



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



In the matter of:	)	
	)	
	)	ADP Case No. 09-06925
	)	
	)	
Applicant for Public Trust Position	)	

**Appearances**

For Government: Gregg Cervi, Esquire, Department Counsel  
For Applicant: *Pro se*

April 15, 2011

**Decision**

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HENRY, Mary E., Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, I conclude that Applicant’s eligibility for access to sensitive information is denied.

Applicant submitted her Questionnaire for Public Trust Position (SF 85P) on December 1, 2008. The Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR), detailing the trustworthiness concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) on July 8, 2010. The action was taken under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); Department of Defense Regulation 5200.2-R, *Personnel Security Program*, dated January 1987, as amended (Regulation); and the *Adjudicative Guidelines For Determining Eligibility for Access to Classified Information* (AG) implemented on September 1, 2006.

Applicant acknowledged receipt of the SOR on July 29, 2010. She answered the SOR in writing on August 18, 2010, and requested a hearing before an administrative judge. DOHA received the request and Department Counsel was prepared to proceed

on November 8, 2010. I received the case assignment on January 3, 2011. DOHA issued a notice of hearing on January 6, 2011 for a hearing on January 27, 2011, which I cancelled on January 21, 2011. DOHA issued a second notice of hearing on January 28, 2011, and I convened the hearing as scheduled on February 17, 2011. The Government offered exhibits marked as GE 1 through 11, which were received and admitted into evidence without objection. Applicant testified. She submitted exhibits marked as AE A through AE M, which were received and admitted into evidence without objection. DOHA received the transcript of the hearing (Tr.) on February 25, 2011. I held the record open until March 10, 2011, for Applicant to submit additional matters. Applicant timely submitted AE N to AE W, without objection. The record closed on March 10, 2011.

### **Procedural Ruling**

#### **Notice**

At the hearing, Applicant indicated she received the hearing notice shortly after it was issued on January 28, 2011. (Tr. at 6) Applicant agreed to proceed with the hearing. (Tr. at 7)

### **Findings of Fact**

In her Answer to the SOR, dated August 18, 2010, Applicant admitted the factual allegations in ¶¶ 1.a - 1.q, 1.s - 1.u, 1.w, 1.x, 1.aa, 1.bb, 1.dd, 1.ee, 1.gg, 1.hh, and 2.c - 2.g of the SOR. She admitted the factual allegation in 2.a and 2.b with qualifications. She denied the factual allegations in the remaining SOR allegations. She also provided additional information to support her request for eligibility for a public trust position.

Applicant, who is 38 years old, works as a warehouse specialist for a Department of Defense contractor. She began her job on December 1, 2008 as an on-call staffer. Her employer converted her to a full-time permanent position in October 2010. Her managers describe her as a reliable and dependable employee, who arrives at work everyday on time with a positive attitude. She works hard, and she has earned the trust and respect of management and her co-workers. She is willing to learn new materials and assume new tasks. Her management recommendations reflect a positive experience with her in the work place.<sup>1</sup>

At age 13, Applicant left home and began a lifestyle which involved the regular use of methamphetamines, an illegal drug. In July 1990, when she was 17 years old, her oldest son was born. In April 1991, the court directed his father to pay her \$327 a month in child support, to pay two outstanding medical bills of \$125, to maintain their son on a health insurance policy through the father's employment, and to pay one-half of any medical bills not paid by health insurance. Her son's father did not comply with the court order. Applicant filed the necessary documents with the court to enforce the support payments ordered and to collect the unpaid child support due her in 1996 and

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<sup>1</sup>GE 1; AE A - AE D; Tr. 20-21, 60.

1998, without success. Her son's father has never paid her any child support and owes her over \$70,000 in back child support.<sup>2</sup>

Applicant married her first husband in 1991 and divorced him 1994. They had a daughter, who is now 18 years old. In 1994, Applicant filed court papers, seeking a judgment establishing child support and a parental relationship, which the court granted on August 18, 1994. The court ordered her former husband to provide health insurance coverage for their daughter, as required by law, and reserved a determination of the amount of child support to be paid for a later date. Later, the court established a monthly child support payment, but the amount is unknown. In 2005, the State filed a court action to recover costs of services provided to Applicant's daughter, and its request was granted in an order dated October 2, 2006. In 2007, Child Support Services notified Applicant that it could not reopen her case against her former husband and the father of her oldest daughter because it could not locate him. Her first husband did not comply with the court order on child support and health insurance.<sup>3</sup>

In 1995, Applicant gave birth to a second daughter and in 1996 she gave birth to a second son. Shortly after her younger daughter's birth, a serious stomach problem developed. Her daughter had surgery as a baby to correct the problem and required yearly medical examinations to monitor her health. Applicant believed that the State medicaid system paid the medical bills for her younger daughter's care. In 1999, the County Family Services division filed the necessary court papers for payment of child support by the father of Applicant's younger children. In September 1999, the court ordered the children's father to pay \$808 a month in child support, to pay \$75 a month towards his child support arrearage of \$18,261, and to provide health insurance coverage for both children. The children's father provided information on health insurance coverage to the court. Applicant has received child support for these children. Currently, her younger daughter lives with her and her younger son lives with his father. With this arrangement, she does not receive child support.<sup>4</sup>

In September 1997, Applicant and her then boyfriend walked into a local store to purchase goods. He selected an item to buy her for her birthday. When they reached the cashier, he presented the cashier with a credit card. The store authorization system denied the card because it had been stolen, which Applicant did not know. Her boyfriend fled the store when security came. She remained until the police came. The police charged her with forgery and receiving stolen property because the present she was to receive was considered stolen. She pled guilty to receiving stolen property, and the court sentenced her to time served, which was 11 days.<sup>5</sup>

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<sup>2</sup>GE 3; AE W; Tr. 17, 67.

<sup>3</sup>AE U; Tr. 66.

<sup>4</sup>AE V; Tr. 24-25.

<sup>5</sup>GE 3; GE 4; Tr. 40-43.

In November 1997, Applicant agreed to watch a neighbor's children for a few hours one day. After watching her neighbor's children for nearly a week, she decided to retrieve her VCR from her neighbor's home for all the children to watch movies. She had her son go through a window in the neighbor's house and retrieve the VCR. When the neighbor came home, the neighbor discovered the VCR missing and called the police. After investigating the loss, the police charged Applicant with burglary. When she appeared in court, the court dismissed the burglary charge on the grounds of insufficient cause.<sup>6</sup>

In 1997 or 1998, when he was seven years old, Applicant's oldest son was hit by a drunken driver while riding his bicycle and suffered serious injuries to his leg. She did not have medical insurance. She met with the hospital social worker, who told her not to worry about the bills, and had her complete paperwork for payment of the bills. She believed the medical bills had been paid, as she never received any bills. In her view, some of the old medical bills listed in the SOR may be related to his treatment.<sup>7</sup>

In January 1999, the police arrested and charged Applicant with manufacturing a controlled substance and vehicle theft. She appeared in court and the charges were dismissed. While in court, Applicant indicated that she wanted to change her life. Two police officers heard her statement and offered to take her immediately to a rehabilitation center. She agreed.<sup>8</sup>

For the next two and one-half years, Applicant stayed at the rehabilitation center. She stopped her drug use, earned her general equivalency diploma, and received training as a cosmetologist. From this program, she learned a better way of life, how to live without drugs, and fun did not mean one must go out and party. She learned how to work and communicate with her children. She described this program as a very positive experience for her. Since 1999, she has used drugs on one occasion. She continues to meet once a month with a support group from her rehabilitation program.<sup>9</sup>

Following completion of her drug treatment program, Applicant worked as a cosmetologist from 2001 until 2003, earning \$10 an hour. The salon where she worked closed in 2003. About this time, she began dating her second husband, who owned a trucking company. She worked for the trucking company from 2003 until early 2007. She did not earn a salary at this job. Rather, the business income paid their living expenses. She began working for a national delivery service in March 2007, earning \$9 an hour. The company later hired her into a full-time position, which paid approximately \$50,000. In May 2008, the company laid her off. She next worked in a deli, earning \$9

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<sup>6</sup>GE 3; GE 4; Tr. 43-44.

<sup>7</sup>Tr. 32-33, 35, 53.

<sup>8</sup>GE 3; Tr. 44-45.

<sup>9</sup>Tr. 19, 47-49.

an hour, for four months. She was unemployed from October 2008 until December 2008, when she began her current employment.<sup>10</sup>

Applicant started dating her second husband in 2003. Before she married him in 2006, two incidents occurred. In 2003 or 2004, Applicant attempted to cash her child support check at a local checking cashing establishment. The proprietor advised her that someone was attempting to pass bad checks under her name. She provided her identification, and the employees searched her belongings. The employees found counterfeit bills in her purse, which her then boyfriend (later second husband) had placed in her purse without her knowledge and called the police. The police arrested her and charged her with false record and possession of counterfeit bills. She pled guilty to the counterfeit bills charge. She served 17 days in jail and 27 in the alternative work program. She stated that she was afraid of her boyfriend and would not turn him in to the police. Applicant has not been arrested since 2004.<sup>11</sup>

In 2005, Applicant obtained a restraining order against her boyfriend. The restraining order ended when she decided to marry this boyfriend in 2006. She separated from him in April 2007, and their divorce was finalized in October 2007.<sup>12</sup>

Applicant recalls being involved in two car accidents. She does not have any recall about the specifics of the first accident, except that she did not have car insurance. The second car accident occurred on Christmas Eve, when she rolled her minivan. She provided four possible dates: 2003, 2004, 2006, or 2007. She did not receive any money from either accident, and acknowledged that the second accident was her fault. She admitted that the 2002 judgment obtained against her stemmed from the first accident. She does not remember getting court papers in this case.<sup>13</sup>

In 2007, Applicant's oldest son sustained injuries to his other leg after being hit by a car while walking in a crosswalk. Her son was in high school and living with his father when this second accident occurred. She thought all medical bills related to this accident had been paid. Her son received a financial settlement.<sup>14</sup>

As an on-call employee in her current job, Applicant earned \$21 an hour, but did not have any benefits such as health insurance. As a full-time employee, she now earns \$18.12 an hour and receives benefits, including health, dental and optical insurance coverage. Her net monthly pay averages \$2,200 and her monthly expenses average \$3,100. Applicant supports three children and one granddaughter. Her 20-

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<sup>10</sup>GE 1; Tr. 19-21, 60-64.

<sup>11</sup>GE 3; Tr. 45-46, 47.

<sup>12</sup>Tr. 64-65.

<sup>13</sup>Tr. 28-29, 34, 50.

<sup>14</sup>*Id.* 51-53.

year-old son's employer recently laid him off. She is currently the only wage earner in the household.<sup>15</sup>

The SOR lists 34 debts from the March 21, 2009 credit report. The credit reports dated October 28, 2009 and December 31, 2009 reflect that Applicant owes 12 debts. The January 27, 2010 and the March 22, 2010 credit reports list 11 debts, and the November 8, 2010 credit report lists nine debts for Applicant. Most of the debts removed from her credit reports are old, closed accounts and relate to medical bills. In the last three years, Applicant has paid her current expenses. Applicant denied owing seven SOR debts. She verified that she paid the debt in SOR allegation 1.v in 2008 and several other past-due debts not listed in the SOR. She also verified that her education loans listed in SOR allegations 1.b and 1.d are paid, except for \$60. Applicant acknowledged that most of the debts listed in the SOR are not paid. She expressed a willingness to pay her debts, but advised that she lacked the financial resources to do so.<sup>16</sup>

When she completed her trustworthiness application on December 1, 2008, Applicant answered "no" to the questions about judgments against her and financial obligations more than 180 days delinquent. She limited her answer with the statement "not that I'm aware of." Applicant denied intentionally falsifying her answer to these questions. She did not realize the extent of her credit problems, although when she left her husband in 2007, she knew there were some unpaid bills. After leaving her husband and before she completed her SF 85P, she paid several unpaid bills from her marriage. In the past, she never thought about her bills, including her unpaid bills. In the last 10 years, she moved five times, usually without leaving a forwarding address because of domestic violence. She never thought to leave a forwarding address for bills.<sup>17</sup>

Applicant did not know about the judgments listed in SOR allegation 1.a and a \$1,374 judgment not listed in the SOR. She is aware of the \$439 judgment a friend obtained against her in 2009 after she completed her SF 85P. The friend moved, and Applicant does not know where this individual is now living. She has no understanding of how debts are bought and sold nor did she realize she could challenge her debts with the credit reporting agencies until the hearing.<sup>18</sup>

Applicant's past drug use created memory loss for her. Now that she no longer uses drugs, her memory is improving. She has not experienced memory loss in recent years. She has not received credit counseling.<sup>19</sup>

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<sup>15</sup>AE Q; Tr. 22-24.

<sup>16</sup>GE 3; GE 6-GE 11; AE O; AE R-AE T; Tr. 27-32, 36-38, 58.

<sup>17</sup>GE 1; GE 3; Tr. 40, 54-60.

<sup>18</sup>GE 3; Tr. 57-58.

<sup>19</sup>Tr. 41, 50, 53-54, 83.

## 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 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.

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.

AG ¶ 19 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and especially the following:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

For many years, Appellant lacked the resources to pay her debts. Thus, she has significant financial problems from her unpaid bills. Most of the debts have not been resolved. These two disqualifying conditions apply.

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 circumstance that it is unlikely to recur and does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment.” Many of the debts listed in the SOR became delinquent between five and nine years ago or longer. A large portion of these debts relate to medical bills for injuries from car accidents. Applicant believed these bills had been paid under medicaid, as she did not have medical insurance. She now has medical insurance, which means that her medical bills will be paid in the future. These circumstances creating her medical bills are no longer extant. I find that many of her debts occurred under unusual circumstances that are unlikely to recur, and it does not raise concerns about her current reliability, trustworthiness, or good judgment. This mitigating condition is partially applicable because not all her debts occurred under unusual circumstances and such conditions may recur because she has a negative cash flow each month.



Under AG ¶ 20(b), it may be mitigating 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 financial problems arose because she earned less than \$25,000 a year for many years, while supporting herself and four children. She did not work for short periods of time over the last 10 years nor did she receive child support from the fathers of her two oldest children. When she separated from her second husband, she paid several unpaid bills incurred when her income increased in 2008. She, however, has not resolved many of the debts listed in the SOR. I find this mitigating condition partially applicable.

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). Applicant has not sought financial counseling. She paid her education debt and one other small debt listed in the SOR. She otherwise has not resolved her past delinquent SOR debts. This mitigating condition has some applicability.

Similarly, AG ¶ 20(d) applies where the evidence shows “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” This mitigating condition is not applicable as Applicant has not contacted the creditors listed in the SOR to pay her debts or set up a payment plan.

AG ¶ 20(e) applies when “the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.” Applicant denies six debts, but she has not provided documentation showing she challenged the validity of the debts with the credit reporting agencies. Thus, this mitigating condition is not applicable.

## **Guideline E, Personal Conduct**

AG ¶ 15 expresses the security concern pertaining to personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and especially the following:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment

qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing; and,

(g) association with persons involved in criminal activity.

For AG ¶ 16(a) to apply, Applicant's omission, concealment or falsification in her answer must be deliberate. The Government established that Applicant omitted a material fact from her SF 85P when she answered "no" to Questions 22a, about judgments against her, and 22b, about debts over 180 days delinquent. This information is material to the evaluation of Applicant's trustworthiness and honesty. In her response, she denies, however, that she had an intent to hide this information from the Government. When a falsification allegation is controverted, the Government has the burden of proving it. Proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant's intent or state of mind at the time the omission occurred.<sup>20</sup>

When she completed her SF 85P in December 2008, Applicant did not know about the two judgments obtained against her because she had never received notification from the court, in part because she moved without leaving a forwarding address. She acknowledged that some debts existed when she left her marriage, which she resolved before she completed her SF 85P. Because of these actions, she qualified her "no" response as she was unaware of other unpaid debts. At the time she completed her SF 85P, she was unaware of the extent of her past financial problems as she had not paid attention to her bills in the past. Her current bills are paid. She did not intentionally falsify her answers to Questions 22a and 22b. The Government has not established intentional falsification, and SOR allegations 2.a and 2.b are found in favor of Applicant.

Prior to her decision to enter drug rehabilitation, the police arrested Applicant on several occasions for her conduct or for conduct connected to others involved in criminal conduct. Since she completed her drug rehabilitation program, she has been arrested on one occasion as the result of the conduct of her boyfriend. The Government has established its case for SOR allegations 2.c through 2.g<sup>21</sup> under AG ¶¶ 16(e) and 16(g).

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<sup>20</sup>See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004)(explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004)).

<sup>21</sup>The allegations in 2.f and 2.g involve the same incident.

AG ¶ 17 provides conditions that could mitigate security concerns. I have considered all the conditions, and especially the following:

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress; and,

(g) association with persons involved in criminal activity has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

The majority of Applicant's arrests occurred before she entered her drug rehabilitation program and can be connected to her impaired judgment from her drug use. Since completing her rehabilitation program in 2001, the police arrested her once. She pled guilty to one charge and accepted her punishment. She no longer associates with individuals involved in drugs or criminal conduct. She works regularly and provides support for her children. She has never denied her past conduct and could not be pressured because of it. She has mitigated the Government's trustworthiness concerns under Guideline E.

### **Whole-Person Concepts**

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) 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. The decision to grant or deny a trustworthiness determination requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a trustworthiness concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a trustworthiness clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate trustworthiness concern.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. At age 13, Applicant left home and began a lifestyle involving drugs. She had four children by the age of 23, no husband, no high school diploma, and little financial ability to support herself and her children. In 1999, she decided to change her life and entered a drug rehabilitation program. She committed herself to this program and made substantial improvements in her attitude and relationship with her children. She continues to seek support from other graduates of her rehabilitation program. Over the last 10 years, Applicant has changed the direction of her life. She works regularly and when she loses a job, she seeks out other employment. She is raising three of her children on her own, without financial assistance from their fathers. She has changed her friends and stayed out of trouble with the police.

In the past, Applicant lacked the financial resources to pay her expenses. She neglected her bills and had little concern about unpaid bills. She works steadily and advises that she pays her monthly bills, which are higher than her monthly income. Although she has not provided evidence which shows how she pays her expenses each month, the credit reports support her statement as there are no recent unpaid bills. Her son worked until recently and may have contributed to household finances, but that fact is not known. She has no money to pay her debts nor does she have a plan to pay her debts. She is owed a substantial amount of back child support from the fathers of two of her children, which would help resolve her debts. She is not likely to ever collect this money, so it is not available to help resolve her old, past-due debts. She indicated a willingness to resolve her debts; however, a future intent to pay is not sufficient to mitigate the Government's concerns. Many of her debts are very old and barred from collection under state statute of limitations. The DOHA Appeal Board prohibits an administrative judge from using state statute of limitations or staleness of debts to mitigate trustworthiness concerns. Many of her debts are so old that the debts have been dropped from her credit reports, making payment in the future difficult. Again, this is a factor which cannot be considered in determining Applicant's eligibility for a trustworthiness determination. Because so many of Applicant's debts have not been paid and she has no plans in place to pay any of the debts due to her lack of financial resources, she has not mitigated the Government's security concerns about her finances.

Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a public trust position. For all these reasons, I conclude Applicant mitigated the trustworthiness concerns arising from her personal conduct, but she has not mitigated the financial considerations concern.

### **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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e-1.u:	Against Applicant
Subparagraph 1.v:	For Applicant
Subparagraph 1.w-1.gg:	Against Applicant

Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant
Subparagraph 2.c:	For Applicant
Subparagraph 2.d:	For Applicant
Subparagraph 2.e:	For Applicant
Subparagraph 2.f:	For Applicant
Subparagraph 2.g:	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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MARY E. HENRY  
Administrative Judge