



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



In the matter of: )  
)  
) ADP Case No. 08-11140  
)  
)  
Applicant for Public Trust Position )

**Appearances**

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

October 20, 2009

**Decision**

CREAN, THOMAS M., Administrative Judge:

Applicant submitted a Questionnaire for Public Trust Position (SF 85P), on June 6, 2008. The Defense Office of Hearings and Appeals (DOHA) issued Applicant an undated Statement of Reasons (SOR) detailing trustworthiness concerns for financial considerations under Guideline F. The SOR was mailed to Applicant on June 4, 2009, and it is assumed this is the date of the SOR. 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 10, 2009.

Applicant answered the SOR in writing on June 26, 2009. She admitted three allegations under Guideline F, but did not respond to the fourth allegation. Since Applicant did not respond to the allegation, it is considered a denial of the allegation. She requested a hearing before an administrative judge. Department Counsel was prepared to proceed on July 17, 2009, and the case was assigned to me on July 24,

2009. DOHA issued a Notice of Hearing on August 13, 2009, for a hearing on August 31, 2009. Applicant signed for the Notice of Hearing on August 19, 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 nineteen exhibits, marked Applicant Exhibits (App. Ex.) A through S, which were received without objection. Applicant testified on her own behalf. The record was held open for Applicant to submit additional documents. Applicant did not submit additional documents. DOHA received the transcript (Tr.) of the hearing on September 8, 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 August 19, 2009. Applicant is entitled to 15 days notice of hearing (Directive E3.1.8). Applicant discussed with Department Counsel the hearing date of August 31, 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 13 days prior to the hearing. If there was an issue on notice, Applicant waived the 15 days notice requirement (Tr. 6-8).

### **Findings of Fact**

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact. Applicant admitted three of the four allegations in response to the SOR, but admitted all of the debts at the hearing.

Applicant is a 30-year-old high school graduate who has been a benefits examiner for a defense contractor for over two years. She is a single mother raising a 12-year-old son. She has also completed some courses at a technical school. (Tr. 14-18, Gov. Ex. 1, Questionnaire for Public Trust Position, dated June 6, 2008).

Credit reports (Gov. Ex. 4, dated June 24, 2008, and Gov. Ex. 5, dated March 7, 2009) listed for Applicant a delinquent debt of \$2,295 in collection for a department store (SOR 1.a); a delinquent credit card debt in collection for \$10,920 (SOR 1.b); another delinquent credit card debt in collection for \$4,396 (SOR 1.c); and a delinquent credit card in collection for \$5,435 (SOR 1.d). The total debt for the four credit cards is \$23,045.

Applicant gave birth to her child in July 1997, when she was 18 years old shortly after graduating from high school. Applicant had been accepted at a technical school so she started classes at the technical school in September 1997. She worked full-time at night to earn about \$1,100 monthly income for herself and her child. Since she was a single mother, she lived with her parents who assisted with the care of the child but charged her rent of half of her pay. She also had to purchase food and supplies for herself and the child. Her mother kept the child for about a year before the child went to a day care center. She then had to pay for the day care expenses. The child's father had agreed to pay child support. However, the child's father never paid child support,

and he is in arrears over \$29,000 (Tr. 71-77; App. Ex. P, Account summary, dated August 28, 2009).

Applicant had to change jobs in January 1998, but she was not working full-time so her pay was reduced. She was unable to work and attend school so she stopped her schooling at that time. She also purchased a car for transportation for her job. At that time, she was also interviewed and featured in the local newspaper concerning how a young single mother had to manage. Applicant was not making enough revenue to support herself and the child, so she started using credit cards (Tr. 77-80).

Applicant used her credit cards to provide for the support of her child and herself. She thought the child's father would pay the required child support and she would be able to pay off the credit card debts. Applicant continued working, in fact working two jobs. She was able to make some payments on the credit card debts until she was laid off from both jobs in April 2003. She was unemployed for over two years until October 2005. During this time, she drew unemployment for six months and also assisted her parents in their business for minimal pay. She started working for her current employer, a defense contractor, in October 2005 (Tr. 14-17, 80-85).

In 2008, Applicant went to a local government agency for debt counseling (App. Ex. A, Counseling documents, undated). They recommended that she apply for a local government program to subsidize the purchase or building of a house. She received counseling from the government agency to assist her in paying her debts. They advised her to pay off her smallest debts first and then move to the largest debts. Her goal was to improve her credit score to qualify for the housing program. Just prior to the hearing, Applicant was notified that she was approved for the program because she had followed an action plan to pay off some of her credit card debts (Tr. 17-20; App. Ex. B, Housing documents, undated).

Applicant is currently paid \$9.86 an hour. Her monthly net salary is approximately \$1,243. Her monthly expenses are approximately \$1,150. Applicant recently had an operation on her knee after she fell. While her health insurance paid most of her medical expenses, she was required to pay \$500 prior to the operation and her post-operation co-payments were \$3,120. She pays \$50 monthly towards this debt and has reduced the debt to \$2,700. After these expenses, her monthly discretionary funds are about \$50 (Tr. 25-27, 45-47, 85-92; App Ex. C, D, E, F, and G, Medical bills, various dates; App. Ex. L, Bill schedule, undated).

Applicant acknowledged she has not made required payments on the credit card delinquent accounts. She has not made payments on the credit card listed in SOR allegation 1.a since 2003. She believes the debt owed is only \$1,961.92, as listed on the credit card company documents, and not the \$2,295 listed in the SOR (Tr. 33-45; App. Ex. H, I, J, and K, Credit card statements, dated December 13, 2003, and August 29, 2008).

Applicant's last payment on the debt listed at SOR allegation 1.b was in November 2003. However, Applicant maintained contact with the creditor. The debt is

listed on the SOR for \$11,394, but Applicant believes the true debt, based on the account statements received from the creditor is \$9,855. She has been offered settlement agreements for lump sum payments over the years. The latest offer was for a lump sum payment settlement of \$6,836.81. She does not have the funds to pay the settlement (Tr. 45-55; App. Ex. M, Credit card statement, dated February 12, 2009).

Applicant believes based on an analysis of the credit card statements that the amount owed on the delinquent credit card debt listed at SOR allegation 1.c is for \$3,952, rather than the \$4,396 listed in the SOR. She also believes the amount owed on the credit card debt listed at SOR allegation 1.d is accurately reported on the SOR as \$5,435. She has not made payments on these debts since 2003. In addition, Applicant paid in full debts for a telephone account, a credit card, and a cable bill ((Tr. 55-67, App. Ex. N, Credit statements, dated April 6, 2008; App. Ex. O, Credit report, dated May 27, 2009).

Applicant presented letters from friends and co-workers attesting to her trustworthiness, honesty, and sense of responsibility (App. Ex. P, Letters, various dates). Her father wrote that Applicant showed a high level of integrity and moral value in managing her debts for herself and her son (App. Ex. Q, Letter, dated August 29, 2009). Applicant presented course completion certificates and awards from her employer. Her performance has been excellent and she is listed as one of the company's most productive employees (App. Ex. R, Certificates and performance reviews, various dates). She has also been approved to return to technical school to finish her education (App. Ex. S, Letter, dated August 8, 2008).

## **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, 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 credit card 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 four credit card debts that have been delinquent for over six years 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 separations) and the individual acted responsibly under the circumstances). The debts became delinquent in 2003, are still unpaid, and are thus current debt. Applicant incurred the debts because she used credit cards to purchase items for her and her son. She worked two jobs but still did not make sufficient funds to meet her and her son's needs. Her son's father was to pay child support but he has not done so. The credit card debts became delinquent when Applicant was laid off and could no longer maintain payments on the debts. The circumstances of how the debts were accumulated and her loss of employment were beyond her control. She had emergency surgery for an injury, but is making payments on those medical debts. She has not accumulated additional delinquent debt. In fact, she paid off a number of other debts. She sought financial counseling and qualified for a local government program to enable her to buy a house. The circumstances of the delinquent debts being beyond her control and her actions to manage and pay her current debts show she acted responsibly and reasonably. Applicant's action in paying her current debts is a strong indication that delinquent debt is not likely to recur. The debts do not now 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). Applicant received financial counseling when she discussed with a professional financial counseling service an approach to resolving her financial issues. She also received financial counseling from a local government housing authority to assist her in qualifying for house purchase. Her financial problems are 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 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. Available, reliable information about the person, 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. 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 has paid her current obligations, and is making payments on her medical debts that she recently incurred. She has not been able to make payments on the four credit card debts listed in the SOR. The debts were incurred to purchase items for her and her son. The boy's father was to pay child support but did not. The amount of the credit card debts was approximately \$23,000, and the amount owed in child support is over \$29,000. It is reasonable to conclude that Applicant would not have used the credit cards to purchase items if the child support payments had been made. Applicant's actions in working two jobs at a time to earn money to support her and her son, attending school to prepare herself for better employment, seeking housing support from a government agency, and paying her current debts is significant and credible information to show that she 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). Applicant does not dispute that she owes the four credit card debts. She does dispute the amount owed for three of the debts. She presented sufficient information to show a reasonable basis to dispute the amount of the debts. The difference in the amounts, however, is not sufficiently significant to affect resolving the issues.

Applicant acted responsibly towards her debts and finances under the circumstances. Applicant presented sufficient information to mitigate security concerns for financial considerations by establishing that the reasons for her debts were beyond her control and that she took reasonable and responsible efforts to manage her finances. Her finances do not 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 Applicant's efforts to make a better life for her and her son, her work ethic in working two jobs at a time to support her and her son, and that she is highly regarded by her employer and is considered honest, trustworthy, and reliable by friends, associates, and co-workers. Applicant incurred delinquent debt using credit cards to purchase items needed by her and her infant son. She was only 18 years old at the time and just finishing high school. The child's father did not pay his required child support. The child support arrears are more than the amount of the delinquent credit cards.

Applicant established a meaningful track record of debt payment of her current debts. She has or is paying all of her present debts except for the four listed in the SOR. She established that she acted reasonably and responsibly towards her finances indicating she will act reasonably and responsibly to protect sensitive information. 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 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 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



## **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