



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



In the matter of:	)	
	)	
	)	ADP Case No. 10-01446
	)	
	)	
Applicant for Public Trust Position	)	

**Appearances**

For Government: Julie R. Mendez, Esq., Department Counsel  
For Applicant: *Pro se*

February 11, 2011

**Decision**

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the Government’s trustworthiness concerns under Guideline F, Financial Considerations. Applicant’s eligibility for access to sensitive information is denied.

On September 16, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns under 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); and the adjudicative guidelines (AG), effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant’s answered the SOR in writing on October 5, 2010, and requested a hearing before an administrative judge. I was assigned the case on December 7, 2010.

DOHA issued the Notice of Appearance on December 8, 2010. The case was scheduled for January 18, 2011. Due to inclement weather, the case was postponed until January 20, 2011. The Government offered Exhibits (GE) 1 through 5, which were admitted into evidence without objection. The Government also offered Hearing Exhibit (HE) I for demonstrative purposes. Applicant testified on her own behalf. She offered Exhibits (AE) A and B, which were admitted into evidence without objection. The record was held open to allow Applicant an opportunity to provide additional documents, which she did. They were marked as AE C through H and were admitted into the record without objections.<sup>1</sup> DOHA received the hearing transcript (Tr.) on January 26, 2011.

### **Procedural Matters**

Department Counsel noted that there was a mistake on the SOR. It did not include a paragraph "1.i" but skipped to "1.k." Instead of relettering the entire SOR, it was agreed that it would remain as written. Applicant's answer was relettered to reflect accurate answers to the correct allegations.

### **Findings of Fact**

In Applicant's SOR answer, she admitted the allegations ¶¶ 1.a, 1.b, 1.c, 1.d, 1.e, 1.j, 1.k, 1.l, 1.n. and 1.o. She denied ¶¶ 1.f, 1.g, 1.h and 1.m. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 48 years old. She is a college graduate and has earned several certifications that are job-related. She has two children, ages 13 and 8. She married in 1998. Her husband was a citizen of Nigeria, residing in the United States. They separated in September 2004, and their divorce was finalized in 2007. Her ex-husband returned to Nigeria and does not pay child support.<sup>2</sup>

Sometime in 2004, Applicant's husband withdrew all of their savings, which was about \$9,000, from their joint account. The townhouse where Applicant and her children were living was in her husband's name. She stated that he sold the townhouse without telling her. She stated she did not discover it had been sold until she received an eviction notice in March 2005. They had two cars. He took the car that was paid off and left her with the car that was financed. Her car was a 2001 and she traded it in August or September 2005. She purchased a new car and financed it for about \$14,000. She stated she was unaware in August or September 2005, almost a year after her separation, that her savings account was empty. She stated she found out about the depleted savings account, after she purchased the new car and realized she did not have money to pay for the car. She made the first monthly payment on the new car, and then returned it to the dealer. The debt in SOR ¶ 1.l (\$11,988) is the car debt. Applicant has not contacted the creditor. She stated she was offered a settlement of \$4,000 about

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<sup>1</sup> HE II is the Government's response to Applicant's exhibits. The Government had no objections.

<sup>2</sup> Tr.29-34.

a year ago, but did not accept it or make any other arrangements to resolve or pay the debt. Applicant then purchased a 1998 used vehicle that she used until 2006, when it was damaged in an accident. Applicant subsequently purchased a 2001 vehicle for \$16,000, and has monthly car payments of \$314.<sup>3</sup>

Applicant has been steadily employed since 2004. She was earning approximately \$40,000 to \$50,000 annually from 2004 to 2005; and for about 13 months from 2005 to 2007 she earned approximately \$50,000. In 2007, she began work with her present employer, a defense contractor and earned \$58,000. Her current annual salary is \$66,000. When she was married, her husband worked from 1999 to 2002, but was in and out of work from 2002 to 2004. He did not provide her any child support after he left.<sup>4</sup>

The debts in SOR ¶¶ 1.a and 1.b (\$150 and \$151) are medical debts. Applicant plans on paying these debts with her income tax refund. She stated she contacted the creditor in August 2010. In Applicant's post-hearing document, she stated she has made payment arrangements with the creditor to begin payments on February 4, 2011.<sup>5</sup>

The debts in SOR ¶¶ 1.c (\$100), 1.d (\$100), and 1.e (\$100) are medical debts to the same creditor. Applicant stated she made arrangements to pay the debts with the creditor in August 2010. She agreed to begin paying \$25 a month. She made a payment of \$25 in September or October 2010, and another in November 2010. She did not make a payment in December 2010 or January 2011. She stated she intended to make a payment in January 2011. She missed the monthly payments because she did not have the money. In her post-hearing submission, she provided proof she made a \$25 payment in May 2010 and July 2010, and a \$50 payment in November 2010.<sup>6</sup>

Applicant stated she paid the debt in SOR ¶ 1.f (\$734). She did not recall what the debt was for. She did not provide proof of payment.<sup>7</sup>

Applicant settled the debt in SOR ¶ 1.g (\$217). She provided a receipt dated September 29, 2010.<sup>8</sup> Applicant provided a post-hearing document for a debt with a different creditor's name, with the same balance as alleged in SOR ¶ 1.g. It is unclear if this is the same debt. The debt alleged is paid.<sup>9</sup>

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<sup>3</sup> Tr. 34-59.

<sup>4</sup> Tr. 59-70.

<sup>5</sup> Tr. 71-81; AE D, E.

<sup>6</sup> Tr. 81-86; AE D, G, H.

<sup>7</sup> Tr. 87-89.

<sup>8</sup> Answer to SOR.

<sup>9</sup> Tr. 89-90; Answer to SOR, AE D, F.

Applicant denied the debt in SOR ¶ 1.h (\$944) stating she paid a settlement amount to resolve the debt in 2005. She stated she disputed the debt on her credit bureau report. In her post-hearing document, she stated she contacted the creditor and advised them she would “like to settle the debt and make payments after clearing up other items.”<sup>10</sup> The debt remains unresolved.<sup>11</sup>

The debts in SOR ¶¶ 1.j and 1.k (\$250 and \$500) are to the same creditor for checks written on an account with nonsufficient funds. These checks were written to the car dealer after Applicant purchased her new car in 2005. She stated she contacted the creditor at the time and was advised that she owed the money. Applicant did not pay the debts and they went to collection. The debts are unpaid and unresolved.<sup>12</sup>

The debt in SOR ¶ 1.m (\$870) is for a credit card. Applicant stated she contacted the creditor in September 2010, and was told they had no record of the debt. She stated she paid the debt. She stated she disputed the debt with the credit bureau and had documentation. She did not provide supporting documents.<sup>13</sup>

The debt in SOR ¶ 1.n (\$537) is for telephone services. Applicant stated she currently has an account with the same company. She stated she contacted the creditor and they were unaware of the debt. She has not disputed the debt with the credit bureau. She did not provide supporting documentation.<sup>14</sup>

Applicant stated in September 2010, she contacted the creditor for the debt in SOR ¶ 1.o (\$170). She stated she made arrangements to pay \$25 a month beginning in November 2010. She made a payment in November 2010 and did not make a payment in December 2010. She intended to make a January payment after her hearing. She did not provide documented proof.<sup>15</sup>

Applicant was interviewed by an Office of Personnel Management investigator on December 18, 2009. In her interview she acknowledged some of her delinquent debts. She also stated she believed certain debts had been paid, and she disputed other debts. The debts she acknowledged owing she stated she did not have the money to pay them. On May 26, 2010, she affirmed the information disclosed in her interview was

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<sup>10</sup> AE D, G.

<sup>11</sup> Tr. 90-92.

<sup>12</sup> Tr. 92-95.

<sup>13</sup> Tr. 95-97.

<sup>14</sup> Tr. 97-98.

<sup>15</sup> Tr. 98-101.

accurate. In answers to interrogatories, she stated she would satisfy the debts she owed from money she anticipated receiving from an income tax refund.<sup>16</sup>

Applicant has approximately \$48,000 in student loans that are in forbearance. She stated that she last made a payment in approximately 2007. The forbearance will expire in October 2011, at which time she will be required to pay \$600 a month. She is hoping to negotiate a reduced payment. Applicant has no money in her savings account, a nominal amount in her checking account, and no retirement accounts, or other investments. She is hoping to increase her salary to help her pay her delinquent debts. She is hoping that when her older son begins high school he will be able to babysit the younger son so she can save money on childcare. Applicant has not received any financial counseling. She stated she has a budget and keeps track of her expenses. She stated she is current on the payment of her other bills.<sup>17</sup>

Applicant provided a copy of an award that she received as “staff member of the quarter from July 2010 to September 2010.” She received the award for her exceptional professional leadership and outstanding work ethic.<sup>18</sup>

Applicant provided character letters that describe her as an energetic mother, who volunteers her time to the school. She is active in the community and an inspiration. She gives of her time and talents. She is considered an outstanding individual.<sup>19</sup>

Applicant’s direct supervisor provided a character letter on her behalf. He describes Applicant as responsible, reliable, and loyal to the mission. She has a great attendance record which is crucial in her job because many clients are in different time zones. She is a considered a major team player. She was recognized for her commitment to the mission.<sup>20</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

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<sup>16</sup> GE 5.

<sup>17</sup> Tr. 111-126.

<sup>18</sup> AE A.

<sup>19</sup> AE B.

<sup>20</sup> *Id.*

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 overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to [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 and 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 *a/so* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## Analysis

### Guideline F, Financial Considerations

The security concern 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 classified 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 security concerns. I have considered all of the disqualifying conditions under AG ¶ 19, and the following are potentially applicable:

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

Applicant has numerous delinquent debts that are unpaid or unresolved. The delinquencies began in 2005, after her husband left. She has been unable or unwilling to satisfy the debts. I find there is sufficient evidence to raise these disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered the following mitigating conditions under AG ¶ 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;
- (b) 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;
- (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;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) 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.

Most of Applicant's delinquent debts are unpaid and unresolved. I find they are numerous and ongoing. Applicant failed to provide a credible plan for resolving the debts. I find her debts are not the result of circumstances making them unlikely to recur. Therefore, AG ¶ 20(a) does not apply.

Applicant attributed her financial problem to her husband abandoning the family in 2004, and taking all of their joint assets. This condition was beyond her control. However, for AG ¶ 20(b) to be completely applicable, Applicant must provide evidence that she acted responsibly under the circumstances. It has now been more than six years since her husband left. She stated she was evicted from their townhouse in March 2005 because she did not know he sold it while she was still living there. It is unreasonable to believe that after her husband left in 2004, and her eviction in March 2005, that she remained unaware that her savings had been depleted until she purchased a new car in August or September 2005. Many of Applicant's delinquent debts are for small amounts that she has made no attempt to resolve. Although Applicant's financial problems began six years ago, she has not provided sufficient evidence to show she has acted responsibly in addressing her delinquent debts since then. I find AG ¶ 20(b) only partially applies.

Applicant provided proof she paid one delinquent debt. She has made a couple of small payments during the past six months on two other debts, but has been inconsistent in paying as promised. She has not addressed other debts and as to those she disputes, she did not provide documentation to support the basis of the dispute or to show it is resolved. She does not have a formulated plan to resolve her debts, other than she hopes to save on daycare costs when her oldest son goes to high school. There is no evidence Applicant has received financial counseling, has initiated a good-faith effort to resolve her remaining delinquent debts, or disputed the debts. I find AG ¶¶ 20(c), 20(d), and 20(e) do not apply.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for access to sensitive information by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable



participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a public trust position must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment. Applicant's husband abandoned her and their children in 2004. He sold the townhouse where they were living and did not tell Applicant. He took all of their savings. He has not provided child support. Applicant has been steadily employed and, during the last two years she was with her husband, she has been the sole provider for the family. Although her husband's actions had a financial effect on her, it has now been more than six years since he left. She has one large debt and many small debts. She paid one debt and has made sporadic small payments on two others. She was made aware during her background interview in December 2009, that her delinquent debts were a concern. She does not have a reasonable payment plan to address and resolve her delinquent debts. She stated she disputed certain debts, but failed to provide any evidence of her actions. She has made minimal efforts to resolve even her small delinquent debts. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for access to sensitive information. For all these reasons, I conclude Applicant failed to mitigate the trustworthiness concerns arising under Guideline F, Financial Considerations.

### **Formal Findings**

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a-1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h	Against Applicant
Subparagraph 1.i	None Alleged
Subparagraphs 1.j-1.o:	Against 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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Carol G. Ricciardello  
Administrative Judge