



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



In the matter of:

ADP Case No. 14-05862

Applicant for Public Trust Position

**Appearances**

For Government: Chris Morin, Esq., Department Counsel

For Applicant: *Pro se*

05/30/2017

**Decision**

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the financial considerations and personal conduct trustworthiness concerns. Eligibility for access to sensitive information is denied.

**Statement of the Case**

On May 19, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) detailing trustworthiness concerns under Guideline F, financial considerations. The action was taken under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.

On June 16, 2016, Applicant submitted an answer to the SOR and requested a hearing before an administrative judge. The case was assigned to me on January 24, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on February 23, 2017, and the hearing was convened as scheduled on April 19, 2017. Government Exhibits (GE) 1 through 4, were admitted in evidence without objection. Applicant testified and submitted Applicant Exhibits (AE) A through E, which were

admitted without objection. The record remained open to allow Applicant to submit additional documents, which she did. They were marked AE F through P, and were admitted without objection.<sup>1</sup> The record closed on May 3, 2017. DOHA received the hearing transcript (Tr.) on April 27, 2017.

### **Procedural Matters**

Department Counsel moved to amend SOR ¶ 1.l to reflect a dollar amount past due as \$229 and the outstanding balance as \$856; SOR ¶ 1.m to reflect a dollar amount past due as \$70 and the outstanding balance as \$260; and SOR ¶ 1.n to reflect the dollar amount past due as \$135 and the outstanding balance as \$3,702. There was no objection and the motion was granted.<sup>2</sup>

### **Findings of Fact**

Applicant admitted the allegations in SOR ¶¶ 1.a, 1.b, 1.d, 1.e, 1.h, and 1.k through 1.s. She denied the allegations in SOR ¶¶ 1.c, 1.f, 1.g, 1.i, 1.j, 2.a and 2.b. Her admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 53 years old. She earned an associate's degree in approximately 2002 and a bachelor's degree in 2010. She has been married and divorced twice. She has two adult children. Applicant served on active duty in the military from 1986 to 1988 and accepted an early release. She received an honorable discharge. She has been employed with her present employer since November 2015.<sup>3</sup>

Applicant disclosed on her May 2013 public trust application and testified she had periods of unemployment as follows: June 2015 to November 2015; December 2012 to May 2013; June 2012 to September 2012; February 2011 to June 2011; January 2010 to May 2010; March 2008 to June 2008; October 2006 to February 2007; January 2006 to March 2006; and November 2004 to May 2005. Some of the employment that Applicant listed was part-time. She may have had other periods of unemployment, but stated it was widespread without being specific. Some of the periods she was unemployed she noted she was attending school. Some periods she received unemployment benefits.<sup>4</sup>

Applicant testified that since starting her present employment in November 2015, she has lived with her father and does not pay rent, so she can pay her delinquent debts. The debts alleged in the SOR are supported by credit reports from June 2013

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<sup>1</sup> Hearing Exhibit (HE) I is Department Counsel's discovery letter. HE II is the exhibit list. HE III is Department Counsel's email memoranda and HE IV is Applicant's fax cover sheet.

<sup>2</sup> Tr. 11-12.

<sup>3</sup> Tr. 19-22.

<sup>4</sup> Tr. 23-25; GE 1.

and September 2014. Applicant testified that she had documents to show she paid some of her debts, but they were on her phone.<sup>5</sup>

During Applicant's June 2013 background interview with a government investigator, numerous delinquent debts were brought to her attention. She told the investigator that she was unaware of many of the debts.<sup>6</sup>

The debts alleged in SOR ¶¶ 1.n through 1.s are federal student loans. Applicant admitted she owes these debts. She obtained the student loans in approximately 2008. She testified she never made payments on the loans. She either had the loans repeatedly deferred or held off paying them because she did not earn sufficient income to pay them. In February 2017, she had the loans consolidated and an income-based repayment plan was approved. The loans are deferred until April 2018. Due to her limited income she does not have to make any payments until April 2018. At that time, her payment will be \$489, unless she files additional papers for a different term.<sup>7</sup>

The debts in SOR ¶¶ 1.l and 1.m are state student loans. Applicant testified that she believed SOR ¶ 1.a is a duplicate of ¶ 1.l. Applicant provided a document to show that a state loan was paid. I do not have sufficient evidence to conclude these debts are duplicates. I find SOR ¶ 1.a is resolved. She provided documents to show she made recent payments on another state loan, which has a remaining balance of \$440. She did not provide more detailed evidence, but it may be for SOR ¶ 1.m.<sup>8</sup>

The debts in SOR ¶¶ 1.b, 1.c, and 1.f are medical accounts from 2014. She testified she paid the debt in SOR ¶ 1.c by debit card. She also stated she paid the other two medical debts and would provide proof, but none was provided.<sup>9</sup>

The debts in SOR ¶¶ 1.d and 1.e are utility bills. Applicant testified that she paid one of them. She did not provide documentations to support which debt was paid.<sup>10</sup>

Applicant provided a partial copy of an April 2017 credit report. The information does not detail if collection accounts were removed due to payment or because of the age of the account. Many of her delinquent debts are more than seven years old. In her post-hearing submission, she provided additional pages of the credit report. I am unable to conclude if she paid dated collection accounts more than seven years old.<sup>11</sup>

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<sup>5</sup> Tr. 34-38; AE A.

<sup>6</sup> GE 3.

<sup>7</sup> Tr. 41-45; AE O, P.

<sup>8</sup> Tr. 28-32, 44-45; AE D, K.

<sup>9</sup> Tr. 32-34, 40-41; 47-49, 52.

<sup>10</sup> Tr. 48-49.

<sup>11</sup> AE A, P.

Applicant provided a document that shows she paid a medical debt for \$763. She did not identify the SOR debt, but it presumably corresponds to SOR ¶ 1.h. That debt is resolved in her favor.<sup>12</sup>

The debts in SOR ¶¶ 1.g, 1.i, and 1.j are accounts in collections, which were opened from 2007 through 2013. Applicant testified she was unfamiliar with the debt in SOR ¶ 1.g, and she had paid all of her collection accounts. She stated that she cancelled the account in SOR ¶ 1.j years ago. She stated she would call the creditor to resolve it. Proof was not provided regarding the resolution of the above allegations.<sup>13</sup>

The debt in SOR ¶ 1.k (\$7,355) was for a truck driving training course that Applicant took, after which she was required to work for the company for a year. She did not fulfill the terms of the contract and owes the company for her training.<sup>14</sup> This debt is unresolved. Applicant provided documents for two debts that were not alleged.<sup>15</sup>

Applicant testified that she misread the application when she completed the section asking about her finances and did not deliberately falsify her answers. She stated she believed the question asked if “all” of these issues existed, rather than if “any” of them existed. She stated she knew she had student loans that she could not pay. Although the questions are clear, I do not believe she deliberately intended to mislead the government.<sup>16</sup>

Applicant testified she took a course in 2015 on how to eliminate debt. She attributes her financial problems to periods of unemployment and underemployment. She stated that she is doing the best that she can. She testified that since living with her father she is paying collection accounts and working on her credit score.<sup>17</sup> She testified that she previously could not afford to pay her bills, but since she has been employed, she is attempting to pay them. Applicant provided a copy of her recent performance evaluation that reflects ratings of “sometimes exceeds,” consistently exceeds” and “exceptional.”<sup>18</sup>

## **Policies**

The Deputy Under Secretary of Defense (Counterintelligence and Security) Memorandum, dated November 19, 2004, indicates trustworthiness adjudications will

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<sup>12</sup> Tr. 50-51.

<sup>13</sup> Tr. 50-53.

<sup>14</sup> Tr. 52-53.

<sup>15</sup> AE H, I.

<sup>16</sup> Tr. 59-65.

<sup>17</sup> Tr. 28.

<sup>18</sup> Tr. 71; AE E.

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.

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."

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.

This concern is broader than the possibility that an individual might knowingly compromise sensitive information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting sensitive information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding sensitive information.<sup>19</sup>

The guideline notes several conditions that could raise 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 she has been unable or unwilling to pay or resolve. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate financial considerations security 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;
- (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.

Many of Applicant's delinquent debts remain unresolved. Some of these have been delinquent for many years. She has had difficulty resolving them due to her low

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<sup>19</sup> See ISCR Case No. 11-05365 at 3 (App.Bd. May 1, 2012).

wages. AG ¶ 20(a) does not apply because Applicant is still resolving her delinquent debts.

Applicant attributes her financial problems to periods of underemployment and unemployment. These were conditions beyond Applicant's control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. Applicant testified that she paid some of her debts, but did not provide supporting documentation. She never made payments on her federal student loans acquired in 2008, but recently consolidated them. They are in a deferred status and no longer delinquent. She resolved a state student loan and is making payments on another. There is insufficient evidence that many of her other debts are resolved. Applicant has not totally ignored her responsibility to pay her delinquent debts, but she does not have the financial means to do so. I find AG ¶ 20(b) partially applies.

Applicant testified she took a debt resolution course in 2015. There is evidence she addressed her delinquent federal student loans by having them consolidated. She does not have any payments due until April 2018. The post-hearing documents Applicant provided were insufficient to conclude certain debts were paid or that there are clear indications that her financial problems are under control. The first part of AG ¶ 20(c) applies.

Applicant has addressed her delinquent federal student loans and two state student loans alleged in SOR ¶¶ 1.a, and 1.m through 1.s. AG ¶ 20(d) applies to these debts.

Applicant testified that she canceled the account in SOR ¶ 1.j years ago. She did not provide supporting documentation of her actions to resolve that disputed debt. AG ¶ 20(e) does not apply.

## **Guideline E, Personal Conduct**

AG ¶ 15 expresses the concern for personal conduct;

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. Of special interest is any failure to provide truthful and candid answers during the process or any other failure to cooperate with the process.

AG ¶ 16 describes conditions that could raise a concern and may be disqualifying. I find the following potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment

qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

I find that Applicant did not deliberately omit, conceal, or falsify her application when she failed to disclose her financial problems. Applicant appeared to be genuinely confused by the questions on the application. During her background interview, she told the investigator she was unaware of many of the delinquent debts. I find she has sufficiently refuted the personal conduct security concerns. Hence, it is not necessary to discuss disqualifying or mitigating conditions.

### **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 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.

Applicant has experienced many periods of unemployment and underemployment. She indicated she is resolving her debts, but provided insufficient evidence to substantiate that some debts are paid. At this juncture, she has not established a meaningful track record of financial stability. 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 failed to mitigate 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
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b-1.g	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraphs 1.i-1.l:	Against Applicant
Subparagraphs 1.m-1.s:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a-2.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 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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Carol G. Ricciardello  
Administrative Judge