



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



In the matter of: )  
)  
) ADP Case No. 10-08311  
)  
Applicant for Public Trust Position )

**Appearances**

For Government: Richard Stevens, Esquire, Department Counsel  
For Applicant: *Pro se*

November 30, 2011

**Decision**

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CREAN, THOMAS M., Administrative Judge:

Based on a review of the case file, pleadings, exhibits, and testimony, eligibility for access to sensitive information is denied.

**Statement of the Case**

On February 22, 2010, Applicant submitted a Questionnaire for Public Trust Position (SF 85P), as part of her employment with a defense contractor. After an investigation conducted by the Office of Personnel Management, the Defense Office of Hearings and Appeals (DOHA) issued two interrogatories to Applicant to clarify and augment information from the investigation. On March 14, 2011 after considering all information, DOHA issued to Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns for 25 allegations of delinquent debt and 6 allegations of issuing fraudulent checks under financial considerations (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); 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 March 21, 2011.

Applicant answered the SOR on April 6, 2011. She admitted 24 allegations of delinquent debt and fraudulent checks. She denied seven allegations of delinquent debts (SOR 1.e, 1.f, 1.p, 1.t, 1.u, 1.v, and 1.y). She requested a hearing before an administrative judge. Department Counsel was prepared to proceed on June 13, 2011, and the case was assigned to me on July 25, 2011. DOHA issued a Notice of Hearing on August 3, 2011, for a hearing on August 22, 2011. I convened the hearing as scheduled. The Government offered five exhibits which I marked and admitted into the record without objection as Government Exhibits (Gov. Ex.) 1 through 5. Applicant testified but did not submit any documents. I left the record open for Applicant to submit documents. Applicant did not submit any post-hearing documents. DOHA received the transcript (Tr.) of the hearing on September 7, 2011.

### **Procedural Issues**

Applicant did not receive the written notice of hearing until August 10, 2011. Applicant is entitled to 15 days advance notice of hearing. (Directive E3.1.8.) Applicant discussed with Department Counsel the hearing date of August 22, 2011, prior to the Notice of Hearing being mailed on August 3, 2011. Applicant was ready to proceed on August 22, 2011, and stated that she had sufficient time to prepare. She waived the 15-day notice requirement. (Tr. 5-6)

### **Findings of Fact**

Applicant admitted 24 and denied 7 of the allegations under Guideline F. She provided an explanation for her admissions and denials. 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 34 years old and has been a claims processor for a defense contractor since 2006. She stated her job performance is good and her ratings have been excellent. She provided no documents concerning her job performance. She graduated from high school in 1994 and served almost six years as a supply specialist in the Army from 1996 until 2002. Applicant received limited debt counseling in the Army. She served overseas and was discharged with an honorable discharge as a Specialist (E-4) because she did not have an appropriate child care plan. She was married while on active duty. She and her husband separated in April 2001 and divorced in June 2002. Her husband was a dependent and not on active duty. Applicant has three children, two from the marriage and one outside the marriage. Her yearly salary is approximately \$20,000. She also received \$240 monthly in child support payments. Her monthly discretionary income is approximately \$60 to \$70. (Tr. 10-16, 20-24, 48-52; Gov. Ex. 1, SF 85P, dated February 22, 2010)

Applicant's finances were poor when she was on active duty. Her husband, as a dependent, was able to make purchases in their name that Applicant was unaware of,

and they could not afford. After leaving the Army, Applicant helped her disabled parents and secured employment with a soda distributor. She was fired from that position for inappropriate conduct and was unemployed for over 13 months from October 2004 until November 2005. When Applicant was hired by her present employer, she was initially placed in a position not requiring access to sensitive information ow which was snot a public trust position. Her employer wants to move her to a new position requiring access to sensitive information. (Tr. 25-28)

Credit reports (Gov. Ex. 4, dated June 24, 2010, and Gov. Ex. 5, dated January 27, 2011), and her answers to financial interrogatories (Gov. Ex. 2, and Gov. Ex. 3, dated December 15, 2010) establish 11 delinquent medical debts (SOR 1.a, 1.b, 1.c, 1.d, 1.l, 1.m, 1.n, 1.r, 1.u, 1.x, and 1.z), six allegations of uttering fraudulent checks (SOR 1.f, and 1.aa to 1.ee), one delinquent energy bill (SOR 1.e), four delinquent phone debts (SOR 1.j, 1.k, 1.p, and 1.q), three delinquent credit card debts (SOR 1.g, 1.h, and 1.v), a delinquent furniture debt (SOR 1.i), two delinquent personal loans (SOR 1.o and 1.s), two delinquent insurance bills (SOR 1.t and 1.v), and one delinquent education loan (SOR 1.w). The total amount of the debt is approximately \$18,000.

Applicant acknowledges the medical debt at SOR 1.a as treatment she received when she was unemployed and did not have health insurance. The debt has not been paid and she has not made inquiries concerning the debt. (Tr. 27-28) Applicant is unsure of the medical debt for emergency services at SOR 1.b. She does not remember being treated in an emergency room but it could have been for one of her children when their father took them for treatment. (Tr. 28) Applicant also acknowledges the medical debts at SOR 1.c, SOR 1.d, SOR 1.m, SOR 1.n, SOR 1.r, SOR 1.w, SOR 1.x, and SOR 1.z. She does not know what the bills are for and she made no inquiries concerning the debts. The medical debts have not been paid. (Tr. 28-29, 37-38, 42-43)

The debt at SOR 1.e is a utility debt resulting from her move from one residence to another. She called the utility company and told them she was moving. She believes the meter was read but is unsure. She presently has service with the utility. She believes if she owed a debt the utility would not provide her service. She did not provide any documentation post-hearing that her utility bill is current. (Tr. 30-31)

Applicant denied and disputed the debt for a returned check from a family portrait photographer at SOR 1.f. She never used the service of the portrait photographer since all of her children's pictures were taken at school. She has not formally disputed the returned check. (Tr. 31-32)

Applicant acknowledged the credit card debts at SOR 1.g and SOR 1.h. She opened the accounts to use for gas and groceries either after she left the Army or when she was laid off. The credit limits were \$200 and \$300. The amount in dispute represents significant interest and penalties. She has not made any attempts to pay the accounts. (Tr. 31-32)

The debt at SOR 1.i is for living room furniture Applicant purchased in June 2003 after leaving the army and establishing a household. She still uses the furniture. She

had a monthly payment plan of \$60 to \$75. She believes she completed the payment plan and paid the loan. The company is no longer in business. However, she did note that the company would not have made negative entries on her credit report if the debt had been paid. (Tr. 33-35)

Applicant acknowledged the three delinquent phone accounts at SOR 1.j, 1.k, and SOR 1.q. One account had increased charges when the original company was purchased by another provided. She complained about the increased charges and her phone service was terminated. She does not know about the second account since she only had one account with the company. The third account was for service she had immediately after leaving the military. She presented no documentation to verify her claims. Her present cell phone service is with a different company. (Tr. 35-36, 41)

The medical debt at SOR 1.l is to her gastroenterologist. She sees him regularly and makes a \$30 cash co-payment before being seen. She believes this debt is current. Applicant was provided the opportunity after the hearing to provide information from the doctor that the debt was current. She did not provide any information. (Tr. 36-37)

The debt at SOR 1.o is for a revolving personal loan Applicant has with a loan company. Applicant still has an account with the lender and her payments are current. She was provided the opportunity to present information from the loan company on the status of the account after the hearing, but she did not provide the information.

The delinquent debt at SOR 1.s is from a check cashing service for a personal loan. After cashing the check, Applicant could not make the required monthly payments. (Tr. 38-39, 42)

The delinquent debt at SOR 1.p is for the remaining balance on a car loan after repossession in September 2005. She made monthly payments on the loan for approximately two years before it was repossessed. She has not made any payments since then and is not sure of the amount owed. (Tr. 40-41)

The delinquent debts at SOR 1.t and SOR 1.u are from insurance companies. She was initially insured by one company for approximately six months and then switched to her present insurance company. Her bills from this company are current. She disputes the debt at SOR 1.u because she never had insurance with that company. She presented no documentation to verify her dispute. (Tr. 42)

The delinquent debt at SOR 1.y is for college course tuition. Applicant enrolled in the course but did not complete it. She claims the debt was paid when her tax refund in 2005 was used to pay the \$1,200 debt. She has the tax receipt and said she would provide it after the hearing. Applicant did not provide the receipt. (Tr. 43-44)

The allegations at SOR 1.aa to 1.ee pertain to checks uttered by Applicant that were dishonored for insufficient funds. She used the checks to purchase small household items. When she uttered some of the checks she knew her account balance was close to the amount of the check and was potentially not to be honored. She

redeemed some of the checks shortly after presenting them but she still had to appear in court for the offenses. No checks were redeemed after she appeared in court. (Tr. 46-47)

## **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 was on active duty in the Army and after being fired from a job and being unemployed for over a year after leaving active duty. She did not properly manage 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. Applicant presented no information to establish that the debts were incurred under unusual circumstances or by circumstances beyond her control. She claimed that some of the debts may have been incurred by her husband's frivolous spending or when she was unemployed for over a year. While these two circumstances could cause financial issues, Applicants did not make a connection between her

unemployment or her husband's spending and her delinquent debts. In fact, her testimony indicates most of the debts were incurred by her actions, and under normal circumstances. Applicant has not acted responsibly towards the debts. She has not attempted to contact most of the creditors, and she has not paid most 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. She said she received financial counseling in the Army, but that was over ten years ago. 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 claimed that she is paying a utility debt (SOR 1.e), and one medical debt (SOR 1.i). She further asserts a furniture debt was paid (SOR 1.i), and a tuition debt was paid from her tax refund (SOR 1.y). She disputed a returned check from a portrait photographer that she stated she never used (SOR 1.f). Applicant was provided the opportunity after the hearing to present documentation of debt payments and disputes filed. She did not present any post-hearing documents. Without documentation, I can give her credit for the medical debt payments. It is reasonable that this debt is current or the doctor would not continue to treat her. Also the utility would not continue to provide her service if her bills are not current. Without documentation, she cannot receive credit for the other debt payments or disputes she claims. She has not contacted the creditors to settle the debts or establish payment plans for the remaining SOR debts. Applicant has not acted responsibly towards her debts and has not presented sufficient information to mitigate public trust concerns for financial considerations. Her finances create and establish a public trust concern.

### **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 almost six years on active duty in the Army. Applicant has not established that she took positive action to resolve her financial problems. A limited number of her debts may have been paid, but most are still outstanding. For most of the debts, she has not even attempted to contact the creditors. Applicant was provided the opportunity after the hearing to present documentation on her financial actions and her duty performance. She chose not to provide the information. Applicant has not established a history of responsible resolution of her debts. 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.

### **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.d:	Against Applicant
Subparagraphs 1.e - 1.f:	For Applicant
Subparagraphs 1.g – 1.k:	Against Applicant
Subparagraph 1.l:	For Applicant
Subparagraphs 1.m – 1.ee:	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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THOMAS M. CREAN  
Administrative Judge