



**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. 14-06888

**Appearances**

For Government: Tovah Minster, 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 June 10, 2015, 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 June 30, 2015,<sup>1</sup> and she requested that her case be decided on the written record in lieu of a hearing. (Item 1.) On October 5, 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

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<sup>1</sup>The Response was resent on September 21, 2015.

FORM, Department Counsel offered six documentary exhibits. (Items 1-6.)<sup>2</sup> Applicant acknowledged receipt of the FORM October 15, 2015. She was given 30 days from receipt of the FORM to submit any additional documentation. Applicant elected not to submit any additional information. The case was assigned to this Administrative Judge on December 15, 2015. Based upon a review of the pleadings and exhibits, eligibility to occupy a sensitive position is denied.

### **Findings of Fact**

Applicant is 34 years old, and single. She is an honorably discharged veteran of the Air Force. She has been employed by a healthcare provider since 2013, 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 18 delinquent debts, totaling approximately \$32,031. Applicant admitted allegations 1.a, 1.e, and 1.r, with explanations. She denied the other allegations, also with explanations. The existence and amounts of all the debts is supported by credit reports dated June 8, 2013; and October 9, 2014. (Items 6 and 5.)

The three debts Applicant admits (1.a, 1.e, and 1.r) are all student loan debts owed to the Department of Education. They total \$12,032. She states in her Response concerning all three, "I have been in contact with the Dept. Of Veteran's Affairs due to issues with my G.I. Bill covering my expenses correctly. Due to nothing being resolved, I will be paying this debt and following up with the VA at a later time." Applicant submitted no other information concerning these debts, including evidence concerning payments made, or the existence of payment arrangements. They are unresolved.

Concerning the other debts, Applicant submitted documentation showing that she filed for relief under Chapter 7 of the Bankruptcy Code on September 22, 2014. Schedule F of her bankruptcy petition indicated that she had \$57,941 in unsecured nonpriority debts. She was granted a discharge of her dischargeable debts on December 29, 2014, which includes all the other debts in the SOR. (Items 1 and 4.) Those debts are resolved through bankruptcy.

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<sup>2</sup>Department Counsel submitted six Items in support of the SOR allegations. Item 3 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 June 27, 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.

Most of the debts in the SOR that are not student loans are medical in nature. However, Applicant did not submit any information as to how the debts were incurred. She did not submit a budget, or any other information concerning her financial situation. Based on the available record, I am unable to determine whether she has the means and ability to resolve her past-due indebtedness, or the ability to avoid financial problems in the future.

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/s/o* 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 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 several years and the student loans 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.” As stated, many of the debts resolved through bankruptcy are medical in nature. Under the particular circumstances of this case, I find that Applicant has acted responsibly under the circumstances concerning those debts.

Applicant did take the counseling required by the Bankruptcy Code to better manage her finances. I find that AG ¶ 20(c) is applicable. With regard to the debts discharged, 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 resolved the student loan 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 concrete efforts to resolve the past-due student loan 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:	Against Applicant
Subparagraphs 1.b through 1.d:	For Applicant
Subparagraph 1.e:	Against Applicant
Subparagraphs 1.f through 1.q:	For Applicant
Subparagraph 1.r:	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