



**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. 15-00161

**Appearances**

For Government: Adrienne Driskell, Esq., Department Counsel

For Applicant: *Pro se*

06/19/2017

**Decision**

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings and exhibits, I conclude that Applicant did not mitigate trust concerns regarding her finances and personal conduct. Eligibility for holding a public trust position is denied.

**History of the Case**

On November 4, 2015, Department of Defense (DOD) Consolidated Adjudication Facility (CAF) issued a Statement of Reasons (SOR) detailing reasons why DOD adjudicators could not make the preliminary affirmative determination of whether to grant eligibility for a public trust position, and recommended referral to an administrative judge to determine whether eligibility to hold a public trust position should be granted, continued, denied, or revoked. The action was taken under Executive Order 10865 (Exec. Or. 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 (AGs).<sup>1</sup> These new Guidelines replaced the 2006 AGs placed in force on September 6, 2006 and are controlling for decisions issued on or after June 8, 2017.<sup>2</sup>

Applicant responded to the SOR on November 23, 2015, and requested a hearing. This case was assigned to me on April 22, 2016. The case was scheduled for hearing on November 16, 2016. A hearing was held on the scheduled date for the purpose of considering whether it would be clearly consistent with the national interest to grant, continue, deny, or revoke Applicant's application for eligibility to hold a public trust position. At the hearing, the Government's case consisted of five exhibits (GEs 1-5); Applicant relied on one witness (herself) and no exhibits. The transcript was received on November 28, 2016.

### **Procedural Issues**

Before the closing of the hearing, Applicant requested the record be kept open to permit her the opportunity to supplement the record with documentation of her payments and disputes and copies of her 2009 Chapter 7 bankruptcy schedules, and a statement from her supervisor covering the circumstances surrounding her completion of her security clearance application. For good cause shown, Applicant was granted seven days to supplement the record. Department Counsel was afforded two days to respond. For good cause shown, and their being no objection, Applicant was granted an additional extension of 21 days. Within the time permitted, Applicant provided copies of her 2009 bankruptcy petition, bankruptcy schedules and a discharge order, character references, and a pre-approved business line of credit from a lender. Applicant's submissions were admitted without objection as AE's A-D.

### **Summary of Pleadings**

Under Guideline F, Applicant allegedly accumulated 11 delinquent debts exceeding \$31,000, inclusive of student loans and consumer debts. Allegedly, these debts remain outstanding.

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<sup>1</sup> A memorandum from the Deputy Under Secretary of Defense for Counterintelligence and Security, titled "Adjudication of Trustworthiness Cases," covering the handling of trustworthiness cases under the Directive was issued on November 19, 2004. This memorandum directed DOHA to continue to utilize DOD Directive 5220.6 in ADP contractor cases for trustworthiness determinations for persons holding sensitive positions (to include those involving ADP I, II, and III positions). (HE 1)

<sup>2</sup> Effective June 8, 2017, by Directive 4 of the Security Executive Agent Directive (SEAD 4), dated December 10, 2016, *National Security Adjudicative Guidelines* for all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position, and by extension eligibility to hold a trustworthiness position, were established to supercede all previously issued national security adjudicative criteria or guidelines. Procedures for administrative due process for contractor personnel continue to be governed by DoDD 5220.6, subject to the updated substantive changes in the guidelines, effective June 8, 2017.

Under Guideline E, Applicant allegedly falsified material facts in responding to questions posed to in Section 26 of the Questionnaire for National Security Positions (e-QIP) she certified to in April 2013. She claimed she did not mean to omit her debt delinquencies listed in the SOR.

In her response to the SOR, Applicant admitted all but three of the alleged debts with explanations. She claimed some of the listed debts she could not identify (SOR debts ¶¶ 1.b-1.d); one debt belonged to her daughter (SOR debt ¶ 1.a); one debt was charged off (SOR debt ¶1.g); some debts were included in a payment plan (SOR debts ¶¶ 1.g, 1.j-1.k); and others were included in her prior bankruptcy petition (SOR ¶¶ debts 1.i and 1.l).

Addressing the falsification allegations, Applicant denied any intent to falsify her e-QIP). She claimed she did not mean to omit her delinquent debts.

### **Findings of Fact**

Applicant is a 50-year-old customer service agent for a defense medical health contractor who seeks to retain her eligibility to hold a public trust position. The allegations covered in the SOR and admitted by Applicant are adopted as relevant and material findings. Additional findings follow.

### **Background**

Applicant has never married and has three children from prior relationships, ages 26, 22, and 17, and two grandchildren. Her oldest daughter was diagnosed with postpartum depression in 2015, hospitalized, and remained in a coma for five days. (GE 1; Tr. 26-34) A fourth child recently passed away. (Tr. 26, 30-33) Three of her children and her mother reside with her. (Tr. 28-29)

She earned her high school diploma in June 1982 and claims no college credits or military service. (GE 1) Applicant has been employed by her current employer since March 2004. Between December 2002 and March 2004, she worked as a temporary analyst for a defense health contractor. (GE 1)

### **Finances**

Applicant has a considerable history of problems with her finances. She is a single parent who is financially responsible for her three youngest children who reside with her. In January 2009, she petitioned for Chapter 7 bankruptcy relief out of concern her half-sister was charging up her credit card accounts. (GEs 2-5 and AE A) Applicant acknowledged that all of the debts listed in her bankruptcy petition belonged to her. (Tr. 23, 40-42)

In her bankruptcy petition, Applicant scheduled a creditor holding a \$20,466 secured auto claim and unsecured creditors holding \$6,549 in unsecured claims, which included a \$501 student loan, and a deficiency balance (SOR debt ¶ 1.i) on a car loan

that Applicant co-signed for her half-sister. (AE A; Tr. 54-57) Although the scheduled \$2,999 claim for creditor 1.i differs substantially from the reported \$12,094 debt in Applicant's credit reports, the financial information covering creditor 1.i in Applicant's Chapter 7 bankruptcy and her more recent credit reports are sufficiently similar in details to justify treating them as one and the same debt. Applicant's SOR debt ¶ 1i debt was discharged in Applicant's Chapter 7 bankruptcy in February 2010. (AE A)

In compliance with bankruptcy court education requirements, Applicant certified to completing an on-line financial counseling course in November 2009 and a financial management course in February 2010. (AE A) She reported current monthly income of \$5,712. (AE A)

Between 2010 and 2015, Applicant accumulated delinquent debts exceeding \$31,000 (GEs 2-5) One of the debts (SOR debt ¶ 1.i) was discharged in her no-asset Chapter 7 bankruptcy and two of the listed debts (SOR debts ¶¶ 1.c and 1.g) are manifestly duplicate accounts. Applicant furnished no documentary evidence addressing any of the remaining SOR debts.

SOR debts Applicant claimed belonged to her half-sister and debts she claimed were being addressed are not corroborated by any documentary evidence from Applicant. (GEs 2-5; Tr. 43-48) Other SOR debts Applicant claimed were included in her bankruptcy petition, or which belonged to her half-sister, cannot be identified from the creditors scheduled in her bankruptcy petition as either secured or unsecured debts. Presumably, these debts were not included.

Applicant claimed participation in a federal student loan forgiveness program and is waiting for the program administrators to ascertain who has her loans. (AE A) She could provide no additional information about the status of her student loans or how she will be able to achieve forgiveness of the loans. She claimed two of the debts she could not identify likely belong to her sister (SOR debt ¶¶ 1.g-1.h), and she is working with the creditors in pursuing her fraud allegations against her sister. (AE A; Tr. 62-63) Further, she claimed that she made arrangements to pay the SOR ¶ 1.e debt. Because Applicant provided no documentation to verify her claims, they cannot be assigned much evidentiary weight.

Applicant documented pre-approval of a \$69,480 line of credit. (AE D) This approved line of credit is undated and contains no affirmations of any follow-up by Applicant on the offer. (AE D) Without more information, this pre-approval cannot be given much credit in an overall evaluation of her finances.

### **E-QIP omissions**

Asked to respond to Section 26 of the e-QIP she was tasked to complete in April 2013, Applicant answered in the negative to questions inquiring about any bankruptcy petitions filed within the previous seven years, any repossessions or foreclosures, any bills or debts turned over to a collection agency, and any credit card suspended, charged off, or canceled for failing to pay as agreed (including those for which she was

a co-signor) In so answering, Applicant omitted material information about her SOR debts. (GE 1)

In her hearing testimony, Applicant denied any deliberate intention to falsify her e-QIP. She claimed she provided the correct information about her 2009 bankruptcy petition and delinquent accounts to her supervisor who was helping her complete her e-QIP application. (Tr. 67-77) She assured she did not know why the no answers covering her bankruptcy and delinquent accounts over the course of the preceding seven years were reported instead of yes answers to the questions. (Tr. 67-77) Applicant's claims of mistaken entry of no answers are corroborated in part by friends who consider her to be honest. While corroborating support from her supervisor would have strengthened her credibility case, her assurances that her omissions were born of mistaken entries in her e-QIP and were not made deliberately are accepted.

### **Character references**

Applicant's supervisor affirmed her awareness of Applicant's filing for Chapter 7 bankruptcy relief in 2009. (AE B) Friends think highly of Applicant. They credit her with being a very loyal and honest person who is active in her church and was a room parent for her children when they were in school. (AE B)

One of Applicant's friends who provided a character reference expressed awareness of Applicant's filing for bankruptcy and assured that Applicant did so only after determining that it was her best option. (AE B)

Applicant's assurances that she gets along well with her supervisor and co-workers are accepted. (Tr. 75-76) Without documented personnel evaluations or reliable evidence of her employer-based and civic contributions, more detailed findings about the quality of her employment and any civic contributions cannot be made.

### **Policies**

The AGs list guidelines to be used by administrative judges in the decision-making process covering DOHA cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified {privacy} information. These guidelines include "[c]onditions that could raise a trustworthiness concern [public trust position] and may be disqualifying" (disqualifying conditions), if any, and many of the "[c]onditions that could mitigate [trustworthiness concerns]."

The AGs must be considered before deciding whether or not eligibility to hold a public trust position should be granted, continued, or denied. The guidelines do not require administrative judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision. Each of the guidelines is to be evaluated in the context of the whole person in accordance with AG ¶ 2(c).

In addition to the relevant AGs, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in AG ¶ 2(a) of the AGs, which are intended to assist the judges in reaching a fair and impartial commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable public trust risk.

When evaluating an applicant's conduct, the relevant AGs are to be considered together with whole-person factors. The following AG ¶ 2(d) factors are to be considered along with the guidelines: (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.

Viewing the issues raised and evidence as a whole, the following individual guideline is pertinent in this case:

### **Financial Considerations**

*The Concern:* Failure 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 [privacy] or sensitive information. . . An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . AG ¶ 18.

### **Personal Conduct**

*The Concern:* Conduct involving questionable judgment, untrustworthiness, unreliability, 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 [privacy] or sensitive classified information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. . . AG, ¶ 15.

### **Burden of Proof**

By virtue of the principles and policies framed by the AGs, a decision to grant or continue an applicant's eligibility to hold a public trust position may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a commonsense

appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a public trust position depends, in large part, on the relevance and materiality of that evidence. See *United States, v. Gaudin*, 515 U.S. 506, 509-511 (1995). As with all adversarial proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) it must prove by substantial evidence any controverted facts alleged in the SOR, and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain public trust position eligibility. The required materiality showing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused privacy information before it can deny or revoke eligibility to hold a public trust position. Rather, the judge must consider and weigh the cognizable risks that an applicant may deliberately or inadvertently fail to protect privacy information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the evidentiary burden shifts to the applicant for the purpose of establishing his or her trustworthiness through evidence of refutation, extenuation, or mitigation. Based on the requirement of Executive Order 10865 that all [trustworthiness] determinations be clearly consistent with the national interest, the applicant has the ultimate burden of demonstrating his or her trust eligibility. "[T]rustworthiness] determinations should err, if they must, on the side of denials." See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

### **Analysis**

Trustworthiness concerns are raised over Applicant's accumulation of delinquent debts over an extended number of years, one of which (SOR debt ¶ 1.1) was discharged in Chapter 7 bankruptcy in February 2010. Additional trustworthiness concerns are raised over Applicant's omissions of her 2009 bankruptcy petition and accumulated delinquent debts since her 2010 bankruptcy discharge.

#### **Financial concerns**

Between 2006 and 2014, Applicant accumulated a number of delinquent debts that are reflected in her credit reports. Applicant's completed bankruptcy and incurred delinquent debts since her bankruptcy discharge warrant the application of two of the disqualifying conditions (DC) of the Guidelines. DC ¶ 19(a), "inability to satisfy debts;" and 19(c), "a history of not meeting financial obligations," apply to Applicant's situation.

Applicant's pleading admissions with respect to her accumulated debts covered in the SOR negate the need for any independent proof (see *McCormick on Evidence*, § 262 (6th ed. 2006)). Each of Applicant's listed delinquent debts are fully

documented in her credit reports and create some judgment issues. See ISCR Case 03-01059 at 3 (App. Bd. Sep. 24, 2004).

Positions designated as ADP I and ADP II were classified as “sensitive positions.” under DOD Regulation 5200.2-R, *Personnel Security Program*, ¶¶ C3.1.2.1.1.7, C3. 12.2.2, and C3. 1.2.3 (Jan. 1987, as amended) (the Regulation). Holding a public trust position involves the exercise of important fiducial responsibilities, among which is the expectancy of consistent trust and candor. DOD Manual 5200.02, which incorporated and canceled DOD Regulation 5200.2-R, continues to cover sensitive positions previously included in DOD Regulation 5200.2-R. While ADP positions are not expressly referenced, they remain sensitive positions eligible for trustworthy determinations. And in the covered individual section of the Directive, covered individuals include contractors holding sensitive positions. See Directive 5220.6, ¶¶ D5(d) and D8.

So, while ADP I and ADP II positions are not expressly designated in the Directive or DOD Manual 5200.02, they are implicitly incorporated in both instruments under the general headings of sensitive positions. By a combination of implied retention of ADP definitions in the Directive, DOD Manual 5200.02, and the DOD Undersecretary’s November 2004 memorandum affirming DOHA’s jurisdiction to hear ADP cases, DOHA’s jurisdiction over the instant ADP case remains vested.

Financial stability in a person cleared to protect privacy information is required precisely to inspire trust and confidence in the holder of the trust position. While the principal concern of a trust position holder’s demonstrated financial difficulties is vulnerability to coercion and influence, judgment and trust concerns are implicit in cases involving debt delinquencies.

Extenuating circumstances are indicated in Applicant’s assumed responsibilities for the care of her mother and children. Considering the available documented evidence, extenuating circumstances in this record account for most of Applicant’s debt problems. Partially available to Applicant is MC ¶ 20(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, a death, divorce, or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances.”

Because Applicant did not address her debts while fully employed as a customer service representative and apparently able to address them with minimal or modest individual payment plans while caring for her mother and children, she cannot be credited with meeting the acting responsibly under the circumstances prong of MC ¶ 20(b). See ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. Nov. 29, 2005)).

Applicant’s payment efforts to date are not very encouraging. She has discharged one debt (SOR debt ¶ 1.i) through her 2010 bankruptcy, has disputed two others (SOR debt ¶¶ 1.g for duplication reasons and 1.l for inability to identify the debt as her own, but has not addressed any of her other listed debts with her available



income from her full-time employment. Accordingly, MC ¶ 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” is not available to mitigate Applicant’s delinquent debt accumulations.

Based on the evidence of record, none of the other mitigating conditions covered by Guideline F are available to Applicant. And while this case is now covered by the new AGs in force for cases decided after June 8, 2017, careful consideration was given to the pre-June 8, 2017 MC conditions when weighing the facts and circumstances of Applicant’s case. No different result would occur were the case to have been decided under the previous AGs in place when this case was heard.

In evaluating Guideline F cases, the Appeal Board has stressed the importance of a “meaningful track record” that includes evidence of actual debt reduction through voluntary payment of debts. ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted) Applicant’s lack of demonstrated debt payments since receiving her bankruptcy discharge in 2010 is a significant indicator of a lack of any meaningful plan to address her debts in a responsible manner.

Whole-person assessment is unfavorable to Applicant. She has shown little progress in addressing her debts since emerging virtually debt-free from her 2010 bankruptcy discharge. While committed to paying off her listed SOR debts, to date she has not been able to restore her finances to stable levels, consistent with the criteria imposed on applicants seeking eligibility to hold a public trust position.

Overall, public trust eligibility assessment of Applicant based on the compiled documentation and her corroborating testimony does not enable her to establish judgment and reliability levels sufficient to overcome trust concerns associated with her accumulation of delinquent debts over a period of several years since her emergence from Chapter 7 bankruptcy relief in February 2010.

Taking into account all of the documented facts and circumstances surrounding Applicant’s debt accumulations and insufficient probative efforts to resolve her debts, conclusions are warranted that her finances are insufficiently stabilized at this time to grant her eligibility to hold a public trust position. Unfavorable conclusions are warranted with respect to the allegations covered by subparagraphs 1.a through 1.f and 1.j through 1.l. Favorable conclusions are warranted with respect to the allegations covered by subparagraphs 1.g through 1.i.

### **e-QIP omissions**

In the e-QIP that Applicant completed in April 2013, Applicant omitted both her 2009 bankruptcy and the delinquent debts she accumulated between February 2010 and April 2013. Taking account of Applicant’s explanations of mistaken understanding and the overall honesty she has shown with friends, her explanations are accepted as credible misunderstandings of what she believed she disclosed in her e-QIP. Applicant’s alleged falsifications are not substantiated by the evidence of record. Favorable conclusions are warranted with respect to the allegations covered by subparagraph 2.a of Guideline E

### **Formal Findings**

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact, conclusions, conditions, and the factors listed above, I make the following formal findings:

#### **GUIDELINE F (FINANCIAL CONSIDERATIONS): AGAINST APPLICANT**

Subparagraphs 1.a-1.f and 1.j-1.l:	Against Applicant
Subparagraphs 1.g-1.i:	For Applicant

#### **GUIDELINE E (PERSONAL CONDUCT); FOR APPLICANT**

Subparagraph 2.a:	For Applicant
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### **Conclusions**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's eligibility to hold a public trust position. Eligibility to hold a public trust position is denied.

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Roger C. Wesley  
Administrative Judge

