



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



In the matter of:	)	
	)	
	)	ADP Case No. 08-00259
SSN:	)	
	)	
Applicant for Public Trust Position	)	

**Appearances**

For Government: James Norman, Esq., Department Counsel  
For Applicant: *Pro Se*

January 12, 2009

**Decision**

LAZZARO, Henry, Administrative Judge

Applicant failed to mitigate the trustworthiness concern that arises from her longstanding financial problems.

On August 26, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing to Applicant its trustworthiness concerns.<sup>1</sup> The SOR alleges a security concern under Guideline F (financial considerations). Applicant submitted a response to the SOR that was received by DOHA on October 3, 2008. She admitted all SOR allegations and requested a hearing.

The case was assigned to me on October 27, 2008. A notice of hearing was issued on October 28, 2008, scheduling the hearing for November 17, 2008. The hearing was conducted as scheduled. The government submitted four documentary exhibits that were

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<sup>1</sup> This action was taken under Executive Order 10865, DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive), DoD Regulation 5200.2-R, dated January 1987, as amended (Regulation), and the revised adjudicative guidelines which became effective within the Department of Defense for SORs issued after September 1, 2006.

marked as Government Exhibits (GE) 1-4 and admitted into the record without objection. Applicant testified and submitted twelve documentary exhibits that were marked as Applicant Exhibits (AE) 1-12 and admitted into the record without objection. The transcript was received on December 1, 2008.

### **Procedural Matters**

Prior to taking evidence, Department Counsel moved to amend the SOR by striking subparagraph 1.k based on it being a duplicate of the allegation contained in SOR subparagraph 1.j. The amendment was allowed without objection.

### **Findings of Fact**

Applicant's admissions to the SOR allegations are incorporated herein. In addition, after a thorough review of the pleadings, testimony and exhibits, I make the following findings of fact:

Applicant is a 34-year-old woman who has been employed as a beneficiary service representative by a defense contractor since October 2006. She performed the same type work for a different employer from March 2000 until October 2006. She worked in a hospital as mental health technician from April 1998 until March 2000. Applicant is able to walk to her present job. She chose to change jobs and accept her current employment to save money by eliminating the expense of commuting. Applicant submitted letters of recommendation from her supervisors at all three of the above employers. (AE 1-4) Those letters establish she has consistently been a dedicated, hard-working and valued employee who has earned a reputation for honesty, integrity and trustworthiness.

Applicant obtained a GED in August 1997. She thereafter attended a community college and a university and is about 20 credit hours short from receiving a bachelor of arts degree. She last attended the university in 2003. She earned a certificate from massage school in December 2005.

Applicant has never been married but has had an ongoing relationship with a man for the past 18 years. She has a 17-year-old daughter and an 11-year-old son from this relationship. She had a third child from the relationship who died in or about December 1995 when the child was about two years old. Applicant has lived on and off with this man during the course of their relationship, but has periodically had to obtain orders of protection against him due to domestic violence. The last order of protection was taken out in 2006. They are currently residing together.

The SOR alleges 13 delinquent accounts that have been submitted for collection, totaling \$48,413. Four additional accounts are alleged in the SOR that had been charged off as bad debts, totaling \$30,698. Seven of the delinquent accounts, totaling \$71,502, represent unpaid student loans or tuition. The other delinquent accounts include credit card, telephone, and medical bills that have remained unpaid for at least several years.

Applicant's student loans alleged in SOR subparagraphs 1.f through 1.j, totaling \$22,535.10, are subject to a wage garnishment order that has been in effect since May

2007 (AE 11). Applicant's annual gross salary is \$33,000 (AE 12), and, as of November 2008, \$153.64 per pay period is being withheld from her wages to satisfy the wage garnishment order (AE 12). The loans covered by the withholding order are subject to an annual interest rate of 7.14% with the daily interest charge being \$4.12 (AE 11). Applicant has not made any payment on any of the other delinquent accounts listed in the SOR since the spring of 2005 (Tr. pp. 35-36).

Applicant attributes her financial problems to the purchase of her house and her following directions provided to her by the man with whom she has had the long-term relationship. She obtained the student loans at his insistence and he squandered much, if not all, the money she received on himself. She acquired the credit card debt and other expenses also at his urging. In 2005, Applicant obtained a mortgage loan to purchase a home knowing she was financially unqualified to obtain the loan due to the overwhelming debt she owed on her outstanding student loans.

Applicant's net biweekly pay is \$709.91 (AE 12). Her mortgage payment is \$633 a month (Tr. p. 27) and her car payment is \$453 a month (Tr. p. 28). Her male companion is currently employed and provides some limited financial assistance to Applicant and her children, such as paying the electricity bill. However, he has only worked about four years out of the 18 years they have been together. He also handles all the household expenses, so she does not actually know what is or is not being paid.

Applicant contacted an attorney about filing for bankruptcy protection in July 2006, and gave him a down payment in the amount of \$325 (AE 8). She completed the required pre-filing counseling (AE 9) but has not further pursued the matter. She does not have any current plan for resolving her financial problems other than to possibly seek a part-time job.

## **POLICIES**

Positions designated as ADP I and ADP II are classified as sensitive positions.<sup>2</sup> The standard to 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.<sup>3</sup> Trustworthiness adjudications apply to cases forwarded to DOHA by the Defense Security Service and Office of Personnel Management.<sup>4</sup> Department of Defense contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination is made.<sup>5</sup>

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<sup>2</sup> Regulation ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3.

<sup>3</sup> Regulation ¶ C6.1.1.1.

<sup>4</sup> Deputy Under Secretary of Defense (Counterintelligence and Security) Memorandum, dated November 19, 2004.

<sup>5</sup> Regulation ¶ C8.2.1.

An Administrative Judge must consider the disqualifying and mitigating conditions in the Adjudicative Guidelines when evaluating an Applicant's suitability for a public trust position. The Administrative Judge must also consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. The entire process is a conscientious scrutiny of a number of variables known as the "whole person concept." The protection of the national security is the paramount consideration, and any doubt concerning personnel being considered for access to sensitive information will be resolved in favor of national security. Decisions are made in terms of the national interest and are not determinations as to the loyalty of the applicant concerned.<sup>6</sup>

The Government is required to present evidence to establish controverted facts alleged in the SOR.<sup>7</sup> 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.<sup>8</sup> The Applicant has the ultimate burden of persuasion as to obtaining a favorable trustworthiness decision.

## Analysis

### Guideline F, Financial Considerations

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. . . . (Adjudicative Guideline [AG] 18)

As alleged in the SOR, Applicant has 17 delinquent accounts, totaling \$79,111, that have either been submitted for collection or charged off as bad debts. Five of those accounts, totaling \$22,535.10, are subject to a wage garnishment order that is being satisfied by the seizure of \$153.64 a payday from Applicant's wages. No payment has been made on any of the other delinquent accounts for almost four years. Disqualifying Conditions (DC) 19(a): *inability or unwillingness to satisfy debts*; and DC 19(c): *a history of not meeting financial obligations* apply.

Applicant's net monthly income is about \$1,500. Her mortgage and car payments alone total almost \$1,100. She currently receives some financial assistance from her male companion, who she periodically has had to obtain orders of protection against, but doesn't know what he actually contributes to the household or what family expenses are actually being paid by him. Applicant purchased a house knowing she was financially unqualified for the mortgage loan she obtained due to her outstanding student loans. She acquired

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<sup>6</sup> Section 7 of Executive Order (EO) 10865.

<sup>7</sup> Directive ¶ E3.1.14.

<sup>8</sup> Directive ¶ E3.1.15.

student loans to finance her male companions desire to splurge on himself. She has thousands of dollars in delinquent credit card and other debt that she cannot even begin to satisfy. DC 19(e): *consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis* applies.

Applicant's financial problems are long standing and unresolved. They were caused by her following the unwise and self-motivated advise of her male companion and her decision to purchase a house knowing she was financially unqualified for the loan she obtained. She has done virtually nothing to resolve any of her debts and has no plan or prospect to attain a financially secure and responsible lifestyle. I have considered all mitigating conditions and conclude that none apply.

The objective of a trustworthiness determination is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to sensitive information. Indeed, the "whole person" concept recognizes we should view a person by the totality of her acts and omissions. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

Considering all relevant and material facts and circumstances present in this case, the whole person concept, the factors listed in ¶ 6.3.1 through ¶6.3.6 of the Directive, and the applicable disqualifying and mitigating conditions, Applicant has failed to mitigate the financial considerations security concerns. She has not overcome the case against her nor satisfied her ultimate burden of persuasion. It is not clearly consistent with the national interest to grant Applicant access to sensitive information.

### **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-j:	Against Applicant
Subparagraph 1.k:	Withdrawn
Subparagraphs 1.l-r:	Against Applicant

### **Conclusion**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a public trust position. Eligibility for access to sensitive information is denied.

Henry Lazzaro  
Administrative Judge

