



**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. 14-05202

**Appearances**

For Government: Gregg A. Cervi, Esquire, Department Counsel

For Applicant: *Pro se*

July 14, 2016

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**Decision**

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ROSS, Wilford H., Administrative Judge:

On December 2, 2014, in accordance with Department of Defense (DoD) Directive 5220.6, the DoD issued a Statement of Reasons (SOR) detailing the trustworthiness concerns under Guideline F for Applicant. (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 Department of Defense after September 1, 2006.

Applicant replied to the SOR in writing (Response) on February 19, 2015, and she requested that her case be decided on the written record in lieu of a hearing. (Item 2.) On September 25, 2015, 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 five documentary exhibits. (Items 1-5.)<sup>1</sup> Applicant acknowledged receipt of the FORM October 19, 2015. She was given 30 days from receipt of the FORM to submit any additional documentation. Applicant submitted an additional written statement after the 30 day period. Department Counsel elected not to object and the statement is admitted into evidence as Applicant Exhibit A. The case was assigned to this Administrative Judge on December 8, 2015. Based upon a review of the pleadings and exhibits, eligibility to occupy a sensitive position is denied.

### **Findings of Fact**

Applicant is 51 years old, and married. She has been employed by a healthcare provider since 1996, and she seeks access to sensitive information in connection with her employment.

#### **Paragraph 1 - Guideline F, Financial Considerations**

The Government alleges in this paragraph that Applicant is ineligible for access because she has a history of financial irresponsibility, which shows poor self-control, lack of judgment, or untrustworthiness.

The SOR lists 14 delinquent debts, totaling approximately \$63,182. Applicant admitted all of the allegations under this paragraph without reservation, except for 1.i. Those admissions are findings of fact. The existence and amounts of all the debts is supported by a credit report dated April 8, 2014. (Item 4.)

Applicant stated that her financial difficulties began in about 2007 when she bought a house. At the same time her mother-in-law became ill and was hospitalized until she died. This adversely affected Applicant's finances because her husband was on disability and could not work, and their second income was based on Applicant being the caretaker of the mother-in-law. (Item 3 at Section 26; Applicant Exhibit A.)

With regard to all the admitted debts, Applicant failed to supply any evidence concerning responsibility for the debts, payments made, or the existence of payment arrangements. With regard to 1.i, she stated in her Response that there was a judgment concerning that debt, and her pay was being garnished in the amount of \$300 a month to resolve it. She further stated that the last payment was supposed to be in January 2015. However, no further information was provided by the Applicant concerning this debt. Based on the available record I find that it is not resolved. In addition, I find that all of the other debts set forth in the SOR have also not been resolved.

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<sup>1</sup>Department Counsel submitted five Items in support of the SOR allegations. Item 5 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 February 20, 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.

Applicant provided no evidence concerning the quality of her professional performance, the level of responsibility her duties entail, or her track record with respect to handling sensitive information. She submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability. I was unable to evaluate her credibility, demeanor, or character in person since she elected to have her case decided without a hearing.

## **Policies**

Positions designated as ADP I, ADP II, and ADP III are classified as “sensitive positions.” (See DoD Regulation 5200.2-R (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. 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 to occupy a sensitive position, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an applicant’s eligibility for access to sensitive information.

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 over-arching 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 the applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion as to obtaining a favorable access decision.

A person who seeks to occupy a sensitive position 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 that 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 adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *a/so* 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, which she has been unable or unwilling to pay.

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 many years and continue 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.” The loss of Applicant’s second income because of the hospitalization of her mother-in-law is arguably a condition beyond her control. However, Applicant submitted no evidence showing how she has attempted to resolve any of the admitted debt, even the smallest, subparagraph 1.I, in the amount of \$262.

Since there is no evidence that Applicant has undertaken any kind of counseling to better manage her finances, I do not find that AG ¶ 20(c) is applicable. Additionally, I do not find that AG ¶ 20(d) is applicable, since Applicant has not “initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” Finally, I do not find any other mitigating condition applies to this case since no evidence was introduced to establish that Applicant’s current financial status is stable or that she is able to resolve her debts. 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 the 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 to occupy a sensitive 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. Based on the lack of evidence to establish that Applicant has made any attempt to resolve the past-due debts listed on the SOR, 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

Subparagraphs 1.a - 1.n:                      Against 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 to occupy a designated ADP I/II/III sensitive position. Eligibility for access to sensitive information is denied.

Wilford H. Ross  
Administrative Judge