



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



In the matter of: )  
)  
) ADP Case No. 08-03998  
)  
)  
Applicant for Public Trust Position )

**Appearances**

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

February 27, 2009

**Decision**

CREAN, THOMAS M., Administrative Judge:

Applicant submitted her Questionnaires for Public Trust Position (SF 85P), on February 1, 2007. On October 17, 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 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 acknowledged receipt of the SOR on October 22, 2008.

Applicant answered the SOR in writing on November 29, 2008. She admitted 12 and denied three allegations under Guideline F. She requested a hearing before an administrative judge. Department Counsel was prepared to proceed on December 22, 2008, and the case was assigned to me on January 2, 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 did timely submitted seven documents, marked App. Ex. D through J. Department Counsel had no objection to consideration of the documents (Gov. Ex. 5, Memorandum, dated February 20, 2009), and the documents are 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 32-year-old customer service representative for a defense contractor. Applicant was one of five children raised by a single mother. She had her first child while she was still in high school. She was married in December 2004 but separated in April 2005. She now has three children, ages 15, 11, and five. All of the children have different fathers. She receives sporadic support for the children from the fathers. The five year old child has disabilities. At present she receives \$674 in disability payments for the child. The amount will be reduced in the next month to \$537 monthly (Tr. 15-16: Gov. Ex. 1, Questionnaire for Public Trust Position, dated February 1, 2007).

Applicant is paid hourly at the rate of \$10.12 by her employer. She does not receive overtime. Her monthly net salary is \$1,280. Her total monthly income, including the disability payment, is approximately \$1,800. Applicant's monthly recurring expenses are about \$1,400, including \$100 a month in after school child care expenses. She also tithes to her church. She has about \$200 left each month in discretionary income. Applicant used her tax refund and stimulus check last year to pay some of her debts and make current some other debts that were past due. She stated she made some purchases, like a cell phone, satellite television service, and a car that was repossessed, that she should not have made. Applicant does not have or use credit cards. She had periods of unemployment caused by being laid-off, and injuries. In addition to regular employment with the defense contractor, Applicant is the volunteer secretary and a Sunday school teacher for her church (Tr. 18-33).

Credit reports (Gov. Ex. 4, dated May 25, 2007; Gov. Ex. 3, dated April 7, 2008) show that Applicant has the following 15 delinquent debts: a car repossession debt of \$14,166 in collection (SOR 1.a); nine medical debts of various amounts ranging from \$5 to \$412 (SOR 1.b, 1.c, 1.f, 1.g, 1.h, 1.k, 1.l, 1.m, 1.o); a debt of \$34,170.33 in collection for a mobile home (SOR 1.d); a cell phone debt of \$625 in collection (SOR 1.e); two debts of \$345 each in collection for cash advances (SOR 1.i and 1.j); and a debt of \$225 in collection for satellite television service (SOR 1.n).

Applicant purchased the car listed as repossessed in SOR 1.a in April 2001 for approximately \$17,000, and it was repossessed in September 2002. Since the repossession, Applicant has not made any payments on the debt. She acknowledges the debt but disputes the amount of the debt as too high. She has been in contact with

the creditor and they are requesting \$11,000 to settle the debt. She is not able to make any payments to settle the debt (Tr. 33-34, 47-48).

There are nine medical debts listed, all in collection by the same collection company. Applicant did not have health insurance until she started working for her present defense contractor employer. Most of her medical debts are for co-payments required when she or her children received medical care. Applicant provided documentation that she paid three of the debts listed at SOR 1.b, 1.c, and 1.m (Tr. 35-37; App. Ex. A, Receipt, dated January 26, 2009). The medical debt at SOR 1.f was settled and paid on February 13, 2009 (App. Ex. D, Letter, dated February 19, 2009). The debts listed at SOR 1.g and 1.k both for \$155 are duplicates as acknowledged by the collection agency. Applicant has scheduled this account for payment on February 27, 2009. Applicant has scheduled a payment of \$283 for the debt at SOR 1.h for March 13, 2009, and the debt for \$412 at SOR 1.i for payment on March 27, 2009. The collection agency has no record of the \$47 debt listed at SOR 1.o. Applicant intends to pay approximately \$100 from each biweekly paycheck until the medical debts are settled and paid (TR. 37-38).

Applicant purchased a mobile home in September 2002. Prior to the dealer placing it on her land, Applicant cancelled the contract because she found another house at a better deal. The dealer brought the mobile home to the lot anyway and left it. It was never assembled or completed, and Applicant never lived in it. The dealer finally took it from the lot. Applicant did not know of any debt until she received the SOR. After the hearing, Applicant contacted the credit bureau to dispute the debt. It is listed on one credit report but not on another credit report. She is working with the credit reporting agency to have the debt removed from her credit report (Tr. 38; App. Ex. D, Applicant's Letter, date February 19, 2009, at 2).

The cell phone debt for \$625 at SOR 1.e was settled for \$151 and paid (Tr. 38, App. Ex. B, Letter, dated October 16, 2008, check, dated January 27, 2009; App. Ex. J, Payment letter, dated February 6, 2009). Applicant has reached an agreement to settle the two cash advance accounts of \$345 each for \$120.75 per debt. She made the first payment on February 13, 2009, and the remaining balance is scheduled for payment on March 6, 2009 (App. Ex. D, Letter, dated February 19, 2009 at 2; App. Ex. I, Letter, dated February 6, 2009). Applicant does not believe she has any obligation for a satellite television service. She believes she paid all of her bills for the service. She inquired about the debt, but the company has no record of an account for Applicant with them. She called the collection agency listed on the credit report but she did not receive an answer (App. Ex. D, Letter, February 19, 2009, at 1-2).

Applicant made a payment of \$112 on February 3, 2009 towards a medical debt not listed on the SOR. The balance on this debt is \$2,656.82 (App. Ex. G, Letter, dated February 13, 2009; App. Ex. H, Receipt, dated February 13, 2009). Applicant also made payments of \$40.61 in partial payment of a telephone debt on January 27, 2009; \$594.67 to a finance company to settle a personal loan on January 24, 2009; and \$556.28 to settle a personal loan on January 23, 2009. Applicant's intention was to pay

these debts even though not listed as delinquent on the SOR to clear them so she can concentrate on her past due debts (Tr. 42-45; App. Ex. C, Receipts, various dates).

Applicant evaluation from her employer for the initial period of her employment was an average evaluation with some need for improvement (App. Ex. E, Letter, dated February 17, 2009). Applicant's pastor, who hired her to be the church secretary, stated that Applicant is dependable and does a good job. In addition to working as the secretary, she also teaches Sunday school. She works on various committees in support of the church. She is trustworthy and reliable (App. Ex. F, Letter, undated).

## **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 security clearance. 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 car and mobile home repossessions, medical debts, loans, and telephone bills, as established by credit reports and Applicant's admissions, 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" does not apply. While the debts were incurred some time ago, they have either just been paid or are still unpaid and thus considered current. There are a number of different accounts and debts, so Applicant incurred debt frequently. Although Applicant incurred some debts when she was young and a single mother with three children and no support from the

fathers, she has not established that the delinquent debts were incurred under unusual circumstances. In fact, she admits that she should not have made some purchases.

I considered 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." It partially applies. Applicant has three children but receives only sporadic child support from the fathers. If she received adequate and continuous child support, she could provide for the children and not have as much debt to repay. In addition, some of the debts resulted from periods of unemployment. Applicant is acting responsibly since she is not using credit cards and is trying to repay her past due obligations.

I have not considered 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." Applicant presented no information concerning financial counseling.

I considered FC MC ¶ 20(d) "the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts." Applicant has paid five of the nine medical debts listed in the SOR and has a payment plan and is paying another three debts. Two of the listed debts are duplicates. She paid one of the two pay-day-loans and has a plan to pay the other pay-day-loan. She presented sufficient information to show payment of the debt for telephone service. Applicant inquired about two debts listed on the credit reports and in the SOR, but was unable to obtain payment information. She has a legitimate dispute and is now disputing her largest debt for a mobile home. The only debt she has not taken action on pertains to a car repossession. She acknowledges the debt but disputes the amount. She presented information to show payment of other debts not listed on the credit reports or in the SOR. In spite of not taking any action on the repossessed car debt, Applicant presented sufficient information to show she is making as good an effort as she can under her circumstances to resolve past due obligations. While she has outstanding delinquent debts, she is making an effort to pay or otherwise 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) 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. An applicant can shown a "meaningful track record" of debt payment, including evidence of actual debt reduction through payment of debts. An applicant is not required, as a matter of law, to establish that she paid off each and every debt listed in the SOR. All that is required is that applicant demonstrate that she has established a plan to resolve her financial problems and taken significant actions to implement that plan. The entirety of an applicant's financial situation and her actions can reasonably be considered in evaluating the extent to which that applicant's plan for the reduction of her outstanding indebtedness is credible and realistic. Available, reliable information about the person's, past and present, favorable and unfavorable, should be considered in reaching a determination. There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan and concomitant conduct may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR (ISCR case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

Applicant established a meaningful track record of debt payment by presenting sufficient information to show she is taking sufficient, consistent, reasonable, and responsible action to resolve her financial issues. She presented information to show either payment of medical debts or a continuing plan to pay the remainder. She presented sufficient information to show payment of two other debts listed of security concern. In addition, she presented information to show payment of other debts not listed as security concern. She presented sufficient information to show payment of one pay-day-loan and a plan to repay the remaining one. She is disputing her largest debt for a mobile home and her dispute is reasonable. She inquired about two debts but did not receive information concerning them. Only one debt, for a car repossession has not been adequately addressed. Applicant presented information that she is considered by her employer to be an average worker. She also is a volunteer in her church and contributes both financially and through her efforts as a volunteer secretary and Sunday school teacher.

Applicant is taking responsible action to resolve her financial problems. She is paying her past due obligations as best she can as a single mother with three children not receiving child support. She does not have credit cards and is not incurring additional debt. She has demonstrated she is managing her finances responsibly under the circumstances. The management of present finances and past obligations 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

