



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



In the matter of: )  
 )  
----- ) ADP Case No. 10-09499  
 )  
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Applicant for Public Trust Position )

**Appearances**

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

September 30, 2011

**Decision**

HOWE, Philip S., Administrative Judge:

On April 9, 1993, the Composite Health Care Systems Program Office (CHCSPO), the Defense Office of Hearings and Appeals (DOHA), and the Assistant Secretary of Defense for Command, Control, Communications and Intelligence (ASD C3I) entered into a memorandum of agreement for DOHA to provide trustworthiness determinations for contractor personnel employed in Sensitive Information Systems Positions (ADP I/II/III) as defined in the Department of Defense (DoD) Regulation.5200.2-R, Personnel Security Program (January 1987), as amended (Regulation).

Applicant submitted her Questionnaires for Public Trust Position (SF 85P), on October 22, 2009. On January 21, 2011, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns under Guidelines E (Personal Conduct) and F (Financial Considerations).

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); the Regulation; and the adjudicative guidelines (AG) effective within the Department of Defense after September 1, 2006.

Applicant acknowledged receipt of the SOR on January 27, 2011. She answered the SOR in writing on February 4, 2011, and requested a hearing before an Administrative Judge. DOHA received the request on February 7, 2011. Department Counsel was prepared to proceed on April 7, 2011, and I received the case assignment on May 2, 2011.

DOHA issued a notice of hearing on May 5, 2011, and I convened the hearing as scheduled on May 27, 2011. The government offered Exhibits (Ex.) 1 through 5, which were received without objection. Applicant testified and submitted Exhibits A through F, without objection. Applicant had until July 1, 2011, to submit additional documents pertaining to her delinquent debts. She submitted additional exhibits on July 5, 2011, to which the government had no objection. These exhibits were marked Ex. G to J. The record closed on July 5, 2011.

DOHA received the transcript of the hearing (Tr.) on June 8, 2011. Based upon a review of the record evidence as a whole, eligibility for a Sensitive Systems Position ADP I/II/III is granted.

### **Findings of Fact**

In her Answer to the SOR Applicant admitted the factual allegations in all subparagraphs of ¶ 2 except the allegations contained in ¶¶ 2.b, 2.c, and 2.i, and provided explanations. Applicant admitted ¶ 1.a, but denied she violated a patient's financial privacy. She also provided additional information to support her request for eligibility for a public trust position.

Applicant is 45 years old, divorced since 2000, and has two teenaged sons. She works for a defense contractor in the medical services business. Applicant's net income each month is \$1,770. All her current monthly bills are paid. She has no savings account. She purchased a used car last year, incurring a car loan of \$11,000. Applicant is current on her car payments. She sold her former car to her oldest son and used his money to make the down payment on the car she purchased. Applicant has not sought financial counseling. Her former husband is obligated under the divorce decree to pay child support, depending on his income. The amount is currently \$111.46 weekly. He did not pay child support for about 13 months, from June 2009 to July 10, 2010, after Applicant moved to her present location out of the state in which they both lived formerly. Applicant's former husband owes her about \$8,000 in child support, plus \$7,000 in attorney's fees. Applicant moved back to her home state so that she would have family to help her. Her mother lives near her. (Tr. 17-20, 33, 38-40, 57, 62, 76; Exhibit 1)

Applicant's physician employer terminated her in July 2009 allegedly because she discussed a patient's financial payment options to the patient when other persons were nearby. This termination occurred four weeks after Applicant informed the office

manager that it appeared the medical practice was double billing for its medications. Applicant denied doing anything wrong. She contends her firing was retaliatory action by her employer. Her position is supported by a statement of a former co-worker, who resigned from the same employer after confronting the physician with his questionable practices. Applicant credibly testified about her actions in that medical practice. In the state where that occurred, terminated workers could not claim unemployment insurance, according to Applicant. The only information regarding the incident is Applicant's disclosure in her SF 85P in Question 12, in which she stated she disputed the firing. There is no government investigation information about the incident. (Tr. 31, 63, 64; Exhibits 1, 2, F)

The SOR lists nine delinquent debts totaling \$84,139. She has resolved all delinquent debts in some manner, including the two debts relating to the mortgages on her former home and the seven other debts totaling \$7,189. (Tr. 22-55; Exhibits 2-5, C)

Applicant's home in her former state of residence was foreclosed in November 2009 when she could not pay the mortgage because of her job termination and the failure of her former husband to pay the child support. The debts listed in Subparagraphs 2.f (\$14,559) and 2.g (\$62,391) were for the first and second mortgages on that house. The house was sold at the foreclosure sale for \$66,768.32. Applicant's May 2011 credit report shows the debt balance is zero dollars, as does the May 2011 and the November 2010 credit report submitted by the government. Applicant submitted a copy of the "Deed under Power" she signed conveying her interest in the house to the purchaser, a bank. (Tr. 23, 24, 32; Exhibits 2-4, C)

The debt in Subparagraph 2.h (\$2,096) is a tax lien on an automobile purchase for which Applicant owed sales tax. Applicant originally was confused about the origin of the tax lien and claimed at the hearing the tax was a real estate tax and it was paid from escrow when the house was sold. The 2009 property tax document Applicant submitted shows \$669.51 in real estate tax owing for the house. This tax statement shows that amount was paid in 2009. The tax lien does not appear on the May 2011 credit report submitted by Applicant. It does appear on the November 2009 credit report submitted by the government, but only as a tax lien, not a real estate tax lien. That credit report shows the lien was filed in October 2009. The lien does not appear on any other credit report. Applicant obtained information after the hearing showing this tax lien was for sales tax. The amount of the debt now is \$1,539.05. Applicant is paying this tax debt at the rate of \$25 monthly. This debt is being resolved by an installment payment agreement. (Tr. 23, 24, 32; Exhibits 2-4, C, I)

Applicant paid a \$53 debt owed on a medical account (Subparagraph 2.c). The debt dated from 2006. This debt is resolved. (Tr. 26, 41, 42; Exhibits 2-5, C)

One of Applicant's remaining debts is a utility bill for \$371 from 2009 (Subparagraph 2.a). Applicant called the company but was told it was in collection mode. The utility told her to contact the collection agency. Applicant is making payments to the utility company. Her first payment was for \$50 on June 14, 2011. This debt is being resolved by an installment payment process. (Tr. 24; Exhibits 2-5, C, G)

Applicant owes \$15 on a medical account (Subparagraph 2.b). Applicant claimed at the hearing she could not find the origin of the debt, so she has not paid it. The debt is delinquent from 2005. In her subsequent exhibits, Applicant submitted a five-page exhibit showing she contacted the collector and submitted proof that this debt was paid on November 3, 2006. This debt is resolved. (Tr. 26, 47; Exhibits 2-5, C, H)

Applicant owes \$272 on a credit union checking account overdraft from 2008 (Subparagraph 2.d). Appellant contends this amount of money has been merged into the amount owed under Subparagraph 2.e, \$4,377, on a personal loan for \$5,000 she borrowed in 2004 to pay an attorney to represent her in a civil suit against her former husband for unpaid child support. Applicant claims she has a verbal agreement with this credit union to pay \$30 monthly on these debts. She is waiting for a document to evidence this installment payment agreement. Applicant stopped paying on these debts when her child support was not paid and she lost her job in March 2009. Applicant submitted a post-hearing exhibit showing she is paying \$30 monthly to resolve these two debts. These debts are being resolved by an installment payment agreement. (Tr. 27-29, 52-54; Exhibits 2-5, C, J)

Applicant owes \$5.00 on a medical debt from 2006 (Subparagraph 2.i). Applicant does not recognize this debt. She contacted the collection agency about it after the hearing. Applicant submitted an exhibit showing the debt was paid. The government's November 2009 credit report shows this debt with account number 6051 and comparing it to the post-hearing exhibit submitted by Applicant shows the \$5.00 debt is actually a cancelled \$4.97 portion of the \$15.00 debt listed in SOR Subparagraph 2.b. This debt is resolved because it was not a valid debt owed by Applicant. (Tr. 27, 55; Exhibits 2-5; C, H)

Applicant submitted two character statements. One statement is from her supervisor at her current employer. He evaluates her work as excellent in the administrative support section. She was promoted and now works in the provider network section and her work is again rated as excellent. The second letter is from her landlord for the past 17 months. He reports Applicant pays her rent promptly and accurately. (Tr. 13, 14; Exhibits A and B)

## **Policies**

Positions designated as ADP I and ADP II are classified as "sensitive positions." (See Regulation ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3.) "The standard that must be met for . . . assignment to sensitive duties is that, based on all available information, the person's loyalty, reliability, and trustworthiness are such that . . . assigning the person to sensitive duties is clearly consistent with the interests of national security." (See Regulation ¶ C6.1.1.1.) The Deputy Under Secretary of Defense (Counterintelligence and Security) Memorandum, dated November 19, 2004, indicates trustworthiness adjudications will apply to cases forwarded to DOHA by the Defense Security Service and Office of Personnel Management. Department of Defense contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination may be made. (See Regulation ¶ C8.2.1.)

When evaluating an Applicant's suitability for a public trust position, the administrative judge must consider the disqualifying and mitigating conditions in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to [sensitive] information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel and has the ultimate burden of persuasion as to obtaining a favorable trustworthiness decision."

A person who seeks access to sensitive information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to sensitive information. Decisions include, by necessity, consideration of the possible risk the Applicant may deliberately or inadvertently fail to protect or safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of sensitive information.

Section 7 of Executive Order (EO) 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline E, Personal Conduct**

AG ¶ 15 expresses the security concern pertaining to Personal Conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect

classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes seven conditions that could raise a security concern and may be disqualifying. None of them apply because the information supporting the allegation was based on Applicant's disclosure in her SF 85P. Applicant noted as part of her disclosure that she disputed the basis of the termination. The government investigation in Exhibit 2 only discussed the financial matters, so there was no other evidence to support the allegation. Applicant testified credibly and persuasively that the physician's office was a hostile workplace, with many employees being terminated routinely. She also demonstrated her firing was in retaliation for her discovery of multiple instances of double-billing by the physician for medications. Then Applicant supported her position with a letter from a nurse who worked with her in the physician's office. The nurse also found questionable practices in the office and eventually quit her job because of the unprofessional work environment. I conclude there was no Personal Conduct for which Applicant is liable under this Guideline E. No disqualifying conditions are applicable. Consequently, no mitigating conditions need be applied either.

#### **Guideline F, Financial Considerations**

The trustworthiness concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect [sensitive] information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

AG ¶ 19 describes conditions that could raise a security concern and may be disqualifying. Two conditions might apply to the facts in this case:

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

Applicant has nine delinquent debts listed in the SOR. These debts total \$84,139. They were incurred from 2004 to 2009. AG ¶ 19 (a) and (c) apply.

AG ¶ 20 provides conditions that could mitigate security concerns. Two concerns might apply:

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances; and

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

Applicant lost her job in March 2009 and her former husband stopped paying her the required child support. Suffering the loss of two sources of income, Applicant decided to move to her home state where her family could supply some financial and emotional support to her. The loss of employment adversely affected Applicant's ability to pay her debts. The employment termination and former husband's wrongful refusal to pay the court-ordered child support were circumstances beyond her control. Her home was foreclosed and sold by the bank. Applicant has not incurred any additional long-term debt since 2009 that she cannot pay. The one major purchase she made was a late model used car in 2010 for \$11,000, on which she pays regularly. She has acted responsibly by paying her current debts, resolving her mortgages by the sale of the former house, and is paying her debts through installment payment agreements. AG ¶ 20 (b) applies.

Applicant has started to pay the credit union debts at the rate of \$30 monthly, which is an amount she can afford. The utility debt for \$371 is being resolved at the rate of \$50 monthly. The sales tax lien is being paid with an installment payment agreement at the \$25 monthly rate. Her mortgages were resolved in 2009 by the sale of her foreclosed home. The \$5.00 medical debt was cancelled in 2006. Applicant has addressed each of the nine debts in good faith and in a responsible and reasonable manner with the goal of resolving them. AG ¶ 20 (d) applies.

### **Whole-Person Concept**

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

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) 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 facts and circumstances surrounding this case. Applicant was an adult when the delinquent debts listed in the SOR were incurred between 2004 and 2009. Her financial problems were caused by her employment termination in March 2009 and her former husband's refusal to pay child support for over a year. Applicant took action to recover those funds from him. She made changes in her state of residence to be closer to family to help her resolve these issues and care for her family. She moved also to obtain a better job. Applicant accomplished those goals and they demonstrate permanent behavioral changes. Applicant has not incurred other delinquent debt since 2009. Applicant worked to move from her former situation and improve her life. The potential for pressure, coercion, exploitation, or duress is minimal based on the total facts. Applicant supports herself and her family. She is well-regarded by her employer and has been promoted once. Before and after the hearing Applicant worked to resolve her debts within the restrictions of her available finances. All nine debts are resolved or being resolved by the installment payment plans she established.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a public trust position. For all these reasons, I conclude Applicant mitigated the trustworthiness concerns arising from her Personal Conduct and Financial Considerations. I conclude the "whole-person" concept for Applicant.

### **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 E:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Paragraph 2, Guideline F:	FOR APPLICANT
Subparagraphs 1.a to 2.i:	For Applicant



## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant Applicant eligibility for a Sensitive Systems Position (ADP-I/II/III).

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PHILIP S. HOWE  
Administrative Judge