



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



In the matter of: )  
 )  
----- ) ADP Case No. 11-15135  
 )  
 )  
Applicant for Public Trust Position )

**Appearances**

For Government: Pamela Benson, Department Counsel  
For Applicant: *Pro se*

December 13, 2013

**Decision**

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted her Electronic Questionnaire for Investigations Processing (E-Quip) dated May 31, 2011, for a position of trust. (Government Exhibit 5.) On April 19, 2013, the Department of Defense (DoD), pursuant to Executive Order 10865 (as amended), and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed the reasons why DoD could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue access to sensitive information for the Applicant and recommended referral to an Administrative Judge to determine Applicant’s eligibility for a position of trust.

The Applicant responded to the SOR in writing on May 13, 2013, in which she elected to have the case determined on a written record in lieu of a hearing. Department Counsel submitted the Government’s File of Relevant Material (FORM) to the Applicant on September 6, 2013. The Applicant received the FORM on September 12, 2013. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. The Applicant failed to submit a reply to the FORM.

This case was assigned to the undersigned on October 30, 2013. Based upon a review of the pleadings and exhibits, eligibility for a position of trust is denied.

## **FINDINGS OF FACT**

The following Findings of Fact are based on the Applicant's Answer to the SOR, the testimony and the exhibits. The Applicant is 31 years old and married with a one biological son and a step-son. She has a high school diploma and two years of college. She is employed by a defense contractor as a Administrative Assistant and is seeking to obtain a favorable trustworthiness determination in connection with her employment.

Under Guideline F of the SOR, several of the seventeen separate allegations have been mis-lettered and are not in alphabetical order. Allegations 1(a) through 1(e) are correct. The remaining allegations are lettered erroneously. For purposes of ease and understanding, I have re-lettered the remaining allegations 1(f) through 1(q) and placed them in alphabetical order.

The Government opposes the Applicant's request for a trustworthiness determination, on the basis of allegations set forth in the Statement of Reasons (SOR). After a complete and thorough review of the evidence in the record, and upon due consideration of the same, the following findings of fact are entered as to each paragraph and guideline in the SOR:

Paragraph 1 (Guideline F - Financial Considerations) The Government alleges that the Applicant is ineligible for a trustworthiness determination because she is financially overextended and at risk to engage in illegal acts to generate funds.

The Applicant admits each of the seventeen delinquent debts set forth in the SOR under this guideline that total over \$22,000. (See, Applicant's Answer to SOR.) Credit Reports of the Applicant dated June 15, 2011; February 12, 2013; April 16, 2013; and August 26, 2013, collectively reflect that each of the delinquent debts set forth in the SOR remain owing. (Government Exhibits 7, 8, 9, and 10.)

Since December 2010 Applicant has been working for her current employer. Prior to that, Applicant was employed with another company, and was enrolled for an on-line education from a university from 2006 to 2008. She attributes her financial indebtedness listed in the SOR to a period of time in 2008 and 2009 when she was very ill. She explained that between 2008 and 2009, she suffered from an illness that her medical providers were not able to diagnose or treat in a timely fashion. During that year, she was unable to work and had to withdraw from her studies. As result of this prolonged illness and the fact that she used sick leave beyond the FMLA leave that she had, Applicant was terminated form her employment. She used credit card to pay bills while she was sick. As a result, she accumulated medical bills and credit card debt that she could not afford to pay. Her illness has since resolved, and she has been working

full time since December 2010. Her plans were to start paying off her delinquent debt when she started working.

Applicant's husband has been unemployed since October 2012 and was collecting unemployment from the state until the end of January 2013. He is now working for minimum wage, which has delayed Applicant's plans to reduce her indebtedness. Applicant also indicated that they also owe back taxes in the amount of \$900 and they have set that matter as a priority to resolve.

Applicant indicates that she is current with all of her monthly expenses, however, she has not had the money to pay her delinquent past due debts. She states that she is working toward the beginnings of repairing the damage to her credit. (Government Exhibit 5.)

Each of the following delinquent debts set forth in the SOR remain owing:

- 1.(a) a delinquent cell phone bill owed to a creditor in the amount of \$372.
- 1.(b) a delinquent medical bill owed to a creditor in the amount of \$240.
- 1.(c) a delinquent debt owed to a creditor in the amount of \$16.00.
- 1.(d) a delinquent debt owed to a creditor in the amount of \$53.00.
- 1.(e) a delinquent debt owed to a creditor in the amount of \$118.
- 1.(f) a delinquent debt owed to a creditor in the amount of \$333.
- 1.(g) a delinquent debt owed to a creditor in the amount of \$1,494.
- 1.(h) a delinquent debt owed to a creditor in the amount of \$143.
- 1.(i) a delinquent debt owed to a creditor in the amount of \$1,091.
- 1.(j) a delinquent debt owed to a creditor in the amount of \$438.
- 1.(k) a delinquent debt owed to a creditor in the amount of \$901.
- 1.(l) a delinquent debt owed to a creditor in the amount of \$2,883.
- 1.(m) a delinquent debt owed to a creditor in the amount of \$4,907.
- 1.(n) a delinquent debt owed to a creditor in the amount of \$1,016.
- 1.(o) a delinquent debt owed to a creditor in the amount of \$4,297.

1.(p) a delinquent debt owed to a creditor in the amount of \$2,591.

1.(q) a delinquent debt owed to a creditor in the amount of \$1,114.

Applicant reported that her and her husband's monthly net income totals \$2,600 monthly. Applicant's personal financial statement indicates that after paying her regular monthly expenses, she is left with \$362 in discretionary income, which she states she uses to pay on old debts or uses for unexpected expenses. (Government Exhibit 6.) She states that she had avoided incurring any additional debt, which has been a goal of the past year.

Applicant states that she has received positive performance reviews at work and that she has a history of honesty and integrity working with confidential information. She states that she abides by all security rules and regulations. She provided no documentary evidence concerning the quality of her professional performance, the level of responsibility her duties entail, or her track record with respect to handling sensitive information and observation of security procedures. She submitted no character references or other evidence tending to establish good judgement, trustworthiness, or reliability. I was unable to evaluate her credibility, demeanor, or character in person since she elected have her case decided without a hearing.

## **POLICIES**

Positions designated as ADP I and ADP II are classified as "sensitive positions." (See DoD Regulation 5200.2-R (Regulation) ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.2.) "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 Adjudicative Guidelines. 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 common sense 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 failed 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).

Enclosure 2 of the Directive sets forth adjudication policies divided into “Disqualifying Factors” and “Mitigating Factors.” The following Disqualifying Factors and Mitigating Factors are found to be applicable in this case:

#### Guideline F (Financial Considerations)

*18. The Concern.* 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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal act

Conditions that could raise a security concern:

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

Conditions that could mitigate security concerns:

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 circumstance;

In addition, as set forth in Enclosure 2 of the Directive at pages 18-19, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature, extent, and seriousness of the conduct;
- b. The circumstances surrounding the conduct, to include knowledgeable participation;
- c. The frequency and recency of the conduct;
- d. The individual's age and maturity at the time of the conduct;
- e. The extent to which participation is voluntary;
- f. The presence or absence of rehabilitation and other permanent behavioral changes;
- g. The motivation for the conduct;
- h. The potential for pressure, coercion, exploitation or duress; and
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to sensitive information.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk. Eligibility for access to classified information is predicated upon the individual meeting these personnel security guidelines. The adjudicative

process is the careful weighing of a number of variables known as the whole-person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination.” The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, “Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned.”

## **CONCLUSIONS**

In the defense industry, a position of trust is granted to only those civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours per day, seven days per week. The Government is therefore appropriately concerned when available information indicates that an Applicant for such access may be involved in instances of financial irresponsibility, which demonstrates poor judgment or unreliability.

It is the Government’s responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant’s conduct and the eligibility for a trustworthiness determination. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation, which is sufficient to overcome or outweigh the Government’s case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant her a favorable trustworthiness determination and access to sensitive information.

In this case the Government has met its initial burden of proving that the Applicant has been financially irresponsible (Guideline F). This evidence indicates poor judgment, unreliability and untrustworthiness on the part of the Applicant. Because of the scope and nature of the Applicant's conduct, I conclude there is a nexus or connection with her trustworthiness eligibility.

Applicant’s illness and unemployment in 2008-2009, as well as her husband’s unemployment from October 2012 to January 2013, has placed her in a tight financial situation and has hindered her from paying her delinquent debts. Since her husband became employed in January 2013, he is only earning minimum wage. Although Applicant has been employed since December 2010, her discretionary monies at the end of the month are about \$362. For some unknown reason, she has not used this money to pay off any of her debts, nor has she set up any payment plans that she is following. Five of the seventeen accounts listed in the SOR have outstanding balances of less than \$200, with the smallest account being \$16. Applicant has continued to ignore even this small debt. Although she indicates that she plans to pay her delinquent debts, and admittedly her intentions are good, Applicant has made no progress toward

resolving her debts. She is excessively indebted, remains a security risk, and I am unable to make a favorable trustworthiness determination.

There is insufficient evidence of financial rehabilitation at this time. Under Guideline F (Financial Considerations), Disqualifying Conditions 19(a) *inability or unwillingness to satisfy debts*, and 19.(c) *a history of not meeting financial obligations* apply. Mitigating Conditions 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 circumstance* applies, but is not controlling. Accordingly, I find against the Applicant under Guideline F (Financial Considerations).

I have also considered the "whole-person concept" in evaluating the Applicant's eligibility for access to classified information. Under the particular facts of this case, the totality of the conduct set forth under all of the guidelines viewed as a whole, support a whole-person assessment of poor judgement, untrustworthiness, unreliability, a lack of candor, an unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard classified information.

Overall, the record evidence leaves me with many 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. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 of the Government's Statement of Reasons.

## FORMAL FINDINGS

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

- Paragraph 1: Against the Applicant.
- Subpara. 1.a.: Against the Applicant.
- Subpara. 1.b.: Against the Applicant.
- Subpara. 1.c.: Against the Applicant.
- Subpara. 1.d.: Against the Applicant.
- Subpara. 1.e.: Against the Applicant.
- Subpara. 1.f.: Against the Applicant.
- Subpara. 1.g.: Against the Applicant.
- Subpara. 1.h.: Against the Applicant.
- Subpara. 1.i.: Against he Applicant.
- Subpara. 1.j.: Against the Applicant.
- Subpara. 1.k.: Against the Applicant.
- Subpara. 1.l.: Against the Applicant.
- Subpara. 1.m.: Against the Applicant.



Subpara. 1.n.: Against the Applicant.  
Subpara. 1.o.: Against the Applicant.  
Subpara. 1.p.: Against the Applicant.  
Subpara. 1.q.: Against the Applicant.

### **DECISION**

In light of the circumstances presented by the record in this case, it is not clearly consistent with the national interests to grant Applicant eligibility for a public trust position. Eligibility for access to sensitive information is denied.

Darlene Lokey Anderson  
Administrative Judge