



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



In the matter of:

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) ADP Case No. 14-03204  
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Applicant for Public Trust Position

**Appearances**

For Government: Jeff A. Nagel, Esquire, Department Counsel  
For Applicant: *Pro se*

07/06/2015  
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**Decision**  
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HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, I conclude that Applicant's eligibility to occupy a public trust position is granted.

**Statement of the Case**

Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) on June 5, 2013. The Department of Defense (DOD) Consolidated Adjudications Facility (CAF), issued a Statement of Reasons (SOR) detailing the trustworthiness concerns under Guideline F, Financial Considerations, on September 30, 2014. The action was taken under DOD Regulation 5200.6, Personnel Security Program, dated January 1987, as amended and modified (Regulation); DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2,

1992), as amended (Directive); and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG) implemented on September 1, 2006.

Applicant received the SOR on October 14, 2014, and she answered it on October 21, 2014. She elected to have her case decided on the written record in lieu of a hearing. However, pursuant to ¶ E3.1.7 of the Additional Procedural Guidance of the Enclosure 3 of the Directive, Department Counsel requested a hearing before an administrative judge with the Defense Office of Hearings and Appeals (DOHA). Department Counsel was prepared to proceed on March 13, 2015, and I received the case assignment on March 30, 2015. DOHA issued a Notice of Hearing on April 16, 2015, and I convened the hearing as scheduled on May 12, 2015. The Government offered exhibits (GE) marked as GE 1 through GE 4, which were received and admitted into evidence without objection. Applicant testified. She did not submit any exhibits at the hearing. DOHA received the hearing transcript (Tr.) on May 19, 2015. I held the record open until May 26, 2015, for Applicant to submit additional matters. Applicant timely submitted AE A - AE I, which were received and admitted without objection. The record closed on May 26, 2015.

### **Procedural and Evidentiary Rulings**

#### **Notice**

Applicant received the notice of the date, time and place of the hearing less than 15 days before the hearing. I advised Applicant of her right under ¶ E3.1.8. of the Directive to receive the notice at least 15 days before the hearing. Applicant affirmatively waived this right under the Directive. (Tr. 10.)

### **Findings of Fact**

In her Answer to the SOR, Applicant denied the single factual allegation (¶ 1.a) of the SOR, with explanation. She also provided additional information to support her request for eligibility for a public trust position.

Applicant, who is 36 years old, works as an audit clerk for a DOD contractor. Applicant began her current employment in November 2001. The record lacks any negative information from her employer about her performance or her conduct.<sup>1</sup>

Applicant was born in Thailand and became a naturalized United States citizen in 1999. She graduated from high school in 1997. She attended college, but did not graduate. She plans to return to school in the fall to complete two courses for her associate's degree in social science.<sup>2</sup>

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<sup>1</sup>GE 1.

<sup>2</sup>GE 1; Tr. 17.

Applicant married in 2001. She has four children. Her sons are 14, 7 and 2 years of age, and her daughter is 5 years of age. Her parents now live with her and provide child care for her children.<sup>3</sup>

Applicant earns \$3,488 a month in gross income, and she receives \$3,000 a month in net income. Her husband receives approximately \$1,900 a month in net income. Their total household income is approximately \$4,900. Their household expenses include \$1,400 for rent, \$250 for utilities, \$100 for cell phones, \$60 for internet and cable, \$300 for a car payment on a 2013 car; \$250 for gasoline, \$200 for car insurance, \$120 on credit cards, and \$300 for food for total monthly expenses of approximately \$2,680. Applicant's husband pays the bills. She provided estimates about their total monthly expenses. They also own another car. They have no debt on this car. Her food estimates are low, and miscellaneous costs such as haircuts, school expenses, and medical are not included. They have sufficient income to pay their monthly expenses.<sup>4</sup>

In 2003, Applicant and her husband purchased a house. They financed their house with a primary mortgage of \$231,726 and a second mortgage of \$13,100. The credit reports dated July 9, 2013, March 24, 2015, and May 8, 2015 indicate that these mortgages were paid in full in August 2005. Applicant advised that she and her husband refinanced their mortgages into one mortgage with the creditor listed in SOR allegation 1.a. The credit reports show that Applicant and her husband refinanced a mortgage for \$261,800 in July 2005. They fell behind in their mortgage payments in 2009 after the birth of their second and third children. Applicant and her husband, separately, took time from work after the birth of each child, which impacted their finances.<sup>5</sup>

When they realized that they could not continue to pay for their house, they listed it as a short-sale property. They sold the property for \$140,000 in December 2010. Their mortgage lender, the creditor listed in SOR allegation 1.a, approved the sale. The lender also provided them with a Form 1099C for \$118,956, as required by law. Applicant and her husband listed this information on their 2010 federal and state income tax returns.<sup>6</sup>

The July 2013 credit report for all three credit reporting agencies lists two real estate accounts with the creditor in SOR allegation 1.a with the same account number. Both listings indicate a high credit of \$261,800. The first listing shows a balance of \$248,980 and a past-due balance of \$40,169. The second listing shows a zero balance

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<sup>3</sup>GE 1; Tr. 16-17, 20-21.

<sup>4</sup>Tr. 17-22.

<sup>5</sup>GE 2 - GE 4; Tr. 22, 28-30, 33-34.

<sup>6</sup>Answer to SOR; AE F - AE I.

with a notation “election of remedy” and “settled” on a collection account.<sup>7</sup> The two 2015 credit reports are from one credit reporting agency. These reports show a past-due balance of \$40,169 for the SOR debt. The credit report account number is the same account number as on the SOR and the balance due is \$248,980. After the hearing, Applicant disputed this debt with the credit reporting agency that was the source of the SOR debt. After a review of her dispute, this credit reporting agency corrected its record to show that the debt had a zero balance, was closed, and had been settled for less than full balance. The other two credit reporting agencies show a zero balance and settled for less than full balance. The SOR debt is resolved. The credit reports reflect that all Applicant’s bills are paid as agreed.<sup>8</sup>

Prior to the hearing, Applicant called the SOR creditor and was advised that she did not owe any money on the mortgage listed in the SOR. She never received a demand for payment of \$40,000 from the mortgage lender after the sale of the property. There is no evidence of credit counseling in the record.<sup>9</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 over-arching 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.

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<sup>7</sup>GE 2, p. 4 and 5.

<sup>8</sup>AE A - AE E; Tr. 25-27.

<sup>9</sup>Tr. 31-32.

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 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 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 relating to the guideline for Financial Considerations is set out in AG ¶ 18:

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(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Applicant accumulated a delinquent mortgage debt and was unable to continue with her obligation to pay her debt. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

The Financial Considerations guideline also includes examples of conditions that can mitigate trustworthiness concerns. I have considered mitigating factors AG ¶ 20(a) through ¶ 20(f), and the following are potentially applicable:

(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 family increased by two children in a short period of time. She and her husband took time from work when their children were born, creating a financial problem. When she and her husband realized that they could not continue to pay their mortgage, they listed their house for sale as a short-sale property. They obtained a buyer, and the mortgage lender agreed to the sale price. They acted reasonably under the circumstances, and they showed "good-faith" to resolve this debt by listing the property for sale, locating a buyer, and obtaining approval of the mortgagor for the sale. After the sale of the house, the mortgagor issued them a Form 1099C, and they listed this financial information on their 2010 income tax returns. Their finances are under control as they pay their monthly bills, and they do not have any other unpaid debts. They have mitigated the security concerns raised in the SOR.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a public trust position by considering the totality of the applicant's conduct and all the 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) 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. The decision to grant or deny a trustworthiness determination requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a trustworthiness concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a public trust position should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate trustworthiness concern.

In assessing whether an Applicant has established mitigation under Guideline F, the Appeal Board provided the following guidance in ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008):

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts." See, e.g., ISCR Case No. 05-01920 at 5 (App. Bd. Mar. 1, 2007). However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. See, e.g., ISCR Case No. 02-25499 at 2 (App. Bd. Jun. 5, 2006). All that is required is that an applicant demonstrate that he has ". . . established a plan to resolve his financial problems and taken significant actions to implement that plan." See, e.g., ISCR Case No. 04-09684 at 2 (App. Bd. Jul. 6, 2006). The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) ("Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.") There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. See, e.g., ISCR Case No. 06-25584 at 4 (App. Bd. Apr. 4, 2008). Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

The evidence in support of granting a trustworthiness determination to Applicant under the whole-person concept is more substantial than the evidence in support of denial. In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant and her husband purchased a home in 2003 and refinanced their two mortgages into one in 2005. They paid their mortgage until 2009, when their increased family size created financial difficulties for them. They were unable to pay their mortgage. They used good judgment when they decided to sell the house as a short- sale and received the approval of the mortgage company. Other than this debt, Applicant and her husband

have a track record of always paying their bills and have lived within their income. Her parents live with her and provide child care, saving Applicant and her husband a large expense. They chose to rent a home that costs them less than their monthly mortgage payment. Applicant and her husband do not live extravagantly. This one SOR debt is insufficient to raise trustworthiness concerns. (See AG ¶ 2(a)(1).)

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a trustworthiness determination. For all these reasons, I conclude Applicant mitigated the trustworthiness concerns arising from her finances under Guideline F.

### **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

Subparagraph 1.a: For Applicant

### **Conclusion**

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

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MARY E. HENRY  
Administrative Judge