



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



In the matter of: )  
)  
) ADP Case No. 10-04539  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Caroline H. Jeffreys, Esquire, Department Counsel  
Applicant: *Pro se*

April 25, 2011

**Decision**

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CREAN, Thomas M., Administrative Judge:

Based on a review of the case file and pleadings, Applicant failed to provide adequate information to mitigate security concerns under Guideline F and Guideline E. Eligibility for access to classified information is denied.

On March 3, 2009, Applicant submitted a Questionnaire for Public Trust Position (SF 85P) to obtain a position of public trust with a defense contractor. (Item 5) As a result of an Office of Personnel Management (OPM) investigation, Department of Defense adjudicators were unable to determine that it is clearly consistent with the national interest to grant Applicant a position of public trust. On November 23, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing public trust concerns for financial considerations under Guideline F and for Personal Conduct under Guideline E. (Item 1) 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 in the Department of Defense on September 1, 2006. Applicant acknowledged receipt of the SOR on November 30, 2010. (Item 3)

Applicant timely answered the SOR on November 30, 2010. She admitted 24 and denied 18 of the 42 factual allegations and the underlying public trust concern under Guideline F with explanation. She denied the two factual allegations of providing false information on her application for a Public Trust position. The total delinquent debt alleged in the SOR is \$115,402. Applicant admits debts totals over \$98,739. Applicant elected to have the matter decided on the written record. (Item 4) Department Counsel submitted the Government's written case on January 12, 2011. Applicant received a complete file of relevant material (FORM) on February 7, 2011, and was provided the opportunity to file objections, and submit material to refute, extenuate, or mitigate the disqualifying conditions. She provided additional information in response to the FORM on February 21, 2011, and March 22, 2011. The case was assigned to me on March 14, 2011.

### **Findings of Fact**

I thoroughly reviewed the case file and the pleadings. I make the following findings of fact.

Applicant is 50 years old, and has worked as a network administrator for a defense contractor since May 2007. Applicant has been married and divorced three times and has two grown children. She has never served in the military, and this is her first application for a public trust position. (Items 5 and 6) In response to interrogatories, Applicant listed her net monthly income as \$4,200, with net monthly expenses of \$3,040, leaving a net monthly remainder in discretionary funds of \$1,160. Applicant indicated she and one of her former husbands received financial counseling over ten years ago. (Item 6 at 8)

Credit reports (Item 7, dated January 12, 2011; Item 8, dated July 15, 2010; and Item 9, dated March 12, 2009) show the 42 delinquent debts. These delinquent accounts include a judgment (SOR 1.a), a tax lien (SOR 1.b), a past due mortgage debt (SOR 1.t), collection accounts for television service, telephone service, and utilities (SOR 1.c to 1.e, 1.h, 1.l, 1.cc, 1.ii, and 1.nn), delinquent medical accounts (SOR 1.f, 1.g, 1.i to 1.k, 1.m to 1.q, and 1.oo), and loans and credit card accounts (SOR 1.r, 1.s, 1.u to 1.bb, 1.dd to 1.hh, 1.jj to 1.ll, and 1.pp). The latest credit reports (Items 8 and 9) list delinquent debts that were incurred as late as 2009.

In a March 29, 2010, interview with a security investigator, Applicant acknowledged that she had financial difficulties for many years. She attributes her problems to her battle with cancer, former husbands running up debt, her single mother income, job relocation, providing support to her family, and the results of economic downturn. She acknowledges most of the debts. Because of her cancer treatment and low paying jobs, she can only meet her current obligations. She is trying to resolve her past due debts but is unable to do so. She does not believe she can realistically pay her delinquent debts due to her ongoing cancer treatment. (Item 6, at 11-16) In her

response to the SOR, Applicant attributes many of her medical and non-medical debts to her cancer treatment. She also disputes some of the debts. (Item 4)

Applicant provided detailed information on the status of her current finances in response to the FORM. She states that her financial problems started in 2003 when her last husband had a car and a mobile home that were in her name repossessed after their divorce. She incurred expenses when some family members passed away and she became unemployed. She has been rebuilding her life and credit since 2007. She moved to another city to get a better job providing steady employment and benefits. She developed cancer in 2007 which caused medical debts and time away from work. She continues to receive treatment for her cancer. She provided information that she has paid seven of her delinquent debts since February 2011, the last paid in March 2011. She has been paying the tax lien and the debt is now \$1,179.96. She entered into settlement agreements for two car repossession debts and is making payments towards that settlement. One of these debts should be resolved in April 2011. She is working on settling and paying her medical debts. She also notes that some debts are beyond enforcement by the state statute of limitation. (Letter and Documents, dated February 21, 2011, and March 17, 2011) Applicant has substantial discretionary funds on a monthly basis to enable her to continue to resolve and settle her delinquent debts.

Applicant completed her application for a position of public trust on March 3, 2009. In response to question 22a concerning bankruptcy, tax liens, or legal judgments against her in the last seven years, Applicant responded "NO" but listed a repossession in October 2007. She did not list the Internal Revenue Service tax lien noted in SOR 1.b. In response to question 22b concerning debts over 180 days delinquent, Applicant again answered "NO" but listed the same repossession listed in response to question 22a. At least 27 debts listed in the SOR were over 180 days past due when Applicant completed her application for a position of public trust. In response to the SOR, Applicant notes her failure to list the tax lien was not deliberate. She did not remember the tax lien since it was placed many years before and was her former husband's responsibility. When interviewed by a security investigator, Applicant informed the investigator that she was aware of her debts since they were ongoing for many years. (Item 6 at 4)

Applicant is highly regarded by her employer. A Senior Director of Applicant's employer notes that Applicant continued to work while she underwent cancer treatment. She is a true asset to the company and continues to do her best for her employer. (Answer to FORM, letter, dated February 16, 2011) Applicant's immediate director states that she has known Applicant for over five years. Applicant always displays a high degree of integrity and responsibility. She has a good work ethic and sense of pride in her work. She is a dependable team player with good judgment and mature outlook. (Answer to FORM, Letter, dated February 22, 2011) Applicant's immediate manager states that he has known her for over four years. Applicant is an exceptional performer who is hard working and dedicated to her duties. She has worked while undergoing cancer treatment. She displays a positive attitude and strong moral character. (Answer to FORM, Letter, dated February 16, 2011) Six of Applicant's co-

workers wrote that Applicant is a good worker and provides them with positive information network support. Applicant displays a positive attitude and is highly regarded for her integrity, judgment, and responsibility. She is considered an asset to the company. (Answer to FORM, Letters, various dates) Applicant's doctor wrote that Applicant has been his patient for over three years for cancer treatment. Applicant has displayed a positive and pleasant attitude. He recommends that she be granted a position of public trust. (Answer to FORM, Letter, dated February 8, 2011)

## **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 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 debts starting in 2003 because of the poor financial actions of her former husbands, her treatment for cancer, and her low paying jobs. The delinquent debts show a history of not meeting financial obligations because of an inability, and not unwillingness, to satisfy debt.

The Government produced substantial evidence to establish the disqualifying conditions as required in AG ¶¶ 19(a) and 19(c). The burden shifts to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the public trust 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.

I considered Financial Considerations Mitigating Condition (FC MC) 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); 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 separation) and the individual acted responsibly under the circumstances). These mitigating conditions do not apply. Applicant's delinquent debt problems may have commenced in 2003 but she still incurred delinquent debt as late as 2009. There is no indication that her debts were incurred under such circumstances that the debts will not recur. In fact, it appears the debts were incurred by Applicant in the normal course of living. According to Applicant, she incurred delinquent debt because of the financial actions of her former husbands, the requirements of her cancer treatment, and her low paying positions. However, Applicant failed to establish or provide information how the actions of her former husband's were beyond her control and caused her financial problems. Her letters of recommendation indicate that she was able to work while undergoing her cancer treatment so she did have income. However, she provided information that some of the debts are being settled and paid indicating she is now acting responsibly to manage and pay her past due obligations. Her financial information shows she has funds available each month to make payment on her delinquent debts. Her financial problems have the potential of coming under control.

I 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 indicated she received financial counseling over ten years ago. Since most of her financial issues are recent and ongoing, this counseling does not pertain to her present financial situation and is not the type of financial counseling considered for mitigating purposes. It does appear that her financial problems have the ability to be resolved or be under control in the near future.

I considered FC MC ¶ 20(d) (the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts). 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, concrete method of handling debts is needed. Good-faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. Applicant has to show a "meaningful track record" of debt payment, including evidence of actual debt reduction through payment of debts. A promise to pay debts in the future is not evidence of a good-faith intention to resolve debts. In addition, relying on debt to be resolved by the application of a statute of limitations rather than paying the debt does not establish a "meaningful track record" for consideration of a public trust position. All that is required is a plan to resolve financial problems coupled with significant action to implement that plan. At this time, Applicant has failed to establish such a good-faith effort or meaningful track record.

Applicant has significant delinquent debt of over \$115,000. While she challenges and denies some of the debt, she admits to over \$98,000 of the debt. She provided

information that she paid or resolved nine of the debts totaling approximately \$10,000 of this total. Two of the debts were duplicate debts. This still leaves Applicant with significant delinquent debts. Her plan is to continue to pay and resolve the debts as she can. However, she has not presented adequate evidence to show how she intends to implement this plan. She has sufficient income to meet her financial obligations but not a detailed plan of how this income will be used to pay her significant delinquent debt. Based on the significant acknowledged delinquent debt that has not been addressed and the lack of a detailed plan to resolve this debt, Applicant has not presented sufficient information to mitigate security concerns for financial considerations.

## **Personal Conduct**

A public trust 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 public trust process or any other failure to cooperate with the security clearance process. (AG ¶ 15) Personal conduct is always a security concern because it asks the central question whether the person's past conduct justifies confidence the person can be entrusted to properly safeguard classified information. The public trust clearance system depends on the individual providing correct and accurate information. If a person conceals or provides false information, the clearance process cannot function properly to ensure that granting access to sensitive information is in the best interest of the United States Government. Applicant answered "NO" to financial questions concerning tax liens and debts delinquent over 180 days. However, in response to both questions, she did list the same debt as falling within both categories. This may indicate that Applicant was confused about the intended information requested. Applicant was aware that she had a number of debts past due more than 180 days, and an IRS tax lien against her. The failure to list these debts raises a security 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. While there is a public trust concern 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 clearance, 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 with intent to deceive. Applicant stated she did not remember the lien when she completed the public trust position application. Applicant completed her public trust clearance application in 2009. The tax lien was filed in 2003 and was against both her and her then husband. It is reasonable to believe six years later after a divorce and cancer treatment, she would not remember the tax lien. However, she listed only one debt past due more than 180 days when she had over 27 significant debts past due at the time the application was completed. The number and dollar value of these past due debts is

significant and something that would be remembered by an individual. When interviewed by a security agent a year after completing her application, she acknowledged all of the debts. It is not reasonable to believe that Applicant would forget these significant debts. On the contrary, It is reasonable to believe that the debts were not listed because of a concern they would have a negative influence on granting Applicant a position of public trust. Her incorrect answer to question 22a was not deliberate but her response to question 22b was a deliberate intent to deceive. I find against Applicant as to personal conduct.

### **Whole-Person Analysis**

Under the whole-person concept, the administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all relevant circumstances. An 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 a security clearance 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 highly regarded by her employer and co-workers and is recommended for a position of public trust. Applicant did not present sufficient information to show she is or has taken reasonable and responsible action to resolve her financial issues. Applicant has not presented sufficient information to establish a meaningful track record of paying and resolving her delinquent debts. Applicant has shown that she has paid or resolved nine of her 42 SOR listed delinquent debts but the dollar amount of those debts was small in comparison to her entire amount of delinquent debt. She has not provided a credible plan to resolve and pay her remaining delinquent debts. Her promise to continue to resolve her debt is not sufficient to establish a good faith-effort to mitigate the public trust concerns. Applicant has not demonstrated responsible management of her finances. She accumulated significant debt which she has only recently started to resolve. She has only resolved a small part of her delinquent debt. It is clear that Applicant has the desire to resolve her debts. If she continues to resolve a significant portion of her remaining unpaid debt in the near future, she may be able to demonstrate reasonable and responsible management of her finances and be considered for access



to sensitive information. The significant delinquent debt and lack of a credible plan to resolve this debt shows a lack of responsible management of financial obligations indicating she may not be concerned or responsible in regard to the safeguarding of sensitive information.

Applicant did not provide false and misleading information on her public trust application with the intent to deceive in response to question 22a concerning a tax lien because she reasonably and honestly did not remember that debt. However, she had to know she had significant delinquent debt past due more than 180 days since the number of debts and the amount was significant and some were even recent. Her failure to list these debts was deliberate with intent to deceive security investigators about the status of her finances.

Overall, the record evidence leaves me with questions and doubts about Applicant's judgment, reliability, and trustworthiness. She has not established her suitability for access to sensitive information. For all these reasons, I conclude Applicant has not mitigated the public trust concerns arising from her financial situation and her personal conduct. Eligibility for access to sensitive information is denied.

### **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
Subparagraph 1.a:	Against Applicant
Subparagraphs 1.b -1.e:	For Applicant
Subparagraphs 1.f. -1.g.	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraphs 1.l - 1.k:	Against Applicant
Subparagraph 1.l:	For Applicant
Subparagraphs 1.m - 1.r:	Against Applicant
Subparagraph 1.s:	For Applicant
Subparagraphs 1.t - 1.jj:	Against Applicant
Subparagraphs 1.kk - 1.ll:	For Applicant

Subparagraphs 1.mm - 1.pp:      Against Applicant

**Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for access to sensitive information. Eligibility for access to sensitive information is denied.

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THOMAS M. CREAN  
Administrative Judge