



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



In the matter of:

-----

Applicant for Public Trust Position

)  
)  
)  
)  
)  
)

ADP Case No. 12-01301

**Appearances**

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

04/30/2014

**Decision**

HOWE, Philip S., Administrative Judge:

Applicant submitted her Electronic Questionnaires for Investigations Processing (e-QIP) on October 10, 2011. On June 25, 2013, the Department of Defense (DoD) issued a Statement of Reasons (SOR) detailing the trustworthiness concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program*, dated Jan. 1987, as amended (Regulation), and the adjudicative guidelines (AG) effective within the Department of Defense on September 1, 2006.

Applicant received the SOR on July 8, 2013. She answered the SOR in writing between July 8 and 16, 2013, and requested a hearing before an Administrative Judge. The Defense Office of Hearings and Appeals (DOHA) received the request on July 16, 2013. Department Counsel was prepared to proceed on September 30, 2013, and I

received the case assignment on November 21, 2013, after the case was transferred from another administrative judge who was assigned the case originally on October 21, 2013. DOHA issued a notice of hearing on February 20, 2014, and I convened the hearing as scheduled on March 18, 2014. The government offered Exhibits (Ex.) 1 through 6, which were received without objection. Applicant testified on her own behalf and submitted Exhibit A without objection. DOHA received the transcript of the hearing (Tr.) on March 27, 2014. I granted Applicant's request to keep the record open until April 4, 2014, to submit additional matters. On March 31, 2014, she submitted Exhibits B to E, without objection. The record closed on April 4, 2014. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to sensitive information is denied.

### **Findings of Fact**

In her Answer, Applicant admitted the factual allegations in ¶¶ 1.a, 1.b, 1.d, 1.f, 1.h, 1.r, 1.u, 1.x, 1.aa, 1.cc to 1.ee, 1.mm to 1.pp of the SOR, with explanations. She denied the factual allegations in ¶¶ 1.c, 1.e, 1.g, 1.i-1.q, 1.s, 1.t, 1.v, 1.w, 1.y, 1.z, 1.bb, 1.ff to 1.ll, and all three allegations in ¶ 2 of the SOR. She also provided additional information to support her request for eligibility for a public trust position.

Applicant filed Chapter 7 bankruptcy in August 2003. It was discharged in November 2003. This bankruptcy occurred after her second divorce. (Tr. 26; Exhibit 1)

Applicant was married and divorced twice, from 1993 to 1994, and then from 1998 to 2000. She has two adult children who do not live with her. Applicant lives alone and commutes to work by public transportation. She does not own a vehicle. Applicant earns about \$40,000 as a customer service representative for a military health care provider. She actually works for a contractor who places people with vision problems in certain government positions. (Tr. 24, 25; Exhibits 1, B-E)

Applicant has several medical problems which make employment for her difficult. She is legally blind, has had diabetes for the past 23 years, macular degeneration in her eyes, eye cataracts for which one eye was operated upon in 2011 (her right eye having the better vision now), oral gum problems for which she had surgery two weeks before the hearing, and diabetic retinopathy. Applicant's medical bills for prescription medicines and doctor appointments usually totaled over \$900 a month until recently. (Tr. 40, 50, 71-77; Exhibits 1, B-E)

As stated, Applicant earns about \$40,000 working for the contractor who places visually handicapped people in government employment. She nets about \$2,200 monthly. Her apartment rent is \$645, groceries \$160, utilities \$175, cable \$60, internet \$16, and medical expenses of \$300 now because she got insurance in her state of residence on the new insurance exchange. Those expenses total \$1,356. Applicant claimed she now had about \$650 of disposable income monthly with which to pay her

delinquent debts. Her new health insurance purchased from an exchange provided her with lower out-of-pocket expenses for her medications. (Tr. 41-47; Exhibits 1-6, A)

Applicant was unemployed for two periods in the past six years. She took care of her grandson from August 2007 to October 2007. She worked for an insurance company from September 2007 to August 2010. She was fired from that job when her absences for medical appointments or tardiness for the same reason became too many. She knew in that time period she was losing her eyesight and was seeking medical diagnosis and treatment for the condition. She found it difficult to see the computer screen she used at her workplace because of her vision loss. (Tr. 20-23; Exhibits 1-3)

Applicant has 41 delinquent debts listed in the SOR. One additional allegation pertains to the 2003 Chapter 7 bankruptcy. These debts total \$44,704. Of those debts, four are owed for her student loans. Those debts amount to \$26,371. The remaining balance owed is \$18,333 on 37 individual debts. (Tr. 26-63; Exhibits 1-6)

Applicant's student loans for her associates' degree in business management are listed in the SOR in Subparagraphs 1.l to 1.o. They are being paid at the rate of \$200 monthly, which is deducted automatically from Applicant's checking account. She started the repayment process in January 2014. The most recent credit report shows these loans are current. These debts for \$26,371 are being resolved. (Tr. 37, 38; Exhibits 2-6, A)

Applicant stated she consults with an attorney whom she pays \$70 monthly to investigate each remaining debt and to try to arrange a payment plan, or have the debt removed from her credit record if proved invalid. She did not submit any documents to support this assertion. Applicant contends that she should have her debts repaid in three-to-five years. (Tr. 46-51, 74)

Applicant's 37 remaining debts include apartment leases, for which she did not pay the agreed amount and she was sued, with judgments against her resulting in debts of \$1,799 in 2012 (Subparagraphs 1.b), \$1,625 in 2006 (Subparagraph 1.c), and \$407 from 2006 (Subparagraph 1.h). Applicant paid some money on those debts years ago but nothing recently. These debts remain unresolved. (Tr. 28-30; Exhibits 1-6)

Applicant had a truck repossessed when she could not make the payments on it due to her unemployment. The truck was sold and the balance owed was reduced to a judgment of \$3,867 in 2006 (Subparagraph 1.d). This debt remains unpaid. (Tr. 30; Exhibits 1-6)

Applicant has a variety of debts that are unresolved. They include six medical accounts (1.e, 1.i, 1.x, 1.aa, 1.oo, 1pp); five delinquent debts owed to landlords for apartments she vacated (1.b, 1.c, 1.d, 1.h, 1.p); six debts for videos or books purchased for which payment was not made (1.u, 1.v, 1.y, 1.z, 1.cc, 1.dd); six utility debts owed

(1.f, 1.s, 1.t, 1.w, 1. ee); one debt owed to a pizza company (1.g); eight delinquent checks owed to one pizza restaurant totaling \$446 (1.bb, 1.ff to 1.ll) that she denies because she never eats pizza or orders from that restaurant; and five debts owed to other creditors (1.k, 1.q, 1.r, 1.mm, 1.nn). Most of these debts are small amounts of less than \$100 each. The debts she does not recognize Applicant disputes. However, she does not have any copy of a letter or email sent to a credit reporting agency, creditor, or collector disputing the debt in writing. Nor does she have any response from any credit reporting agency, creditor, or collector concerning the disputed debt. Applicant stated she did not have the money to pay these debts previously, but now with her monthly net income remainder of \$650 and with the information her attorney gives her she should be able to pay the debts in the next three to five years. (Tr. 30-63, 73; Exhibits 1-6)

Applicant claims her identify was stolen in 2004 when she lived in another state. She has fraud alerts on her bank accounts. She contends that the pizza restaurant bad checks and some other debts are the results of that identify theft. She did examine the checks written with her name and on her purported account and claims they are clever forgeries of her signature. (Tr. 58-61, 72, 73)

Applicant was interviewed by a government investigator in November 2011. They discussed her delinquent debt. She told the investigator that she would investigate the debts and pay the debts she validly owes. In 2014 at the hearing she had only worked to resolve her student loans starting in January 2014. She explained she did not have the money in the past years to pay these debts. Her medical expenses consumed most of her income because of her preexisting conditions. (Tr. 40, 41; Exhibit 2)

Applicant completed and executed her e-QIP on October 10, 2011. Applicant failed to identify any of her SOR-listed debts in her responses to the questions in:

“Section 26. Financial Record; Delinquency Involving Enforcement: In the past seven years have you had a judgment entered against you; or had a lien placed against your property for failure to pay taxes?”

And, in the section pertaining to “Delinquency Involving Routine Accounts; Have you had any debts turned over to a collection agency in the past seven years”;

and “Have you been over 120 days delinquent on any debt(s)?”;

and “Are you currently over 120 days delinquent on any debt(s)?”

Applicant testified she did not know why she answered, “No,” to these questions when she had all the delinquent debts listed in Paragraph 1 of the SOR due and owing. She knew about the apartment lease debts and her truck repossession before she completed the e-QIP. She knew she had a \$218 tax lien filed against her in October 2009, which she paid in December 2009. She did state that she denied the debts because she did not know they were her debts. Now she has hired an attorney to attempt to assist her in resolving the debts or clearing them from her credit record.

However, she admitted to knowledge of most if not all the debts for the past three-to-four years. (Tr. 12, 46, 64-68; Exhibits 1-6)

Applicant is visually impaired. One of her character letters states she was hired in September 2010 under a special program for training and employing blind and visually impaired individuals. Applicant works in a call center. In the past three years Applicant's service was characterized as dependable, dedicated, and she provides timely and accurate information to personnel seeking data on their insurance policies and programs. Another supervisor stated in a separate letter that Applicant works hard every day and comes to work regularly. A third supervisor reported that Applicant comes to work even when she is weak and tired. She is dependable. Applicant earned two "Triple Crown Awards" from her employer, when many employees never earn even one such award. Her work is consistently rated as "Excellent." (Tr. 71, 77; Exhibits B to E)

### **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 security concern 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 classified 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 security concerns under AG ¶ 19. Two are potentially applicable in this case:

(a) inability or unwillingness to satisfy debts; and

(c) a history of not meeting financial obligations.

The SOR alleges that Applicant incurred approximately 41 delinquent debts totaling \$44,704, plus a previous bankruptcy in 2003. She has not contested or otherwise addressed her delinquent accounts listed on her credit reports, except for her four student loans of \$26,371 that are now current with her regular \$200 monthly payment. Her remaining delinquent debts total \$18,333. She has \$650 left now after satisfying her monthly obligations and claims she can start to repay some of her debts. She had a past inability to address her debts. She has an overall “history of not meeting financial obligations.” AG ¶¶ 19(a) and 19(c) are disqualifying.

Five Financial Considerations mitigating conditions under AG ¶ 20 were considered, but found inapplicable, including:

(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.

The Appeal Board has held, “A security clearance adjudication is not a proceeding aimed at collecting an applicant’s personal debts. Rather, it is a proceeding aimed at evaluating an applicant’s judgment, reliability, and trustworthiness.”<sup>1</sup> Security clearance adjudications regarding financial issues are not debt collection proceedings. Rather, the purpose is to make “an examination of a sufficient period of a person’s life to

---

<sup>1</sup> ISCR Case No. 01-09691 at 3 (App. Bd. Mar. 27, 2003).

make an affirmative determination that the person is an acceptable security risk.”<sup>2</sup> Applicant’s ongoing decision not to address her debt in a meaningful manner reflects poorly on her current judgment, reliability, trustworthiness, and ability to protect classified information. Future delinquencies are likely to recur, given her past performance. Applicant’s current assertion that she now has enough money to start to repay her delinquent debts is not supported by any objective action on her part. She has not established that the problem is being resolved or is under control, or that she made a good faith effort to repay her remaining delinquent accounts. Applicant contends the pizza restaurant debts are not hers, but she introduced no documented proof to substantiate the basis of her dispute and she failed to provide evidence of any action to resolve the debts. None of the mitigating conditions were sufficiently established by the record evidence with respect to any of her debts and the financial history of which they are symptomatic.

### **Guideline E, Personal Conduct**

The security concern for the Personal Conduct guideline is set out in AG ¶ 15:

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 security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(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.

Applicant failed to list her SOR-listed debts on her e-QIP. Applicant clearly knew she had debts, such as the obligations on her previous apartment that had not been resolved. Yet, she willfully chose not to include them on the e-QIP. This behavior indicates questionable judgment and untrustworthiness.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

---

<sup>2</sup> AG ¶ 2(a)



(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 security clearance process. 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; and

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

After considering the mitigating conditions outlined above in AG ¶ 17, it is apparent that none of them apply. Applicant did not make prompt or good-faith efforts to correct her falsification or concealment. She provided no information that indicates she was ill-advised in completing her e-QIP. Falsifying information is a serious offense and Applicant has done nothing to show that similar lapses in judgment are unlikely to recur. Further, she fails to take responsibility for her actions. She has not provided information in this record to show that she has met her burden of proof for her personal conduct.

### **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. 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." 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 considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant is working hard to support herself even with her multitudinous medical disabilities. She continues to apply herself and gets high ratings from her supervisors. However, none of her past actions in the last seven years shows she acted responsibly regarding her delinquent debts. Applicant's income has been adversely affected by her vision problems. She is legally blind. The present position she acquired through an organization that helps visually affected persons gain productive employment. These conditions impeded her ability to repay her debts. However, they do not excuse or explain a person's spending of money that she did not have the income to repay within a reasonable amount of time.

On the Personal Conduct issue, nothing in Applicant's testimony or on her e-QIP explains why she did not disclose on the form her financial difficulties, even in the additional comments section at the end of the questionnaire. She could still decide, regardless of every challenge she had, to truthfully disclose the delinquent debts even in a general fashion to put the government on notice there was a problem, in which it should delve as part of its background investigation. Applicant did not make those disclosures as required and as she swore on the e-QIP that she provided truthful answers to all questions.

Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a public trust position. For all these reasons, I conclude Applicant did not mitigate the trustworthiness concerns arising from her Financial Considerations and Personal Conduct guideline categories.

### **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
Subparagraphs 1.b to 1.k:	Against Applicant
Subparagraphs 1.l to 1.o:	For Applicant
Subparagraphs 1.p to 1.pp:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT

Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant

### **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.

---

PHILIP S. HOWE  
Administrative Judge