



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



In the matter of:

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Applicant for Public Trust Position

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ADP Case No. 14-01766

**Appearances**

For Government: John B. Glendon, Esquire, Deputy Chief Department Counsel

For Applicant: *Pro se*

March 27, 2017

**Decision**

ROSS, Wilford H., Administrative Judge:

On February 13, 2013, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). (Item 3.) On July 14, 2014, the Department of Defense (DoD) issued Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns under Guideline F (Financial Considerations). (Item 1.) The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DoD for SORs issued after September 1, 2006.

Applicant replied to the SOR in writing (Response) on November 17, 2014, and she requested that her case be decided on the written record in lieu of a hearing. (Item 2.) On March 1, 2016, Department Counsel issued the Department's written case. A complete copy of the file of relevant material (FORM) was provided to Applicant. In the

FORM, Department Counsel offered seven documentary exhibits. (Items 1-7.)<sup>2</sup> Applicant acknowledged receipt of the FORM on March 11, 2016. She was given 30 days from receipt of the FORM to submit any additional documentation. Applicant submitted additional information, which has been marked and admitted into evidence without objection as Applicant's Exhibit A. The case was assigned to this Administrative Judge on May 31, 2016. Based upon a review of the pleadings and exhibits, eligibility to occupy a sensitive position is denied.

### **Findings of Fact**

Applicant is 57 years old, and has one adult child. She received a divorce from her second husband in 2009. She has been employed in the defense industry by the same employer since 2005.

#### **Paragraph 1 (Guideline F – Financial Considerations)**

The Government alleges in this paragraph that Applicant is ineligible for a public trust position because she is financially overextended and therefore potentially unreliable, untrustworthy, or at risk of having to engage in illegal acts to generate funds. The SOR lists two delinquent debts, totaling approximately \$18,223. Applicant admitted allegation 1.a, with explanations. She denied allegation 1.b, also with explanations. The existence and amounts of both debts is supported by credit reports dated February 28, 2013; March 12, 2014; and February 16, 2016. (Items 5, 6, and 7.)

1.a. Applicant admitted that she owes a bank \$16,309 for a past-due debt that has been charged off. She stated in her Response:

After my divorce I decided to go to a Debt Consolidating Company . . . to get help so I could pay off my credit cards. I didn't want to file bankruptcy. I was such a mess after my divorce that I would just shut down when it came time for me to pay my bills. When working with a Debt Consolidating Company they pay off one credit card at a time. They start off with the smallest amounts first of course [this creditor] was the last card to pay off because of the large amount owed. They decided to write it off. I felt really bad, but also understood.

This debt is not resolved.

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<sup>2</sup>Department Counsel submitted seven Items in support of the SOR allegations. Item 4 is inadmissible and will not be considered or cited as evidence in this case. It is the summary of an unsworn interview of Applicant conducted by an interviewer from the Office of Personnel Management on March 12, 2013. It was never adopted by Applicant as her own statement, or otherwise certified by her to be accurate. Under EO 10865 Section 5, and Directive ¶ E3.1.20, this Report of Investigation summary is inadmissible in the absence of an authenticating witness. Given Applicant's admissions, it is also cumulative.

1.b. Applicant denied owing \$1,914 for a past-due credit card debt. She alleged in the Response that the Debt Consolidating Company resolved this debt. Department Counsel admitted in the FORM that the most recent credit report in the record (Item 7) confirmed that this debt has been paid. It is resolved.

A review of Items 5 and 7 reflect that Applicant had several paid charge-offs. This supports her statement that she was working with a Debt Consolidating Company to resolve her debts. Item 7 and Applicant's Exhibit A, however, show that her financial situation is still not under control. Applicant has a \$4,000 unpaid delinquency in connection with a truck loan she co-signed for her nephew. The record shows that her other debts, which includes an auto loan and two credit card debts, are current. She admits, "I'm just barely making ends meet each month." (Applicant Exhibit A.)

### **Policies**

Positions designated as ADP I, II, and 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 the DoD and DOHA by the Defense Security Service and Office of Personnel Management. DoD 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 Adjudicative Guidelines (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 AG ¶ 2(a), describing 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.

According to 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 the applicant or proven by Department Counsel and has the ultimate burden of persuasion as to obtaining a favorable [trustworthiness] decision.”

A person who applies for access to sensitive information seeks to enter 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 10865 provides that “Any determination under this order adverse to an applicant shall be a determination 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**

### **Paragraph 1 (Guideline F - Financial Considerations)**

The trustworthiness concern relating to the guideline 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 and could potentially apply in this case. Under AG ¶ 19(a), “an inability or unwillingness to satisfy debts,” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise trustworthiness concerns. I find that both of these disqualifying conditions apply to Applicant in this case. The evidence has established that Applicant accumulated significant delinquent debt, a substantial part of which she has been unable or unwilling to repay.

AG ¶ 20 provides conditions that could mitigate trustworthiness concerns from financial difficulties. AG ¶ 20(a) states it may be mitigating when the behavior happened so long ago, was infrequent, or is unlikely to recur. That is inapplicable because the debts have been in existence for several years, and the largest past-due bank debt continues to date.

Under AG ¶ 20(b), it may be mitigating where, “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.” Applicant states that her divorce in 2009 began this period in her life of not being able to pay her debts. This condition has some applicability, but is not controlling since her finances are not yet under control.

I find that AG ¶ 20(c) is not applicable. Applicant admits that her current financial situation is not under control. She is unable to pay the large, past-due, debt for the truck loan she co-signed for with her nephew. The creditor in allegation 1.a has charged off the debt, but there is no evidence they have forgiven it, such as by providing Applicant an IRS Form 1099.

With regard to the single alleged debt that has been paid (1.b), AG ¶ 20(d) is applicable, since Applicant has “initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” However, there is no current evidence that she has paid or otherwise resolved the other alleged debt, which is more than eight times larger. Therefore, I find Guideline F against Applicant.

### **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.

According to 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 the facts and circumstances surrounding this case. Based on the lack of evidence to establish that Applicant has made concrete efforts to resolve the large past-due debt listed on the SOR, and the fact that her current financial situation is not stable, I find that the record evidence leaves me with significant questions and doubts as to Applicant's eligibility and suitability for access to sensitive information, under the whole-person concept. For all these reasons, I conclude Applicant has not mitigated the trustworthiness concerns under the whole-person concept.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant

### **Conclusion**

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

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Wilford H. Ross  
Administrative Judge