



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



In the matter of: )  
)  
) ADP Case No. 10-01867  
)  
Applicant for Public Trust Position )

**Appearances**

For Government: William T. O'Neil, Esquire, Department Counsel  
For Applicant: *Pro se*

August 4, 2011

**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 denied.

**Statement of the Case**

On March 23, 2009, Applicant submitted a Questionnaire for Public Trust Position (SF 85P), as part of her employment with a defense contractor. On October 13, 2010, the Defense Office of Hearings and Appeals (DOHA) issued to 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 October 22, 2010.

Applicant answered the SOR on November 16, 2010. She admitted five allegations (1.a, 1.e, 1.g, 1.h, and 1.i) and denied four allegations (1.b, 1.c, 1.d, and 1.f) under Guideline F. Her answer to the one allegation under Guideline E was ambiguous. At the hearing, she admitted the allegation. She requested a hearing before an administrative judge. Department Counsel was prepared to proceed on February 3, 2011, and the case was assigned to me on February 22, 2011. DOHA issued a Notice of Hearing on April 18, 2011, for a hearing on May 3, 2011. I convened the hearing as scheduled. The Government offered eight exhibits which I marked and admitted into the record received without objection as Government Exhibits (Gov. Ex.) 1 through 8. Applicant testified and submitted two exhibits which I marked and admitted into the record without objection as Applicant Exhibits (App. Ex.) A and B. I left the record open for Applicant to submit additional documents. Applicant timely submitted two documents which I marked and admitted into the record as App. Ex. C and D. Department Counsel had no objection to the admission of the additional documents. (Gov. Ex. 9, Memorandum, dated May 31, 2011) DOHA received the transcript (Tr.) of the hearing on May 11, 2011.

### **Procedural Issues**

Applicant did not receive the notice of hearing until April 26, 2011, only seven days before the hearing. Applicant is entitled to 15 days advance notice of hearing. (Directive E3.1.8.) Applicant discussed with Department Counsel the hearing date of May 3, 2011, prior to the Notice of Hearing being mailed on April 18, 2011. Applicant was ready to proceed on May 3, 2011, and stated that she had sufficient time to prepare. She waived the 15-day notice requirement. (Tr. 7-8)

### **Findings of Fact**

Applicant admitted five and denied four allegations under Guideline F. She provided an explanation for her admissions and denials. She admitted the allegation under Guideline E with explanation. 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 46 years old and is a computer technician for a defense contractor. She is a high school graduate with technical and communication certifications. Applicant served on active duty as a computer and telecommunications specialist in the United States Army from November 1984 until June 1991. She had two overseas assignments, and received an honorable discharge as a specialist (E-4). During her active duty tour, she held a top secret security clearance. She has never been married and has no children. (Tr. 21-23, 26; Gov. Ex. 1, SF 85P, dated March 23, 2009)

After leaving the Army, Applicant worked for a technology company from July 1991 until January 1992. For six weeks in November and December 1991, the company did not send her a pay check and did not offer her an explanation for the delay in her pay. She left the company in January 1992 and started working as a computer specialist for a bank. Later that year, she lost her job with the bank, had issues with her

roommate, became destitute, and had no place to go. She used a fake gun to rob a bank on December 11, 1992. She used the same fake weapon and robbed a different bank on December 12, 1992. Applicant was apprehended after the second bank robbery, convicted of armed bank robbery, and sentenced to federal prison for 31 months. She served 24 months in a federal prison and her remaining six months in a prison boot camp program. She was released from prison in 1996. Applicant admits that her actions were a mistake. (Tr. 23-26; Gov. Ex. 1, SF 85P, dated March 3, 2009)

Since her release from prison, Applicant has been gainfully employed in the computer field. She has been commended for her work performance by her present employer, and her customers have praised her for her work ethic and customer service. (Tr. 26-27; App. Ex. A, Work History, undated; App. Ex. B, e-mails, various dates) She told security investigators that her monthly net income was \$2,891 with monthly expenses of \$1,989, leaving \$908 in discretionary funds. (Gov. Ex. 2, Testimonies, dated November 4, 2010 at 4)

Credit reports (Gov. Ex. 4, dated May 30, 2009; Gov. Ex. 5, dated August 24, 2009; Gov. Ex. 6, dated April 3, 2010; and Gov. Ex. 7, dated February 2, 2011) show the following delinquent debts for Applicant: two medical debts in collection each for \$80 (SOR 1.a and 1.b); a credit union charged off debt for \$12,386 (SOR 1.c); a bank debt charged off for \$2,283 (SOR 1.d); a credit card debt charged off for \$115 (SOR 1.e); two judgments in favor of a credit union for \$4,849 (SOR 1.f), and \$16,121 (SOR 1.g); a debt of \$1,010 placed for collection by a landlord (SOR 1.h); and an insurance debt placed for collection for \$144 (SOR 1.i).

In response to questions from security investigators, Applicant denied knowledge of most of the debt. She stated she would try to resolve the debts she knew about. She listed the cause of her financial problems as mismanagement of her money. She stated she is capable of meeting her financial obligations and has the ability to pay her debts. Her other accounts are paid as agreed. (Gov. Ex. 2, Testimonies, dated November 4, 2009) She also stated that she was consolidating some debts and would pay her debts in the near future. (Gov. Ex. 3, Answers to Interrogatories, dated June 7, 2010) At the hearing, Applicant stated that even though she has been gainfully employed since 1996, she did not have sufficient funds to meet her needs. She is waiting for the outcome of her request for access to sensitive information before deciding if she will pay some of the debts. (Tr. 41-43)

The medical debts at SOR 1.a and 1.b are for physical therapy received by Applicant. She stated that she paid the charges in cash when she received the treatment. To clear the debts, Applicant paid them again and provided receipts for the payments. (Tr. 28-29; App. Ex. C, Letter, dated May 27, 2011; App. Ex D and E, Receipts, dated May 27, 2011)

Three debts, SOR 1.c, 1.f, and 1.g, are listed with the same credit union. Applicant had a loan from the credit union for the purchase of a car. In 2001, the car broke down while Applicant still had an outstanding balance of approximately \$4,000 on the car loan. She purchased another car by using an another loan from the same credit

union. She thought the dealer had consolidated the first loan with the second loan. She paid on the second loan for approximately two years. When she did not receive an expected pay raise and her living expenses increased, she no longer could afford the new car loan. She turned in the new car for repossession. After the vehicle was sold, she was advised by the credit union that she had a remaining debt for that car of \$12,000 (SOR 1.c) and \$4,000 on the original car loan (SOR 1.f). The third credit union debt (SOR 1.g) is a combination of these two debts. She has not made arrangements to pay the debts or made any payments to the credit union. (Tr. 29-32, 38-39)

Applicant attributes the \$2,283 bank debt at SOR 1.d to a fraudulent money scheme. She was told by a company that they would send her some money orders that she would cash, and send them the funds less a certain percentage she kept for her efforts. She deposited the money orders in her bank account. When she went to withdraw the funds, she was told that the money orders were not honored and the bank had charged her account for the amount of the money orders. She cashed in her 401K account in 2006 to reimburse the bank and close the account. The account was paid in full. (Tr. 32-34, 39; App. Ex. F, Letter, May 31, 2011; App. Ex. G, Bank Paid in Full Letter, dated May 26, 2011)

The credit card debt at SOR 1.e is for tires Applicant purchased. Applicant tried to contact the collection agency but could not locate any contact information. She also has not contacted the company where she purchased the tires. The debt has not been paid. (Tr. 39-40)

Applicant does not know why she has a debt to the insurance company for the debt at SOR 1.i. She cancelled her car insurance when she got insurance with another company. She has not contacted or paid the insurance company for this debt. (Tr. 35, 41)

Applicant moved from an apartment a month before the lease terminated. The landlord sent her a letter informing her that they would sell all the items left in the apartment. The items were sold but the debt does not reflect the value of those items. It is only for the amount of rent for the final two months of the lease. She has not paid the debt since the landlord sold all of her belongings to satisfy the debt. She has not been in contact with the landlord concerning the debt. (Tr. 36-37, 40-41)

### **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 for 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 safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation of 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, testimony, and admissions, 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 when she mismanaged her money and could not meet her financial obligations. The information indicates both an inability and an unwillingness to satisfy debts.

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). These mitigating conditions do not apply to Applicant's financial problems. Some of the debts were paid but others have not been addressed and are current debts. Applicant presented no information to establish that the debts were incurred under unusual circumstances or by circumstances beyond her control. In fact, the evidence shows that the debts were incurred under normal circumstances. Applicant has not acted responsibly towards the debts. She has not attempted to contact some of the creditors, and she has not paid many of the debts. Applicant has not established a pattern of acting responsibly towards her finances, so her past-due debts cast doubt on her reliability, trustworthiness, and good judgment.

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). This mitigating condition does not apply. Applicant has not presented any documents or testified concerning any financial counseling she requested or received. Her financial problems are not being resolved and are not 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. Good faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty and obligation. 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. An applicant is not required to establish that she paid each and every debt listed. All that is required is that Applicant demonstrates an established plan to resolve her financial problems and show she has taken significant actions to implement that plan.

Applicant established that she paid the two medical debts in the SOR (1.a and 1.b) and an account to a bank (1.d). However, she had not paid any of the remaining debts. In fact, she has not contacted the creditors to settle the debts or established payments plans for the remaining SOR debts. Applicant has not acted responsibly towards her debts and has not presented sufficient information to mitigate security concerns for financial considerations. Her finances create and establish a public trust concern.

### **Guideline E, 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 classified information. (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.

Applicant was convicted of bank robbery in 1992 and served almost three years in federal prison. She was destitute at the time and facing financial problems at the time she committed the robberies. These fact raise Personal Conduct Disqualifying Condition (PC DC) AG ¶ 16(e) (personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if know, may affect the person's personal, professional, or community standing,).

The Government produced sufficient evidence to establish the disqualifying conditions as required in AG ¶ 16(e). The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the trustworthiness concerns under financial considerations. An applicant has the burden to refute an established allegation or prove a mitigating condition, and the burden to prove or disprove it never shifts to the Government. Applicant raised conditions that may mitigate the concern

I have considered Personal Conduct Mitigating Condition (PC MC) AG ¶ 17(c) (the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment); AG ¶17(d) (the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such

behavior is unlikely to recur); and AG ¶ 17(e) (the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress). These mitigating conditions apply.

Applicant's conviction for bank robbery was almost 20 years ago. At the time, she was facing severe financial problems, had lost her job, and had no place to go. She was under personal stress. She successfully completed her prison sentence including a six-month prison boot camp program in 1996. She has been gainfully employed since then and has not had any other law enforcement issues. While bank robbery is a serious offense, the offense happened long ago under unusual stressful circumstances that will not recur. She acknowledged her poor behavior. She took positive rehabilitative steps through schooling in computer and communications technologies resulting in steady employment which reduced or eliminated vulnerability to exploitation, manipulation, or duress. Applicant mitigated trustworthiness concerns for her personal conduct associated with a bank robbery by her rehabilitation efforts and clean criminal record since 1996.

### **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 served over seven years on active duty in the Army and held a top secret security clearance. I considered that Applicant is a highly regarded employee with a good work record. However, Applicant has not established that she took positive action to resolve her financial problems. Some of her debts have been paid, but most are still outstanding. For most of the debts, she has not even attempted to contact the creditors. Applicant has not established a history of responsible resolution of her debts. She has presented sufficient information to mitigate the trustworthiness concern for her personal conduct based on an armed bank robbery charge in 1992. The record evidence leaves me with



questions and doubts about Applicant's eligibility and suitability for a public trust position. For all these reasons, I conclude Applicant has not mitigated the trustworthiness concerns arising from her financial situation, but has mitigated the personal conduct trustworthiness concerns.

### **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.b:	For Applicant
Subparagraphs 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraphs 1.e - 1.f:	Against Applicant
Subparagraph 1.g;	For Applicant (Duplicate of 1.c and 1.f)
Subparagraphs 1.h - 1.i:	Against 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 not clearly consistent with national security to grant Applicant eligibility for a public trust position. Eligibility for access to sensitive information is denied.

---

THOMAS M. CREAN  
Administrative Judge