



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



In the matter of: )  
)  
) ADP Case No. 12-01679  
)  
Applicant for Public Trust Position )

**Appearances**

For Government: Robert J. Kilmartin, Esq., Department Counsel  
For Applicant: *Pro se*

11/29/2013

**Decision**

DUFFY, James F., Administrative Judge:

Applicant failed to mitigate the trustworthiness concerns arising under Guideline F, financial considerations. Eligibility to occupy a position of trust is denied.

**Statement of the Case**

On June 26, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns under Guideline F. This action was taken under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive); and the adjudicative guidelines (AG) implemented on September 1, 2006.

The SOR detailed reasons why the DOD could not find under the Directive that it is clearly consistent with the national interest to grant or continue Applicant's access to sensitive information. Applicant answered the SOR on July 3, 2013, and requested a hearing on July 14, 2013. The case was assigned to me on August 26, 2013. The

Defense Office of Hearings and Appeals (DOHA) issued a Notice of Video Teleconference Hearing on September 12, 2013, setting the hearing for October 1, 2013. However, the hearing was postponed due to a Federal Government shutdown. Another Notice of Video Teleconference Hearing was issued on November 4, 2013, and the hearing was held as scheduled on November 7, 2013. At the hearing, Department Counsel offered exhibits (GE) 1 through 4 that were admitted into evidence without objection. Applicant testified and offered no exhibits. The record was left open until November 21, 2013, to provide Applicant an opportunity to submit additional matters. Applicant timely submitted exhibits (AE) A through J that were admitted into evidence without objection. The transcript (Tr.) of the hearing was received on November 19, 2013.

### **Findings of Fact**

Applicant is a 30-year-old employee of a federal contractor. She has worked for that contractor since September 2010. She was initially a full-time employee, but moved to another state and now works for that company at home as a part-time employee. She graduated from high school in 2001, was awarded a bachelor's degree in 2006, and recently earned a master's degree. She married in 2007. Her husband served on active duty in the Navy for 20 years and retired in pay grade E-6 in May 2013. They have a son who is five years old. He has four children from a prior marriage, ages 11, 13, 14, and 20, who reside with them. This is the first time that she has sought to occupy a position of trust.<sup>1</sup>

The SOR alleged that Applicant had 23 delinquent debts totaling \$67,893 (SOR ¶¶ 1.a–1.w). The largest alleged debt (SOR ¶ 1.w) asserted that Applicant had combined student loans in the approximate amount of \$52,902. In her answer to the SOR, Applicant admitted 15 allegations as identified below and denied the remaining allegations. Her admissions are incorporated as findings as fact.<sup>2</sup>

Applicant attributed her financial problems to various reasons. First, she was unemployed from April 2008 to June 2009 and from December 2009 to August 2010. The first period of unemployment occurred because she had a high-risk pregnancy and her son was born 14 weeks early. Her son's medical condition required her to stay home to care for him for almost a year after his birth. The later period of unemployment occurred when she and her husband moved to his new duty station. Second, she and her husband have custody of his four children from a prior marriage. The mother of those children is supposed to pay \$825 a month in child support, but she usually pays about \$300. Third, her father-in-law passed away last year, and her husband paid for his funeral expenses. Her husband has also been providing financial assistance to his mother. Finally, she noted that she was not provided financial support from her family

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<sup>1</sup> Tr. at 6-7, 28-31; Applicant answer to the SOR; GE 1, 2.

<sup>2</sup> Applicant's answer to the SOR.

while attending college and incurred periods of unemployment as a student. In her Office of Personnel Management (OPM) interview, Applicant acknowledged that she was not knowledgeable about financial matters and was not taught how to manage money by her parents.<sup>3</sup>

The status of the alleged debts is reflected in the following table:

<b>SOR/DEBT</b>	<b>AMOUNT</b>	<b>STATUS</b>	<b>EVIDENCE</b>
SOR ¶ 1.a – collection account	\$3,115	Admitted. This debt arose from an apartment lease that Applicant cosigned for a friend. The friend defaulted on the lease. The debt was placed for collection in August 2012. Applicant stated her friend had made arrangements to pay this debt and was making payments until she lost her job. Applicant stated the friend intends to resolve this debt when she receives her next income tax refund. This debt remains unresolved.	Answer; Tr. at 57-59; GE 3; AE H.
SOR ¶ 1.b – collection account	\$70	Admitted. This debt arose from a book of the month club membership. In her answer, Applicant indicated that she would pay this account on July 5, 2013. At the hearing she indicated that she had not yet paid it. In her post-hearing submission, she provided a letter from the collection company dated November 13, 2013, reflecting this debt was satisfied in full.	Answer; Tr. at 59; AE E.
SOR ¶ 1.c – collection account	\$177	Denied. This was a medical debt that was placed for collection in October 2011. Applicant stated that she is not responsible for this debt because TRICARE should have covered it. Since this debt was incurred after her marriage, her explanation is plausible.	Answer; Tr. at 59-60; GE 3.
SOR ¶ 1.d – collection account	\$1,007	Admitted. This was a credit card account that Applicant used in college. It had a date of first deficiency/date of last activity of May 2008. This account remains unresolved.	Answer; Tr. at 60-61; GE 2, 3, 4.

<sup>3</sup> Tr. at 28-39, 70-71; Applicant's answer to the SOR; GE 1, 2.

SOR ¶ 1.e – collection account	\$689	Admitted. This was a medical debt that was placed for collection in February 2008. It was incurred when Applicant was not covered by medical insurance. This debt remains unresolved.	Answer; Tr. at 48, 61; GE 2, 4.
SOR ¶ 1.f – collection account	\$102	Denied. This was a bank account debt that was placed for collection in October 2010. Applicant claimed she paid this debt and later opened another account at that bank. Insufficient evidence was presented to show this debt was resolved.	Answer; Tr. at 61-62; GE 2, 3, 4.
SOR ¶ 1.g – unpaid debt	\$196	Denied. This was a medical account that was placed for collection in August 2007. In her answer, Applicant stated that she was unable to determine if it is a valid debt because she had no knowledge of it. This debt remains unresolved.	Answer; Tr. at 62; GE 3, 4.
SOR ¶ 1.h – unpaid debt	\$576	Denied. This was a medical account that was placed for collection in June 2007. In her answer, Applicant stated that she was unable to determine if it is a valid debt because she had no knowledge of it. This debt remains unresolved.	Answer; Tr. at 62; GE 2, 3, 4.
SOR ¶ 1.i – judgment	\$100	Denied. This debt arose from an apartment lease. Applicant indicated that she intended to dispute this debt. Insufficient evidence was presented to show this debt was resolved.	Answer; Tr. at 39-42, 62, 66; GE 2, 4; AE J.
SOR ¶ 1.j – judgment	\$2,202	Denied. This judgment arose from a deficiency Applicant owed after a vehicle repossessed in 2005 was sold at an auction. This debt remains unresolved.	Answer; Tr. at 40-42, 62-63; GE 2, 4.
SOR ¶ 1.k – judgment	\$1,183	Admitted. This is a duplicate of the debt in SOR ¶ 1.j, above.	Answer; Tr. at 40-42, 62-63; GE 2, 4.

SOR ¶ 1.l – collection account	\$708	Denied. This was a credit card account that Applicant had in college. In her answer, Applicant claimed she paid this debt. Insufficient evidence was presented to show this account is resolved.	Answer; Tr. at 63; GE 2, 4.
SOR ¶ 1.m – collection account	\$1,113	Admitted. This debt arose from an overdrawn checking account. In her post-hearing submission, she provided a letter from the collection company dated November 12, 2013, reflecting this debt was satisfied in full.	Answer; Tr. at 50-63; GE 2, 4; AE G.
SOR ¶ 1.n – collection account	\$516	Admitted. This debt arose from a gym membership. Although she had a month-to-month membership, she was charged a termination fee when she canceled the account. This debt remains unresolved.	Answer; Tr. at 48-50, 64-65; GE 2, 4.
SOR ¶ 1.o – collection account	\$455	Denied. In her answer, Applicant stated that she was unable to determine if this was a valid debt because she had no knowledge of it. This debt remains unresolved.	Answer; Tr. at 65; GE 2, 4.
SOR ¶ 1.p – collection account	\$347	Admitted. This debt arose from an apartment lease. Applicant indicated this debt was a duplicate of the judgment in SOR ¶ 1.i. GE 4 indicated that this debt was placed for collection after that judgment. Insufficient evidence was presented to show this account is resolved.	Answer; Tr. at 39-42, 65-66; GE 2, 4; AE J.
SOR ¶ 1.q – collection account	\$299	Admitted. This was a medical debt that was incurred when Applicant was not covered by medical insurance. This debt remains unresolved.	Answer; Tr. at 66; GE 2, 4.
SOR ¶ 1.r – collection account	\$205	Admitted. This debt arose from an overdrawn checking account. It was placed for collection in January 2010. In her post-hearing submission, she provided a letter from the collection company dated November 12, 2013, reflecting this debt was satisfied in full.	Answer; Tr. at 50-51, 67; GE 2, 4; AE F.

SOR ¶ 1.s – collection account	\$84	Admitted. This debt arose from a check returned for insufficient funds. It was placed for collection in May 2006. This debt remains unresolved.	Answer; Tr. at 47, 51, 67; GE 4.
SOR ¶ 1.t – collection account	\$50	Admitted. This debt arose from a check returned for insufficient funds. It was placed for collection in June 2006. This debt remains unresolved.	Answer; Tr. at 47, 51, 67-68; GE 4.
SOR ¶ 1.u – collection account	\$45	Admitted. This debt arose from a check returned for insufficient funds. It was placed for collection in March 2006. This debt remains unresolved.	Answer; Tr. at 47, 51, 68; GE 4.
SOR ¶ 1.v – unpaid debt	\$1,752	Admitted. This was a medical debt that was incurred when Applicant was not covered by medical insurance. This debt remains unresolved.	Answer; Tr. at 42-43, 68-69; GE 1, 2.
SOR ¶ 1.w – combined student loans	\$52,902	Admitted. Applicant testified that her student loans were deferred. Her credit report confirmed they were deferred. Since she just completed her master's degree, the student loans will remain in deferment for another six months. At that time, monthly payments will become due. She anticipates the monthly payments will be about \$650.	Answer; Tr. at 55-57, 69; GE 3, 4.

Applicant has received financial counseling from a friend and prepared a spreadsheet for making payments on her debts. However, she did not present that spreadsheet as an exhibit during this proceeding. In her OPM interview, she stated that she planned to pay one debt at a time due to her limited assets. At the hearing, she indicated that she could not remember the last time she made a payment toward any of the alleged debts. Applicant took a vacation to the Bahamas in 2010.<sup>4</sup>

In May 2013, Applicant submitted a personal financial statement (PFS) that reflected her and her husband's total net monthly income was \$7,142, that their total monthly expenses were \$5,340, and that their monthly debt payments were \$990, which left them a net monthly remainder of \$812. Since his retirement from the military, Applicant and her husband moved to another state in July 2013. He obtained a civilian job in which his employer has matched his active duty military pay. His monthly income (retired pay and civilian salary) totals about \$5,000. Applicant now works part-time from her home and her monthly salary is about \$1,800. While their monthly income has decreased by about \$342 since she submitted the PFS, their monthly expenses have

<sup>4</sup> Tr. at 27-28, 31-35, 70-71; GE 1, 2.

also decreased by about \$1,100 due to a reduction in rent and the elimination of day care expenses.<sup>5</sup>

Applicant's annual performance appraisal for 2012 reflected that she fully met expectations. A coworker stated that Applicant displays a professional and caring attitude and brings a wealth of knowledge and experience to the organization. A vice president of her company praised her contributions.<sup>6</sup>

### **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 the interests of national security." (See Regulation ¶ C6.1.1.1.) In a memorandum dated November 19, 2004, the Deputy Under Secretary of Defense (Counterintelligence and Security) indicated that trustworthiness adjudications will apply the procedures contained in the Directive before making a determination. (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 overarching 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.

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.

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<sup>5</sup> Tr. at 30-35, 51-55; GE 2.

<sup>6</sup> AE B-D.

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 of potential, rather than actual, risk of compromise of sensitive information.

## **Analysis**

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

The trustworthiness concern for financial considerations is set out in AG ¶ 18 as follows:

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 trustworthiness 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.

Applicant accumulated a number of delinquent debts over an extended period that she was unable to satisfy. This evidence is sufficient to raise the above disqualifying conditions.

Five financial considerations mitigating conditions under AG ¶ 20 are potentially applicable:

- (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.

A trustworthiness adjudication is not a debt collection procedure. It is a procedure designed to evaluate an applicant's judgment, reliability, and trustworthiness.<sup>7</sup> An applicant is not required, as a matter of law, to establish that he or she has resolved every debt alleged in the SOR. An applicant need only establish a plan to resolve the financial problems and take sufficient action to implement the plan. There is no requirement that an applicant make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in the SOR be paid first.<sup>8</sup>

SOR ¶ 1.w alleged that Applicant had \$52,902 in student loans. It did not allege that those loans were delinquent. The evidence established that these loans have been deferred and will remain in a deferment status for the next six months. I find in favor of Applicant on SOR ¶ 1.w.

Applicant encountered a number of financial setbacks. These included a high-risk pregnancy and premature birth of her son that resulted in her unemployment from April 2008 to June 2009. She and her husband also assumed custody of his four children from a prior marriage. Additionally, her husband's father passed away. They paid for her father-in-law's funeral expenses and have since provided financial support to her mother-in-law. These were financial conditions beyond her control. Many of her debts predate her marriage in 2007. She provided evidence establishing that she paid three of the alleged debts, totaling \$1,388, and that she received financial counseling. She provided little documentary evidence about the status of the other debts or about the actions she has taken to resolve them. In her personal financial statement of May 2013, she disclosed a net monthly remainder of \$812, but failed to present any evidence of systematic payments towards the debts. At the hearing, she could not remember the last time she made a payment toward the debts. In 2010, she took a vacation to the

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<sup>7</sup> See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010).

<sup>8</sup> See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

Bahamas while she was encountering these financial problems. Based on the record evidence, I also cannot find that Applicant established a meaningful track record of payments towards her delinquent debts, that she has acted responsibly under the circumstances in handling her debts, or that her financial problems are under control and are being resolved. Her delinquent debts continue to cast doubt on her current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a) does not apply. AG ¶¶ 20(b), 20(c), and 20(d) partially apply. AG ¶ 20(e) applies to SOR ¶¶ 1.c and 1.k.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a position of trust by considering the totality of the applicant's conduct and all relevant 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) 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.

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. AG ¶ 2(c).

I considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. 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.

Applicant is highly thought of by her coworkers and is a valued employee. Nonetheless, she has failed to present evidence to show that she is acting responsibly in resolving her financial problems. Her delinquent debts continue to raise security concerns for the reasons set forth above.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a public trust position. For all these reasons, I conclude Applicant failed to mitigate the alleged security concerns.

### **Formal Findings**

Formal findings 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:	Against Applicant
Subparagraphs 1.b – 1.c:	For Applicant
Subparagraphs 1.d – 1.j:	Against Applicant
Subparagraph 1.k:	For Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	For Applicant
Subparagraphs 1.n – 1.q:	Against Applicant
Subparagraph 1.r:	For Applicant
Subparagraphs 1.s – 1.v:	Against Applicant
Subparagraph 1.w:	For Applicant

**Decision**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant’s eligibility for a public trust position. Eligibility to occupy a position of trust is denied.

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James F. Duffy  
Administrative Judge