



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



In the matter of:	)	
	)	
[Redacted]	)	ADP Case No. 11-14248
	)	
Applicant for Public Trust Position	)	

**Appearances**

For Government: Kathryn D. MacKinnon, Esquire, Department Counsel  
For Applicant: *Pro se*

12/09/2013

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**Decision**

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FOREMAN, LeRoy F., Administrative Judge:

This case involves trustworthiness concerns raised under Guideline F (Financial Considerations). Eligibility for a public trust position is denied.

**Statement of the Case**

Applicant submitted an application for a public trust position on June 13, 2011. On April 12, 2013, the Department of Defense (DOD) sent her Statement of Reasons (SOR), citing trustworthiness concerns under Guideline F. DOD acted under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); DOD Regulation 5200.2-R, *Personnel Security Program* (January 1987), as amended (Regulation); and the adjudicative guidelines (AG) implemented by DOD on September 1, 2006.

Applicant received the SOR on April 22, 2013; answered it on May 8, 2013; and requested a decision on the record without a hearing. Department Counsel submitted the Government's written case on June 25, 2013, and a complete copy of the file of relevant material (FORM) was sent to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. She received the FORM on October 17, 2013, and submitted a response,

which was included in the record without objection. The case was assigned to me on November 27, 2013.

### **Findings of Fact**

Applicant is a 30-year-old employee of a federal health care administrator. She worked as a file clerk and pharmacy clerk for a non-federal employer from January 2004 to November 2009. She was unemployed from November 2009 to November 2010. She has worked for her current employer since November 2010. She has never held a security clearance or eligibility for a public trust position. (Item 4 at 9-12, 16.)

Applicant was diagnosed with a medical condition in 2005 that limited her to part-time employment. She suffered complications during pregnancy before her son was born prematurely in August 2008. She returned to full-time work in June 2009 but was fired in November 2009 because of excessive absenteeism, which she attributed to her son's medical needs. (Item 4 at 12; Response to FORM.)

Applicant married in December 2012, and she was six months pregnant when she responded to the SOR. She was working part time when she submitted her application for a public trust position, and she expected to be placed on maternity leave in August 2013. (Item 3 at 1; Item 4 at 13, 15.) She stopped working in May 2013 due to complications in her pregnancy. She returned to full-time employment in October 2013. (Response to FORM.)

Applicant's credit bureau reports (CBRs) dated June 25, 2013; December 14, 2012; and June 21, 2011, reflect the following delinquent debts alleged in the SOR. Applicant admitted all the debts except SOR ¶ 1.h. The status of each debt alleged in the SOR is described below.

**SOR ¶ 1.a. Cable Bill for \$276, referred for collection in August 2007.** Applicant promised to arrange a payment plan for this debt after she paid other debts.

**SOR ¶ 1.b. Cell Phone Bill for \$168, referred for collection in February 2011.** Applicant submitted documentary evidence that she had arranged to pay \$10 per month on this debt, with the first payment to be made in May 2013. She submitted no documentary evidence of any payments beyond the initial payment.

**SOR ¶ 1.c. Cell Phone Bill for \$198, referred for collection in March 2007.** Applicant submitted documentary evidence that she had arranged to pay \$40 per month, beginning in May 2013. She submitted no documentary evidence of any payments beyond the initial payment.

**SOR ¶ 1.d. Overdrawn Checking Account for \$1,597, referred for collection in June 2008.** Applicant promised to arrange a payment plan for this debt after she paid other debts.

**SOR ¶ 1.e. Delinquent Car Loan, opened in March 2003 and charged off for \$5,721 in August 2008.** Applicant promised to arrange a payment plan for this debt after she paid other debts.

**SOR ¶ 1.f. Bad Check Uttered to Tire Shop for \$54 in May 2007, referred for collection in July 2007.** Applicant claimed that she had been unable to locate the current account holder.

**SOR ¶ 1.g. Loan for \$7,188, past due for 120 days or more.** Applicant disputed the amount of this debt. She stated that the debt is more than ten years old, and she promised to verify the amount due and make payment arrangements.

**SOR ¶ 1.h. Auto Towing Bill for \$901, referred for collection in August 2005.** Applicant denied this debt, asserting that the debt pertained to a car that was sold 12 years ago. She has not filed a dispute of this debt with the original creditor, the collection agency, or the credit reporting agencies.

**SOR ¶ 1.i. Judgment for \$2,282, filed in April 2010.** In her response to the SOR, Applicant admitted this debt and stated that she had arranged to pay \$50 per month, beginning in June 2013. She submitted no documentary evidence of a payment agreement or any payments.

### **Policies**

The standard that must be met for assignment to sensitive duties is that 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. DOD contractor personnel are entitled to the procedural protections in the Directive before any final unfavorable access determination may be made. Regulation ¶ C8.2.1.

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. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard sensitive information.

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 an evaluation of the whole person. The 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.

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. The Government must present substantial evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. 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 burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). An applicant has the ultimate burden of demonstrating that it is clearly consistent with national security to grant or continue eligibility for access to sensitive information.

## **Analysis**

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

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

This concern is broader than the possibility that an individual might knowingly compromise classified or sensitive information in order to raise money. It encompasses concerns about an individual’s self-control, judgment, and other qualities essential to protecting classified or sensitive information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified or sensitive information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant’s admissions, corroborated by her credit reports, establish two disqualifying conditions under this guideline: AG ¶ 19(a) (“inability or unwillingness to satisfy debts”) and AG ¶ 19(c) (“a history of not meeting financial obligations”). The following mitigating conditions are potentially applicable:

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;

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;

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;

AG ¶ 20(d): the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

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.

AG ¶ 20(a) is not established. Applicant's delinquent debts are numerous, ongoing, and not the result of circumstances making them unlikely to recur.

AG ¶ 20(b) is not established. Applicant's health problems and her son's health problems were circumstances beyond her control. I cannot determine whether her loss of employment due to absenteeism in November 2009 was a circumstance beyond her control, because she provided no evidence of the nature of her son's health problems, and no evidence of the steps, if any, that she took to inform her employer of the situation and to arrange her work schedule to accommodate her son's needs. The debts alleged in SOR ¶¶ 1.a, 1.c, 1.d, 1.e, 1.f, and 1.h became delinquent long before her loss of employment in November 2009. Finally, she has not acted responsibly. She has taken no action to resolve most of her delinquent debts. She did not negotiate the payment agreements for the debts alleged in SOR ¶¶ 1.b and 1.c until she submitted her application for a public trust position, and she provided no evidence of compliance with the payment agreements beyond the initial payment. She provided no documentary evidence reflecting a payment agreement for the debt alleged in SOR ¶ 1.i.

AG ¶ 20(c) is not established. Applicant submitted no evidence that she has sought or received any financial counseling, and her financial situation is not under control.

AG ¶ 20(d) is not established. "Good faith" within the meaning of this mitigating condition means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. ISCR Case No. 99-0201, 1999 WL 1442346 at \*4 (App. Bd. Oct. 12, 1999). Applicant has promised to pay her delinquent debts, but a promise to pay a delinquent debt in the future is not a substitute for a track record of paying debts in a timely manner. ISCR Case No. 07-13041 at 4 (App. Bd. Sep. 19, 2008).

A person is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. He or she need only establish a plan to resolve financial problems and take significant actions to implement the plan. The adjudicative guidelines do not require that an individual make payments on all delinquent debts simultaneously, nor do

they require that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). However, Applicant does not have a credible plan to resolve her debts and has not taken any significant actions to resolve them.

AG ¶ 20(e) is not established. Although Applicant denied the debt alleged in SOR ¶ 1.h, she has not documented the basis for disputing it, and she has not filed a dispute with the original creditor, the collection agency, or the credit reporting agencies.

### **Whole-Person Concept**

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. In applying 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 relevant circumstances. An 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.

I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

The evidence in this record is sparse, but it indicates that Applicant has struggled with health problems and financial problems since at least 2005. However, the record also reflects that Applicant took virtually no action to resolve her financial problems until she was confronted with a trustworthiness determination. Because Applicant requested a determination on the record without a hearing, I have no opportunity to evaluate her credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003).

After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the trustworthiness concerns raised by her financial problems. Accordingly, I conclude she has not carried her burden of showing that it is clearly consistent with national security to grant her eligibility for a public trust position.

### **Formal Findings**

Paragraph 1, Guideline F (Financial Considerations): AGAINST APPLICANT

Subparagraphs 1.a-1.i:

Against Applicant

### **Conclusion**

I conclude that it is not clearly consistent with national security to grant Applicant eligibility for a public trust position. Eligibility for a public trust position is denied.

LeRoy F. Foreman  
Administrative Judge