



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



In the matter of:

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SSN: -----

Applicant for Public Trust Position

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ADP Case No. 07-03766

**Appearances**

For Government: Jeff Nagel, Esquire, Department Counsel  
For Applicant: *Pro Se*

January 14, 2008

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**Decision**

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MOGUL, Martin H., Administrative Judge:

Applicant submitted her Questionnaires for Public Trust Position (SF 85P) on May 15, 2006. On July 18, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the trustworthiness concerns under Guideline F for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended; 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 Jan. 1987, as amended (Regulation); and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant responded to the SOR (RSOR) in writing on August 29, 2007, and requested a hearing before an Administrative Judge. I received the case assignment on October 11, 2007. DOHA issued a notice of hearing on October 24, 2007, and I convened the hearing as scheduled on November 15, 2007, in Sacramento, California. The government offered Exhibits (Ex.) 1 through 7, which were received without

objection. Applicant testified on her own behalf and submitted Exhibits A through P, without objection. DOHA received the transcript of the hearing (Tr.) on December 3, 2007. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to sensitive information is granted.

### **Findings of Fact**

In the SOR, the Government alleges concern under Adjudicative Guideline F (Financial Considerations) of the Directive. The SOR contains 22 allegations, 1.a., through 1.v., under Guideline F. In her RSOR, Applicant admitted SOR allegations 1.b., 1.c., 1.d., 1.i. through 1.k., 1.n. through 1.t. and 1.v. She also admitted that a debt was owed, but did not agree with the amount stated in the SOR for the following debts: 1.e., 1.f., 1.g., 1.h., and 1.u. She denied allegations 1.a., 1.l., and 1.m.,. The admitted allegations are incorporated herein as findings of fact.

After a complete and thorough review of the evidence in the record, including Applicant's RSOR, the admitted documents, and the live testimony, and upon due consideration of that evidence, I make the following additional findings of fact:

Applicant is 39 years old. She is not married, and she has three children, ages 19, 15, and 11, all of whom live with her. Applicant is a customer Service Representative for a defense contractor who seeks an ADP-I/II/III position on behalf of the Applicant.

The SOR lists 22 allegations of overdue debts, 1.a. through 1.v., under Adjudicative Guideline F. All of the debts will be discussed in the same order as they were listed in the SOR:

1.a. This overdue debt to Creditor 1 is cited in the SOR in the amount of \$300. Applicant denies that she ever purchased anything from this creditor. She has disputed this bill for some time. Exhibit D, is a letter, dated October 21, 2007, sent to the collection agency for this creditor in which Applicant disputes this bill. Since this bill is not on the latest credit report I find that Applicant does not owe this debt.

1.b. This overdue debt to Creditor 2 is cited in the SOR in the amount of \$482. Applicant testified that Applicant's ex-husband had verbally agreed to pay this debt, but he never did. She has now contacted this creditor and made one payment of \$25, and she plans to make payments of \$100 a month until this debt is paid.

1.c. This overdue debt to Creditor 3 is cited in the SOR in the amount of \$215. Applicant is disputing this bill since she believes that it has been paid. Although the creditor indicated that one of the bills has been paid, since there are apparently two bills from this creditor it is not clear if this entire debt has been resolved.

1.d. This overdue debt to Creditor 4 is cited in the SOR in the amount of \$212. Applicant testified that Applicant's ex-husband had verbally agreed to pay this debt for his telephone, but he never did. She is not clear which of two collection agencies is

responsible for collecting this debt. She testified that when she becomes aware of the proper party, she will pay this bill.

1.e. This overdue debt to Creditor 5 is cited in the SOR in the amount of \$1,169. Applicant testified that this debt is for child support which she has paid for her daughter, who is now 19 years of age. She has been having \$94 a month garnished from her wages, and she believes she now owes approximately \$590 on this debt.

1.f. This overdue debt to Creditor 6 is cited in the SOR in the amount of \$2,378. Applicant testified that this credit card debt became overdue when her husband at the time became unemployed. She stated that the actual debt was no more than her credit limit of \$500 on this card and she attempted to negotiate a payment plan to resolve this debt when it was first overdue, but was unable to do so. Through interest and finance charges the bill has increased to the current amount stated on the SOR, and it has not been resolved.

1.g. This overdue debt to Creditor 7 is cited in the SOR in the amount of \$1,659. Applicant testified that this credit card debt also became overdue when her husband at the time became unemployed. The actual debt was no more than her credit limit of \$250 on this card, but again, she was unable to negotiate a payment plan to resolve this debt. Through interest and finance charges the bill has increased to the current amount stated on the SOR, and it has not been resolved.

1.h. This overdue debt to Creditor 8 is cited in the SOR in the amount of \$801. Applicant testified that this third credit card debt became overdue when her husband at the time became unemployed. The actual debt was no more than her credit limit of \$500 on this card, but again, she was unable to negotiate a payment plan to resolve this debt. Through interest and finance charges the bill has increased to the current amount stated on the SOR, and it has not been resolved.

1.i. This overdue debt to Creditor 9 is cited in the SOR in the amount of \$121. Applicant testified that this debt is for a check with insufficient funds that was used to make a payment to a creditor. She is disputing the amount that the collecting law firm is assessing for this insufficient check, although Applicant has no evidence that the assessment is incorrect. At this point this debt has not been paid.

1.j. This overdue debt to Creditor 10 is cited in the SOR in the amount of \$127. This debt is also for a check with insufficient funds that was used to make a payment to a creditor. She is disputing the amount that the collecting law firm is assessing for this insufficient check, although Applicant has no evidence that the assessment is incorrect. At this point this debt has not been paid.

1.k. This overdue debt to Creditor 11 is cited in the SOR in the amount of \$200. This debt is also for a check with insufficient funds that was used to make a payment to a creditor. She is disputing the amount that the collecting law firm is assessing for this insufficient check, although Applicant has no evidence that the assessment is incorrect. At this point this debt has not been paid.

1.l. This overdue debt to Creditor 12 is cited in the SOR in the amount of \$441. Applicant testified that this medical bill was not submitted to her insurance carrier as it should have been. Exhibit F is a letter from the creditor hospital, dated November 12, 2007, indicating that they acknowledge that this debt should have been billed to Applicant's insurance carrier, and that they are now reducing this debt to \$0.

1.m. This overdue debt to Creditor 13 is cited in the SOR in the amount of \$190. This medical bill was also not submitted to Applicant's insurance carrier as it should have been. Exhibit F, the letter from the creditor hospital, indicates that they acknowledge that this debt should have been billed to Applicant's insurance carrier, and that they are now reducing this debt to \$0.

1.n. This overdue debt to Creditor 14 is cited in the SOR in the amount of \$260. Applicant testified that she has reached an agreement with this creditor, and she will be paying this debt in full by the end of November 2007.

1.o. This overdue debt to Creditor 15 is cited in the SOR in the amount of \$56. Applicant testified that she has reached an agreement with this creditor, and she will be paying this debt in full by the end of November 2007.

1.p. This overdue debt to Creditor 16 is cited in the SOR in the amount of \$105. Applicant testified that she has reached an agreement with this creditor, and she will be paying this debt in full by the end of November 2007.

1.q. This overdue debt to Creditor 17 is cited in the SOR in the amount of \$388. Applicant is unaware of the basis for this debt so she has contacted the creditor requesting verification.

1.r. This overdue debt to Creditor 18 is cited in the SOR in the amount of \$140. Applicant testified that she has reached an agreement with this creditor, and she will be paying this debt in full by the end of November 2007.

1.s. This overdue debt to Creditor 19 is cited in the SOR in the amount of \$481. Applicant testified that she is current on this debt. Exhibit G shows that she makes payment of \$61 on this debt and 1.t., below.

1.t. This overdue debt to Creditor 20 is cited in the SOR in the amount of \$3,719. Applicant testified that she is also current on this debt. Exhibit G shows that her payment of \$61 is for this debt.

1.u. This overdue debt to Creditor 21 is cited in the SOR in the amount of \$414. Applicant is disputing this bill which she feels is incorrect. She has contacted the creditor and the collection agency and received some documentation (Exhibit H), but it does not resolve Applicant's question of this debt. She believes that she owes the creditor \$94 on this debt, and she has attempted to pay the creditor this amount, but they would not accept it.

1.v. This overdue debt to Creditor 22 is cited in the SOR in the amount of \$243. Applicant testified that this medical bill was not submitted to her insurance carrier as it should have been. Exhibit F indicates that this debt should have been billed to Applicant's insurance carrier, and that they are now reducing this debt to \$0.

Applicant testified that over the last 15 years, with the exception of three years, she was a single parent. Her primary financial problems occurred in 2003 when her husband at the time, was involved in an automobile accident that resulted in a fatality and considerable legal bills. Ultimately he moved out, and their marriage was dissolved in 2004.

In the last six months Applicant's financial situation has improved because she and her boyfriend are living together, along with her two children, and since he now pays a third of the rent, \$540, she now has more disposable income. Exhibit A is a Personal Financial Statement prepared by Applicant. It shows a net remainder each month of \$240.

Applicant did purchase a 2004 Ford Mustang in 2005 for \$19,000. She is making payments of \$528 a month on the vehicle.

Finally, Applicant submitted a 2006 and a partial 2007 performance evaluation from her current employer. They were both quite positive.

### **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 common sense 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.” 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.

Section 7 of Executive Order (EO) 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or 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 significant delinquent debt and was unable to pay some obligations for a period of time. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

The guideline also includes examples of conditions that could mitigate trustworthiness concerns arising from financial difficulties.

Under AG & 20 (b), it may be mitigating where 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. As noted above, some of the financial problems arose from Applicant's husband's fatal impact collision, his loss of employment and ultimately their dissolution of marriage. Applicant acted responsibly in continuing to take care of her two children and in more recently identifying and attempting to resolve these debts. I find this potentially mitigating condition is a factor for consideration in this case.

Similarly, AG & 20 (d) applies where the evidence shows the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. Applicant has been attempting to resolve all the delinquent debts, either by payment or settlement. She is now more financially sound and better prepared for future contingencies. I conclude these potentially mitigating conditions apply.

### **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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant's financial problems largely resulted because she was a single parent for a number of years with a limited income. She also accumulated debt due to circumstances largely beyond her control. Significantly, she has taken affirmative action to pay or resolve most of the delinquent debts. Of course, the issue is not simply whether all her debts are paid. It is whether her financial circumstances raise concerns about her fitness to hold a position of public

trust. I find that while some debts remain unpaid, they are insufficient to raise trustworthiness concerns.

Overall, the record evidence is favorable as to Applicant's eligibility and suitability for a public trust position under the whole person concept. For all these reasons, I conclude Applicant has mitigated the trustworthiness concerns arising from her financial considerations.

### **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
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e.:	For Applicant
Subparagraph 1.f.:	Against Applicant
Subparagraph 1.g.:	Against Applicant
Subparagraph 1.h.:	Against Applicant
Subparagraph 1.i.:	Against Applicant
Subparagraph 1.j.:	Against Applicant
Subparagraph 1.k.:	Against Applicant
Subparagraph 1.l.:	For Applicant
Subparagraph 1.m.:	For Applicant
Subparagraph 1.n.:	For Applicant
Subparagraph 1.o.:	For Applicant
Subparagraph 1.p.:	For Applicant
Subparagraph 1.q.:	For Applicant
Subparagraph 1.r.:	For Applicant
Subparagraph 1.s.:	For Applicant
Subparagraph 1.t.:	For Applicant
Subparagraph 1.u.:	For Applicant
Subparagraph 1.v.:	For Applicant



## **Conclusion**

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

Martin H. Mogul  
Administrative Judge