



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



In the matter of: )  
)  
) ADP Case No. 11-06376  
)  
)  
Applicant for Public Trust Position )

**Appearances**

For Government: Paul M. DeLaney, Esquire, Department Counsel  
For Applicant: *Pro se*

06/28/2012

**Decision**

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant accrued about \$34,645 in delinquent debt due, in part, to irresponsible spending. She had an agreement in place to repay a \$12,625 credit card judgment and two other credit card debts totaling \$7,125, which she cancelled in August 2011. As of late September 2011, she was making no payments on her delinquent debts. Public trust position denied.

**Statement of the Case**

On October 26, 2011, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR), detailing the trustworthiness concerns under Guideline F, Financial Considerations, as to why it could not grant her eligibility for a public trust position. DOHA took action under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); Department of Defense Regulation 5200.2-R, *Personnel Security Program* (January 1987) as amended; and the adjudicative guidelines (AG) effective within the Department of Defense on September 1, 2006.

Applicant acknowledged receipt of the SOR on November 1, 2011. She answered the SOR on November 16, 2011, but it was considered incomplete because it was not notarized, and she did not indicate whether she wanted a hearing or a decision on the written record. On February 27, 2012, Applicant requested a decision without a hearing. On March 30, 2012, the Government submitted a File of Relevant Material (FORM), consisting of ten exhibits (Items 1-10). On April 2, 2012, DOHA forwarded a copy of the FORM to Applicant and instructed her to respond within 30 days of receipt. Applicant received the FORM on April 10, 2012. No response was received by the May 10, 2012, due date. On May 30, 2012, the case was assigned to me to consider whether it is clearly consistent with national security to grant or continue a public trust position for Applicant.

### **Findings of Fact**

The SOR alleged under Guideline F, Financial Considerations, that as of October 26, 2011, Applicant owed a \$12,625 judgment debt (SOR 1.a), \$263 in medical debt in collection (SOR 1.b and 1.c), and delinquent consumer credit card and loan debt totaling \$21,700 (SOR 1.d-1.l). Applicant admitted the debts without explanation. Her admissions to the delinquencies are incorporated as findings of fact. After considering the Government's FORM, which includes her Answer (Item 4), I make the following additional findings of fact.

Applicant is 27 years old, married, and has a three-year-old daughter.<sup>1</sup> (Item 5.) She is employed by a medical services company that contracts with the DOD. Applicant started working there as a medical services coordinator under the employ of a staffing agency in September 2010, and in January 2011, she was hired by the defense contractor. (Item 6.)

Applicant has an associate's degree in human resources, which was awarded her in May 2005. Applicant was employed part time while in school, but she financed her education through a student loan of \$6,125 taken out in September 2003. (Items 5-8.) During her first year in college, she worked in sales at a local greeting card store. From April 2004 to September 2007, Applicant worked as an assistant manager for another retailer at three different locations. (Items 5, 6.) During this time, Applicant opened several charge accounts (SOR 1.e, 1.g, 1.h, 1.j, 1.k), and she took out an automobile loan of \$11,747, to be repaid at \$203 per month for six years. (Items 8, 9.) In October 2006, her student loan account was closed, and her debt was transferred to a new account. (SOR 1.i). From September 2007 until October 2008, Applicant worked in sales for a jewelry store. (Item 5.) Although she made her car payments on time, she stopped paying on some of her credit card accounts (SOR 1.g, 1.h, 1.j). (Items 8, 9.) Applicant saw a financial counselor a few times, but her income was insufficient to pay all her credit obligations. (Item 6.)

In September 2008, Applicant and her spouse married. In October 2008, she accepted an office manager's position with another jeweler. In late May 2009, she and her spouse had a daughter. In August 2010, Applicant was fired from her employment. She

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<sup>1</sup>Applicant may also have a newborn. She informed DOHA by email on February 8, 2012, that she had just received an email message of January 18, 2012, because she had been on maternity leave. (Item 4.)

claims that she had put in a three-week notice, but she was terminated three days later because of a company policy that resignations are effective immediately. (Items 5, 6.)

In September 2010, Applicant began working for her current employer under a contract held by an employment services company. On September 7, 2010, Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP) for an automated data processing (ADP) position designated to support a DOD contract. Applicant responded "No" to the financial record inquiries: 22.a, concerning, in part, whether a legal judgment had been entered against her for a debt in the last seven years, and question 22.b, about whether she was currently over 180 days delinquent on any loan or financial obligation. (Item 5.)

On October 7, 2010, the credit bureaus reported that Applicant owed a \$12,625 credit card judgment filed in March 2010 (SOR 1.a), and several collection debts: charge account balances of \$3,386 (SOR 1.e), \$933 (SOR 1.g), \$682 (SOR 1.h), \$5,987 (SOR 1.j), and \$582 (SOR 1.k); \$165 telephone (SOR 1.f) and \$59 cable television (SOR 1.l) debts; and a \$202 medical debt (SOR 1.c). Also, Applicant was 180 days past due on a \$7,283 student loan balance (SOR 1.i). (Item 9.)

On April 14, 2011, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM) about her employment history and her financial accounts. Applicant volunteered that she should have responded affirmatively to 22.a and 22.b on her e-QIP, although she denied knowing that credit card debt needed to be reported. She indicated that since about 2008, she had been working with a debt settlement firm to resolve the judgment and the credit card debts in SOR 1.g and 1.j, and that she had been paying \$248 per month under an agreement. Applicant admitted that her income was insufficient to make payments on her student loan when it came out of deferment. Applicant also acknowledged that the charge account in SOR 1.h was past due. She did not recognize some of the debts on her credit record, including those delinquencies in SOR 1.c, 1.e, 1.k, and 1.l. Applicant denied that her cell phone account (SOR 1.f) with her previous servicer was ever delinquent because she paid her bill in full each month. Applicant estimated that she and her spouse had monthly household discretionary income of \$36 after paying their living expenses, installment and car loans, and \$278 toward credit cards, including the \$248 to the debt settlement firm. She attributed her financial delinquencies to her youth and not fully understanding how credit worked. She admitted that she had bought items she could not afford in the past, and interest rates made her debt unmanageable. Applicant expressed her intent to satisfy the judgment and then make payments on her other debts. (Item 6.)

A check of Applicant's credit on August 18, 2011, revealed that her student loan account (SOR 1.i) had been referred for collection. The balance of the debt in SOR 1.g had increased to \$1,138, and there was no reduction in the balance of the judgment debt reported, despite her assertion of \$248 monthly payments to the debt settlement firm from sometime in 2008 until August 2011. Also, a secured credit line had been reportedly charged off in the amount of \$484 (SOR 1.d), and a \$60 medical debt had been placed for collection in December 2010 (SOR 1.b). (Item 8.)

On September 1, 2011, the lender holding Applicant's student loan notified her of its intent to garnish her wages for the \$9,237.44 updated balance (SOR 1.i) unless she entered into a repayment agreement with its collection agent by October 7, 2011. In response to DOHA interrogatories about efforts, if any, to resolve her delinquencies, Applicant indicated that in August 2011, she cancelled her agreement with the debt settlement firm. She admitted that she had done nothing to resolve the debts in the SOR. She provided documentation showing that she needed to reach an agreement to repay her defaulted student loan or her wages would be garnished. Applicant also furnished proof that on August 11, 2011, she paid \$1,106.83 to pay off a credit card balance on an account that had a \$1,000 limit. Applicant averred that her financial situation was in a better state than it had been in the last five years. She hoped to be able to begin taking care of her outstanding delinquencies, but the debts would not be resolved overnight. (Item 7.)

Applicant did not update the record about the status of her student loan debt. It is unclear whether Applicant's wages are currently being garnished to repay her defaulted student loan, whether she is repaying the loan under an agreement with the lender or its assignee, or whether no payments are being made. As of late September 2011, Applicant was not making any payments on delinquent debt that reportedly totaled about \$34,645.<sup>2</sup> (Items 4, 6-9.) She was paying her day-to-day expenses on time. (Item 6.)

### **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 national security. (See Regulation ¶ C8.2.1.) 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.

When evaluating an Applicant's suitability for a public trust position, the administrative judge must consider the disqualifying and mitigating conditions in the Adjudicative Guidelines (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 overall adjudicative goal is a fair, impartial and commonsense decision. According to AG ¶

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<sup>2</sup>The \$34,645 total balance includes the \$57 increase in student loan debt from the reported \$9,180 in August 2011 (Item 8) to \$9,237 as of October 2011. If Applicant consistently paid \$248 per month from March 2010, when the judgment was issued, until August 2011, when she cancelled her agreement, her debt would have been reduced by about \$4,216, excluding any interest charges and fees assessed on the debt. Applicant presented no corroboration for her claimed payments. Moreover, Applicant did not contest the \$13,200.74 reported judgment balance when she responded to DOHA interrogatories in late September 2011. (See Item 7.)

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 reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

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 applicant or proven by Department Counsel. . . .” The Applicant has the ultimate burden of persuasion to obtain 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 as to potential, rather than actual, risk of compromise of sensitive information. See Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

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

The trustworthiness concerns about Financial Considerations are 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 classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The evidence establishes that Applicant accrued about \$34,588 in delinquent debt to the creditors alleged in the SOR. AG ¶ 19(a), “inability or unwillingness to satisfy debts,” AG ¶ 19(c), “a history of not meeting financial obligations,” and AG ¶ 19(e), “consistent spending beyond one’s means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis,” are established. Applicant did not fully understand how credit works. At the same time, she admitted that she overextended herself financially. She bought items that she could not afford on her income, and her debt accumulated to unmanageable levels.

Concerning potentially mitigating conditions, AG ¶ 20(a), “the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment,” cannot reasonably apply, given the absence of any demonstrated, sustained progress toward resolving her past-due debt balances. Moreover, as recently as December 2010, a small medical debt of \$60 was placed for collection. AG ¶ 20(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,” is not implicated. Applicant admitted that her debts were not caused by circumstances beyond her control.

Applicant told an OPM investigator in April 2011 that she had arranged to pay \$248 per month to a debt settlement firm to resolve the judgment as well as the debts in SOR 1.g and 1.j. She presented no evidence of any payments, which she claimed to have made since 2008 to the debt settlement company. A voluntary effort to resolve debt through a debt management agreement could implicate AG ¶ 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” Applicant apparently also attended a few financial counseling sessions in 2008. See AG ¶ 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.” However, it is difficult to mitigate the financial security concerns under either AG ¶ 20(c) or AG ¶ 20(d) because Applicant cancelled her debt management agreement in August 2011, and she has made no payments toward any of her debts since then. On September 1, 2011, she was informed that her wages would be garnished to collect her defaulted student loan debt unless she established a written repayment agreement with the lender’s collection agent by October 7, 2011. It is unclear whether she entered into a repayment agreement. Furthermore, despite her financial situation being better than it has been in the last five years, she has not paid even her minor debts of \$61 (SOR 1.b) and \$59 (SOR 1.l).

Concerning mitigating condition AG ¶ 20(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 disputed the \$165 wireless services debt (SOR 1.f) when she was interviewed in April 2011. Applicant believed that she had paid the charges on her account in full each month. Yet, when she answered the SOR, she did not deny the debt. The debt was still on her credit record as of August 2011, and she did not present any financial records to undermine its validity. Apparently, she is no longer contesting the debt. AG ¶ 20(e) is not established.

## Whole-Person Concept

Under the whole-person concept, the administrative judge must consider the totality of an applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(a).<sup>3</sup>

Applicant's delinquent debt is largely attributable to youth and financial naiveté. At the same time, she has a responsibility to repay her creditors for the goods and services she enjoyed as a result of credit extended to her. Of her more than \$30,000 in delinquent debt, only \$263 was for medical services. Applicant is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. She need only establish a plan to resolve financial problems and take significant actions to implement the plan. There is no requirement that she make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). Applicant had a plan in place that she cancelled for reasons not apparent in the record available for review. Applicant expressed hope in late September 2011 that she could begin repaying her debt. She offered no explanation for her failure to make any payments on the debts in the SOR in the last seven months. Applicant apparently went on maternity leave, and the costs of having another child could have strained the household budget. That being said, she presumably had \$248 per month extra after she cancelled her debt management plan. Doubts exist about whether she can be counted on to make the sound decisions that must be demanded of those persons in a public trust position. I am unable to conclude on the record before me that it is clearly consistent with national security to grant Applicant access to sensitive information at this time.

## Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a-1.i:	Against Applicant

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<sup>3</sup> The factors under AG ¶ 2(a) are as follows:

(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.

## **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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Elizabeth M. Matchinski  
Administrative Judge