



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



In the matter of:	)	
	)	
	)	ADP Case No. 09-07518
	)	
	)	
Applicant for Public Trust Position	)	

**Appearances**

For Government: Daniel F. Crowley, Esquire, Department Counsel  
For Applicant: *Pro se*

May 20, 2011

**Decision**

HENRY, Mary E., Administrative Judge:

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

Applicant submitted her Questionnaire for Public Trust Position (SF 85P) on April 9, 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, 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 received the SOR on July 30, 2010. She answered the SOR in writing on September 24, 2010, and requested a hearing before an administrative judge. DOHA received the request on September 27, 2010. Department Counsel was prepared to

proceed on March 2, 2011, and I received the case assignment on March 4, 2011. DOHA issued a notice of hearing on March 15, 2011, and I convened the hearing as scheduled on April 6, 2011. The Government offered Exhibits (GE) 1 through 8, which were admitted without objection. Applicant and one witness testified. She submitted Exhibits (AE) A through F, which were admitted without objection. DOHA received the hearing transcript (Tr.) on April 13, 2011. I held the record open until May 6, 2011, for the submission of additional matters. She timely submitted AE G through AE M, without objection. The record closed on May 6, 2011.

## **Procedural and Evidentiary Rulings**

### **Notice**

At the hearing, I advised Applicant of her right under ¶ E3.1.8 of the Directive to 15 days notice before the hearing. Applicant agreed to move forward with the hearing as scheduled. (Tr. at 9-10.)

### **Findings of Fact**

In her Answer to the SOR, Applicant admitted all the factual allegations in the SOR, with explanations. She also provided additional information to support her request for eligibility for a public trust position.

Applicant, who is 52 years old, works as over-the-phone help desk support for a Department of Defense contractor. She began her current position in March 2008. She has worked in similar computer support positions since 1996. She was unemployed for seven months from September 2007 until April 2008 and for two months in late 2001. She also worked for a temporary employment business, where she did not always work full-time.<sup>1</sup>

Applicant married as a teenager and divorced a few years later. She has five adult children, a daughter who is 33 and four sons who are 36, 35 and 31 (twins). Her sons live independently. While her daughter and six grandchildren live independent of Applicant, Applicant, however, provided financial support to her daughter until recently. Applicant no longer pays her daughter's monthly rent of \$630.<sup>2</sup>

Applicant earns \$2,480 in gross monthly income and \$1,944 in net monthly income, plus occasional overtime pay.<sup>3</sup> Her monthly expenses total \$1,210. She used

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<sup>1</sup>GE 1; Tr. 28-29.

<sup>2</sup>Tr. 28-30, 47.

<sup>3</sup>Between January 15, 2011 and March 11, 2011, Applicant earned \$353 in net overtime pay. AE L.

her \$734 a month remainder to support her daughter and grandchildren until recently. Applicant lives with a significant other, who pays her housing expenses.<sup>4</sup>

The SOR identified nine purportedly continuing delinquencies as reflected by credit reports from 2008 and 2009, totaling approximately \$15,044. Some accounts have been transferred, reassigned, or sold to other creditors or collection agents. Other accounts are referenced repeatedly in both credit reports, in many instances duplicating other accounts listed, either under the same creditor or collection agency name or under a different creditor or collection agency name. Some accounts are identified by complete account numbers, while others are identified by partial account numbers, in some instances eliminating the last four digits and in others eliminating other digits.

The record contains four credit reports dated April 29, 2008, December 4, 2009, March 23, 2010, and January 11, 2011. The debts in SOR allegations 1.b through 1.i are listed in the April 29, 2008 credit report, and the debt in SOR allegation 1.a appeared for the first time on the December 4, 2009 credit report. The debts in SOR allegations 1.e through 1.i have not been listed on the credit reports after April 29, 2008. Four debts became delinquent in 2002 or earlier.<sup>5</sup>

Applicant attempted to contact the SOR creditors by telephone and arrange payments on her debts. She was unsuccessful in many instances. She successfully contacted the creditor for SOR allegations 1.a and 1.h. She paid these debts.<sup>6</sup>

After approximately one year of trying to obtain information about her debts from the creditors through telephone calls, Applicant began writing letters to the credit collection companies holding the debts, asking for documentation to verify her indebtedness. She wrote the creditor in SOR allegations 1.f (\$222 for a telephone bill) and 1.i (\$393 for a telephone bill from a different company) on February 24, 2010. She received no response to her letter, and the debts are not on three of the credit reports. She did write to the original creditor, who verified that she does not have any outstanding debts. These debts are resolved.<sup>7</sup>

On October 12, 2010, Applicant wrote a letter to the credit collection company holding the debt identified in SOR allegation 1.e (\$13,297), asking for information and documents verifying her debt. She wrote a similar letter on October 27, 2010 to the credit collection company holding the debt in SOR allegation 1.g (\$204) for a telephone

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<sup>4</sup>GE 4; AE L.

<sup>5</sup>GE 2; GE 3; GE 7; GE 8.

<sup>6</sup>AE A; AE F; AE J.

<sup>7</sup>GE 3; GE 7; GE 8; AE E; AE H; AE K; Tr. 30-31, 34-35, 38-40.

bill owed to a company no longer in business. She received no responses to her letters. These two debts are not listed on three credit reports.<sup>8</sup>

Applicant wrote a letter on February 1, 2011 to the credit collection company holding the debts identified in SOR allegations 1.c (\$204) and 1.d (\$104), asking for information and documents verifying her debt to the original creditor, a cable company. She has not received a response to her letter. She also spoke by telephone to the creditor, which told her that it did not have any information under her name and social security number. She also contacted the hospital she believes is the owner of the debt in SOR allegation 1.b (\$118), asking for a bill. Of these four debts, only the \$118 medical bill remains on her credit report. She has neither received a bill nor any further communication from the hospital.<sup>9</sup>

Applicant contacted a budget and debt counseling company on April 1, 2011 and discussed her financial situation. She did not provide a copy of her registration with this company, but indicated at the hearing that she is working with this company. The credit reports indicate that Applicant pays her current bills and that she has paid other past-due debts, including a car repossession and \$2,300 rental debt.<sup>10</sup>

Applicant's witness, a long-time friend, described Applicant as honest, reliable, trustworthy, and hard working. Her work colleagues describe her as efficient, well-versed, organized, knowledgeable, and reliable. They all provide a favorable image of Applicant and recommend her for a trustworthiness determination.<sup>11</sup>

## **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.)

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<sup>8</sup>GE 3; GE 7; GE 8; AE C; AE D; Tr. 30-31, 34-35, 37-40.

<sup>9</sup>GE 7; GE 8; AE B; Tr. 34-37.

<sup>10</sup>GE 2; GE 3; GE 7; GE 8; AE I; Tr. 48.

<sup>11</sup>AE M; Tr. 21-25.

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 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 several 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 security concerns. Applicant accrued some delinquent debt in the past and she was unable to pay these debts. These disqualifying conditions are applicable.

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 reliability, trustworthiness, or good judgment." Applicant's financial problems primarily arose between 2001 and 2005. During this time, she worked, but not always at a full-time job. She is current on her present bills and has managed her usual expenses. Her long ago debts do not cast doubt on her current reliability, trustworthiness, or good judgment. This mitigating condition has some applicability.

AG ¶ 20(b) 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 was unemployed for seven months in 2007 and 2008, which is a circumstance beyond her control. Her daughter separated from her husband and is trying to support six children. Her daughter's separation caused financial problems for her daughter requiring Applicant's financial help, which is a circumstance beyond Applicant's control. Many of the debts listed in the SOR became delinquent before Applicant became unemployed and before her daughter separated. Her unemployment and her daughter's separation made it difficult for Applicant to repay her past-due debts. She paid her regular expenses and did not incur any additional debt while unemployed or helping her daughter. This mitigating condition is 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). 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 is currently taking financial management classes. She paid two SOR debts and provided information that she does not owe two other SOR debts. She wrote letters to the remaining creditors after attempting to obtain

information on her debts by telephone. None of the creditors for the unpaid debts have responded to her letters or her telephone requests for information on her debts. Except for SOR allegations 1.a and 1.b, the SOR debts are no longer on her credit reports, making it difficult for her to pay them. The credit collection companies are not cooperating with her, leaving her without the ability to resolve the debts. These mitigating conditions are applicable.

### **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 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 public trust position 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.

In assessing whether an Applicant has established mitigation under Guideline F, the Appeal Board provided the following guidance in ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008):

In evaluating Guideline F cases, the Board has previously noted that the concept of “‘meaningful track record’ necessarily includes evidence of actual debt reduction through payment of debts.” See, e.g., ISCR Case No. 05-01920 at 5 (App. Bd. Mar. 1, 2007). However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. See, e.g., ISCR Case No. 02-25499 at 2 (App. Bd. Jun. 5, 2006). All that is required is that an applicant

demonstrate that he has “. . . established a plan to resolve his financial problems and taken significant actions to implement that plan.” See, e.g., ISCR Case No. 04-09684 at 2 (App. Bd. Jul. 6, 2006). The Judge can reasonably consider the entirety of an applicant’s financial situation and his actions in evaluating the extent to which that applicant’s plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) (“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. See, e.g., ISCR Case No. 06-25584 at 4 (App. Bd. Apr. 4, 2008). 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant’s financial problems arose some time ago, when her income was not as stable as it is now. She acknowledged the debts and contacted the creditors in an effort to resolve her old debts. Only four creditors provided her with any information about her accounts. The remaining creditors have not responded to her request for information. One can only speculate as to why she did not receive a response. Most of the SOR debts have been removed from her credit reports due to age, which means that the debts are no longer legally collectible and past the age that the debts will remain on her credit report. With the debts off her credit reports, the creditors do not have information on her debt in their system. She lacks the ability to resolve her old debts when she cannot get information from the creditor. She has taken affirmative action to pay or resolve most of the delinquent debts raising security concerns. She has not been able to pay many of these debts because the creditors have declined to work with her or provide her with information on her debt. Of concern is the \$13,000 car repossession debt; however, that debt was never reduced to a judgment and the Statute of Limitations has expired, making it uncollectible. (See AG ¶ 2(a)(8).) Thus, this debt cannot be a source of improper pressure or duress. Of course, the issue is not simply whether all her debts are paid. Rather, it is whether her financial circumstances raise concerns about her fitness to hold a position of public trust. While some debts remain unpaid, they are insufficient to raise trustworthiness concerns because she pays her current bills, and she has not incurred significant unpaid debts as shown by her credit report. (See AG ¶ 2(a)(1).)

Overall, the record evidence leaves me without 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 financial difficulties.



## **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:           FOR APPLICANT

Subparagraphs 1.a-1.i:           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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MARY E. HENRY  
Administrative Judge