



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



|                                     |   |                       |
|-------------------------------------|---|-----------------------|
| In the matter of:                   | ) |                       |
|                                     | ) |                       |
|                                     | ) | ADP Case No. 11-14932 |
|                                     | ) |                       |
|                                     | ) |                       |
| Applicant for Public Trust Position | ) |                       |

**Appearances**

For Government: David F. Hayes, Esquire, Department Counsel  
For Applicant: *Pro se*

April 15, 2014

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**Decision**

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CEFOLA, Richard A., 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 Information Systems Positions as defined in DoD Regulation 5200.2-R, Personnel Security Program (Regulation), dated January of 1987.

Applicant submitted her Questionnaires for Public Trust Position (SF 85P), on August 16, 2011. On June 20, 2013, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing the trustworthiness concerns under Guideline F regarding the Applicant. 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); and the adjudicative guidelines (AG), effective within the Department of Defense after September 1, 2006.

Applicant answered the SOR (Answer) in writing on August 29, 2013, and requested an Administrative Determination by an Administrative Judge. Department Counsel issued a File of Relevant Material (FORM) on November 25, 2013. Applicant responded to the FORM (Response) soon thereafter. Department Counsel had no objection, and the documents are entered into evidence. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

### **Findings of Fact**

In her Answer to the SOR, dated August 29, 2013, Applicant admitted the factual allegations in all the Subparagraphs of the SOR, except for Subparagraph 1.b., with explanations.

#### **Guideline F - Financial Considerations**

Applicant attributes much of her financial difficulties to her leaving “a good job which . . . [she] loved” in 2009 to care for her mother who succumbed to cancer in July of that year. (Item 6 at page 9.) The SOR alleges 21 past-due debts. She has engaged a nonprofit debt servicing company (DSC) to help with her finances, but has only addressed one of the alleged past-due debt through their services. (Answer at the last page.)

1.a. The first debt is to Creditor A in the amount of about \$126. Applicant avers this debt was “referred” to her DSC, but it is not one of the creditors listed by the DSC that it is servicing. (See Answer at the last page.) In February of 2014, she wrote a check to Creditor A in the amount of \$8.55. (Response at page 7.) I find that Applicant is trying to address this admitted debt, but it is still past due.

1.b. The second debt is to Creditor B in the amount of about \$912. (Item 10 at page 1.) Applicant denies this debt, and avers this debt “belongs to . . . [her] boy friend when . . . [she] bought the cell phone as a birthday gift for him.” However, as it appears on her most recent June 2013 credit report, I find that this debt is still past due.

1.c.~1.e. The third through fifth debts are to Creditor C in an amount totaling about \$268. Applicant avers that she “will be paying off this account.” In February of 2014, she wrote a check to Creditor C in the amount of \$20. (Response at page 11.) I find that Applicant is trying to address this admitted debt, but it is still past due.

1.f. The sixth debt is to Creditor F in the amount of about \$88. Applicant has paid this debt as evidenced by a check to Creditor F.

1.g. The seventh debt is to Creditor G in the amount of about \$214. Applicant avers this debt was “referred” to her DSC, but it is not one of the creditors listed by the DSC that it is servicing. (See Answer at the last page.) I find that this debt is still past due.

1.h. The eighth debt is to Creditor H in the amount of about \$944. Applicant avers this debt was “referred” to her DSC, and it is one of the creditors listed by the DSC that it is servicing. (Answer at the last page.) I find that Applicant is addressing this admitted debt, but it is still past due.

1.i. The ninth debt is to Creditor I in the amount of about \$875. Applicant avers this debt was “referred” to her DSC, but it is not one of the creditors listed by the DSC that it is servicing. (See Answer at the last page.) I find that this debt is still past due.

1.j. The tenth debt is to Creditor J in the amount of about \$51. Applicant has paid this debt as evidenced by a check to Creditor J.

1.k. The eleventh debt is to Creditor K in the amount of about \$732. Applicant avers this debt was “referred” to her DSC, but it is not one of the creditors listed by the DSC that it is servicing. (See Answer at the last page.) I find that this debt is still past due.

1.l. The twelfth debt is to Creditor L in the amount of about \$105. Applicant avers this debt was “referred” to her DSC, but it is not one of the creditors listed by the DSC that it is servicing. (See Answer at the last page.) I find that this debt is still past due.

1.m. The thirteenth debt is to Creditor M in the amount of about \$5,444. Applicant avers this debt was “referred” to her DSC, but it is not one of the creditors listed by the DSC that it is servicing. (See Answer at the last page.) I find that this debt is still past due.

1.n. The fourteenth debt is to Creditor N in the amount of about \$280. Applicant avers this debt was “referred” to her DSC, but it is not one of the creditors listed by the DSC that it is servicing. (See Answer at the last page.) I find that this debt is still past due.

1.o. The fifteenth debt is to Creditor O in the amount of about \$280. Applicant avers this debt was “referred” to her DSC, but it is not one of the creditors listed by the DSC that it is servicing. (See Answer at the last page.) I find that this debt is still past due.

1.p. The sixteenth debt is to Creditor P in the amount of about \$653. Applicant avers this debt was “referred” to her DSC, but it is not one of the creditors listed by the DSC that it is servicing. (See Answer at the last page.) I find that this debt is still past due.

1.q. The seventeenth debt is to Creditor Q in the amount of about \$206. Applicant avers this debt was “referred” to her DSC, but it is not one of the creditors listed by the DSC that it is servicing. (See Answer at the last page.) I find that this debt is still past due.

1.r. The eighteenth debt is to Creditor R in the amount of about \$1,296. Applicant avers this debt was “referred” to her DSC, but it is not one of the creditors listed by the DSC that it is servicing. (See Answer at the last page.) I find that this debt is still past due.

1.s. The nineteenth debt is to Creditor S in the amount of about \$331. Applicant avers this debt was “referred” to her DSC, but it is not one of the creditors listed by the DSC that it is servicing. (See Answer at the last page.) I find that this debt is still past due.

1.t. The twentieth debt is to Creditor S in the amount of about \$382. Applicant avers this debt was “referred” to her DSC, but it is not one of the creditors listed by the DSC that it is servicing. (See Answer at the last page.) I find that this debt is still past due.

1.u. The twenty-first debt is to Creditor U in the amount of about \$3,869. Applicant avers this debt was “referred” to her DSC, but it is not one of the creditors listed by the DSC that it is servicing. (See Answer at the last page.) I find that this debt is still past due.

## **Policies**

Positions designated as ADP I/II/III 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 over-arching 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 applicant or proven by Department Counsel. . . .” The Applicant 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 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.

The guideline notes several conditions that could raise trustworthiness concerns. Under AG ¶ 19(a), an “*inability or unwillingness to satisfy debts*” is potentially disqualifying. Similarly under AG ¶ 19(c), “*a history of not meeting financial obligations*” may raise security concerns. Applicant has significant past-due debt that she has yet to

address. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

The guideline also includes examples of conditions that could mitigate trustworthiness concerns arising from financial difficulties. Under AG ¶ 20(b), it may be mitigating where *“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.”* As noted above, Applicant attributes much of her financial problems to her mother’s terminal cancer, but she has yet to address most of her debts. I find this mitigating condition is not applicable in this case.

Evidence that *“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”* is potentially mitigating under AG ¶ 20(c). Applicant has engaged a nonprofit debt servicing company to help her, but has only addressed one of the alleged debts through the DCS. I find this mitigating condition is also not applicable in this case.

### **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 circumstances. 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.

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.

I considered all of the evidence, including the potentially disqualifying and mitigating conditions surrounding this case. Overall, the record evidence leaves me with questions and doubts as to Applicant’s eligibility and suitability for a public trust position. For all these reasons, I conclude Applicant has not mitigated the trustworthiness concerns arising from her financial considerations.

## 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.:        | For Applicant     |
| Subparagraph 1.b.:        | Against Applicant |
| Subparagraphs 1.c.~1.f.:  | For Applicant     |
| Subparagraph 1.g.~1.i.:   | Against Applicant |
| Subparagraph 1.j.:        | For Applicant     |
| Subparagraph 1.k.~1.u.:   | 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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Richard A. Cefola  
Administrative Judge