



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



In the matter of:

ADP Case No. 14-03541

Applicant for Public Trust Position

**Appearances**

For Government: Chris Morin, Esq., Department Counsel

For Applicant: *Pro se*

05/20/2015

**Decision**

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the financial considerations trustworthiness concerns. Eligibility for access to sensitive information is denied.

**Statement of the Case**

On August 25, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) detailing trustworthiness concerns under Guideline F, financial considerations. 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 Regulation 5200.2-R, *Personnel Security Program* (January 1987), as amended (Regulation); and the adjudicative guidelines (AG) implemented by the Department of Defense on September 1, 2006.

On October 10, 2014, Applicant submitted an answer to the SOR, and she elected to have her case decided on the written record. On February 19, 2015, Department Counsel submitted the Government's file of relevant material (FORM). The FORM was mailed to Applicant on March 18, 2015, and it was received on March 24,

2015. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant submitted additional information. There were no objections to any of the documents offered and the Government and Applicant's exhibits are admitted. The case was assigned to me on May 15, 2015.

### **Findings of Fact**

Applicant admitted the allegations in SOR ¶¶ 1.a-1.i, 1.k-1.l, and 1.n. She denied the allegations in ¶¶ 1.j. and 1.m. Her admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact.

Applicant is 51 years old. She is a high school graduate. She married in 1989 and divorced in 2006. She has two daughters, ages 25 and 21.

Applicant and her husband filed Chapter 7 bankruptcy in 2004 and had their debts discharged in January 2005. They purchased a home in 2003. She became sick and was not contributing to the family income. They could no longer afford the home. After making approximately 12 monthly payments on the mortgage they stopped. The mortgage was included in the bankruptcy discharge along with other debts.

Applicant attributes her more recent financial problems to unemployment and being in an abusive relationship with her fiancé. She indicated she did not want to lose her house, car, or have a negative impact on her credit so she remained with him. She stated her fiancé did not want her to work. She did not work from June 2012 to August 2013. She indicated he used her credit cards and her money and it was "beyond her control" to say "no." She was aware he was using the credit cards. In her interview with a government investigator in February 2014, she admitted she made purchases using the credit cards. She indicated that on June 19, 2013, her fiancé was arrested for domestic violence. She stated she had paid her bills on time until October 2013. She also indicated that they had some type of business together that was terminated in May 2013 "two weeks before he left."<sup>1</sup>

Applicant disclosed in her electronic Questionnaire for Investigations Processing (e-QIP) that she was employed from June 2011 to June 2012. She noted the reason she left this employment was because "Salary was low. Not consistent with hours every week. Had me working every weekend. Wanted to pursue other options of employment."<sup>2</sup> Applicant further lists she was unemployed from June 2012 to September 2013.<sup>3</sup> She began working part-time at a retail store in September 2013. She began working full-time in a temporary position with an agency in February 2014.

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<sup>1</sup> Item 1; Answer to FORM; Response to FORM.

<sup>2</sup> Item 2.

<sup>3</sup> Item 2.

She began working at her current position full-time in a permanent position in June 2014.<sup>4</sup>

Applicant disclosed that she took vacation cruises as follows: February 2013 for seven days; September 2012 for five days; and August 2011 for seven days.<sup>5</sup>

SOR ¶ 1.m alleges a past-due mortgage (\$7,516) with a total balance of \$131,831. Applicant admitted she fell behind paying her mortgage due to unemployment. She indicated she remained in contact with the mortgage lender and applied for mortgage assistance, but was denied and the house was being foreclosed. She indicated she attempted to modify her mortgage loan, but because she was only working part-time she was unable. She appealed the decision. She obtained a full-time permanent position in June 2014 and her loan modification was approved in July 2014. She provided copies of the mortgage loan modification and proof she has been making monthly payments.<sup>6</sup>

The debt in SOR ¶ 1.j (\$315) is for a jewelry store credit card. Applicant paid the debt in March 2014 and provided documented proof the debt is resolved.<sup>7</sup>

The SOR alleges an additional 11 delinquent debts totaling approximately \$9,318. In her Response to the FORM, Applicant indicated that she has attempted to pay some of her creditors and resolve her debts. The debts in SOR ¶¶ 1.b (\$2,374), 1.c (\$399,) and 1.k (\$882) are medical debts incurred in March 2012 when Applicant had to go to the emergency room by ambulance. She made a \$50 payment in January 2015 and provided proof. She intended to contact the creditors when her situation improved. She indicated her health insurance at the time was not very good. She did not provide additional documents to support resolution or settlement of any other alleged debts. It is likely the past-due balances on the alleged debts have increased.<sup>8</sup>

No information was provided regarding Applicant's current income, expenses, and proof of actions she has taken to resolve the existing past-due and delinquent debts. She indicated she has three active credit cards that are current. Applicant indicated that she is working with an attorney to consolidate her debt. No other information was provided regarding the consolidation of her debts or any payment plans that have been developed.

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<sup>4</sup> Item 1; Response to FORM.

<sup>5</sup> Item 3; Response to FORM.

<sup>6</sup> Answer to SOR; Response to FORM with attachments.

<sup>7</sup> Item 1.

<sup>8</sup> Response to FORM.

## 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.”

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 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**

The trustworthiness concern 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 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. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant and her husband filed Chapter 7 bankruptcy in 2004 and their debts were discharged in 2005. Applicant has 11 debts that total approximately \$9,318 that she is unable or unwilling to satisfy. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate financial considerations trustworthiness concerns are provided under AG ¶ 20. The following 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.

AG ¶ 20(a) does not apply because Applicant has numerous debts that are not resolved. Applicant attributes her financial problems to being unemployed and being in an abusive relationship. She indicated that her fiancé used her credit cards. These conditions were somewhat beyond her control. To fully apply AG ¶ 20(b), Applicant must have acted responsibly. Applicant has medical bills that were not covered by her insurance for medical services received in March 2012. She indicated that she took cruises in September 2012 and February 2013. She did not explain how she could afford to pay for a cruise and not pay her medical bills. She indicated her fiancé misused her credit cards. In her interview with a government investigator she admitted that she also used the credit cards for her purchases. On her e-QIP she indicated she voluntarily left her job in June 2012. She later indicated that her fiancé did not want her to work, so she was unemployed. Applicant's fiancé was arrested in June 2013. Presumably he was no longer living with her after that date. She has been employed full-time since February 2014. She has resolved her past-due mortgage through a loan modification. She paid one credit card debt and made a \$50 payment for a medical debt. She has not provided proof of other actions she has taken to resolve her remaining debts. AG ¶ 20(b) partially applies.

Applicant indicated she is receiving counseling from an attorney regarding debt consolidation. No additional information was provided regarding actions she has taken to settle or resolve her debts. Some of the debts alleged have small balances. Applicant has not provided sufficient information to conclude there are clear indications her financial problems are being resolved or are under control. AG ¶ 20(c) partially applies. AG ¶ 20(d) applies to SOR ¶¶ 1.k and 1.m. Applicant did not dispute any debts. AG ¶ 20(e) is not raised.

### **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 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. 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.

Applicant is 51 years old. She and her husband had their debts discharged in bankruptcy in 2005. Later she was in an abusive relationship and voluntarily stopped working. She was able to modify her mortgage loan and is current on her payments. She resolved one credit card debt. She incurred medical debts, but did not provide an explanation as to how she was able to take a cruise, but was unable to pay her medical bills. She has been working full-time since February 2014 and with her current employer since June 2014. The status of her current finances is unknown. Without additional explanations, information, and documents, it is too early to conclude that Applicant's finances are under control. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a public trust position. For all these reasons, I conclude Applicant failed to mitigate the Guideline F, 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:	AGAINST APPLICANT
Subparagraphs 1.a-1.j:	Against Applicant
Subparagraph 1.k:	For Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	For Applicant
Subparagraph 1.n:	Against Applicant

### **Conclusion**

In light of all of the circumstances it is not clearly consistent with national security to grant Applicant eligibility for a public trust position. Eligibility for access to sensitive information is denied.

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Carol G. Ricciardello  
Administrative Judge