



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



In the matter of: )  
)  
) ADP Case No. 09-08574  
)  
)  
Applicant for Public Trust Position )

**Appearances**

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

October 27, 2010

**Decision**

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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 November 20, 2006, Applicant submitted a Questionnaire for Public Trust Position (SF 85P), as part of her employment with a defense contractor. On May 21, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns for financial considerations (Guideline F), and personal conduct (Guideline E). 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 June 2, 2010.

Applicant answered the SOR in an undated response received at DOHA on June 17, 2010. She admitted all 20 allegations under Guideline F. She denied the one allegation under Guideline E. She 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 20, 2010. I convened the hearing as scheduled. The government offered five exhibits marked and received without objection as Government Exhibits (Gov. Ex.) 1 through 5. Applicant submitted ten exhibits marked and received without objection as Applicant Exhibits (App. Ex.) A through J. I left the record open for Applicant to submit additional documents. Applicant timely submitted 17 additional documents marked as App. Ex. K through AA. Department Counsel had no objection to admission of the additional documents. (Gov. Ex. 6, Memorandum, dated October 12, 2010) DOHA received the transcript (Tr.) of the hearing on October 4, 2010.

### **Procedural Issues**

Applicant does not remember the exact day she received the notice of hearing. Applicant is entitled to 15 days notice of hearing (Directive E3.1.8.). Applicant discussed with Department Counsel the hearing date of September 20, 2010, prior to the Notice of Hearing being mailed on September 2, 2010. If there is an issue on notice, Applicant waived the 15 days notice requirement, (Tr. 5-8)

### **Findings of Fact**

Applicant admitted the 20 allegations under Guideline F in the SOR. Her answer to the one allegation under Guideline E was ambiguous, but I find that she denied the allegation. After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact.

Applicant is 40 years old, and has been a medical compliance and data entry clerk for a defense contractor for over ten years. She is married but separated from her husband for over ten years. She has two children, one at home and one in college. Applicant's daughter notes that her mother has sacrificed to send her to college and has inspired her to succeed in her education. (App. Ex. C, Letter, undated) Applicant has an associate's degree and is attending school for her bachelor's degree. (App. Ex. H, Certificate, dated May 1, 2009; App. Ex. I, Grade report, dated August 23, 2010) Applicant's monthly pay is \$900 with monthly expenses of approximately \$850, leaving \$50 monthly in discretionary spending. She recently completed paying her car loan of \$363 per month freeing more discretionary funds each month. (Tr. 15-19, 54-55; Gov. Ex. 1, Questionnaire for Public Trust Position, dated November 20, 2006)

Applicant had severe medical problems starting in 1998. She had miscarriages in 1998, 1999, and 2000. She had a difficult pregnancy resulting in the birth of her youngest child in 2002. Her medical problems and the lack of support from her separated husband led to financial problems. Credit reports (Gov. Ex. 3, dated April 7, 2007; Gov. Ex. 4, dated December 3, 2009; and Gov. Ex. 5, dated July 1, 2010), as well as Applicant's answers to Interrogatories (Gov. Ex. 2, dated February 17, 2010) show delinquent debts for Applicant totaling approximately \$50,393. The debts include unpaid medical accounts in the amount of \$25 (SOR 1.a), \$75 (SOR 1.d), \$505 (SOR 1.e), \$59 (SOR 1.f), \$84 (SOR 1.g), \$81 (SOR 1.h), \$20 (SOR 1.i), \$1,750 (SOR 1.o), \$1,114

(SOR 1.p), \$352 (SOR 1.q), \$283 (SOR 1.r), \$128 (SOR 1.s), and \$96 (SOR 1.t); a communications bill in collection for \$65 (SOR 1.b); another collection account for \$1,049 (SOR 1.c); a collection account for a repossessed mobile home for \$28,191 (SOR 1.j); a collection account on an automobile loan for \$9,835 (SOR 1.k); a collection account for a national retail store for \$5,080 (SOR 1.l); a collection account for a credit card for \$937 (SOR 1.m); and a collection account more than 120 days past due for another national retail store for \$664 (SOR 1.n). Almost 70% of the total delinquent debt is attributed to the collection accounts on the repossessed mobile home and the repossessed automobile.

Applicant was unable to keep current with her bills because of low pay, lack of support from her estranged husband, and the expenses of raising two children as a single parent. She initially had health insurance that paid most of her medical expenses except for co-pays. However, she lost her insurance in March 2003 when she was required to leave her job because of a complicated pregnancy. She incurred medical debts not paid by insurance until she returned to work and received medical benefits in October 2004. When she was not working, she received unemployment of \$200 weekly, which was not sufficient to pay her medical bills. Applicant's financial plan was to keep current with her present debts so she could house and feed her children. She received some help from her parents but they provided loans that she had to pay back. She paid some of her medical debts. She received a tax refund of \$4,000 in early 2010. She paid \$1,000 on debts not listed in the SOR and still has about \$3,000 at home. (Tr. 53-71)

Applicant contacted the creditors on her medical debts after the hearing. The creditors for the debts at SOR 1.a (App. Ex. K), 1.l, 1.s, 1.t (App. Ex. M), SOR 1.f, SOR 1.o, and SOR 1.p. (App. Ex. N) did not have information to show or establish the debts for Applicant. The creditors for the medical accounts for \$75 at SOR 1.d, for \$84 at SOR 1.g, for \$81 at SOR 1.h, for \$352 at SOR 1.q, and for \$283 at SOR 1.r were contacted and established the debts. These debts were paid in full by Applicant using funds she had received from her tax refund. (App. Ex. O, Receipts dated September 29 and October 4, 2010; App. Ex. P, Receipt, dated September 28, 2010; and App. Ex. Q, Receipt, dated September 29, 2010) Applicant established a payment plan with the creditor for the \$505 debt at SOR 1.e for payment of \$25 monthly. The first payment has been made. (App. Ex. T, Check, dated September 30, 2010)

Applicant paid the \$65 debt at SOR 1.b. (Tr. 47-48; App. Ex. J, Receipt, dated September 10, 2010) She has a payment plan with the creditor for the debt at SOR 1.c to pay \$67 monthly until the debt is paid. Her first payment was made on September 3, 2010. (Tr. 49-50; App. Ex. R, Cancelled check, dated September 3, 2010) She has an agreed payment plan of \$25 monthly with the national retail store debt of \$664 at SOR 1.n. The first payment under the plan has been made. (App. Ex. S, Cancelled check, dated September 30, 2010) Applicant has an agreed payment plan with the creditor for the \$5,080 debt to a national retail store at SOR 1.l. The first monthly payment of \$25 was made. (Tr. 53; App. Ex. U, Check, dated September 30, 2010) Applicant attempted to contact the creditor for the debt of \$937 at SOR 1.m, but there is no listing or working phone number for the creditor. (App. Ex. M, Notes, dated October 10, 2010)

Applicant purchased a mobile home sometime in 1998 for \$35,265.01 and placed it on property owned by her father. (Tr. 51; App. Ex. Y, Sales Contract, undated) She was making payments on the loan until 2005, when she defaulted on the loan. (App. Ex. Z, Money Gram, dated September 30, 2007; App. Ex. AA, Money Gram, dated October 29, 2005) The mobile home was repossessed in early 2006. At the time of repossession, the creditor listed the debt at \$37,646.33. The creditor sold the home for \$9,500 and alleged a residual debt of \$28,191. Applicant contacted the creditor but was unable to learn how much she had paid on the loan to establish the true amount of the debt. She was unable to make arrangements for a payment plan. (Tr. 68-71; App. ex. X, Notes, dated October 10, 2010)

Applicant purchased a used car for \$15,328 with an interest rate of 21.99%. Shortly after Applicant purchased the car, it became inoperative. She made only a few payments on the loan before the car was repossessed and sold for \$4,000. She has not made additional payments on the loan. She contacted the creditor but has not arranged a payment plan. (Tr. 70-71; App. Ex. W, Notes, dated October 10, 2010)

Applicant's mother and father both testified that they are retired on a fixed income and try to assist their daughter financially as best they can. They provided loans to her to help with their granddaughter's college education. Since they are on a fixed income, they are unable to make direct payments to Applicant. She has continued to pay the loans when she can. There are no formal agreements, but they trust Applicant to repay them. Applicant has had a difficult time financially because of the needs of her children and being a single parent. She has tried hard to maintain her finances and pay her current debts. (Tr. 81-94)

Applicant completed her application for a position of public trust on November 20, 2006, and re-signed the application after making corrections on January 24, 2007. This was her first application for a security clearance. The human resource representative provided her a copy of the form and she completed it at home. Applicant was aware she had financial problems. In November 2006, her home was about to be repossessed and she had medical and credit card debt. She responded "No" to the financial question asking if she had any debts more than 180 days past due. Applicant testified that she was unaware of the extent of her debt issues and she had not looked at a credit report before completing the form. She was unsure how to answer the questions. She knew that her credit would be reviewed and discussed with her. She did not intend to deliberately mislead any investigations concerning her finances. (Tr. 28-39)

Applicant has a good work record. Her performance has been rated as sometimes exceeding expectations. (App. Ex. A, Overall Evaluation, dated September 9, 2010; App. Ex. D, performance Review, dated January 30, 2008; App. Ex. E, Performance Review dated March 21, 2009; App. Ex. F, Performance Review dated March 8, 2010) She has been commended for the quality of her work. (App. Ex. G, Certificate of Award, January 2005) Applicant's co-worker notes that Applicant is a dependable and reliable worker who always completes her tasks. She has been the cornerstone of every department she has been in. She strives for excellence and pushes others to do the same. She communicates well with others and has

demonstrated responsibility, integrity, innovation, and quality. She is an asset to the organization. (App. Ex. B, Letter, dated September 2010)

## **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 incurred delinquent debt after she had severe medical problems and lost work and health insurance for about a year. She and her husband separated, and she became a single parent raising two children. She incurred medical debts from co-pays and loss of insurance, from a mobile home and car repossession, as well as other consumer debts. 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. The debts became delinquent because Applicant had medical issues that caused her to lose employment and health insurance and forced her to resort to unemployment payments. In addition, her husband did not provide support for her children. These conditions were beyond her control. She recently took steps to pay

her debts and so is now acting responsibly towards her finances. 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 only partially applies. There is no indication Applicant received financial counseling. However, 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 has a plan to resolve her past-due financial obligations. She contacted eight creditors for medical and other debts and they could not provide her information to enable her to pay any debts she has with them. She paid six debts and is current with payment plans for four debts. She has not made any payments on her two largest debts, the car and mobile home repossessions. Because of her limited income, it is unlikely that she will be able to make any payments on these debts. Applicant's attempt to contact creditors to pay debts and her payment or paying of ten debts establishes a meaningful track record of debt reduction. 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 she could, and controlled her future spending. Her finances do not indicate a public trust concern.

## **Personal Conduct**

A trustworthiness concern is raised because conduct involving questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect sensitive information. Of special interest is any failure to provide truthful and candid answers during the trustworthiness clearance process or any other failure to cooperate with the trustworthiness clearance process. (AG ¶ 15) Personal conduct is always a trustworthiness concern because it asks the central question does the person's past conduct justify confidence the person can be entrusted to properly safeguard sensitive information. The trustworthiness clearance system depends on the individual providing correct and accurate information. If a person conceals or provides false information, the trustworthiness clearance process cannot function properly to

ensure that granting access to sensitive information is in the best interest of the United States Government.

Applicant's wrong information to a question concerning her finances on her public trust application raises a potential trustworthiness concern under Personal Conduct Disqualifying Condition (PC DC) AG ¶ 16(a) (the deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history, or similar form used to conduct investigations, to determine security eligibility or trustworthiness).

Applicant denied intentional falsification. In response to financial questions on the public trust position application, Applicant responded that she did not have any debts more than 180 days past due. In fact, Applicant had debts as noted in the SOR more than 180 days past due. A trustworthiness concern may arise for an omission, concealment, or falsification of a material fact in any written document or oral statement to the government when applying for a public trust position. But every omission, concealment, or inaccurate statement is not a falsification. A falsification must be deliberate and material. It is deliberate if it is done knowingly and willfully. Applicant was aware of the debts more than 180 days past due, but she carelessly checked the wrong box noting she that she did not have debts more than 180 days past due. The available information shows her failure to list her past-due debts was not knowing and willful. Applicant established that she did not deliberately fail to provide full information on the public trust position application with intent to deceive. I find for Appellant as to Personal Conduct pertaining to falsification of the public trust position application.

### **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. I considered that Applicant is a single parent raising two children, one attending college, with no financial help from the children's father. Applicant has taken steps to manage her present finances on a small income, paying some debts not listed in the SOR, including her car loan. She contacted all of her past creditors and eight were unable to provide her information to enable her to pay them. She paid or is paying ten other debts. Her only remaining financial obligations are for a repossessed mobile home and a repossessed car. The car was a non-operational car and the amount of the mobile home debt is questionable. She will not be able to pay these debts because of her limited salary. Applicant is paying her past and present obligations as best she can and living within her means. She has established a meaningful track record of payment of past debts. I considered that she did not deliberately provide false information on her public trust position application with intent to deceive. 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 and her personal conduct.

### **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.t:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	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