



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



In the matter of: )  
)  
) ADP Case No. 12-01784  
)  
Applicant for Public Trust Position )

**Appearances**

For Government: Ray T. Blank Jr., Esq., Department Counsel  
For Applicant: *Pro se*

01/23/2014  
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**Decision**  
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RIVERA, Juan J., Administrative Judge:

Applicant acknowledged responsibility for the debts alleged in the Statement of Reasons (SOR). She established payment plans for two large debts, and paid six smaller debts. Her financial problems were caused by circumstances beyond her control that are no longer present. She has a viable plan to resolve her delinquent debt, and she is in the process of getting control of her financial situation. I find Applicant's current financial situation does not raise trustworthiness concerns. Eligibility to hold a position of trust is granted.

**Statement of the Case**

Applicant submitted an electronic questionnaire for a position of trust (Application) on October 5, 2010. On August 7, 2013, the Department of Defense (DoD) issued Applicant an SOR listing trustworthiness concerns under Guideline F (financial

considerations).<sup>1</sup> Applicant answered the SOR on September 6, 2013, and elected to have her case decided on the written record in lieu of a hearing.

A copy of the Government's file of relevant material (FORM) was provided to her by transmittal letter dated December 12, 2013. Applicant received the FORM on December 19, 2013. She was allowed 30 days to submit any objections to the FORM and to provide material in extenuation and mitigation. She timely responded to the FORM, and provided a sworn statement, which was made part of the record. The case was assigned to me on January 23, 2013.

### **Findings of Fact**

In her Answer, Applicant admitted the factual allegations in SOR ¶¶ 1.a, 1.c, and 1.d. She denied the allegations in SOR ¶¶ 1.b, and 1.e. Her admissions are incorporated as findings of fact. After a thorough review of the record evidence, including her answers to the SOR, the FORM, DOD interrogatories, and her application, I make the following additional findings of fact:

Applicant is a 47-year-old employee of a government contractor. She is a high school graduate and attended college, but she did not state whether she received a degree. In 2012, she was certified as a nurse assistant. Applicant married in 1992 and divorced in 1997. She married her second husband in 1997, and divorced in 2011. She has no children.

Applicant's work history indicates that she worked as an administrative assistant for a company from 1992 to July 2007. From July 2007 to October 2008, she worked as an account representative for a healthcare company. From November 2008 to July 2009, she worked as a tax preparer for a fast cash refund company. From August 2009 to October 2010, she worked for another health care company. She was hired by her current employer, a federal contractor, as a bilingual customer service representative in September 2010. This is her first application for a position of trust.

In her October 2010 Application, Applicant disclosed she filed for Chapter 7 bankruptcy protection in 2005, and was discharged of her dischargeable debts in January 2006. (SOR ¶ 1.a) The background investigation addressed her financial problems and revealed the four delinquent debts alleged in the SOR. The status of Applicant's SOR debts is as follows:

SOR ¶ 1.b – This is a debt to a telephone services provider for \$1,622. Applicant settled the debt for less than the full balance and paid it in July 2013.

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<sup>1</sup> The DoD acted under Executive Order 12968, *Access to Classified Information* (August 2, 1995), as amended; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and DoD Regulation 5200.2-R, *Personnel Security Program*, dated January 1987, as amended (Regulation); and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), implemented by the DoD on September 1, 2006.

SOR ¶ 1.c – This is a delinquent car loan for \$11,000. Applicant voluntarily returned the car to the dealer. She established a \$75-a-month payment agreement in September 2013. After her account is reviewed in 2014, she anticipated she will start paying \$250 a month. If she establishes an automatic payment plan through a bank account, the creditor promised to reduce the 18% interest rate to 5%.

SOR ¶ 1.d – This is a \$10,781 delinquent car loan that Applicant cosigned for her ex-husband. After the divorce, he failed to make the car payments and the creditor brought a collection action against Applicant. She established a \$100-a-month payment agreement in September 2013.

SOR ¶ 1.e – This is a \$985 delinquent credit card account. Applicant settled the debt for less than the full balance and paid it in July 2013.

Applicant presented evidence showing that she paid four other debts in May 2013: a \$309 collection to a telephone services provider; and three debts for medical services for \$326, \$134, and \$67.

Applicant explained that her financial problems were the result of several factors, including her then husband's lack of employment or underemployment, her aging parent's illnesses and need for full-time care, and her medical problems. In 2005, Applicant was the sole provider for her household, which included her husband, her sister, and her parents. Her husband's employment problems did not allow him to contribute financially to the household expenses, or to the medical expenses for the care of her aging parents. Notwithstanding her limited earnings, she became the sole provider for the household, and her income was insufficient to pay for their day-to-day living expenses, her parent's medical expenses, and her debts. Applicant was forced to file for bankruptcy protection.

Applicant separated from her husband in 2007, and they divorced in May 2011. Applicant's father died in May 2009. Applicant's mother underwent bypass surgery in September 2012, and died from complications in October 2012. After her mother passed away, Applicant became a certified nurse assistant.

Applicant's June 2013 personal financial statement indicated that her monthly gross salary was \$2,887; and her net salary was \$1,660. Her monthly expenses were \$1,225; and her debt payments totaled \$232, for a net remainder of \$203. She took money out of her 401(k) retirement plan to pay some of her delinquent obligations.

Applicant believes that her financial situation is now stable because of her current income. She also works part-time as a certified nurse assistant to earn additional income to pay her debts. Applicant stated that she has a working budget that allows her to pay her day-to-day living expenses and her debts.

Applicant takes her job and her obligations to her employer seriously. She considers herself to be reliable and trustworthy. She averred that she never would do

something unethical or illegal because of her financial situation. She noted that all of her accounts are now paid or being paid under a payment agreement. She understands the importance of being financially responsible and promised to continue her efforts to resolve her financial problems. She has the financial ability to resolve her debts, although she cannot pay all the debts at the same time.

Applicant presented favorable testimony from three references. By all accounts, she is considered to be honest, trustworthy, and a dedicated employee. Her references lauded her abilities and desire to help other people in need.

### **Policies**

Positions designated as ADP I and ADP II are classified as “sensitive positions.” 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.” Regulation ¶ C6.1.1.1. 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.

The AG list disqualifying and mitigating conditions for evaluating a person’s suitability for a public trust position. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing suitability for a public trust position. Each decision must reflect a fair, impartial, and common-sense consideration of the whole person and the factors listed in AG ¶ 2(a). All available, reliable information about the person, past and present, favorable and unfavorable must be considered.

A public trust position decision resolves whether it is clearly consistent with the national security to grant or continue an applicant’s access to sensitive information. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her access to sensitive information.

Persons with access to sensitive and classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national security as their own. The “clearly consistent with the national security” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government. “[Access to sensitive information] determinations should err, if they must, on the side of denials.” AG ¶ 2(b). Eligibility for a public trust position decisions are not a determination

of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing access to sensitive information.

## **Analysis**

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

Under Guideline F, the trustworthiness concern is that 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. (AG ¶ 18)

In 2006, Applicant was discharged of her dischargeable debts after filing for Chapter 7 bankruptcy protection. Apparently, she and her then husband reaffirmed their car's notes. Because of her husband's inability to find steady work, Applicant's aging parent's medical problems and their medical expenses, and her own medical problems, she was unable to make payments on the debts alleged in the SOR until recently. Two of the financial considerations disqualifying conditions apply: AG ¶ 19(a): inability or unwillingness to satisfy debts, and AG ¶ 19(c): a history of not meeting financial obligations.

AG ¶ 20 lists five conditions that could mitigate the financial considerations trustworthiness concerns:

- (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.

Applicant's debts are the result of circumstances beyond her control that contributed to or aggravated her financial problems, which include: her husband's inability to find work and to contribute to the household financial situation, her divorce, taking care of her elderly parents and paying their medical bills, and the passing of her parents. Although she initially defaulted on some of her financial obligations, she has assumed responsibility for the debts.

When Applicant realized she could not continue paying her debts she filed for bankruptcy protection. Later, she voluntarily returned her car to the creditor, and withdrew money from her 401(k) retirement fund to pay debts. She contacted her creditors and established payment plans with two of the creditors alleged in the SOR. She paid two other SOR debts and four additional small debts not alleged in the SOR. Applicant intends to honor her payment agreements and to resolve her financial problems. On balance, I find that her delinquent debts are not the result of financial irresponsibility.

AG ¶ 20(a) partially applies because Applicant's debt is current and not completely resolved. However, because her financial problems are due to circumstances beyond her control, and she has taken responsible action to address her debts (contacted creditors and established payment plans), they do not cast doubt on her current reliability, trustworthiness, and judgment. AG ¶ 20(b) applies.

AG ¶ 20(c) applies in part. It is not clear whether Applicant participated in financial counseling as a result of her 2005 bankruptcy filing. However, Applicant receives credit because she contacted her creditors and established viable payment plans. I find that there are clear indications that her financial problems are being resolved. Applicant's actions so far established her ability and willingness to resolve her delinquent debts.

Applicant divorced her husband and her parents passed away. She no longer has the responsibility to assume her parent's care or to pay for their medical expenses. Additionally, she has a steady full-time job and works part-time as a certified nurse assistant to earn additional income to pay her debts. On balance, the evidence is sufficient to show that Applicant is establishing a track record of financial responsibility, and that she has a viable plan to resolve her financial problems. AG ¶ 20(d) applies. The remaining mitigating conditions are not applicable to the facts of this case (AG ¶¶ 20(e) and 20(f)).

## **Whole-Person Concept**

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. AG ¶ 2(c).

Applicant has worked almost four years for a government contractor, and this is her first trustworthiness application. By all accounts, she is considered to be honest, trustworthy, and a dedicated employee. Her references lauded her ability, knowledge, and performance.

Applicant acknowledged responsibility for the debts alleged in the SOR. Her financial problems were caused by circumstances beyond her control that are no longer present. Considering the record as a whole, Applicant has a viable plan to resolve her delinquent debt, and she is in the process of gaining control of her financial situation. I find Applicant's current financial situation does not raise trustworthiness concerns.

## **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:	FOR APPLICANT
Subparagraphs 1.a-1.e:	For Applicant

## **Conclusion**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national security to grant eligibility for a position of trust to Applicant. Eligibility for a position of trust is granted.

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JUAN J. RIVERA  
Administrative Judge