



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



In the matter of: )  
 )  
 ----- ) ADP Case No. 11-01464  
 )  
 Applicant for Public Trust Position )

**Appearances**

For Government: Melvin A. Howry, Esq., Department Counsel  
For Applicant: *Pro se*

2/23/2012

**Decision**

HARVEY, Mark, Administrative Judge:

Applicant’s statement of reasons (SOR) lists 12 debts, totaling \$26,089. She provided insufficient evidence that she has acted responsibly on 10 of 12 of her SOR debts, totaling \$24,954, and there is no consistent track record of payments to her SOR creditors. She intentionally provided false information on her October 2, 2009, Questionnaire for Public Trust Positions (e-QIP) (Standard Form (SF)-85P) concerning her delinquent debts. Financial considerations and personal conduct concerns are not mitigated. Access to sensitive information is denied.

**Statement of the Case**

On October 2, 2009, Applicant completed her SF-85P (Government Exhibit (GE) 1). On July 25, 2011, the Defense Office of Hearings and Appeals (DOHA) issued an SOR to her (hearing exhibit (HE) 2), pursuant to Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended, modified and revised; Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program*, dated Jan. 1987, as amended

(Regulation); and the adjudicative guidelines (AG) promulgated by the President on December 29, 2005.

The SOR alleges trustworthiness concerns under Guidelines F (financial considerations) and E (personal conduct). (HE 2) The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Regulation that it is clearly consistent with the national interest to grant or continue Applicant's eligibility to occupy a public trust position, which entails access to sensitive information. (HE 2) DOHA recommended referral to an administrative judge to determine whether such access to sensitive information should be granted, continued, denied, or revoked.

On August 31, 2011, Applicant responded to the SOR allegations. (HE 3) On October 28, 2011, Department Counsel indicated he was ready to proceed. On November 18, 2011, DOHA issued a hearing notice. (HE 1) Applicant's hearing was held as scheduled on December 7, 2011, using video teleconference. (HE 1; Tr. 4) Department Counsel offered 10 exhibits (GE 1-10) (Transcript (Tr.) 23-24), and Applicant offered 18 exhibits. (Tr. 25-28; AE A-R) There were no objections, and I admitted GE 1-10 (Tr. 24), and AE A-R. (Tr. 28) Additionally, I admitted the SOR, response to the SOR, and hearing notice. (HE 1-3) On December 15, 2011, I received the transcript. After the hearing, I received nine additional exhibits from Applicant, which were admitted without objection. (AE S-AA) On February 15, 2012, the record was closed. (AE Y)

### **Findings of Fact<sup>1</sup>**

Applicant admitted responsibility for the debts alleged in SOR ¶¶ 1.a-1.g, 1.i, and 1.k, and she asserted the debt in SOR ¶ 1.j was paid. (HE 3) Her admissions are accepted as findings of fact. After a complete and thorough review of the evidence of record, I make the following additional findings of fact.

Applicant is a 30-year-old employee of a government contractor. (Tr. 6) She is a logistical service coordinator. (AE I) She has never been married. (Tr. 7) She has a four-year-old child, and she had a baby shortly after her hearing. (Tr. 7) She has never served in the military. (GE 1) When she completed her SF-85P, she did not complete the section about her school attendance. (GE 1) At her hearing she said she graduated from high school in 1999 or 2000. (Tr. 6) She has not attended college. (Tr. 6) There is no derogatory information concerning Applicant's police records, such as arrests, illegal drug possession or use, or alcohol-related incidents. (GE 1)

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<sup>1</sup>The facts in this decision do not specifically describe employment, names of witnesses or locations in order to protect Applicant and her family's privacy. The cited sources contain more specific information. Unless stated otherwise, the sources for the facts in this section are Applicant's October 2, 2009 SF-85P (GE 1) or her January 29, 2010 Office of Personnel Management (OPM) investigative personal subject interview (PSI). (GE 6)

## Financial Considerations

Applicant stopped paying some of her debts in 2006 after her son was born. (Tr. 29) Her vehicle was voluntarily repossessed. (Tr. 29) Many of the SOR debts became delinquent in 2006-2007. In most instances, Applicant did not contact her SOR creditors for at least a year before her hearing. (Tr. 32-45)

The SOR lists 12 collection accounts, alleging debts totaling \$26,089 as follows: 1.a is for \$1,006 (Tr. 32-33, 55-57); 1.b is for \$13,239 (Tr. 34-35, 55-57);<sup>2</sup> 1.c is for \$352 (Tr. 35); 1.d is for \$1,573 (Tr. 36); 1.e is for \$1,388 (Tr. 37); 1.f is for \$441, and she has a \$200 settlement offer from the creditor for about \$200 (Tr. 37-38, 46); 1.g is a debt from her voluntary vehicle repossession in December 2006 for \$4,956 (Tr. 38-39; GE 2 at 3); 1.h is a disputed debt owed to a gym for \$1,656 (Tr. 40);<sup>3</sup> 1.i is for \$675 (Tr. 41-42); 1.j is a debt Applicant said she paid for \$460 (Tr. 42-43, 46);<sup>4</sup> 1.k is for \$223 (Tr. 43); and 1.l is a medical debt for \$120; however, Applicant said she had medical insurance (Tr. 44). (HE 2)

Three of the 12 debts warrant additional comment. In SOR ¶ 1.e (\$1,388), the creditor wrote Applicant on August 1, 2011, indicating the balance due was \$1,406; and the settlement offer was to pay \$422 by August 31, 2011. (AE T) Applicant wrote a note indicating "2/12/12 deduction on the 24<sup>th</sup>"; however, Applicant is not credited with resolving this debt due to lack of corroborating documentary evidence establishing this debt's resolution. (AE T)

For the debt in SOR ¶ 1.g (\$4,956), on July 21, 2011, the creditor wrote Applicant, indicating the most recent payment was received on February 29, 2008; the balance due was \$5,035; and the settlement offer was a one-time payment of \$1,762. (AE S) Applicant wrote a note indicating she sent \$200 on January 31, 2012, and she provided a photocopy of a Money Order receipt. (AE S)

As to SOR ¶ 1.i (\$675), on September 17, 2011, the creditor wrote Applicant, indicating the debt could be settled for a one-time payment of \$270. (AE U) The creditor's correspondence does not include a time limit for the payment. (AE U) On

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<sup>2</sup>Applicant said the debts in SOR ¶¶ 1.a and 1.b were duplications of each other. (Tr. 32-35, 55-57); however, she did not provide any post-hearing evidence that the two debts were duplications of each other. (Tr. 61-62) I note the creditors have different names and the debts have different amounts. On May 20, 2011, Applicant said in response to DOHA interrogatories that she was going to court to settle the issue of the high interest rate on the debt in SOR ¶ 1.b. (GE 7) She did not provide any court-related documentation at her hearing concerning this debt.

<sup>3</sup>I held the record open after Applicant's hearing to provide her an opportunity to provide evidence showing her dispute of this debt; however, she did not provide any documentary evidence of her dispute. (Tr. 61, 76)

<sup>4</sup>Although Applicant did not provide proof of payment of this debt, such as a letter from the creditor or a debit from her bank account, she is credited with paying this debt on November 30, 2011. (Tr. 42-43)

January 20, 2012, Applicant wrote that she paid the debt using a credit card. (AE U) I have credited Appellant with favorably resolving this debt.

In September 2006, Applicant was five months pregnant and she decided to quit her job and seek better employment. (Tr. 51-52) She was unemployed for about four months. (Tr. 52-53) She borrowed from her 401K account. (Tr. 52) She fell behind on some of her accounts, and she never caught up on some of them. (Tr. 52) She pays \$400 per month for daycare for her son. (Tr. 52) She did not want to ask the state to compel her son's father to pay child support, and the same person is the father of her child, which was born after her hearing. (Tr. 49, 53-54) Sometimes he provides clothing or food; however, he contends he makes less money than she does and cannot afford to pay child support. (Tr. 54-55) On February 15, 2012, Applicant said the father of her children had begun to provide some child support; however, she did not provide further details about the amount of his payment or his plans for future payments. (AE Y)

On January 29, 2010, Applicant told an Office of Personnel Management (OPM) investigator that her financial circumstances were stable and improving. (GE 6 at 2) She intended to have all of her delinquent debts "paid in full within a 2 year period." *Id.* She indicated her gross monthly salary was \$2,126; her deductions were \$206; her expenses were \$1,105; her debt payments were \$25; and her net remainder was \$790. *Id.* She had \$2,300 in bank savings. *Id.*

Applicant provided an updated personal financial statement at her hearing on December 5, 2011, which shows a gross monthly income of \$3,455; her deductions are \$1,131; her expenses are \$2,086; and net funds available to address delinquent debts are about \$250. (Tr. 47; AE A) She did not list any payments to her creditors. (AE A) She is considering filing for bankruptcy; however, she still intended to pay her three smallest debts. (Tr. 47-48)

Applicant described three actions to reduce her expenses. She was leasing a 2009 vehicle, and in August 2011, she turned in the vehicle. (Tr. 48-49; SOR response) She purchased an older vehicle, and she no longer has a \$300 monthly car payment. (SOR response) She has moved to a smaller apartment to reduce her rent. (Tr. 31; SOR response) She plans to use her tax refund to pay some of her debts. (Tr. 31)

In October 2009, Applicant obtained her current employment, which is stable. (GE 6 at 2) On August 30, 2011, a tax levy was released after Applicant paid \$536 from her paycheck. (AE V, W) The tax levy is not listed in her SOR as creating a trustworthiness concern.

Applicant owed about \$200 to a medical creditor that was not listed on her SOR, and she is in the process of paying this debt. (Tr. 36, 62-63) She provided a December 6, 2011 account statement from a medical creditor indicating she had a \$503 debt, and she had paid it down to \$331. (AE D)

In sum, Applicant has a settlement offer she is considering for SOR ¶ 1.f for \$441; she paid \$200 on January 31, 2012, to the creditor in SOR ¶ 1.g (\$4,956); she is

credited with settling the debt in SOR ¶ 1.i (\$675) on January 20, 2012 and for paying the debt in SOR ¶ 1.j (\$460) on November 30, 2011; and she disputes the debts in SOR ¶¶ 1.h and 1.l for \$1,656 and \$120. She acknowledges responsibility for all SOR debts, and she plans to pay them. (Tr. 46) She loves her work and looks forward to being debt free. (Tr. 47)

## **Personal Conduct**

The SOR alleges Applicant provided incomplete financial information on her October 2, 2009 SF-85P. In response to question 22b, which asked, “Are you now over 180 days delinquent on any loan or financial obligation?” she responded, “No” and in the comment section, she did not list any debts. (Tr. 49-50; SF-85P, GE 1)

Applicant explained why she omitted her delinquent debts as follows, “when I first got hired and I really, really, really wanted the job. I really wanted the opportunity to move up. . . . I failed to answer it because I thought that would omit me from keeping the job or getting the job that I currently have at this point.” (Tr. 50, 57)

Applicant said that after she completed her SF-85P, she told a Human Resources (HR) employee at her company using email that her answer on her SF-85P about her delinquent debts was incorrect and “I do owe, you know, a couple of people and I want to make sure where I stand there.” (Tr. 51, 58-61) She said the HR employee contacted an OPM investigator to interview Applicant about her debts. (Tr. 58-59, 63-64) Applicant told the OPM investigator about her financial situation. (Tr. 59)

I asked Applicant to provide the email she sent to HR. (Tr. 59-60) After her hearing on December 5, 2011, she provided an email dated “December 15, 2011,” where she disclosed her “bad credit” to HR. (AE Z) Applicant forwarded the emails as an attachment to Department Counsel by email on “December 12, 2011.” (AE Z) HR asked Appellant, “how bad is your credit?” Appellant responded, “Well, I do [have] some small amounts and a car that I turned in as a voluntary repo but I don’t know exactly. All I know is that I think I didn’t put an amount on my app and hopefully I can correct it but I know it’s not millions and I don’t have bankruptcy.” (AE Z) The “December 15, 2011” dates on her emails to and from HR are unexplained. (AE Z) The emails were made in connection with issuing her a CAC card, and her emails did not indicate that she provided false information on her SF-85P.

## **Character Evidence**

Several military personnel and civilian Government employees praised and thanked Applicant for her hard work, professionalism, attention to detail, positive attitude, and dedication to accomplishing the mission. (AE E, F, G, H, I, J, K, M, N, O, P, Q, R; SOR response) She is an exceptionally energetic person who substantially contributed to the success of the Navy and her employer. (AE G, I) She is very valuable to her company and the Navy. (AE I)

## Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no one has a ‘right’ to a security clearance [or a public trust position].” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). The government’s authority to restrict access to classified information applies similarly in the protection of sensitive, unclassified information. As Commander in Chief, the President has the authority to control access to information bearing on national security or other sensitive information and to determine whether an individual is sufficiently trustworthy to have access to such information. See *Id.* at 527.

Positions designated as ADP I and ADP II are classified as “sensitive positions.” 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.” Regulation ¶ C6.1.1.1. 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, an 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 an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

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.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant which may disqualify the applicant from being eligible for access to sensitive information. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security and trustworthiness suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue her security clearance [or access to sensitive information].” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance [or trustworthiness] determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

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.” 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.”

## Analysis

### Financial Considerations

AG ¶ 18 articulates the trustworthiness concern relating to financial problems:

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 classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

AG ¶ 19 provides two disqualifying conditions that could raise a trustworthiness concern and may be disqualifying in this case: “(a) inability or unwillingness to satisfy debts;” and “(c) a history of not meeting financial obligations.” In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government’s obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.

(internal citation omitted). Applicant’s history of delinquent debt is documented in her credit reports, her responses to DOHA interrogatories, her OPM interview, her SOR response, and her hearing statement. Applicant’s SOR lists 12 debts totaling \$26,089. Most of delinquent SOR debts became delinquent in 2006 and 2007. As of her hearing, she had resolved two debts, and her delinquent debt total was reduced to \$24,954. The

Government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c), requiring additional inquiry about the possible applicability of mitigating conditions.

Five mitigating conditions under AG ¶ 20 are potentially applicable:

(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;

(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;

(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;

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

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant's conduct in resolving her debts warrants limited application of any of the mitigating conditions.<sup>5</sup> In November 2011, she paid the debt in SOR ¶ 1.j (\$460); in January 2012, she resolved the debt in SOR ¶ 1.i (\$675); and in February 2012, she paid \$200 towards the debt in SOR ¶ 1.g (\$4,956). She is credited with some financial counseling through her generation of a budget. She showed some good faith when she admitted responsibility for her SOR debts to the OPM investigator, in her response to

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<sup>5</sup>The Appeal Board has previously explained what constitutes a "good faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the "good faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term "good-faith." However, the Board has indicated that the concept of good-faith "requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation." Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [the "good faith" mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).



DOHA interrogatories, in her SOR response, and at her hearing. Applicant's financial situation was damaged by insufficient income, a four-month period of unemployment in late 2006, and the failure of her children's father to pay child support.

Applicant did not act responsibly under the circumstances because her financial circumstances have been relatively stable since October 2009, when she obtained her current employment, and she did not show any systematic improvement in the resolution of her delinquent SOR debts. She provided her personal financial statements in January 2010 and December 2011, which showed a substantial increase in gross income from \$2,126 to \$3,255. She indicated she disputes her gym debt in SOR ¶ 1.h for \$1,656 and her medical debt in SOR ¶ 1.i (\$200); however, she did not provide "documented proof to substantiate the basis of the dispute or [provide other] evidence of actions to resolve the issue." She has not provided sufficient information about her efforts to pay her SOR creditors over the past two years to fully establish any mitigating conditions. From her personal financial statements, and her recent reductions in expenses, it appears she could have done more to resolve her remaining SOR debts.

Applicant did not establish that she acted responsibly under the circumstances. She did not maintain contact with several SOR creditors, and she did not attempt to negotiate payment plans with some SOR creditors,<sup>6</sup> there are no receipts or account statements from several SOR creditors, establishing any payments to the SOR creditors. There is insufficient evidence that her financial problems are being resolved and are under control, and that she has acted responsibly on 10 of 12 of her SOR debts, totaling \$24,954. In January 2010, she told the OPM investigator that she would pay her delinquent debts, and that she intended to resolve her delinquent debts in two years. In January 2012, 10 of 12 delinquent SOR debts are unresolved. There is no consistent track record of payments to support a conclusion that she will resolve her remaining delinquent SOR debts.

## **Personal Conduct**

AG ¶ 15 expresses the trustworthiness 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 [process for determining eligibility for a public trust position] or any other failure to cooperate with [this process].

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<sup>6</sup>Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current.

AG ¶ 16 describes two conditions that could raise a trustworthiness concern and may be disqualifying with respect to Applicant's failure to disclose debts currently delinquent for more than 180 days on her October 2, 2009 SF-85P. Those two disqualifying conditions are as follows:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities; and

(b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative.

When Applicant completed her October 2, 2009 SF-85P, she knew that she had debts that were delinquent more than 180 days. Her SF-85P asked, "Are you now over 180 days delinquent on any loan or financial obligation?" She responded, "No" and in the comment section, she did not list any debts. Applicant explained why she omitted her delinquent debts as follows, "when I first got hired and I really, really, really wanted the job. I really wanted the opportunity to move up. . . . I failed to answer it because I thought that would omit me from keeping the job or getting the job that I currently have at this point." AG ¶¶ 16(a) and 16(b) apply and further inquiry about the possible application of mitigating conditions is necessary.

AG ¶ 17 provides seven conditions that could mitigate trustworthiness concerns in this case:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the [process for determining eligibility for a public trust position]. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(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 it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(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;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;

(f) the information was unsubstantiated or from a source of questionable reliability; and

(g) association with persons involved in criminal activity has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

None of the mitigating conditions fully apply. AG ¶ 17(a) is potentially applicable because Applicant said she “made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts.” However, she was unclear about when she disclosed her financial problems, and she did not specifically indicate the disclosure was made to correct her October 2, 2009 SF-85P. The email corroboration of her disclosure to HR that she provided does not clearly establish when the disclosure to HR was made.

Applicant intentionally deceived the U.S. Government about her financial situation. She did not alert the Government to the fact that she had a history of financial problems or that she currently had delinquent debt. Applicant was well aware that she had delinquent debt that she should report. Instead, she deliberately chose not to disclose her delinquent debt because she wanted to be hired as a contractor employee. The personal conduct concern pertaining to Applicant's failure to accurately complete the financial portion of her October 2, 2009 SF-85P is not mitigated.

### **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 the 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) 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 have incorporated my comments under Guidelines F and E in my whole-person analysis. Some of the factors

in AG ¶ 2(a) were addressed under Guidelines F and E, but some warrant additional comment.

There are some facts supporting mitigation of trustworthiness concerns under the whole-person concept; however, they are insufficient to fully mitigate trustworthiness concerns. Applicant is a 30-year-old employee of a defense contractor, who is sufficiently intelligent and mature to understand and comply with trustworthiness requirements. Several military personnel and civilian Government employees praised and thanked Applicant for her hard work, professionalism, attention to detail, positive attitude, and dedication to accomplishing the mission. She is an exceptionally energetic person who substantially contributed to the success of the Navy and her employer. There is no derogatory information concerning Applicant's police records, illegal drug possession or use, or alcohol-related incidents. She is loyal to the United States. She has been employed by a defense contractor since October 2009.

Circumstances beyond Applicant's control caused her to have delinquent debt. She was unemployed in late 2006 for about four months. She is a single parent with two children. She has learned how to generate a budget, and she understands what she must do to establish her financial responsibility.

The circumstances tending to support denial of Applicant's clearance are more significant than the factors weighing towards approval of her clearance at this time. Applicant currently has 10 unresolved delinquent SOR debts, totaling \$24,954, and there is no consistent track record of payments to her SOR creditors. Applicant's financial circumstances have been relatively stable for more than two years. Her January 2010 and December 2011 personal financial statements indicate she has funds remaining each month for addressing her SOR debts. In January 2010, she had her OPM interview, which highlighted her delinquent debts. She told the OPM investigator that she would pay her delinquent debts over the next two years. By February 2012, she had made very modest progress on her delinquent SOR debts by paying less than ten percent of her delinquent SOR debt total. After January 2010, the prudent course of action was to begin serious negotiations with her SOR creditors and set up at least one payment plan and pay whatever she was able to pay each month on a consistent basis to reduce her delinquent debts. She advised that she had some negotiations with her creditors, attempted to establish payment plans, reduced her standard of living and expenses, and increased her net funds available to address her SOR debts.

Applicant failed to provide sufficient evidence of progress resolving her 10 remaining delinquent SOR debts to establish her financial responsibility. After evaluation of all the evidence, her progress has been too little too late to fully mitigate financial considerations trustworthiness concerns.

Applicant intentionally provided false information on her October 2, 2009, SF-85P about her delinquent debts. More time must elapse without such breaches of her integrity before full mitigation of personal conduct concerns will occur.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude Applicant has not fully mitigated the financial considerations and 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 to 1.h:	Against Applicant
Subparagraphs 1.i and 1.j:	For Applicant
Subparagraphs 1.k and 1.l:	Against Applicant
Paragraph 2, Guideline E:	Against APPLICANT
Subparagraph 2.a:	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 a public trust position. Eligibility for access to sensitive information is denied.

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Mark Harvey  
Administrative Judge