



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



In the matter of: )  
)  
) ADP Case No. 09-07655  
)  
)  
Applicant for Public Trust Position )

**Appearances**

For Government: Gina Marine, Esquire, Department Counsel  
For Applicant: *Pro se*

November 23, 2010

**Decision**

CREAN, THOMAS M., Administrative Judge:

Based on a review of the case file, pleadings, exhibits, and testimony, eligibility for access to sensitive information is granted.

On July 15, 2009, Applicant submitted a Questionnaire for Public Trust Position (SF 85P), as part of her employment with a defense contractor. On April 14, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns for financial considerations (Guideline F). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program*, dated January 1987, as amended (Regulation); and the adjudicative guidelines (AG) effective in the Department of Defense on September 1, 2006. Applicant acknowledged receipt of the SOR on April 20, 2010.

Applicant answered the SOR on June 1, 2010. She admitted all 23 allegations under Guideline F, and requested a hearing before an administrative judge. Department

Counsel was prepared to proceed on July 1, 2010, and the case was assigned to me on August 11, 2010. DOHA issued a Notice of Hearing on September 2, 2010, for a hearing on September 21, 2010. I convened the hearing as scheduled. The Government offered four exhibits marked and received without objection as Government Exhibits (Gov. Ex.) 1 through 4. Applicant submitted 13 exhibits marked and received without objection as Applicant Exhibits (App. Ex.) A through M. I left the record open for Applicant to submit additional documents. Applicant timely submitted 11 additional documents marked as App. Ex. N through X. Department Counsel had no objection to admission of the additional documents. (Gov. Ex. 5, Memorandum, dated October 13, 2010) DOHA received the transcript (Tr.) of the hearing on October 4, 2010.

### **Procedural Issues**

Applicant did not remember the exact day she received the notice of hearing. Applicant is entitled to 15 days advanced notice of hearing (Directive E3.1.8.). Applicant discussed with Department Counsel the hearing date of September 21, 2010, prior to the Notice of Hearing being mailed on September 2, 2010. Applicant was ready to proceed and had sufficient time to prepare. She affirmatively waived the 15 days notice requirement. (Tr. 6-7)

### **Findings of Fact**

Applicant admitted the 23 allegations under Guideline F in the SOR. Her admissions are included in my findings of fact. After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact.

Applicant is 38 years old, and has been a business analyst for a defense contractor for about two years. She has been married since December 26, 2002. She has one child from a previous marriage. Applicant is attending school part-time and will complete her bachelor's degree in computer information systems by the end of 2010. Applicant served on active duty in the Navy from October 1990 until November 1993. She received an honorable discharge, and was commended for her years of service to the Navy. She held a security clearance while on active duty. (Tr. 73-78; Gov. Ex. 1, Questionnaire for Public Trust Position (SF 85P), dated July 15, 2009; App. Ex. B, DD 214 and Letter of Appreciation, date October 1993)

After leaving active duty, Applicant attended college level courses and worked at various positions in information technology for different companies from March 1997 until September 2002. In September 2002, she started working for the same defense contractor that is now her employer. She worked for the company until January 2007. (App. Ex. C, Resume, undated) During most of this time, her credit was excellent with a score of 762. She was able to meet her financial obligations. Applicant had medical issues that caused her to miss work and use unpaid medical leave starting in mid-2005. Applicant was finally hospitalized for depression from May 9, 2006, until June 8, 2006. She left the hospital because her medical insurance had reached the maximum pay limits and she could not afford the daily fees. She was able to pay the co-payments for

her hospitalization until the insurance reached its limit. During all of this time, Applicant lost approximately four months of income. (App. Ex. S, Pay records, undated) Applicant was cleared to work when she left the hospital in June 2009, but was still receiving medication. (App. Ex. L, Medical Discharge, dated June 8, 2006) She attempted to return to work, but was unable at times to work because of her medical condition. She exhausted her family leave allowance and was finally terminated by the company in January 2007, with the option to reapply for return to work when she recovered. (Tr. 18-22, 77-88)

Applicant was able to find work with another employer after her termination in January 2007, even though she had a medical condition. From March 2007 until May 2009, she was a lead contract business analyst for a company contracted to do work for the local state department of revenue. The contract with the state was for approximately two years. After this contract terminated, Applicant applied for and returned to the defense contractor that she originally worked for in July 2009. She is still employed by that company. Applicant earned approximately \$76,000 to \$78,000 yearly during her first employment with the defense contractor. While working as a contract hire for the state department of revenue, she earned approximately \$74,000 annually. Her present salary with the defense contractor is approximately \$65,000. (Tr. 50-54)

Applicant's husband is attending school full-time to earn a master's degree in art with the intent to teach art. He is a part-time teaching assistant and earns a few hundred dollars a month when he teaches during the school semesters. Applicant testified her monthly net salary is approximately \$3,200, with monthly expenses of \$2,800 leaving her and her husband with monthly disposable or discretionary funds most months of \$400. This does not consider any pay her husband may receive. Bankruptcy documents show that Applicant and her husband's net monthly income is \$4,135.46, monthly expenses of \$3,935, and monthly net disposable funds of \$200.46. (Tr. 51-59, 65-66, 83-84; App. Ex. R, Bankruptcy Schedule J, undated)

Applicant met her financial obligations until she started having medical problems in 2006 and missing work and salary. Credit reports (Gov. Ex. 3, dated July 28, 2009, and Gov. Ex. 4, dated March 1, 2010) list delinquent debts totaling \$83,066 for four small medical debts totaling approximately \$310 (SOR 1.1, 1.c, 1, d, and 1.f); two library overdue accounts totaling \$251 (SOR 1.v and 1.w); and 17 credit card debts totaling over \$82,500 (SOR 1.b, 1.e, and 1.g to 1. u). Applicant acknowledged that none of the debts listed on the SOR are duplicates. Most of the debts were incurred prior to Applicant's hospitalization in May 2006. The library debts are from her daughter who lost some books that she checked out from the library. (Tr. 66-67)

Applicant incurred medical co-pay debts and credit card debt to pay for her husband's medical expenses from injuries suffered in an automobile accident prior to her hospitalization in May 2006. The husband was not at fault in the accident but the driver at fault did not have insurance and could not pay his expenses. They used credit cards to pay over \$10,000 of medical debts. They were able to recover \$3,000 to cover medical debts from their insurance company. They still hope to recover some funds

from the other driver. (Tr. 25-31; App. Ex. N, Husband's medical records, date July 1, 2003; App. Ex. O, Foreclosure documents for other driver, dated August 19, 2008)

In addition, Applicant and her husband used their credit cards to pay expenses in establishing his art business in 2000. Applicant believes at least \$25,000 of the credit card debt is business debt. The business was not successful and was terminated in 2006. (Tr. 31-34, 66-67; See, App. Ex. Q, Business license, undated) Applicant incurred other debts not listed in the SOR prior to her hospitalization. These debts include credit card debt used to pay for ordinary living expenses such as food, car expenses, and clothing, student loans for both she and her husband, and debts owed to her employer for her professional development. (Tr. 30-32)

Because of their financial problems, Applicant contacted some creditors and was successful in establishing payment plans for some of her credit card debts. (Tr. 80-84; App. Ex. U, Letters, dated October 2006) When she went back to work for the company in July 2009, she asked for and the company waived the professional development student loan debt since she was back working with the company. (App. Ex. V, e-mail, dated July 30, 2009)

Applicant contacted two financial advisers who told her that she should file bankruptcy. She consulted a law firm specializing in bankruptcy and again was advised to file bankruptcy. (App. Ex. K, Agreement, dated October 2, 2007) Applicant did not file a bankruptcy at that time because she was a contractor to the state department of revenue and she feared losing her job with them when they learned she filed bankruptcy. (Tr. 21-22)

Applicant worked for her present employer for a year before she consulted another bankruptcy attorney and determined she could file a bankruptcy action without fear. Applicant filed a Chapter 13 bankruptcy in June 2010. All debts listed in the SOR are included in the bankruptcy action, to include the credit card debts being paid under payment plans. (Tr. 22; App. Ex. W, Bankruptcy Schedule F, undated) Applicant's payment under the wage earner's plan is approximately \$200 monthly. Applicant made the first payment of \$200 directly to the trustee on July 21, 2010. The required pay period payment of \$92.31 was automatically deducted from her pay starting on August 4, 2010. Four payments have been made. (Tr. 68-69; App. Ex. P, Payroll records)

Applicant's co-worker testified that he has worked for the same employer as Applicant for over 25 years. He works in the defense contractor's program that requires a public trust access. He has known Applicant for over five years, and considers Applicant to be trustworthy, reliable, and honest. She works hard and is a team player. She has great potential for leadership and management in the company. Applicant presented eight letters of recommendation from co-workers and supervisor from her previous and present employment, friends, and members of the local community. All attest that they have known Applicant for a number of years and consider her of high character. She is completely honest, loyal, trustworthy, and reliable. They would trust were with access to sensitive public trust information.

## Policies

Positions designated as ADP I and ADP II are classified as “sensitive positions.” The standard that must be met for assignment to sensitive duties is that, based on all available information, the person’s loyalty, reliability, and trustworthiness are such that “assigning the person to sensitive duties is clearly consistent with the interests of national security.” Trustworthiness adjudications will apply to cases forwarded to DOHA by the Defense Security Service and Office of Personnel Management. (See, The Deputy Under Secretary of Defense (Counterintelligence and Security) Memorandum, dated November 19, 2004) Department of Defense contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination may be made. (See Regulation ¶ C8.2.1.)

When evaluating an applicant’s suitability for a public trust or a sensitive position, the administrative judge must consider the disqualifying and mitigating conditions in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial and commonsense decision. The entire process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. (AG ¶ 2(c))

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to [sensitive] information will be resolved in favor of national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion as to obtaining a favorable trustworthiness decision.

A person who seeks access to sensitive information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to sensitive information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of sensitive information.

## Analysis

### Guideline F, Financial Considerations

There is a public trust concern for a failure or inability to live within one's means, satisfy debts, and meet financial obligations because such actions 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 ¶ 18) Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his or her obligation to protect sensitive information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a public trust position. An applicant is not required to be debt free, but is required to manage her finances in such a way as to meet her financial obligations. Applicant's delinquent debts, as established by credit reports and Applicant's statements and testimony, are a security concern raising Financial Consideration Disqualifying Conditions (FC DC) ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC ¶ 19(c) (a history of not meeting financial obligations). Applicant used credit cards to finance among other things her husband's art business, the husband's medical expenses from an automobile accident that was not his fault, and ordinary living expenses. Applicant was able to meet her financial obligations until she had severe medical problems, lost work, was hospitalized in May 2006, and lost four months of income. Even though she continued to be gainfully employed, her lost work and lower salary prevented her from meeting her financial obligations. This shows a history of not meeting financial obligations because of an inability, and not unwillingness, to satisfy debt.

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). Both of these mitigating conditions apply to Applicant's financial problems. Applicant incurred some of her delinquent debt supporting her husband after his injury and in his failed art business. The accident and the failed business circumstances are unusual and not likely to recur. Applicant's husband is not now in the art business. The accident and the business failure were caused by conditions beyond her control. In addition, her ability to pay the debts was hampered by

her loss of salary due to illness. She contacted creditors to establish payment plans. She considered but did not file bankruptcy early in the process because she feared losing her job with a state department of revenue. She recently took steps to resolve her debts by filing a Chapter 13 bankruptcy and having payments to the trustee automatically deducted from her pay. She has a pattern of acting responsibly towards her finances. With the bankruptcy in place, it is unlikely that she will have additional or recurring financial problems. Her past-due debts do not cast doubt on her reliability, trustworthiness, and good judgment under these circumstances.

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) and it applies. Applicant consulted two financial advisers and was told the only reasonable action was to file bankruptcy. She consulted an attorney who also advised bankruptcy action. She filed the bankruptcy in June 2010 and as part of that action she is required to receive financial counseling. With the filing of the bankruptcy, her financial problems are being resolved or 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) and it does apply. 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. The entirety of an Applicant's financial situation and her actions can reasonably be considered in evaluating the extent to which Applicant's plan for the reduction of her outstanding indebtedness is credible and realistic. All that is required is that Applicant demonstrates she has established a plan to resolve her financial problems and has taken significant actions to implement that plan.

Applicant filed a Chapter 13 bankruptcy and included all of her debts in the payment plan. Bankruptcy is a legal and permissible means of resolving debt. A Chapter 13 bankruptcy is a good means of paying debt in that the debts are under the bankruptcy trustee and payments are made through the courts. Applicant has made payments under the plan and her payments are now automatically deducted from her pay. Applicant has acted responsibly towards her debts, some caused by conditions beyond her control. Applicant has presented sufficient information to mitigate security concerns for financial considerations because she took reasonable action to pay the debts. 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 that Applicant is a trusted and highly regarded employee with a good work record and reputation for honesty, reliability, and trustworthiness. She successfully held a security clearance during her three years of active duty in the Navy. Some of Applicant's debts were incurred by circumstances beyond her control. She acted responsibly by filing a Chapter 13 bankruptcy and has made payments under the plan and will continue to make payments by automatic payroll deduction. She has established a meaningful track record of payment of her financial obligations. The record evidence leaves me without questions and 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

Subparagraphs 1.a - 1.w: For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest 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