



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



In the matter of: )  
)  
) ADP Case No. 12-02226  
)  
Applicant for Position of Trust )

**Appearances**

For Government: Richard Stevens, Esq., Department Counsel  
For Applicant: *Pro se*

10/20/2014

**Decision**

LOUGHRAN, Edward W., Administrative Judge:

Applicant has not mitigated personal conduct and financial considerations trustworthiness concerns. Eligibility for access to sensitive information is denied.

**Statement of the Case**

On March 12, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing trustworthiness concerns under Guidelines E (personal conduct) and F (financial considerations).<sup>1</sup> The action was taken under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); DOD Regulation 5200.2-R, *Personnel Security Program* (January 1987), as amended (Regulation); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.

Applicant answered the SOR on April 9, 2014, and elected to have the case decided on the written record in lieu of a hearing. The Government's written case was

<sup>1</sup> The SOR identifies this as a public trust position case. Applicant's job is consistent with that designation. Department Counsel indicated the case may be a security clearance case. I am not changing the designation. The adjudicative guidelines are the same for public trust position and security clearance cases, and this decision would be the same under either designation.

submitted on May 15, 2014. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the trustworthiness concerns. Applicant received the FORM on June 2, 2014. As of September 10, 2014, she had not responded. The case was assigned to me on September 11, 2014. The Government exhibits included in the FORM (Items 4-8) are admitted.

### **Findings of Fact**

Applicant is a 35-year-old employee of a defense contractor. She has a bachelor's degree from 2000 and two master's degrees that were awarded in 2010 and 2011. She is married with two children.<sup>2</sup>

Applicant worked for a bank from 2003 until she was terminated in 2006 for embezzling \$500. A deposit bag contained \$500 more than was listed on the deposit slip. Applicant stole the \$500 believing the money would not be missed. She was questioned by a bank investigator about two weeks later. She admitted the theft and was terminated. In 2007, she was charged in federal court with embezzlement. She completed the terms of a pretrial diversion program, and the charge was dismissed in 2009. Applicant stated that the charge was expunged. Her husband is aware of her conduct. She listed the charge on her Questionnaire for National Security Positions (SF 86), and she admitted her conduct during her background interview.<sup>3</sup>

Applicant obtained another job after she lost her bank job. She remained employed until she lost her job in December 2009. She was unemployed until she obtained work with her current employer in November 2011. Applicant has significant medical problems requiring daily medication. She did not have medical insurance for an extended period. She was unable to pay all her bills, and a number of debts became delinquent.<sup>4</sup>

The SOR alleges 21 delinquent debts totaling about \$13,950. Applicant admitted owing all the debts except the debts alleged in SOR ¶¶ 1.b (\$204), 1.e (\$603), 1.f (\$207), and 1.r (\$556), which she denied. She stated that she paid the \$6 medical debt alleged in SOR ¶ 1.a in 2013.<sup>5</sup>

With the exception of the \$6 medical debt, there is no evidence that Applicant made any payments toward any of the delinquent debts. She had difficulty contacting several creditors; she was told that some debts were charged off; and she was unable

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<sup>2</sup> Items 4, 5.

<sup>3</sup> Items 3-5, 7.

<sup>4</sup> Items 4, 5.

<sup>5</sup> Item 3.

to pay the amount requested by other creditors. She did not pay the \$67 medical debt alleged in SOR ¶ 1.u because the creditor would “only accept full payment.”<sup>6</sup>

There is no evidence that Applicant received financial counseling. Little is known about Applicant’s current financial situation because the only credit report in the record was obtained in November 2011. Applicant then had more than \$110,000 in deferred student loans. Applicant submitted a personal financial statement in August 2013. She noted that her and her husband’s net monthly income varied, but she gave an estimated figure of \$3,366. After monthly expenses and \$784 in car payments, they had a net monthly remainder of about \$164. That amount did not include payments toward her student loans or any of her delinquent debts.<sup>7</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.) 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 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.”

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<sup>6</sup> Item 3, 6.

<sup>7</sup> Items 5, 6, 8. Applicant’s student loans were not alleged in the SOR. Any financial matters that were not alleged in the SOR will not be used for disqualification purposes. They may be considered when assessing Applicant’s overall financial situation, in the application of mitigating conditions, and in analyzing the “whole person.”

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.

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:

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. The following 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 and was unable or unwilling to pay her financial obligations. The evidence is sufficient to raise AG ¶¶ 19(a) and 19(c).

Conditions that could mitigate financial considerations trustworthiness concerns are provided under AG ¶ 20. The following 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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant attributed her financial problems to medical issues and unemployment, but she may not have been unemployed if she had not been terminated from the bank for embezzlement. To the extent that the above events were beyond her control, for the full application of AG ¶ 20(b), Applicant must also have acted responsibly under the circumstances.

Applicant is given credit for the debts alleged in SOR ¶¶ 1.b (\$204), 1.e (\$603), 1.f (\$207), and 1.r (\$556), which she denied owing. With the exception of the \$6 medical debt alleged in SOR ¶ 1.a, there is no evidence that Applicant made any payments toward any of the delinquent debts. She indicated that she had difficulty contacting several creditors; she was told that some debts were charged off; and she was unable to pay the amount requested by other creditors. Applicant and her husband pay \$784 each month in car payments, but she stated that she did not pay the \$67 medical debt because the creditor would "only accept full payment." The status of her student loans is unknown.

There is insufficient evidence for a determination that Applicant's financial problems will be resolved within a reasonable period. I am unable to find that she acted responsibly under the circumstances or that she made a good-faith effort to pay her debts. Her financial issues are recent and ongoing. They continue to cast doubt on her current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a), 20(c), and 20(d) are not applicable. AG ¶ 20(b) is partially applicable. I find that financial considerations concerns remain despite the presence of some mitigation.

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

The trustworthiness concern for personal conduct is set out in AG ¶ 15, as follows:

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 [sensitive] information.

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

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as . . . engaging in activities which, if known, may affect the person's personal, professional, or community standing.

Applicant abused a position of trust when she embezzled \$500 while working for a bank. That conduct created a vulnerability to exploitation, manipulation, and duress. AG ¶ 16(e) is applicable. Additionally, the conduct showed dishonesty, poor judgment, and an unwillingness to comply with the law, which raises questions about Applicant's ability to protect sensitive information. The general concern addressed in AG ¶ 15 is also raised. See ISCR Case No. 12-01683 at 4 (App. Bd. Jun. 10, 2014).

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

(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.

It has been about eight years since Applicant stole money from a bank. She completed the terms of her pretrial diversion program, and the charge was dismissed in 2009. It may have also been expunged. Her husband is aware of her conduct; she listed the charge on her SF 86; and she admitted her conduct during her background interview. Applicant has reduced her vulnerability to coercion, exploitation, and duress. AG ¶ 14(e) is applicable. However, I remain concerned about Applicant's core honesty. She committed a serious breach of trust. She has significant financial problems that could lead her to again succumb to temptation. Her conduct continues to cast doubt on her current reliability, trustworthiness, and good judgment. I am unable to conclude that such conduct is unlikely to recur. AG ¶¶ 14(c) and 14(d) are not applicable. Personal conduct concerns remain despite the presence of some mitigation.

### **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 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.

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. I have incorporated my comments under Guidelines E and F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant has not convinced me that she will attain financial stability within the foreseeable future. Moreover, I have concerns about her honesty.

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 has not mitigated personal conduct and financial considerations 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:	Against Applicant
Subparagraphs 1.a-1.b:	For Applicant
Subparagraphs 1.c-1.d:	Against Applicant
Subparagraphs 1.e-1.f:	For Applicant
Subparagraphs 1.g-1.q:	Against Applicant
Subparagraph 1.r:	For Applicant
Subparagraphs 1.s-1.u:	Against Applicant
Paragraph 2, Guideline E:	Against Applicant
Subparagraph 2.a:	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.

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Edward W. Loughran  
Administrative Judge