



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



In the matter of:

Applicant for Public Trust Position

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ADP Case No. 15-01017

**Appearances**

For Government: Caroline E. Heintzelman, Esq., Department Counsel  
For Applicant: *Pro se*

08/24/2016

**Decision**

DAM, Shari, Administrative Judge:

Applicant's financial problems began in 2011 and continue to the present. She failed to present sufficient evidence to mitigate the financial trustworthiness concerns. Based upon a thorough review of the pleadings, exhibits, and testimony, eligibility for access to ADP I/II/III sensitive information is denied.

**Statement of the Case**

On July 17, 2014, Applicant submitted a public trust position application (SF 85P). On August 1, 2015, the Department of Defense (DOD) issued Applicant 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); DOD Regulation 5200.2-R, *Personnel Security Program* (January 1987), as amended (Regulation); and the adjudicative guidelines (AG) effective within the DOD for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on August 27, 2015 (Answer), and requested a hearing before an administrative judge. The Department of Defense Office of Hearings and Appeals (DOHA) assigned the case to me on November 17, 2015, and issued a Notice of Hearing on April 18, 2016. I convened the hearing as scheduled on May 11, 2016. Department Counsel offered Government Exhibits (GE) 1 through 4 into

evidence. Applicant testified, called one witness, and offered Applicant Exhibits (AE) A through I into evidence. All exhibits were admitted without objections. DOHA received the transcript of the hearing (Tr.) on May 23, 2016. The record remained open until June 3, 2016, to give Applicant an opportunity to submit additional documents. She timely submitted seven exhibits that I marked as AE J through P and admitted without objection. I marked her transmittal email as AE Q and admitted it into the record.

### **Findings of Fact**

In her Answer, Applicant admitted 56 of the 57 allegations contained in the SOR. She denied the allegation in ¶ 1.a. Her admissions are incorporated into these findings.

Applicant is 23 years old and unmarried. She has earned about 17 college credits. She began working for her current employer, a defense contractor, in March 2014. Prior to this position she had worked for an insurance company for about a year and a half. She was then unemployed for six months before obtaining her current job. Her employer is aware of this hearing and the financial delinquencies underlying the trustworthiness concerns. (Tr. 14-18, 22.)

Applicant's financial difficulties began when she was about 20 years old. Since then she has had various medical conditions and emergencies, which have required numerous visits to an emergency room and physicians for which she did not have medical insurance. In January 2015 she obtained medical insurance through her employer. (Tr. 19-21.)

Based on credit bureau reports (CBR) from July 2015 and August 2014, the SOR alleged 57 delinquent debts totaling \$39,122, and accumulating between 2011 and 2014. All are medical debts, except the debt for \$3,508 alleged in SOR ¶ 1.a. That automobile loan debt is being resolved through an automobile loan on which she makes monthly payments of \$300. (Tr. 27; GE 3, GE 4.) The \$12,587 debt alleged in SOR ¶ 1.rr is a judgment owed to a medical clinic. She is trying to arrange a payment plan. (Tr. 38, 43.) The remaining 55 medical debts are unaddressed and unresolved, including several small debts for \$13, \$20, \$29, \$35, and \$31.

In addition to the SOR debts, Applicant owes additional medical debts which became delinquent in mid-2015, after she had obtained medical insurance.<sup>1</sup> They are listed on a May 2016 CBR, some of which are small amounts, such as \$40 and \$26, and probably co-pays. (AE A.) Her student loans total about \$10,000 and are deferred. (Tr. 23, 37; AE L, AE O.) She believes that all of her debts, including the \$39,000 owed for the SOR allegations, total between \$50,000 and \$60,000. (Tr. 41-42.) She testified that she intends to pay her debts when she is financially able. (Tr. 30.)

In May 2016 Applicant met with a credit counseling service. Her annual salary for 2015 was \$22,500. Her current net monthly income is \$1,400 and expenses are \$1,815,

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<sup>1</sup> Although these additional debts are not alleged in the SOR, they may be considered in an analysis of mitigating conditions and the whole-person concept. They will not be included in the analysis of disqualifying conditions.

leaving a deficit of \$415. (AE H, AE P.) In her post-hearing submission, she indicated that after speaking to a credit counselor and evaluating her financial situation, she has decided to file bankruptcy. She re-contacted the bankruptcy attorney, with whom she had previously spoken about filing bankruptcy in 2015 but then chose not to go forward. (Tr. 30; AE F, AE K, AE Q.)

Applicant's mother testified. She explained the difficulties her daughter experienced while trying to obtain health insurance. She thinks Applicant has become more responsible and mature since starting her current position. (Tr. 46-48.) Applicant submitted her 2015 performance evaluation. Her supervisor gave her a high rating of meeting the employer's expectations. (AE M.)

### **Policies**

Positions designated as ADP I, II, and III are classified as "sensitive positions." (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." (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 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. (Regulation ¶ C8.2.1.)

When evaluating an applicant's suitability for a public trust 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 to be used 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 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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. Directive ¶ E3.1.15 states that, “[t]he 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 clearance decision.”

A person applying 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 protected 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.

## **Analysis**

### **Guideline F, Financial Considerations**

The trustworthiness concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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 classified 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>2</sup>

AG ¶ 19 describes two conditions that could raise trustworthiness concerns and may be disqualifying in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

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<sup>2</sup> See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant began accumulating delinquent debts in 2011, which she has been unable or unwilling to satisfy to date. The evidence raises both of the above trustworthiness concerns, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate trustworthiness concerns arising from Applicant's financial difficulties:

- (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.

Because Applicant's debts are ongoing, the evidence does not establish mitigation under AG ¶ 20(a). Of the 57 alleged debts, 56 of them are medical debts, which arose because Applicant did not have medical insurance for several years. Those were circumstances beyond her control. However, she did not produce evidence to demonstrate that she attempted to responsibly manage the debts while they were accumulating, including some of the smaller debts, which proof is necessary to establish full mitigation under AG ¶ 20(b). Applicant did not participate in credit or financial counseling until after her hearing. At this time there is no evidence that her financial problems are under control. Thus, AG ¶ 20(c) does not apply. She provided some evidence that she recently negotiated a payment plan for an automobile loan and has it included in her budget, indicating a good-faith effort to resolve the debt alleged in SOR ¶ 1.a. She established mitigation under AG ¶ 20(d) as to that debt. Applicant did not formally dispute any of the alleged debts. AG ¶ 20(e) does not apply.

## **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 relevant circumstances. 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. 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.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant is an honest and intelligent 23-year-old woman, who has successfully worked for a defense contractor for two years. Since 2011 she accumulated numerous delinquent medical debts because she did not have insurance to cover the medical services or the income to pay them. The SOR alleged at least \$36,000 of unpaid medical debts, and her recent CBR includes more medical debts, which accumulated after January 2015 when she had medical insurance. To date all of those debts are unresolved, including small debts for \$13 to \$35, which may be co-pays. After her hearing in early May 2016, she met with a credit counselor to review her situation and design a budget. As a consequence she decided to file a bankruptcy. Although she is becoming more maturely involved in her financial obligations and decisions, she has not yet established a reliable track record of managing her finances and medical bills. After weighing the disqualifying and mitigating conditions, and all facts and circumstances in the context of the whole-person, the record evidence leaves me with doubt as to Applicant's eligibility and suitability for a position of trust at this time. For these reasons, I conclude that Applicant did not mitigate the trustworthiness concerns arising under the guideline for financial considerations.

## **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:

**For Applicant**

Subparagraphs 1.b through 1.eee:

**Against 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 ADP I/II/III sensitive information is denied.

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Shari Dam  
Administrative Judge