



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



In the matter of:

ADP Case No. 14-03518

Applicant for Public Trust Position

**Appearances**

For Government: Robert J. Kilmartin, Esquire, Department Counsel

For Applicant: *Pro se*

03/24/2015

**Decision**

CREAN, THOMAS M., Administrative Judge:

Based on a review of the case file, pleadings, exhibits, eligibility for access to sensitive information is granted.

On January 8, 2014, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP), as part of her employment with a defense contractor. After an investigation conducted by the Office of Personnel Management (OPM), the Department of Defense (DOD) could not make the preliminary affirmative findings required to grant Applicant access to sensitive information. On October 28, 2014, DOD issued to Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns for financial considerations (Guideline F). The action was taken under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program*, dated January 1987, as amended (Regulation); and the adjudicative guidelines (AG) effective in the Department of Defense on September 1, 2006. (Item 2) Applicant acknowledged receipt of the SOR on November 4, 2014. (Item 1)

Applicant answered the SOR on November 22, 2014. She admitted 9 of the 12 allegations of delinquent debt and a 2007 bankruptcy. She denied three allegations of delinquent debt because she did not have any knowledge of these debts. She requested a decision on the record. (Item 3) Department Counsel submitted the Government's written case on January 7, 2015. Applicant received a complete file of relevant material (FORM) on February 8, 2015, and was provided the opportunity to file objections and to submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant timely provided additional information with four exhibits in response to the FORM. The case was assigned to me on March 10, 2015.

### **Findings of Fact**

Applicant admitted ten and denied three allegations under Guideline F. Applicant's admissions are included in my findings of fact. After a thorough review of the pleadings and exhibits, I make the following essential findings of fact.

Applicant is a 40-year-old single mother with three young sons. She is a high school graduate with some college credit. She received a certificate in medical billing and coding in April 2012. Applicant was married from October 1993 until she divorced in January 2000. She married again in August 2010 and divorced in January 2014. Prior to 2005, Applicant did not have financial issues. Applicant's son was born prematurely in May 2005 and was diagnosed with a severe medical condition which required extensive medical care. Another son was born in 2007 with a form of leukemia that also required extensive medical care. Caring for her sick children was one of the causes of her unemployment. Applicant has been employed with a defense contractor as a medical billing technician since June 2013. (Item 4, e-QIP, dated January 8, 2014)

The SOR lists the following 12 delinquent debts for Applicant: a medical debt for \$98 (SOR 1.a); a medical debt for \$1,316 (SOR 1.b); a credit account in collection for \$3,101 (SOR 1.c); a medical account for \$118 (SOR 1.d); student loans in collection for \$824 (SOR 1.e), \$1,444 (SOR 1.f), \$1,674 (SOR 1.g), \$1,467 (SOR 1.h), \$2,423 (SOR 1.i, and \$1,608 (SOR 1.j); an account in collection for \$236 (SOR 1.k); and an account in collection for \$140 (SOR 1.l). The total amount of the delinquent debt is approximately \$14,000. Also listed is a Chapter 7 bankruptcy filed in September 2007 with the debts discharged in December 2007 (SOR 1.m). The debts and the bankruptcy are confirmed by Applicant admissions, OPM interview (Item 5), and a credit report (Item 6).

In her response to the SOR, Applicant stated that she tried to pay the debt at SOR 1.a but the original creditor had been barred from doing business by the state Attorney General. She received a notice from a different collection agency on this debt in October 2014. She paid the debt in full in November 2014. (Item 3, attachment a, receipt dated November 17, 2014)

Applicant initially denied knowledge of the medical debt at SOR 1.b. She now believes it is for her second son's leukemia treatment. His medical care is covered under the state's Medicaid program. She provided documentation to the creditor to

establish her son's coverage under Medicaid. (Item 3, exhibit b, State document; Response to FORM, Exhibit b, Letter, dated December 10, 2014)

Applicant has been making payments on the medical debt at SOR 1.c since July 2014. She anticipates paying the debt in full in December 2015. (Item 3, Exhibit c, Receipt, dated November 14, 2014; Response to FORM, Exhibit c, Letter Receipt, dated February 6, 2015)

Applicant paid the medical debt at SOR 1.d in June 2014. (Item 3, exhibit d)

Applicant has been making payments on her student loans at SOR 1.e and 1.f since March 2014. The loans have been rehabilitated and are no longer in default status. They are in good standing, and Applicant has been making the required monthly payments. The balance on the loans has gone from \$2,625 and \$4,000 to \$823, and \$1,442. (Response to FORM, Account Statement, dated January 4, 2015)

Applicant has been making payments on the student loans at SOR 1.g, 1.h, 1.i, and 1.j to have them rehabilitated since January 2014. The loans are now in a current status and she has been making the required monthly payments. The total amount of the student loans has been reduced by over \$2,000. (Item 3, Exhibits g, h, i, and j., Letter, dated September 20, 2014; Response to FORM, Exhibits g, h, i, and j, Account Statement, dated January 19, 2015)

Applicant inquired about the debts at SOR 1.k and 1.l. She has not been able to find sufficient information to either pursue further inquiry or pay the debt. (Item 3)

Applicant admits to filing bankruptcy in 2007. She had extensive medical debts for her son born prematurely with medical issues in May 2005. She could not work because of his medical condition. She and her husband separated in 2007, and she learned her husband had not been paying their bills. She was required to file bankruptcy to resolve the finances problems she had at the time. (Item 3)

## **Policies**

Positions designated as ADP I and ADP II are classified as "sensitive positions." 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." Trustworthiness adjudications will apply to these cases. DOD contractor personnel are afforded trustworthiness rights and procedures before any final unfavorable access determination may be made. (See Regulation ¶ C8.2.1)

When evaluating an applicant's suitability for a public trust or a sensitive 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. 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. (AG ¶ 2(c))

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, an 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 for 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 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**

There is a public trust concern for a failure or inability to live within one’s means, satisfy debts, and meet financial obligations because such actions 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. (AG ¶ 18) Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his or her obligation to protect sensitive 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 terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a public trust position. An applicant is not required to be

debt free, but is required to manage her finances in such a way as to meet her financial obligations. Applicant's delinquent debts, as established by Applicant's admissions, a credit report, and Applicant's answers to questions in the OPM investigation, are a security concern raising Financial Consideration Disqualifying Conditions AG ¶ 19(a) (inability or unwillingness to satisfy debts), and AG ¶ 19(c) (a history of not meeting financial obligations). The delinquent debts show a history of not meeting financial obligations because of an inability, and not unwillingness, to satisfy debt.

I considered Financial Considerations Mitigating Conditions AG ¶ 20(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), and AG ¶ 20(b) (the conditions that resulted in the financial problems 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). Both of these mitigating conditions apply to Applicant's financial problems.

Applicant was reasonably managing her finances until her first son was born with a severe medical condition in 2005 and her second son was born with a medical condition in 2007. She was unable to work and incurred medical debts. She and her husband separated about the same time as the sons became sick forcing her to file bankruptcy to resolve the debts she had at that time. These debts were incurred under unusual circumstances that were beyond Applicant's control. She acted responsibly by filing bankruptcy, which is a legal and permissible means of resolving debt. She later contacted creditors, established payment plans, and paid some of the debts in full. Applicant established a pattern of acting responsibly towards her finances. She has been paying her debts according to the payment plans indicating her financial management is sound and responsible. Since she is gainfully employed, it is unlikely that she will have additional or recurring financial problems. Her past financial problems do not cast doubt on her reliability, trustworthiness, and good judgment.

I have considered FC MC ¶ 20(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). Applicant did not present any information concerning financial counseling. However, she filed a bankruptcy petition and financial counseling is required when filing bankruptcy. She also presented financial information showing her financial problems are being resolved or are under control.

I considered FC MC ¶ 20(d) (the individual initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts) and it applies. For FC MC ¶ 20(d) to apply, there must be an "ability" to repay the debts, the "desire" to repay, and "evidence" of a good-faith effort to repay. Good faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty and obligation. A systematic method of handling debts is needed. Applicant must establish a "meaningful track record" of debt payment. A "meaningful track record" of debt payment can be established by reduction of debt through payment of debts. All that is required is that

Applicant demonstrate he has established a plan to resolve her financial problems and has taken significant actions to implement that plan.

Applicant's debts were incurred by conditions beyond her control. Applicant paid two debts in full. Applicant established that she is not responsible for one debt but that the state health insurance program is responsible for the medical debt. She established that she rehabilitated her student loans and is current with payment on the six loans. She also established that two other debts cannot be paid since she does not have sufficient information to pay the debts. Applicant's management of her debts provides significant and credible information to establish a meaningful track record of debt payment. Her actions are reasonable and prudent under her financial circumstances and show honesty and an adherence to her financial duties and obligations. She established a good-faith effort to repay her creditors and resolve debt. Her reasonable and responsible efforts indicate that her past delinquent debts do not reflect adversely on her trustworthiness, honesty, and good judgment. She has mitigated public trust concerns based on financial considerations.

### **Whole-Person Concept**

Under the whole-person concept, an 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) 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. I considered that Applicant's debts were incurred by circumstances beyond her control. She acted responsibly by contacting creditors and arranging payment plans. She paid some debts in full and is current with her agreed payment plans. The record evidence leaves me without questions and doubts about Applicant's eligibility and suitability for a public trust position. For all these reasons, I conclude Applicant has mitigated the trustworthiness concerns arising from her financial situation.

### **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.m: For Applicant

### **Conclusion**

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

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THOMAS M. CREAN  
Administrative Judge