



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



In the matter of: )  
)  
) ADP Case No. 08-06704  
)  
)  
Applicant for Public Trust Position )

**Appearances**

For Government: Caroline H. Jeffreys, Esquire, Department Counsel  
For Applicant: *Pro Se*

July 24, 2009

**Decision**

CREAN, THOMAS M., Administrative Judge:

Applicant submitted a Questionnaire for Public Trust Position (SF 85P), on September 6, 2007. On February 27, 2009, 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 March 13, 2009.

Applicant answered the SOR in writing on March 21, 2009. She denied nine and admitted five of the SOR allegations under Guideline F, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on April 20, 2009, and the case was assigned to me on May 4, 2009. DOHA issued a Notice of Hearing on May 20, 2009, for a hearing on June 9, 2009. I convened the hearing as scheduled. The government offered six exhibits, marked Government Exhibits (Gov.

Ex.) 1 through 6, which were received without objection. Applicant submitted nine exhibits, marked Applicant Exhibits (App. Ex.) A through I, which were received without objection. Applicant testified on her own behalf. DOHA received the transcript (Tr.) of the hearing on June 24, 2009. Based on a review of the case file, pleadings, exhibits, and testimony, eligibility for access to sensitive information is granted.

### **Procedural Issues**

Applicant signed for the Notice of Hearing on June 1, 2009. Applicant is entitled to 15 days notice of hearing (Directive E3.1.8). Applicant discussed with Department Counsel the hearing date of June 9, 2009, prior to the Notice of hearing being mailed so actual notice was given more than 15 days prior to the hearing. However, Applicant signed for the Notice of Hearing only 9 days prior to the hearing. Applicant waived the 15 days notice requirement (Tr. 4-5).

### **Findings of Fact**

Applicant is 24 years old and has been a computer programmer for a defense contractor for over two years. She is a college graduate who is presently taking courses under the auspices of her employer for a master's degree in information systems. She is married with one child. Applicant completed a financial statement in response to Interrogatories. Her net monthly income is approximately \$2,680. Her husband's net monthly salary is approximately \$1,300, for a total family monthly income of \$3,980. The family's combined monthly expense are approximately \$3,730, leaving monthly discretionary disposable funds of \$250 (Tr. 28-29, 32-35; Gov. Ex. 1, Questionnaire for Public Trust Position, dated September 6, 2007; Gov. Ex. 3, Answers to Interrogatories, dated August 19, 2008).

Credit reports (Gov. Ex. 4, dated November 21, 2008; Gov. Ex. 5, dated June 18, 2008; and Gov. Ex. 6, dated November 7, 2007) list the following debts: six medical accounts in collection for \$332 (SOR 1.a), \$697 (SOR 1.b), \$104 (SOR 1.c), \$27 (SOR 1.d), \$416 (SOR 1.e), and \$30 (SOR 1.f); a credit card account past due for \$4,270 (SOR 1.g); two credit card accounts to the same creditor for \$467 (SOR 1.h), and in collection for \$3,503 (SOR 1.i); two telephone debts to different creditors for \$582 (SOR 1.j) and \$259 (SOR 1.k); a credit card account in collection for \$969 (SOR 1.l); a credit card account in collection for \$5,098 (SOR 1.m); and a student loan with a bank in collection for \$14,481 (SOR 1.n).

Applicant attributes her delinquent debts to periods of unemployment, lack of financial education, and financial hardship in 2005/2006. She had health issues associated with cancer, was a student, and could not find full-time work. She also became pregnant which affected her ability to work (Tr. 17-18).

Applicant has been working with a bank official since September 2008 to restructure her debt so it can be paid on time. Through their efforts, she developed a plan to restructure her expenses, save funds, and pay off debts in turn. She has been able under the plan to pay creditors and improved her credit score. Her plan is to

continue to save funds monthly until she has sufficient funds to pay the next debt she intends to pay. She made her last payment on the most recent debt paid in March 2009. Since then, she has saved \$300 towards her next debt to be paid, the debt listed at SOR 1.g. She has been able to save and pay more of her debts since commencing work with her present employer (Tr. 23-28, 37-39, 44-48).

She has followed her repayment plan and has been able to pay nine of fourteen listed delinquent debts. SOR 1.a to SOR 1.e are medical debts to the same medical facility. The debts have been paid in full (Tr. 18; App. Ex. A, Letter, dated March 13, 2009). The medical debt at SOR 1.f has also been paid in full (Tr. 19; App. Ex. B, Receipt, dated October 3, 2008). SOR 1.h is a debt to a bank in collection. It has been paid in full (Tr. 20; App. Ex. C, Letter, dated March 13, 2009). SOR 1.j and 1.k are telephone bills to different companies that have been paid in full (Tr. 21; App. Ex. D, Letter, dated March 27, 2009; App. Ex. E, Letter, dated March 25, 2009). Department counsel concurs that the debts have been paid in full (Tr. 23-24).

SOR 1.g, 1.i, 1.l, and 1.m. are credit card debts in collection by various collection agencies. Applicant stopped making payments on the credit card in approximately 2005 when she had trouble with full time employment because of school and health issues. The debts have not been paid. Applicant has not used the credit card since October 2005. According to her plan, Applicant is saving funds to pay her next debt which is SOR 1.g. She is working with the collection agency creditors to develop a payment plan. After paying each debt in full, she will move to pay the next debt. Debt 1.n is a student loan with a private bank that has not been consolidated or deferred. She has other student loans that are deferred since she is in school studying for her master's degree (Tr. 21-24, 28-31, 40-46).

Applicant presented letters of commendation and recommendation from a friend, a co-worker, and supervisors. The mayor of Applicant's town notes that he has known her for a number of years because she worked in his family business. She is extremely efficient, reliable, and trustworthy (App. Ex. F, Letter, undated). A supervisor notes that Applicant has been a model employee who seeks out challenges to enhance her job performance (App. Ex. G, Letter, dated May 4, 2009). An employer who Applicant works for part time notes that she is a person of integrity and honesty. Applicant handles business arrangement and funds for the business. She is dedicated to the safeguarding of funds and is a good young business woman (App. Ex. H, Letter, undated). Applicant's supervisor notes that she has known Applicant since she joined their company. Applicant has shared with her and fellow employees what she learned about debt management and paying off debt. She is always willing to share her knowledge with fellow employees. Applicant is an outstanding professional and an asset to the team (App. Ex. I, Letter, dated June 9, 2009).

### **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." 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 public trust 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 sensitive 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 credit cards and student loans, as established by credit reports 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). Applicant has paid nine of the fourteen delinquent debts listed. However, five delinquent debts, four credit cards and one student loan, are over four years old indicating a history of not meeting financial obligations as well as an inability or unwillingness to satisfy debts.

I considered financial considerations mitigating conditions (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), and 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). While the debts were incurred some time ago, some have only recently been paid and other debts are still unpaid so they are considered current. The debts accumulated while Applicant was a student with health problems with a young baby. Some of these events are beyond her control but they are still normal happenings in life. The circumstances can recur. She is now acting responsibly in seeking financial counseling, following professional advice, and developing and executing a plan to pay her delinquent debts. These mitigating conditions partially apply.

I have considered FC MC ¶ 20(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). Applicant sought and received assistance from a bank official on budgeting and developed a plan to pay her delinquent debts. She followed that plan and sought follow-up advice from the bank official. Applicant's financial problems are being resolved.

I considered FC MC ¶ 20(d) (the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts). For FC MC ¶ 20(d) to apply, there must be an "ability" to repay the debts, the "desire" to repay, and "evidence" of a good-faith effort to repay. A systematic method of handling debts is needed. Applicant must establish a "meaningful track record" of debt payment. A "meaningful track record" of debt payment can be established by evidence of actual debt payments or reduction of debt through payment of debts. An applicant is not required to establish that she paid off each and every debt listed. 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. 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. All that is required is that Applicant demonstrates she has established a plan to resolve her financial problems and taken significant actions to implement that plan.

Applicant developed with her financial counselor a plan to pay her delinquent debts in turn. She has a systematic method of handling her delinquent debts. She presented sufficient credible information to establish she followed her plan and paid in full nine of the fourteen delinquent debts listed in the SOR. Appellant has the ability to pay her remaining five delinquent debts in accordance with her plan. She is saving funds each month to accumulate a sufficient amount to either pay the next debt on her plan or enter a payment plan with the creditor. She established a meaningful track record of debt payment by showing actual payment of debts. Her plan is reasonable and permits her to accumulate funds to pay the debts in turn. She is executing the plan. She established her good faith effort to satisfy her outstanding debts and mitigate security concerns for financial considerations. Her finances do not indicate a security concern.

### **Whole Person Concept**

Under the whole person concept, an 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. Applicant established a meaningful track record of debt payment. She paid nine of the fourteen debts in the SOR and has a credible plan to pay the remaining five. She demonstrated she is responsibly managing her finances under the circumstances. Her management of finances indicates she will be concerned, responsible, and not careless concerning sensitive information. Overall, the record evidence leaves me with no questions or

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 his 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
Subparagraphs 1.a - 1.n:	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