



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



In the matter of: )  
)  
) ADP Case No. 12-03799  
)  
)  
Applicant for Public Trust Position<sup>1</sup> )

**Appearances**

For Government: Alison O'Connell, Esq., Department Counsel  
For Applicant: *Pro se*

03/27/2014

**Decision**

COACHER, Robert E., Administrative Judge:

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

**Statement of the Case**

On November 7, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns under Guideline F, financial considerations. DOD acted under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); DOD Regulation 5200.2-R, *Personnel Security Program*, dated January 1987, as amended (Regulation); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

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<sup>1</sup> The SOR caption in this case was originally styled as "Applicant for Security Clearance." Department Counsel amended the caption of the SOR to read: "Applicant for Public Trust Position."

Applicant answered the SOR on December 6, 2013, and elected to have her case decided on the written record. Department Counsel submitted the Government's File of Relevant Material (FORM) on January 17, 2014. The FORM was mailed to Applicant and she received it on January 31, 2014. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. She declined to submit any additional information. The case was assigned to me on March 13, 2014.

### **Findings of Fact**

In her answer to the SOR, Applicant admitted SOR allegations ¶¶ 1.a - 1.m. She denied ¶¶ 1.n and 1.o. The admissions are incorporated as findings of fact. After a review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is a 35-year-old employee of a government contractor. She works as an administrative assistant and has held that position since October 2010. She has a high school diploma and, she has taken several years of vocational college courses. She has six children, three of whom currently reside with her. She is separated from her husband. She has no military background.<sup>2</sup>

The SOR alleges 15 delinquent debts for a total of about \$17,000. The debts were listed in credit reports from July 2013, October 2011, and June 2011.<sup>3</sup>

Applicant stated in her answer to the SOR that her financial difficulties came about because of several factors, including her separation in 2008, her unemployment in 2010, and her difficulty supporting her children while making only about \$12 per hour. She receives about \$200 per month in Social Security and child support payments for her children.<sup>4</sup>

She did not provide any documentation supporting her dispute of SOR ¶¶ 1.n or 1.o. In an earlier interview with an investigator, Applicant admitted that these two debts were hers and were related to insurance accounts. She also admitted that she does not currently have the financial means to pay the delinquent debts. She has not presented evidence of payment plans or payments for any of the SOR debts. In January 2012, she indicated her intent to meet with a credit counselor to set up a payment plan. In August 2013, she met with a credit counselor who recommended that she file for bankruptcy protection. In December 2013, she indicated she intended to file for bankruptcy protection as soon as she found an attorney to represent her. Sometime after this, Applicant indicated after talking with a manager from work, she was not going to pursue bankruptcy, but rather attempt debt consolidation. She did not present any

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

<sup>3</sup> Items 7-9.

<sup>4</sup> Items 4, 6.

documentation to support either a bankruptcy filing or contact with a credit counseling service.<sup>5</sup>

The debt alleged in ¶ 1.a is a judgment in the amount of \$6,181. This judgment is for a delinquent credit card debt. The judgment was filed in September 2010. This debt is unresolved.<sup>6</sup>

The debt alleged in ¶ 1.b is a judgment in the amount of \$2,568. This judgment is for an unpaid credit union loan. Applicant claims she was making payments for a time, but had to stop. She offered no proof of payments. The judgment was filed in September 2008. This debt is unresolved.<sup>7</sup>

The debts alleged in SOR ¶¶ 1.c, 1.e, and 1.f are collection accounts for three telecommunication debts in the respective amounts of \$357, \$317, and \$144. The dates of last activity respectively are May 2008, April 2010, and December 2008. These debts are unresolved.<sup>8</sup>

The debt alleged at SOR ¶ 1.d is a collection account for a medical debt in the amount of \$226. The date of last activity for this debt is December 2011. This debt is unresolved.<sup>9</sup>

The debt alleged at SOR ¶ 1.g is a collection account in the amount of \$126. The date of last activity for this account was July 2010. This debt is unresolved.<sup>10</sup>

The debt alleged at SOR ¶ 1.h is a charged-off credit card account in the amount of \$999. The date of last activity for this account was May 2007. This debt is unresolved.<sup>11</sup>

The debt alleged at SOR ¶ 1.i is a collection account in the amount of \$960. The date of last activity for this account was May 2010. This debt is unresolved.<sup>12</sup>

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<sup>5</sup> Items 4, 6.

<sup>6</sup> Items 6-9.

<sup>7</sup> Items 4, 6-9.

<sup>8</sup> Items 4, 6-9.

<sup>9</sup> Items 7-9.

<sup>10</sup> Items 7-9.

<sup>11</sup> Items 7-9.

<sup>12</sup> Items 7-9.

The debt alleged at SOR ¶ 1.j is a charged-off credit card account in the amount of \$2,217. The date of last activity for this account was June 2007. This debt is unresolved.<sup>13</sup>

The debt alleged at SOR ¶ 1.k is a collection account in the amount of \$139. The date of last activity for this account was October 2011. This debt is unresolved.<sup>14</sup>

The debt alleged at SOR ¶ 1.l is a collection account for utilities in the amount of \$2,506. The date this account was assigned to collection was July 2011. Applicant claims she made regular payments on this debt, but provided no documentation of any payments. This debt is unresolved.<sup>15</sup>

The debt alleged at SOR ¶ 1.m is a delinquent bank debt in the amount of \$327. This account was assigned to a collection attorney. This debt is unresolved.<sup>16</sup>

The debts alleged at SOR ¶¶ 1.n and 1.o were the delinquent insurance debts discussed above in the amounts of \$198 and \$105 respectively. These accounts were turned over to collection attorneys in December 2007 and April 2009. These debts are unresolved.<sup>17</sup>

Applicant stated she received both credit counseling and bankruptcy counseling, but provided no documentation supporting either. Her personal financial statement shows, after expenses, a negative disposable income amount at the end of the month.<sup>18</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

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<sup>13</sup> Items 8-9; Note: the name of the debtor is incorrectly listed in the SOR, but the amount is correct and Applicant admitted the debt.

<sup>14</sup> Items 8-9.

<sup>15</sup> Items 6, 8-9.

<sup>16</sup> Items 8-9.

<sup>17</sup> Items 6, 8-9.

<sup>18</sup> Items 4, 6.

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." 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.

## **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 has numerous delinquent debts that remain unpaid. The evidence is sufficient to raise the above disqualifying conditions.

Several 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.

Applicant's debts are recent, multiple, and cast doubt on her reliability, trustworthiness, and good judgment. AG ¶ 20(a) is not applicable.

Although Applicant's separation and unemployment could be considered beyond her control, she has not put forth responsible efforts to resolve the issues associated with her debts. AG ¶ 20(b) is partially applicable.

There is some evidence of financial counseling. However Applicant has not established any type of payment plan for the unresolved debts. AG ¶ 20(c) partially applies, and ¶ 20(d) does not apply.

Applicant failed to provide any documentation supporting disputes of any debts. AG ¶ 20(e) does not apply. At this point, Applicant's finances remain a concern 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 trustworthiness determination 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 trustworthiness determination 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 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.

I considered the circumstances by which Applicant's financial situation was affected by her separation, her unemployment, and her personal circumstances. However, I also considered that despite these factors, all of the debts remain unaddressed. Her troublesome financial history causes me to question her ability to resolve her debts.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for access to sensitive information. For all these reasons, I conclude Applicant has not mitigated the 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.o:               Against Applicant

## **Conclusion**

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

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Robert E. Coacher  
Administrative Judge