



consideration on April 25, 2011, within the 30 days permitted. Applicant's submission consisted of an undated letter of explanation. In her letter, she claimed that she completed all of her pre-bankruptcy paperwork for her attorney, and that her bankruptcy petition has been initiated. However, she provided no documentation of a filed bankruptcy petition. In the balance of her letter, she stressed her trustworthiness and financial mistakes with her marriage that she is trying to rectify. Applicant's submission was identified as AE 1 and admitted. The case was assigned to me on May 3, 2011.

### **Summary of Pleadings**

Under Guideline F, Applicant allegedly accumulated 12 delinquent debts exceeding \$100,000. In her response to the SOR, Applicant admitted each of the allegations without explanation.

### **Findings of Fact**

Applicant is a 26-year-old employment services representative for a defense contractor who seeks a determination of eligibility to hold a public trust position. The allegations covered in the SOR and admitted by Applicant are adopted as relevant and material findings. Additional findings follow.

### **Background**

Prior to moving to her current state of residence in October 2007, Applicant was unmarried and childless. (Item 4) Since moving to her current state in 2007, she cohabited with a male friend with whom she had a child in early 2010. (Item 6) Claims conflict as to whether she married the boyfriend who fathered her child. In her interview with an agent from the Office of Personnel Management (OPM), the agent credited her with referring to her boyfriend as her husband. (Item 6) When subsequently asked about the accuracy of the interview summary in an October 2010 interrogatory, she denied the boyfriend was her husband. (Item 6)

In her supplemental response to the FORM, Applicant claimed her live-in boyfriend and father of her new-born is her husband. Without reconciling all of her explanations of her relationship, inferences warrant that at some point in time in 2010 or 2011, Applicant married her live-in boyfriend (either by formal marriage or through a recognized common-law union). Marriage best characterizes Applicant's current living arrangement.

Applicant has been employed by her current defense contractor since March 2010. (Item 3) She likes her work and would like the opportunity to continue with her employment.

### **Applicant's Finances**

Applicant and her boyfriend at the time purchased a home together in January 2006 in her former state of residence for about \$120,000. (Item 6) She and her boyfriend financed their purchase with an 80-20 mortgage. This mortgage was

comprised of a first mortgage of around \$86,000, a second mortgage of \$28,000, and an undetermined down payment. (Items 5 and 6)

Applicant experienced recurrent unemployment problems between October 2006 and March 2010 and encountered difficulties keeping up with her bills. When she left her boyfriend in her former state of residence in 2007, she understood that her boyfriend assumed responsibility for paying the two mortgages on the property. (Item 10) However, he failed to maintain the required mortgage payments, and the home was foreclosed by the creditor holding both mortgages in August 2007. How much the property produced in the public sale is unknown. Applicant, though, remains exposed to potential deficiency claims on the two mortgages.

Besides her real estate mortgages, Applicant accumulated a number of utility, consumer, medical, and student loan debts between 2006 and 2009. (Items 5-7) She has been unable to address any of the listed debts with her available income sources. She committed all of her income to preparing for the arrival of her baby. (Item 7) According to her last correspondence, her baby was born in July 2010. (AE 1) Her claims are not controverted and are accepted.

Applicant's non-real estate debts do not exceed \$3,000. However, she has not addressed any of these debts to date or obtained financial counseling to assist her with her finances. While she assures she has prepared the necessary paperwork for initiating a bankruptcy petition, she has provided no documentation of a bankruptcy filing, or other evidence of concrete steps taken towards seeking bankruptcy relief. (AE 1)

In her July 2010 OPM interview, Applicant provided personal financial information covering her income sources and expenses. (Item 6) Based on the information she provided, Applicant earned net monthly income of \$1,690. (Item 6) Her boyfriend at the time earned net monthly income of \$2,100. Their combined net monthly income totaled \$3,790. (Item 6) She listed monthly expenses of \$2,974 and a net monthly remainder of \$816. (Item 6) Because she no longer receives food stamps, her food expenses have increased to \$450 a month. (Item 6) Diaper expenses for her newborn (about \$350 a month) have further reduced her monthly remainder.

### **Endorsements**

In her response to the SOR, Applicant cited her productive performance and demonstrated responsibility as proof of her trustworthiness. (AE 1) She assured that she has learned from her mistakes and will not encounter recurrent mistakes of financial judgment in the future. However, she did not provide any endorsements or performance evaluations on her behalf. Nor did she provide any proof of community and civic contributions, or service-related awards and commendations.

### **Policies**

The AGs list guidelines to be used by administrative judges in the decision-making process covering DOHA cases. These guidelines take into account factors that

could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to hold a public trust position. These guidelines include "[c]onditions that could raise a security concern and may be disqualifying" (disqualifying conditions), if any, and many of the "[c]onditions that could mitigate trustworthiness concerns." These guidelines must be considered before deciding whether or not eligibility to hold a public trust position should be granted, continued, or denied. The guidelines do not require administrative judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision. Each of the guidelines is to be evaluated in the context of the whole person in accordance with AG ¶ 2(c).

In addition to the relevant AGs, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in AG ¶ 2(a) of the AGs, which are intended to assist the judges in reaching a fair and impartial commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable trust risk.

When evaluating an applicant's conduct, the relevant guidelines are to be considered together with the following AG ¶ 2(a) factors: (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.

Viewing the issues raised and evidence as a whole, the following individual guidelines are pertinent in this case:

### **Financial Considerations**

*The Concern:* "Failure or inability to live within one's means, satisfy debts 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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts." AG, ¶ 18.

### **Burden of Proof**

By virtue of the principles and policies framed by the AGs, a decision to grant or continue an applicant's eligibility to hold a public trust position may be made only

upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a commonsense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility to hold a public trust position depends, in large part, on the relevance and materiality of that evidence. See *Kungys v. United States*, 485 U.S. 759, 792-800 (1988). As with all adversarial proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) it must prove by substantial evidence any controverted facts alleged in the SOR; and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to hold or maintain a public trust position. The required materiality showing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused a position requiring trust and reliability before it can deny or revoke eligibility to hold a public trust position. Rather, the judge must consider and weigh the cognizable risks that an applicant may deliberately or inadvertently fail to demonstrate good judgment and trustworthiness.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the evidentiary burden shifts to the applicant for the purpose of establishing his or her eligibility to hold a public trust position through evidence of refutation, extenuation, or mitigation. Based on the requirement of Exec. Or. 10865 that all public trust positions be clearly consistent with the national interest, the applicant has the ultimate burden of demonstrating his or her trust eligibility. Like security clearance determinations, public trust eligibility decisions“ should err, if they must, on the side of denials.” See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

### **Analysis**

Applicant is an employment services representative of a defense contractor who accumulated a number of delinquent debts, mostly while residing in another state. Together with her boyfriend, Applicant assumed first and second real estate mortgages exceeding \$106,000. When her boyfriend failed to meet the mortgage obligations following their separation, the lender foreclosed. Without any documented information of the sale price of the property at the foreclosure sale, it cannot be determined how much of a deficiency, if any, that Applicant is currently exposed to.

To date, she has provided no documentation concerning her foreclosed real estate or any of her other delinquent debts covered in the SOR. At least since her July 2010 OPM interview, she has committed to a bankruptcy strategy for resolving her delinquent debts. Such a strategy may work for her once she files a petition. However, to date she has not provided any proof of a bankruptcy filing or firm indications as to when she can expect a discharge.

Applicant's pleading admissions of the debts and initiated foreclosure of her home covered in the SOR negate the need for any independent proof (see *McCormick on Evidence*, § 262 (6th ed. 2006)). Each of Applicant's listed debts are documented in her latest credit reports and provide corroboration of her debts. Her accumulation of delinquent debts, her past inability and unwillingness to address these debts, and her failure to date to take any concrete steps towards petitioning for federal bankruptcy warrant the application of two of the disqualifying conditions (DC) of the Guidelines: DC ¶ 19(a), "inability or unwillingness to satisfy debts," and ¶ 19(c) "a history of not meeting financial obligations."

Moreover, some judgment problems persist over Applicant's explained delinquencies and her failure to demonstrate she acted responsibly in addressing her listed debts. See ISCR Case 03-01059 at 3 (App. Bd. Sep. 24, 2004). Not only are her listed debt delinquencies still outstanding, but she has failed to address them in any good-faith manner. Resolution of a debt through foreclosure (as is the case with creditors 1.a and 1.l) rather than through voluntary repayment efforts carries much less mitigating force, and does not afford Applicant any cognizable mitigation credit for the handling of her real estate loans to date. See ISCR Case No. 04-07360 (App. Bd. Sept. 26, 2006).

Holding a security clearance involves a fiduciary relationship between the Government and the clearance holder. Quite apart from any agreement the trust holder may have signed with the Government, the nature of the clearance holder's duties and access to classified information necessarily imposes important duties of trust and candor on the clearance holder that are considerably higher than those typically imposed on Government employees and contractors involved in other lines of Government business. See *Snepp v. United States*, 444 U.S. 507, 511 n.6 (1980). Failure of the applicant to make concerted efforts to pay or resolve her debts when able to do so raises concerns about whether the applicant has demonstrated the trust and judgment necessary to safeguard classified information.

Applicant's debts are attributable in part to her taking on too much real estate and other obligations with an unreliable partner, which exposed her to considerable risks of deficiency enforcement by the foreclosing lender, and other creditors with smaller credit balances. All of the listed debts in the SOR are either unpaid or unresolved. While Applicant's real estate deficiency risks are in part attributable to her boyfriend's failure to pay the mortgages after their separation (as promised), her failure to seek and obtain relevant financial data from her ex-boyfriend and public sources about the status of her foreclosed mortgages reflect mitigation lapses of her own doing. Her explanations do not account for her failure to provide a meaningful record of communication exchanges between herself, her ex-boyfriend, the lender, and public authorities responsible for maintaining records of real estate sales.

Based on the documented materials in the FORM, some extenuating circumstances are associated with Applicant's inability to pay of or otherwise resolve her debts. Available to Applicant in part is MC ¶ 20(b), "the conditions that resulted in the behavior 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.” But extenuating circumstances alone are not enough to enable Applicant to mitigate trust concerns over her failure to date to address her debts, either through payment arrangements or initiated bankruptcy proceedings.

A whole-person assessment does not enable Applicant to surmount the judgment questions raised by her accumulation of delinquent debts and failure to take responsible steps to address them. While recurrent unemployment problems, preparations for the birth of her child, and the absence of cooperation and assistance from her ex-boyfriend may have played a considerable role in her accumulation of so much debt exposure, her continuing failure to take any action on her admitted debts and real estate foreclosure is a source of continuing trustworthiness and judgment concerns. Endorsements and performance evaluations might have been helpful, too, in making a whole-person assessment of her overall clearance eligibility, but were not provided. Overall, a trustworthiness eligibility assessment of Applicant based on the limited amount of information available for consideration in this record does not enable her to establish judgment and trust levels sufficient to overcome concerns arising out of her accumulation of delinquent debts.

Taking into account all of the documented facts and circumstances surrounding Applicant’s debt accumulations and her lack of any acceptable explanations for her declinations to address her delinquent debts, it is still too soon to make safe predictive judgments about Applicant’s ability to either repay her debts, or resolve them through a completed bankruptcy discharge, and restore her finances to stable levels commensurate with the minimum requirements for holding a public trust position. Unfavorable conclusions warrant with respect to the allegations covered by subparagraphs 1.a through 1.l.

### **Formal Findings**

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact, conclusions, conditions, and the factors listed above, I make the following formal findings:

#### **GUIDELINE F (FINANCIAL CONSIDERATIONS): AGAINST APPLICANT**

Subparagraphs. 1.a through 1.l:	Against Applicant
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### **Conclusions**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant’s eligibility to hold a public trust position. Eligibility is denied.

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Roger C. Wesley  
Administrative Judge

