



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



In the matter of: )  
)  
) ADP Case No. 08-09242  
)  
)  
Applicant for Public Trust Position )

**Appearances**

For Government: Ray T. Blank, Jr., Esquire, Department Counsel  
For Applicant: *Pro Se*

January 15, 2010

**Decision**

CREAN, THOMAS M., Administrative Judge:

Applicant submitted a Questionnaire for Public Trust Position (SF 85P), on June 4, 2007. On June 3, 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 June 15, 2009.

Applicant answered the SOR in writing in an undated response received at DOHA on July 27, 2009. She admitted three and denied 38 allegations under Guideline F. She requested a hearing before an administrative judge. Department Counsel was prepared to proceed on August 25, 2009, and the case was assigned to me on September 4, 2009. DOHA issued a Notice of Hearing on October 8, 2009, for a hearing on October 21, 2009. Applicant signed for the Notice of Hearing on October 20, 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 called one witness, and testified on her own behalf. The record was held open for Applicant to submit additional documents. Applicant timely submitted six additional documents marked and received as App Ex J through O. Department Counsel had no objection to admission of the additional Applicant exhibits (Gov. Ex. 6, E-Mail, dated December 3, 2009). DOHA received the transcript (Tr.) of the hearing on November 5, 2009. Based on a review of the case file, pleadings, exhibits, and testimony, eligibility for access to sensitive information is denied.

### **Procedural Issues**

Applicant signed for the Notice of Hearing on October 20, 2009. Applicant is entitled to 15 days advance notice of the hearing (Directive E3.1.8). Applicant discussed with Department Counsel the hearing date of October 21, 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 one day prior to the hearing. At the hearing, Applicant waived the 15 days notice requirement (Tr. 5-7).

### **Findings of Fact**

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact. Applicant admitted three and denied 38 of the forty-one allegations in response to the SOR. She admitted more of the debts at the hearing but disputed the amount of the debts.

Applicant is 39 years old, and has been a claims associate, trainer or provider relations representative for a defense contractor for over 17 years. She married in 1997, but has been divorced since March 2008. She has three children, two still at home. She also received her bachelor's degree in 2008. She has been cleared for access to sensitive information in the past. Her monthly income is approximately \$2,785. Her monthly expenses were \$2,785. In October 2009, she paid off her automobile loan which provided her with \$239.89 in disposable income which she will allocate to debt payments (Tr. 21-25, 77-87, Gov. Ex. 1, Questionnaire for Public Trust Position, dated June 4, 2007; App. Ex. D, Resume, undated; App. Ex. I, Leave and Earnings statement, dated July 17, 2009; App. Ex. N, Cash flow summary, undated).

Credit reports (Gov. Ex. 4, dated July 4, 2007; Gov. Ex. 5, dated September 8, 2008; and Gov. Ex. 6, Credit report, dated March 3, 2009) listed 40 delinquent debts totaling approximately \$29,931 for Applicant. The debts include 37 collection accounts, consisting of 24 medical accounts, two apartment rental accounts, two utility accounts, one department store account, three delinquent credit card accounts, one furniture store account, four telephone accounts; one automobile repossession debt, a past due student loan, and an account charged off as a bad debt. There is also an allegation for uttering a worthless check (SOR 1.00).

Applicant's husband was a drug abuser. Applicant's finances deteriorated because she provided him with funds with the intent to save the marriage. She started having financial problems in 2006, and she is still dealing with the financial fallout. In addition, her oldest daughter has mental health medical issues resulting in medical debts (Tr. 22-23; 77-87).

During her marriage and after her divorce, Applicant did not have the funds to make payments on her debts. When she received bills, she ignored them because they did not look right or she did not understand them. She realized the extent of her financial problems when she received the SOR in June 2009. She retrieved her credit reports and learned of the extent of her indebtedness. She also discovered that she did not have any information on many of her debts. She consulted a financial counselor who started assisting her with her financial issues by providing her a means to verify her debts. She counseled her to pay her car loan to free funds for further debt reduction. Applicant's plan is to pay her smallest debt first before moving to resolve her bigger debts. She is scheduled to continue financial counseling (Tr. 23-24 66-67, 87-88; App. Ex. A, Letter, dated October 20, 2009; App. Ex. E, Course sign-up, dated October 20, 2009; App. Ex. J, Letter, dated November 2, 2009). Applicant provided a summary of some of her actions to contact creditors and resolve her debts (App. Ex. K, Credit management ledger, dated November 5, 2009).

Applicant acknowledged most of the debts, but disputes the amount owed on a majority of the debts. She wrote to some of the medical creditors, and sent similar dispute letters to the three credit reporting agencies (Tr. 49-50; App. Ex. C, Letter, dated July 20, 2009, App. Ex F, G, and H, Letters, dated June 15, 2009). She received a reply from two of the credit reporting agencies and some of the debts have been deleted from her credit reports. No reasons for the deletions were provided by the credit reporting agencies (App. Ex. B, Letter, dated August 19, 2009; App. Ex. O, Letter dated September 1, 2009).

The delinquent debt at SOR 1.a for \$1,576 is for past due rent for an apartment Applicant vacated before the lease terms expired. The company charged her for two months rent after she vacated the apartment. Applicant did not dispute the debt but disputed the amount. She claims she had an agreement with the property manager that she owed only one month rent of \$775 plus a \$200 damage fee for a total of \$975. The dispute has not been resolved and Applicant has not paid any of the delinquent debt (Tr. 32-39).

The delinquent debts for \$261 (SOR 1.b), \$282 (SOR 1.c), \$198 (SOR 1.d), \$66 (SOR 1.f), \$113 (SOR 1.i), \$806 (SOR 1.j), \$307 (SOR 1.k), \$308 (SOR 1.l), \$1,579 (SOR 1.m), \$97 (SOR 1.n), \$277 (SOR 1.o), \$945 (SOR 1.p), \$166 (SOR 1.q), \$88 (SOR 1.r), \$43 (SOR 1.w), \$5,454 (SOR 1.z), \$1,577 (SOR 1.aa), \$1,163 (SOR 1.bb), \$813 (SOR 1.dd), \$316 (SOR 1.gg), \$265 (SOR 1.hh), \$100 (SOR 1.jj), \$99 (SOR 1.kk), \$91 (SOR 1.ll), and \$75 (SOR 1.mm) are medical debts from co-payments or other charges for either Applicant or her daughter. Applicant had primary care health insurance coverage so she did not understand the medical charges. She thinks her out-of-pocket charges should be minimal (Tr. 44-45). She requested validation of the debts

from some of the medical debt collection agencies (Tr. 49-50). App. Ex. F, G, and H, Letters, dated June 15, 2009). She received one response with an account of the charges, noting that she had 14 accounts with a balance of \$2,782, and offering a payment plan of \$50 per month (App. Ex. L, Letter, dated October 29, 2009). She has not taken any action on this settlement offer. She also requested validation of the medical debts from the credit reporting agencies (App. Ex. C, Letter, dated July 20, 2009). She received a response from one of the credit reporting agencies. Some of the medical debts were verified and others were deleted from her credit report. Applicant was unable to match the deleted accounts with any SOR allegations. Applicant has not made payments on any of the medical debts still outstanding (Tr. 50-56; App. Ex. B, Letter, dated August 19, 2009).

The delinquent debt at SOR 1.e is for the rent on an apartment from which Applicant was evicted. She disputed the amount of the debt but not the debt itself. One of the credit reporting agencies deleted the debt from her report without providing any reason for the deletion (Tr. 42-44, App. Ex. C, Letter dated July 20, 2009; App. Ex. B, Credit reporting agency letter, dated August 19, 2009).

The delinquent debt alleged at SOR 1.g is for a utility debt of \$237 Applicant incurred at one of her apartments. Applicant does not dispute the debt itself but does dispute the amount of the debt. She does not believe the debt should be for more than \$200. She requested that the amount be verified but she has not received a response. She has not made payments on this debt and has no plan as to how she will pay the debt (Tr. 46-49).

The delinquent debts at SOR 1.h for \$525, SOR 1.t for \$234, SOR 1.cc for \$1,003, SOR 1.ee for \$738, and SOR 1.ii for \$234 are to various telephone providers for cell phone bills. The debts at SOR 1.t, 1.ee and 1.ii appear to be the same debt. The creditor has closed this account based on Applicant's dispute (App. Ex. M, Letter, dated August 29, 2009). Applicant does not dispute the remaining telephone service debts but disputes the amount of each of the debts. She requested verification of the debt but has not received a reply. She has not made any payments on the debts (Tr. 50-51, 58-62).

The delinquent debt at SOR 1.s for \$348 is to a department store. The delinquent debt at SOR 1.v is for a charged off amount of \$445 on a credit card. The delinquent debt at SOR 1.x for \$903 is for a credit card Applicant used to rent cars after her car was repossessed. Applicant does not dispute these debts but disputes the amount owed on each of the debts. She asked for verification of the debts but has not received a reply. She has not made any payments on the debts. In addition, Applicant will not make any payments on the debt at SOR 1.x until she pays off other smaller debts. The delinquent debt at SOR 1.ff for \$369 is for furniture. Applicant believes she paid the debt in full but does not have a receipt. She requested verification of the debt but has not received a reply (Tr. 59-50, 64-67).

The delinquent debt at SOR 1.u is for a past due amount of \$890 on Applicant's student loans. The student loans are now in deferment and there is no past due amount owed on the loans (Tr. 63-64).

The delinquent debt at SOR 1.y for \$158 is for a utility bill. The debt was paid when incurred and is not a delinquent debt (Tr. 66, See. Response to SOR).

The delinquent debt at SOR 1.nn for \$5,601 is the remainder debt owed on car repossession. Applicant contacted the creditor but they would not settle the debt. The creditor requests a lump sum payment. Applicant is unable to make such a payment. Applicant has not made any arrangements to pay this debt (Tr. 67-68).

Applicant was charged twice with issuing a fraudulent check. One was to a grocery store, and the other to a department store. Applicant redeemed both checks by paying cash immediately after being notified by the stores that the checks had not cleared the bank. The grocery store dropped the charge. The department store continued to pursue the charge even after redemption of the check. This charge led to the financial concern for fraudulent check listed at SOR 1.oo (Tr. 24-25, 89-91)

### **Policies**

Positions designated as ADP I and ADP II are classified as “sensitive positions.” 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.” Trustworthiness adjudications will apply to cases forwarded to DOHA by the Defense Security Service and Office of Personnel Management (See, The Deputy Under Secretary of Defense (Counterintelligence and Security) Memorandum, dated November 19, 2004. 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 or a sensitive 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. 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 (AG ¶ 2(c)).

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, an 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, 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 approximately forty delinquent debts consisting of medical bills, credit cards, utility and telephone service, and a car repossession that have been delinquent for some time indicating a history of not meeting financial obligations, as well as an inability or unwillingness to satisfy her 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 separation) and the individual acted responsibly under the circumstances). These mitigating conditions do not apply. The debts became delinquent as early as 2001, are still unpaid, and are thus current debt. Applicant incurred the debts because she did not properly manage her finances and provided her drug abusing husband with funds rather than pay her bills. She ignored the medical debts for herself and her daughter. While there is sufficient information to show that Applicant's husband was a drain on Applicant's finances because of his drug use, Applicant has not established that this condition was beyond her control. She admits that it was a mistake to provide him funds in hopes of salvaging their marriage. Applicant made a choice, and the circumstances were not out of her control. Her husband's drug use was beyond her control but her decision to provide him with the family funds, slipping them further into debt, was within her control. When the debts mounted, she basically ignored them and thus did not act responsibly. There is a strong indication her financial problems are likely to recur because she has only minimal funds to meet her present financial obligations and pay past-due debts. The debts cast doubt on her reliability, trustworthiness, and good judgment.

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). This mitigating condition partially applies. Applicant received financial counseling starting in July 2009 after she received the SOR. She has continued to attend financial counseling. However, her financial problems are not under control.

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. 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. Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination. A reasonable plan and concomitant conduct may provide for the payment of such debts one at a time. All that is required is that an applicant demonstrate that she has established a plan to resolve her financial problems and has taken significant actions to implement that plan.

Applicant has not paid and is not making payments on her past due financial obligations. She contacted creditors to verify her debts. Creditors have verified some of the debts, but Applicant has not yet entered payment plans or made any payments. She is still waiting for additional verification. She acknowledges most of the debts only disputing the amount. She knows she owes creditors some amount of money. Knowing

that she owes creditors has not prompted her to seek or agree to payment plans with the creditors. Applicant's lack of action paying her debts is significant and credible information to show that she has not acted reasonably under the circumstances.

I considered FC MC ¶ 20(e) (the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provided documented proof to substantiate the basis of the dispute or provides evidence of action to resolve the issue). This mitigating condition does not apply. Applicant does not dispute she owes the debts. She does dispute the amount owed for the majority of the delinquent debts. The difference in the amounts, however, is not sufficiently significant to affect resolving the issues.

Applicant has not acted responsibly towards her debts and finances under the circumstances. Applicant has not presented sufficient information to mitigate security concerns for financial considerations because she did not establish that the reasons for her debts were beyond her control and that she took reasonable and responsible efforts to manage her finances. Her finances indicate a public trust 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. I considered her husband's drug abuse was one of the causes of Applicant's financial problems. I also considered that her daughter's medical issues were the basis for some of the medical debts. I considered that she has not paid her debts, but may now be in a position to start to make payments on some of her past obligations.

Applicant has not established a meaningful track record of paying her delinquent debts. She has not made payments on her delinquent debts. She disputes the amount



of the debts but not the debts themselves. She only recently has funds available to make debt payments. At this time, she has not had the opportunity to establish a meaningful track record of debt payments. She has not established that she acted reasonably and responsibly towards her finances which indicates she may not act reasonably and responsibly to protect sensitive information. In the future, if Applicant is able to establish such a meaningful track record of debt payment and reduction, she should be afforded the opportunity to establish eligibility for a position of public trust. The management of her finances indicates she may not be concerned and responsible when protecting sensitive information. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a public trust position. For all these reasons, I conclude Applicant has not 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:	AGAINST APPLICANT
Subparagraphs 1.a - 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraphs 1.f - 1.s	Against Applicant
Subparagraph 1.t:	For Applicant
Subparagraph 1.u:	For Applicant
Subparagraph 1.v:	Against Applicant
Subparagraph 1.w	Against Applicant
Subparagraph 1.x:	Against Applicant
Subparagraph 1.y:	For Applicant
Subparagraphs 1.z - 1.dd	Against Applicant
Subparagraph 1.ee:	For Applicant
Subparagraph 1.ff - 1.hh:	Against Applicant
Subparagraph 1.ii:	For Applicant
Subparagraph 1.jj - 1.nn:	Against Applicant
Subparagraph 1.oo:	For Applicant

### **Conclusion**

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

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THOMAS M. CREAN  
Administrative Judge