that Applicant filed for Chapter 7 bankruptcy protection in 2010. Accordingly, the evidence establishes the Government’s *prima facie* case. Applicant has demonstrated a history of financial problems that caused her to have an inability to pay her bills and income taxes.<sup>15</sup> However, Applicant’s financial problems did not occur under circumstances that raise doubts about her trustworthiness. With the exception of her state and federal tax debts, Applicant’s financial problems were caused largely by events beyond her control. In 2010, Applicant was laid off from a job earning \$54,000. Housing issues between 2012 and 2013 caused her to deplete her savings. She dealt with the financial repercussions of a failed business and accepted a job paying \$25,000 per year when she re-entered the workforce in 2011. Because of her federal and state tax liabilities, a finding that Applicant acted responsibly in light of her circumstances is not appropriate.<sup>16</sup>

---

<sup>14</sup> AG ¶ 18.

<sup>15</sup> AG ¶¶ 19(a) and (c).

<sup>16</sup> See AG ¶ 20(b).

However, the record does support a finding that Applicant has made some good-faith efforts to resolve her delinquent accounts. She has rehabilitated her student loan and it is now in a forbearance status. She reduced her state tax liability by \$7,900 and has now turned her attention to paying off her federal tax liability. She provided a legitimate basis for disputing the two delinquent accounts to a creditor with whom she has an active and current account.<sup>17</sup>

After reviewing the record, I have no doubts about her suitability for access to sensitive information. In reaching this conclusion, I have also considered the whole-person factors at AG ¶ 2(a). Applicants are not held to a standard of perfection. Although Applicant still has a significant amount of unresolved delinquent debt, her efforts to resolve them are not immaterial. She has provided sufficient evidence of a history of debt repayment and intent to resolve her delinquent accounts that she is likely to continue to make payments toward her debts. Accordingly, her request for access to sensitive information is granted.

### **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:	FOR APPLICANT
Subparagraphs 1.a – 1.f:	For Applicant

### **Conclusion**

In light of all of the circumstances presented, it is clearly consistent with the interests of national security to grant Applicant access to sensitive information. Applicant's eligibility to occupy a position of trust is granted.

---

Nichole L. Noel  
Administrative Judge

---

<sup>17</sup> AG ¶¶ 20 (d) – (e).