



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



In the matter of:	)	
	)	
[Name Redacted]	)	ADP Case No. 14-02408
	)	
Applicant for Public Trust Position	)	

**Appearances**

For Government: Daniel F. Crowley, Esq., Department Counsel  
For Applicant: *Pro se*

02/23/2016

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**Decision**

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HEINY, Claude R., Administrative Judge:

Applicant contests the Department of Defense’s (DoD) intent to deny her eligibility for a trustworthiness position to work in the defense industry. Applicant filed for bankruptcy protection in 2006, had a vehicle repossessed, and had 28 charged-off, collection, or delinquent accounts, which total more than \$26,000. The majority of her delinquent accounts were due to her and her husband’s medical problems. She mitigated the financial considerations and personal conduct trustworthiness concerns. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to sensitive information and eligibility for a public trust position is granted.

**History of the Case**

On October 6, 2014 acting under the relevant Executive Order and DoD Directive,<sup>1</sup> the DoD issued a Statement of Reasons (SOR) detailing financial

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<sup>1</sup> Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*

considerations and personal conduct security concerns. DoD adjudicators could not find that it is clearly consistent with the national interest to grant or continue Applicant's position of public trust. On November 19, 2014, Applicant answered the SOR and requested a hearing. On May 27, 2015, I was assigned the case. On June 18, 2015, the Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing for a hearing to be convened on July 6, 2015.

At the hearing, Government's Exhibits (Ex.) 1 through 7 and Applicant's Exhibits A through I were admitted without objection. Applicant testified at the hearing, as did two others on her behalf. The record was kept open to allow Applicant to submit additional documentation. Five documents were received and admitted without objection as Ex. J – N. The last document was received on November 16, 2015. On July 14, 2015, DOHA received the hearing transcript (Tr.).

### **Findings of Fact**

In Applicant's Answer to the SOR, she admitted filing for Chapter 7 bankruptcy protection in 2004, admitted owing 20 delinquent obligations, and denied owing the remaining nine delinquent debts listed in the SOR. Her admissions are incorporated as facts. After a thorough review of the pleadings, exhibits, and testimony, I make the following additional findings of fact:

Applicant is a 42-year-old employee who has worked for a defense contractor since August 2011, and seeks to obtain a position of public trust. (Tr. 21) Her monthly income is approximately \$1,400,<sup>2</sup> after overtime pay ended. (Tr. 29, 45) She is married, but her husband is not working. (Tr. 29) In February 2011, they separated for a year before reuniting. (Tr. 43) They have two children, ages 10 and 11. (Tr. 30) Her husband's social security disability claim was denied, but is being appealed. (Ex. C, Tr. 28) At the birth of her first child, she was confined to bed rest starting at her third month of pregnancy. (Tr. 30) She suffered from toxemia and preeclampsia with both pregnancies. (Tr. 30) Her employer's health insurance covered the majority of the medical bills for her first pregnancy, and her second pregnancy was covered by Medicaid. (Tr. 31)

For the past ten years, Applicant's husband has suffered from chronic pain from chronic gastritis reflux, which causes him to throw up constantly. (Tr. 31) He suffers from flare up or episodes. (Tr. 32) In the past ten years, he has been able to work approximately 40% of the time. (Tr. 43) He is being treated for pain management and due to his illness he has lost more than 150 pounds. (Tr. 31) He has had been hospitalized several times including for gall bladder surgery. (Tr. 32) He was on dialysis twice when his kidneys stopped functioning. (Tr. 32) The 14 SOR medical debts, which totaled approximately \$1,300, were for her husband's medical treatment. (Tr. 31) In June 2015, she paid \$145 towards one of the radiology debts. Due to his illness, her

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(January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DoD on September 1, 2006.

<sup>2</sup> Applicant's hourly pay rate is \$15.31. (Tr. 46)

husband has been unable to maintain or keep a job. He is currently reenrolled in a two-year school program. (Tr. 47)

In December 2004, Applicant and her husband filed for bankruptcy protection. She incurred medical bills because of a complicated pregnancy. Her income stopped and her husband was laid off from his job. They filed for bankruptcy protection to save their home. (Ex. I) Their nonpriority unsecured debts were discharged in 2006.

Following the bankruptcy, after her husband's health had been good for six months, they decided to start a courier service. In August 2007, Applicant and her husband co-signed on the purchase of a \$13,798 vehicle for their business requiring monthly payments of \$404. (Ex. 2) Shortly after the purchase, her husband's illness caused them to lose their contracts. (Ex. I) They voluntarily returned the vehicle resulting in an \$11,979 delinquent obligation (SOR 1.b). Applicant has not had any recent contact with the creditor and has made no payments on the debt. (Tr. 34)

Applicant experienced problems with her apartment including a hole in the roof, water problems, and other problems. While living at the location, her mailbox was tampered with and credit union checks were stolen resulting in a \$1,210 charged-off account (SOR 1.d). She asserts, due to the problems, the property manager agreed to allow them to end their lease early. However, a \$4,185 collection account (SOR 1.c) was placed on Applicant's credit record. She has disputed this debt. (Tr. 34, 35) The management company is no longer in business.

In 2010, Applicant paid her jewelry account (SOR 1.s, \$125) (Ex. D) She accepted an offer and in August 2015 and September 2015 paid a telephone bill (SOR 1.e, \$1,145) (Ex. D) She paid the credit card listed in SOR 1.y (\$1,204). When she contacted the creditor, she was told the creditor could not locate the debt or the account. (Tr. 38) As of January 2013, the account appears as closed and cancelled on her credit report. (Tr. 39) A furniture collection account (SOR 1. aa) was included in her 2006 bankruptcy filing. (Tr. 39) When Applicant called the city concerning the \$81 water bill (SOR 1.bb) a delinquent account could not be located. (Tr. 40)

In June 2010, Applicant received a speeding ticket for driving 31 miles per hour in a 20 miles-per-hour zone and a ticket for failing to stop at a stop sign. (Ex. 7) Each ticket was approximately \$300. (Ex. 7) She has paid one ticket and is making payments on the other ticket. (Ex. F, Tr. 40, 76) It was alleged she failed to attend a court appearance. She asserts she went, but was unable to meet her monthly payment obligations. (Tr. 76) She says she was notified about the failure to pay, but was never issued a warrant<sup>3</sup> for failure to appear. (Ex. 7, Tr. 76)

Applicant and her husband sought the services of a debt management company and also a credit counseling service. Applicant had agreed to start making \$656 monthly payments starting in January 2015. (Ex. A, B) However, her husband lost his job in the oil field. (Tr. 29) The monthly payments were based on an anticipated job, which her husband did not obtain. (Tr. 29) Her husband is not working.

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<sup>3</sup> There is nothing in the record indicating a warrant was every issued for Applicant.

In order to save money, Applicant discontinued cable service and eating out. (Tr. 48, 49) For the past two years, she has been living with her mother to save expenses. (Ex. 53) Applicant's husband does not live with her, but lives with his mother. (Tr. 59) A coworker states Applicant works very hard, sometimes doing 12-hour shifts, and taking on other odd jobs such as catering and babysitting. (Tr. 66, 67) Applicant has gotten up at 4 a.m. to stand in line in order to get her children into after-school care or summer camps. (Tr. 66) Her friends states Applicant would do whatever she can to cut expenses. (Tr. 66)

## **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 Defense Office of Hearings and Appeals (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 sensitive information 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 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**

Adjudicative Guideline (AG) ¶ 18 articulates the trustworthiness concerns relating to financial problems:

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.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a trustworthiness position. An applicant is not required to be debt free, but is required to manage her finances to meet her financial obligations.

Applicant has a history of financial problems. In 2004, after losing a job due to a difficult pregnancy, she had to file for Chapter 7 bankruptcy protection. Following the bankruptcy discharge of her nonpriority unsecured debts in 2006, she had a vehicle repossessed and has other collection, charged-off, and delinquent accounts totaling more than \$26,000. More than half of the debt arose from a repossessed vehicle and an

apartment lease dispute. Disqualifying Conditions AG ¶ 19(a), “inability or unwillingness to satisfy debts” and AG ¶ 19(c), “a history of not meeting financial obligations” apply.

Five 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 provided documentation showing she paid approximately \$1,500 on her delinquent SOR obligations. One SOR debt (SOR 1.aa, \$1,177) was included in her previous bankruptcy. When she contacted three creditors, she was told there was no money owed or that accounts could not be located. Approximately half of her SOR debts were medical debts related to her husband's on-going medical problems. The largest of her delinquent debt (SOR 1.b, \$11,979) was part of a failed business venture. The vehicle was purchased for a courier business they were starting. The venture ended due to her husband's illness and inability to continue working. The second largest delinquent debt (SOR 1.c, \$4,185) resulted from problems with her apartment. The property had water problems, a hole in the roof, and other problems and the management company agreed the lease could be terminated early. Later, the company, which is no longer in business, entered a collection account against Applicant.

Applicant is sole income earner for herself, her husband, who is attending school, and their two children. She makes \$15 per hour. She has obtained other part-time jobs to assist her with her bills, has cancelled expenses where possible, and, two years ago, moved in with her mother to save money. With her limited income, she is doing what she can. She has acted responsibly under the circumstances.

Applicant's financial difficulties are both multiple and many remain unpaid. She would like to pay her debts and entered into a debt management program in January 2015. However, the plan was based on her husband obtaining a job in the oil industry, which never occurred.

Even though Applicant has been unable to address all of her debts, her failure to pay the debts does not cast doubt on her current reliability, trustworthiness, and good judgment. The majority of her debts were due to factors beyond her control. Her difficult pregnancies resulted in the loss of her job and her husband's medical condition has resulted in him only being able to work 40% of the time during the last ten years. Additionally, starting in February 2012 she and her husband separated for a year before getting back together. Due to these conditions were factors beyond her control, AG ¶ 20(b) applies.

Applicant has received financial counseling and has not incurred any new debt. The mitigating condition listed in AG ¶ 20(c) partially applies. The mitigating conditions listed in AG ¶ 20(d) applies to the traffic tickets, and the other debts she has paid. The mitigating condition listed in AG ¶ 20(e) does not apply because Applicant failed to document her disputes. I find her explanation credible concerning her living conditions that resulted in mutual agreement to end her lease.

## **Personal Conduct**

AG ¶ 15 explains why personal conduct is a security concern stating:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

In 2010, Applicant received two \$300 tickets. One for traveling 31-miles-per-hour (MPH) in a 20 MPH zone and the other for failing to stop at a stop sign. She said she never received a warrant for failure to appear, but for failure to pay when she was unable to make her monthly payments on the tickets. These citations for traffic infractions and her inability to make timely monthly payments on them are insufficiently serious to raise trustworthiness concerns. If they did, then the mitigating condition outlined in AG ¶ 17(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment, would apply.

## **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a trustworthiness position 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 a public trust position 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 the facts and circumstances surrounding this case. Applicant is living with her mother and two children. She is doing part-time jobs to supplement her income. She makes \$15 per hour, which pays the expenses for her, her husband, and her two children. Two thirds of the delinquent debt was due to medical bills incurred for her and her husband's medical problems, the repossessed vehicle from the failed business, and the apartment lease dispute. She has paid some of her bills. She has contacted some creditors and the creditors are unable to locate any delinquent accounts. She is doing the best she can.

The issue is not simply whether all Applicant's debts are paid—it is whether her financial circumstances raise trustworthiness concerns about her fitness to hold a public trust position. (See AG ¶ 2(a)(1).) Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a public trust position. For all these reasons, I conclude Applicant mitigated any questions or doubts as to Applicant's eligibility and suitability for a public trust position. For all these reasons, I conclude Applicant mitigated the financial considerations and personal conduct 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, Financial Considerations:                      FOR APPLICANT



Subparagraphs 1.a – 1.dd:	For Applicant
Paragraph 1, Personal Conduct:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

**Conclusion**

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

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CLAUDE R. HEINY II  
Administrative Judge