



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



In the matter of: )  
)  
) ADP Case No. 09-00400  
)  
)  
Applicant for Public Trust Position )

**Appearances**

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

December 21, 2010

**Decision**

ANTHONY, Joan Caton, Administrative Judge:

I have carefully reviewed the administrative file, pleadings, and exhibits in this case and conclude that Applicant failed to mitigate security concerns under the Financial Considerations adjudicative guideline. Eligibility for access to sensitive information is denied.

Applicant submitted a Public Trust Position Application (SF 85P) on May 20, 2008. On April 9, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) alleging trustworthiness concerns under Guideline F. DOHA acted 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 adjudicative guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

On June 15, 2010, Applicant answered the SOR in writing. She requested that her case be determined on the record in lieu of a hearing. The Government compiled its

File of Relevant Material (FORM) on September 9, 2010. The FORM contained documents identified as Items 1 through 10. By letter dated September 10, 2010, a copy of the Form was forwarded to Applicant, with instructions to submit any additional information and/or objections within 30 days of receipt. Applicant received the file on September 26, 2010. Her response to the FORM was due on October 26, 2010. She did not file any additional information or objections within the required time period. The case was assigned to me for a decision on December 8, 2010.

### Findings of Fact

The SOR is comprised of 19 allegations that raise trustworthiness concerns under AG F, Financial Considerations. Eighteen allegations raised financial delinquency concerns totaling \$34,443, and one allegation recited that Applicant, who petitioned for bankruptcy in October 2005, received a discharge in Chapter 7 bankruptcy in February 2006. (Item 1.)

In her Answer to the SOR, Applicant admitted her 2006 discharge in bankruptcy (SOR ¶ 1.a.) and eight financial delinquencies totaling \$30,449 (SOR ¶¶ 1.c., 1.f., 1.h., 1.j., 1.k., 1.m., 1.p., and 1.s.); she denied five debts (SOR ¶¶ 1.e., 1.i., 1.n., 1.q., and 1.r.). She gave qualified admissions to five allegations, which the Government considered to be *de facto* denials (SOR ¶¶ 1.b., 1.d., 1.g., 1.l., and 1.o.). Applicant's admissions are entered as findings of fact. (Item 4 at 4-6.)

Applicant is 40 years old, never married, and the parent of two children, a daughter who is approximately 17 years old, and a son who is approximately eleven years old.<sup>1</sup> She is a high school graduate and completed one year of junior college study. She recently joined a National Guard unit. (Item 4 at 4; Item 5; Item 7.)

The record reflects that Applicant was unemployed for two months in 2008 before assuming her current job. She was also unemployed for three months in 2007. Since May 2008, she has been employed in customer service by a Government contractor. She seeks a trustworthiness determination for the first time. (Item 5.)

Applicant has a history of financial delinquencies. The SOR alleges that Applicant's delinquent debts were discharged in Chapter 7 bankruptcy in 2006 (SOR ¶ 1.a.). When she filed for bankruptcy in 2005, Applicant reported total assets of \$1,367 and total liabilities of \$195,378. In a November 2008 interview with an authorized investigator from the U.S. Office of Personnel Management (OPM), she reported that she was living "paycheck to paycheck," but staying current with her bills. Her credit bureau report of May 2008 revealed that Applicant owed an automobile creditor approximately \$16,514 resulting from an automobile repossession. In April 2009, in response to DOHA interrogatories, Applicant acknowledged the debt and stated: "I am negotiating payment amount. I do not owe this much. Waiting for itemized list of charges. Company is not cooperating with me." The delinquent debt, which grew to \$19,579 and which also appears on Applicant's credit reports of March 2010 and

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<sup>1</sup> Applicant's Schedule I on her 2005 bankruptcy petition lists her children's ages as 12 and six, as of November 9, 2005. She did not list her children on her SF-85P. (Item 5 at 5; Item 7 at 42.)

September 2010, is alleged at SOR ¶ 1.k. In her answer to the SOR, Applicant admitted that the debt had not been satisfied. Additionally, Applicant asserted that she was paying the creditor \$580 a month by payroll allotment. However, she failed to provide documentation to corroborate her assertion. (Item 4 at 5; Item 6 at 25; Item 7 at 16; Item 8 at 1; Item 9 at 1; Item 10.)

In her answer to the SOR, Applicant admitted a delinquent debt of \$600 but failed to provide documentation corroborating payment. The record does not establish that the debt, alleged at SOR ¶ 1.c., has been satisfied. (Item 4 at 4.)

Applicant admitted a \$393 debt in collection status (SOR ¶ 1.f.) and a \$8,997 charged-off debt (SOR ¶ 1.s.). She stated she was “working on paying” the debt alleged at SOR ¶ 1.f. and was paying \$100 monthly on the debt alleged at SOR ¶ 1.s. However, she failed to provide documentation to corroborate her claims of payment. (Item 4 at 4-6.)

Applicant admitted the debts alleged at SOR ¶¶ 1.h., 1.j., and 1.p. She stated that she would pay those debts in the future. She also admitted the delinquent debt alleged at SOR ¶ 1.m. and stated she “need[ed] to do some research to find out how to pay this debt off.”<sup>2</sup> (Item 4 at 5-6.)

Applicant admitted the debts alleged at SOR ¶¶ 1.b., 1.g., 1.l., and 1.o. She stated further that the debts were hers but had been paid. Applicant’s admissions were treated as de facto denials. However, Applicant failed to provide documentation corroborating her assertions that the debts had been paid. (Item 4 at 4-5.)

Applicant admitted the debt alleged at SOR ¶ 1.d. She asserted that the debt had been discharged in her 2006 Chapter 7 bankruptcy. I also treated this admission as a de facto denial. The record includes the Schedule F (Creditors Holding Unsecured Nonpriority Claims) that Applicant filed in her bankruptcy case. The debt listed in SOR allegation 1.d. does not appear on Applicant’s Schedule F or on other bankruptcy schedules listing debts owed to other classes of creditors.<sup>3</sup> However, the debt listed in SOR ¶ 1.d. appears on Applicant’s credit report of May 30, 2008. The credit report shows the debt arose in 2007, after Applicant’s debts were discharged in the 2006 bankruptcy. (Item 4 at 4; Item 7; Item 10 at 10.)

Applicant denied the debts at SOR ¶¶ 1.e., 1.i., 1.n., 1.q., and 1.r. In her personal subject interview in November 2008, Applicant stated she did not recognize the \$60 debt alleged at SOR ¶ 1.i. but would contact the creditor and pay the debt if she owed it. The debts alleged at SOR ¶¶ 1.e. and 1.i. appear on Applicant’s credit report of May 30, 2008. The debts alleged at SOR ¶¶ 1.n. and 1.q. are listed on Applicant’s credit reports of March 12, 2010, and September 9, 2010. The delinquent debt alleged

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<sup>2</sup> The debt alleged at SOR ¶ 1.h. is for \$72. The debt alleged at SOR ¶ 1.j. is for \$60. The debt alleged at SOR ¶ 1.m. is for \$40.

<sup>3</sup> See Item 7, Schedules D and E, at 23-27.

at SOR ¶ 1.r. is listed on Applicant's credit report of March 12, 2010. (Item 4 at 4-6; Item 6 at 24; Item 8; Item 9; Item 10.)

In response to DOHA interrogatories and an inquiry by the OPM investigator, Applicant provided personal financial information. Her net monthly income includes her take-home pay of \$1,743 and \$200 in child support, for a total of \$1,943.<sup>4</sup> Her fixed monthly living expenses total approximately \$1,761 and are as follows: rent: \$600; groceries: \$200-\$250; utilities: \$150; cell phone: \$140; gasoline: \$160; auto loan: \$386; and auto insurance: \$100. Additionally, she reported that she paid \$300 each month on two debts.<sup>5</sup> Applicant's financial information indicates that her monthly expenses exceed her regular monthly income by approximately \$124. (Item 6 at 10, 24, 26.)

The record does not establish that Applicant has had financial counseling.

### **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 AGs. The guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, the administrative judge must apply the guidelines 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

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<sup>4</sup> Applicant stated that she worked overtime when the opportunity was available to her. She reported she could earn \$200 to \$400 in extra overtime income each month. (Item 6 at 25.)

<sup>5</sup> It is not clear from the record how Applicant's current finances are affected by the \$580 payroll allotment she stated in her Answer to the SOR that she was paying to satisfy the creditor identified at SOR ¶ 1.k. (Item 4 at 5.)

[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.

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 in seeking to obtain 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.

Section 7 of Executive Order (EO) 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

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

The trustworthiness concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

Failure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate 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.

The guideline notes conditions that could raise trustworthiness concerns. Under AG ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise trustworthiness concerns. While Applicant admitted allegations of financial delinquency on the SOR and claimed to have satisfied several other alleged delinquent debts, she provided no documentation to corroborate payment or to establish that the alleged

debts were not hers. Moreover, she denied several debts alleged on the SOR which were listed on her credit reports.

In ISCR Case No. 08-12184 at 7 (App. Bd. Jan.7, 2010), the Appeal Board explained:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government's obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.

(internal citation omitted.) Applicant's history of delinquent debt is documented in her credit reports, her SF 85P, her interview with the OPM investigator, and her SOR response. In 2006, Applicant's debts were discharged in a Chapter 7 bankruptcy. Since about 2007, Applicant accumulated considerable delinquent debt and was unable to pay or satisfy her financial obligations. The evidence is sufficient to raise financial considerations disqualifying conditions identified at AG ¶¶ 19(a) and 19(c).

The guideline also includes examples of conditions that could mitigate trustworthiness concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where "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 trustworthiness, or good judgment." Applicant's current financial delinquencies began in about 2007. While her financially delinquent behavior began several years ago, it continues unresolved at the present time, is likely to recur, and casts doubt on her current reliability, trustworthiness, and good judgment. Accordingly, I conclude that AG ¶20(a) does not apply to the facts of Applicant's case.

Under AG ¶ 20(b), mitigation can occur where "the conditions that resulted in the financial problem 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." Applicant's admitted financial delinquencies began in 2007 and continue to the present. While Applicant was unemployed for two months in 2008 and three months in 2007, she offered no explanation for her failure to resolve or settle her financial delinquencies during the past 2½ years when she has been steadily employed. I conclude that she failed to act responsibly in identifying and resolving her debts, some of which were for small amounts. I find that AG ¶ 20(b) applies only in part as a factor for consideration in this case.

Evidence that "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" is potentially mitigating under AG ¶ 20(c). Similarly, AG ¶ 20(d) applies where the evidence shows "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." Applicant failed to provide documentation to corroborate her

statements that she had paid or was paying delinquent debts alleged on the SOR. The record does not reflect that she has received financial counseling. Moreover, her current monthly budget shows a deficit of approximately \$124, making consistent future payments unlikely. Accordingly, I conclude that AG ¶¶ 20(c) and 20(d) do not apply to the facts of Applicant's case. AG ¶¶ 20 (e) and 20 (f) are not raised by the facts of this case.

### **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 relevant 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. In 2006, Applicant received a fresh start under the bankruptcy law to follow a financially prudent course and satisfy her debts in a timely manner. She has had a steady job with the same employer for over 2 years. Since 2007, she has accumulated over \$30,000 in new delinquent debts. She has failed to demonstrate that her financial problems will not continue to be a trustworthiness concern in the future.

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 failed to mitigate the trustworthiness concerns arising from her financial delinquencies.

## **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.s.: Against Applicant

## **Conclusion**

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

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Joan Caton Anthony  
Administrative Judge