



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



In the matter of: )  
)  
) ADP Case No. 08-03594  
)  
)  
Applicant for Public Trust Position )

**Appearances**

For Government: Richard Stevens, Esquire, Department Counsel  
For Applicant: *Pro Se*

March 4, 2009

**Decision**

CREAN, THOMAS M., Administrative Judge:

Applicant submitted her Questionnaire for Public Trust Position (SF 85P), on April 26, 2007. On November 10, 2008, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns for financial considerations under Guideline F. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), 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 January 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 acknowledged receipt of the SOR on November 25, 2008.

Applicant answered the SOR in writing on December 4, 2008. She admitted one and denied nine of the allegations under Guideline F with detailed explanations. She requested a hearing before an administrative judge. Department Counsel was prepared to proceed on December 31, 2008, and the case was assigned to me on January 5, 2009. DOHA issued a notice of hearing on January 8, 2009, for a hearing on February 5, 2009. I convened the hearing as scheduled. The government offered four exhibits,

marked Government Exhibits (Gov. Ex.) 1 through 4, which were received without objection. Applicant submitted three exhibits, marked Applicant Exhibits (App. Ex.) A through C, which were received without objection. Applicant testified on her own behalf. The record was held open for Applicant to submit additional documents. Applicant timely submitted one document marked App. Ex. D. Department Counsel had no objection to consideration of the documents (Gov. Ex. 5, Memorandum, dated February 17, 2009), and the document is admitted. DOHA received the transcript (Tr.) of the hearing on February 19, 2009. Based on a review of the case file, pleadings, exhibits, and testimony, eligibility for access to sensitive information is granted.

### **Findings of Fact**

Applicant is a 30-year-old high school graduate with some college credit serving as a customer service representative for a defense contractor. She married on November 2, 1996 when she was 18 years old. She and her husband worked various jobs for about a year before his father turned over the family business to him. Her parents provided them with a house that had only a small mortgage. Applicant and her former husband took out a second small mortgage to assist with household and business expenses. Applicant gave birth to their only child in February 1998. Both Applicant and her husband worked in the business but Applicant mainly followed her husband's directions on what needed to be done in the business. She signed whatever documents her former husband asked her to sign. Applicant had a child and started working from home. Unbeknownst to Applicant, her husband was abusing drugs and alcohol, using the business assets to pay for his drugs and alcohol. He also mortgaged their house again with a higher mortgage. She was not aware of this mortgage until she received a notice of foreclosure in the mail. Applicant's husband took care of all of the family financial transactions (Tr. 16-17, 23-27; Gov. Ex. 1, Questionnaire for Public Trust Position, dated April 26, 2007).

Applicant separated from her husband in June 2000. A divorce was granted on October 9, 2001, on the grounds of the husband's habitual drunkenness. Applicant was granted custody of the child and her husband received visitation privileges. Her husband was to assume responsibility for most of the debts from the house and the mortgage. Each assumed responsibility for the debts they incurred in their own name. Applicant's husband was ordered to pay child support to include arrears. Applicant was responsible for one vehicle. Her husband filed for bankruptcy shortly after she filed for divorce and his debts were discharged. Applicant did not participate in the bankruptcy and did not know about it until informed later by her attorney. The car Applicant was provided in the divorce was included in the husband's bankruptcy petition. She was told by her husband to return the car to the bank holding the loan on the car. She returned the car as directed (Tr. 17-19; See Answer to SOR, Divorce Decree, dated October 23, 2001; Gov. Ex. 2, Answer to Interrogatories, dated August 21, 2008).

After the divorce, Applicant moved to be near her parents and was provided a house they owned. She worked hard not to accrue debt. She did not purchase items on time so she did not see any reason to check her credit history or credit report. Applicant married her second husband in May 2006. Her second husband is disabled

from a motorcycle accident and does not work but draws disability. Applicant had a child with her second husband, so she now has two children. She worked at various jobs until she found steady employment in April 2007 with the defense contractor (Tr. 23-27).

Applicant is a high producer for her employer. Her performance is rated above average (App. Ex. A, Letter, dated January 7, 2009). Her productivity results are consistently almost more than 200% of the employer's goal (App. Ex. B, Associate Productivity Report, Various dates). She has numerous awards for outstanding performance and exceeding standards (App. Ex. C, Award certificates, various months). Applicant's manager notes she is a dedicated professional employee with exceptional customer service skills. She can be counted on to work hard and accurately. She is a pleasure to work with. Ten fellow workers and family members wrote letters of reference stating that she is a smart, dedicated, hard worker who is trustworthy and reliable (App. Ex. A, Letters, various dates).

Applicant is paid hourly at the rate of \$10.05 by her employer. She does not receive overtime. Her monthly net salary is \$1,389.46. She receives \$432 in monthly child support. Her husband receives \$558 monthly in disability. The family's combined monthly income is \$2,379. Their monthly recurring expenses are approximately \$1,600 leaving a monthly net remainder in discretionary or disposable funds of approximately \$600 (Tr. 39-48).

A credit report (Gov. Ex. 4, dated May 9, 2007) shows the following ten delinquent debts listed for Applicant: a credit card debt charged off for \$3,838 (SOR 1.a); a utility debt in collection for \$167 (SOR 1.b); a charged off department store account for \$166 (SOR 1.c); an account charged off for \$68 (SOR 1.d); a credit card in collection for \$2,765 (SOR 1.e); a medical debt in collection for \$130 (SOR 1.f); a cell phone debt in collection for \$1,077 (SOR 1.g); a collection account for a storage company for \$359 (SOR 1.h); a credit card account in collection for \$5,836 (SOR 1.i); and a charged off account for a car loan for \$8,567 (SOR 1.j).

Applicant is unaware of a number of the delinquent debts. She did not become aware of the debts until she received the SOR. She believes the debts were incurred by her former husband either without her knowledge or creditors are pursuing her for the debts since her former husband's bankruptcy action discharged the debts for him leaving her as the only account holder (Tr. 17, 25-27).

SOR delinquent debt 1.a is for a credit card. Applicant believes she was placed on the credit card by her husband as a co-signer. She did not have a credit card with the creditor in her own name. She cannot recall what the card was used for, the balance, or why it was not paid. She believes her former husband was the principle user of the card and he incurred the debts. She has not made any payments towards this account. She does not believe the debt is her debt (Tr. 28-29).

SOR delinquent debt 1.b is a utility debt for the house she and her former husband lived in. After they separated, her husband moved out and she and her son

lived in the house until it was foreclosed. Her husband was to pay the expenses from the house, and the utility service was in his name. She does not remember a bill from the utility company. She has not made any payments on this bill since she believes it is not her debt but her former husband's debt (Tr. 29-30).

SOR Delinquent SOR 1.c is for a department store account. Applicant had an account with the department store. When she separated from her former husband, she destroyed her credit cards. At the time, her department store account was at zero balance. She does not know who used the credit card or incurred the debt, but it is not her debt (Tr. 30-31).

SOR delinquent debts 1.d and 1.f are medical debts in collection. Applicant has no knowledge of these debts. She always had medical insurance or Medicaid. She never received correspondence from the creditors or the collection agencies (Tr. 32-34).

SOR delinquent debts 1.e and 1.i are for credit card debts in collection. Applicant never had an account with either of the credit card companies. She never received any information from the creditors or collection companies on these delinquent debts. She believes the debts arose when her former husband opened and used the credit cards without her knowledge for his purposes (Tr. 35-37).

SOR delinquent debt 1.g is for a cell phone bill. Applicant admits this debt and acknowledges that she incurred a debt of about \$500 on her cell phone. She asked the cell phone company to convert her plan to a different payment plan so she would not incur as much expense. The company refused to change the plan so Applicant returned her phone and cancelled the plan and refused to pay the bill. The bill continued to accrue expenses and is still unpaid (Tr. 34-36). After the hearing, Applicant contacted the phone company and was informed the debt was now for \$1,077.33 and had been sold to a collection agency. The company was unable to assist her since the account had been sold. Applicant tried to contact the collection agency but was unsuccessful. She did learn that there are numerous complaints against the collection agency because people cannot reach them to settle or dispute debts. She intends to contact the credit reporting agency to register her dispute concerning the debt and have the debt removed from her credit report (App. Ex. D, Letter with attachments, dated February 16, 2009).

SOR delinquent debt 1.h is a debt for space at a storage facility. When Applicant vacated the house she shared with her former husband, she moved to a smaller house owned by her parents. She placed furniture and other items in storage paying \$60 per month. She paid the storage fee for a short time, but was unable to maintain the monthly payments because of low paying and sporadic employment. She defaulted a few months on the payments and the storage company auctioned Applicant's items in the facility to pay the storage delinquent fees. Applicant claims that the auctioned items sold were worth substantially more than the debt owed on the storage facility. Since she believes the storage company was reimbursed for the delinquent fees from the auctioned contents, she refuses to pay the debt (Tr. 37-38).

SOR delinquent debt 1.j is for a car that was repossessed by the lender. Applicant received the car as part of the divorce degree. She was making payments on the car, but Applicant's former husband included the car debt in his bankruptcy. As part of his bankruptcy, the car had to be returned to the creditor. He informed Applicant she had to return the car to the bank which she did. Approximately 18 months later, Applicant tried to cash a check at her bank which was the same bank that held the note on the repossessed car. She was informed that her bank account had been drafted for over \$2,000 to pay at least part of the remaining debt on the car. Even though her former husband was cleared of the debt under the bankruptcy, Applicant was still responsible for the debt. With the bankruptcy, the sale of the car, and the funds taken from her account, Applicant does not believe she has a debt for the car. She is not making any further payments on the car debt (Tr. 37-39).

### **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.

## **Analysis**

### **Guideline F, Financial Considerations**

There is a security concern for a failure or inability to live within one’s means, satisfy debts, and meet financial obligations indicating 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 their obligation to protect classified 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 from a car, medical debts, credit cards, and telephone bills, as established by a credit report and Applicant’s statements and testimony, are a security concern raising Financial Consideration Disqualifying Conditions (FC DC) ¶19(a) "inability or unwillingness to satisfy debts", and FC DC ¶ 19(c) "a history of not meeting financial obligations".

I have considered a number of Financial Considerations Mitigating Conditions (FC MC). FC MC ¶ 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" applies in part. While the debts were incurred some time ago, they are still unpaid and thus considered current. There are a number of different accounts and debts, so delinquent debt was

incurred frequently. Most of the delinquent debts were incurred by Applicant's husband to pay for his abuse of illegal drugs and alcohol. Her former husband was released from the debts by bankruptcy, but Applicant as a cosigner is still liable for the debts. She has tried to pay her cell phone debt but cannot locate contact information for the collection agency. Applicant believes two debts were satisfied by sale of items or payment of the debt. The debts were incurred under the unusual circumstances of her divorce and her former husband's incurring the debts for his alcohol and drug abuse. These circumstances are not likely to recur.

FC MC ¶ 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 separations) and the individual acted responsibly under the circumstances," applies. All of Applicant's debts are directly related to the actions of her former husband. Applicant and her former husband had a potentially comfortable lifestyle before he turned to drug and alcohol abuse. Because of his actions, they lost this comfortable lifestyle and incurred delinquent debt. Applicant was unaware of her husband's problems or actions that caused financial problems. After learning of the issues, Applicant divorced her former husband. The divorce decree settled property issues, and her former husband had responsibility for most of the debts incurred in the marriage. She had responsibility for only the debts incurred by her in her name. However, Applicant's former husband filed for bankruptcy without her knowledge and his part of the debts were discharged. The creditors then sought to collect on the debts from Applicant. The actions leading to the debts were caused by her former husband without Applicant's knowledge. His actions were beyond her control. Applicant has acted responsibly under the circumstances, by divorcing her former husband as soon as she learned of the problems, finding steady employment, not incurring additional delinquent debts, and living within her means.

FC MC ¶ 20(a) "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" does not apply. Applicant presented no information concerning financial counseling.

FC MC ¶ 20(d) "the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts" applies in part. Applicant had no knowledge of seven of the debts which she believes were incurred by her former husband without her knowledge until she received the SOR. She has not paid any of these debts since she believes she is not responsible for them. She tried to pay a cell phone debt but has not been able to obtain contact and payment information. Two other debts should have been satisfied by auction of furniture and repossession and payment on a car. Applicant presented sufficient information to show she is either not responsible for the debts or made as good an effort as she could under her circumstances to resolve her past due obligations. Even though she is steadily employed, her employment does not provide sufficient income to pay the delinquent debts incurred by her former husband to fuel his drug and alcohol abuse. She merely has sufficient income to meet her present financial requirements. While she has outstanding delinquent debts that may legally and technically be her responsibility, she

does not have the financial means to address them. She has tried to resolve the one debt she is responsible for but has been unable to do so because of the collection agency lack of contact information. She reasonably believes two debts have been satisfied by sale or auction of items. She has made a reasonable effort under the circumstances to resolve her debts.

### **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 has presented sufficient information to show the majority of the listed debts were not caused by her actions but by the actions of her former husband, an alcohol and drug abuser. She has tried to contact a collection agency for one debt to no avail. She does not believe she owes a debt on a repossessed car and a storage fee because the debts should have been satisfied by sale of furniture and sale of the car coupled with another payment. Applicant presented information to establish that she is an excellent and productive employee. Her employer has constantly rewarded her for her work ethic and performance. Her supervisors, friends, and family have attested to her efforts and her reputation for reliability and trustworthiness.

The circumstances concerning how Applicant incurred the delinquent debts are an important consideration in determining Applicant's suitability for a position of public trust. She incurred the debts through the actions of her former husband in accruing debt to pay for his drugs and alcohol abuse. Applicant was left with the debts after a divorce and the discharge of her husband's debts by bankruptcy. After learning of her former husband's drug and alcohol abuse, she took control of her life, divorced him, moved closer to her parents for support, found steady employment, and did not use credit cards. She demonstrated she is responsibly managing her present finances under the circumstances. The management of present finances indicates she will be



concerned, responsible, and not careless concerning sensitive information. Overall, the record evidence leaves me with no questions and doubts as to 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
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:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	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.

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THOMAS M. CREAN  
Administrative Judge