



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



In the matter of: )  
)  
) ADP Case No. 15-02605  
)  
Applicant for Public Trust Position )

**Appearances**

For Government: Mary M. Foreman, Esq., Department Counsel  
For Applicant: *Pro se*

11/22/2016

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**Decision**

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CREAN, THOMAS M., Administrative Judge:

Based on a review of the pleadings, eligibility for a public trust position is granted. Applicant presented sufficient information to mitigate financial trustworthiness concerns.

On September 11, 2014, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) to retain eligibility for a public trust position with a defense agency. (Item 3) Applicant was interviewed by a security investigator from the Office of Personnel Management (OPM) on January 6, 2015. (Item 4) After reviewing the results of the OPM investigation, the Department of Defense (DOD) could not make the affirmative findings required to grant Applicant access to sensitive information. On November 4, 2015, DOD issued Applicant a Statement of Reasons (SOR) for financial trustworthiness concerns under Guideline F. The action was taken under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended; Department of Defense Regulation 5200.2-R, *Personnel Security Program*, dated Jan. 1987, as amended (Regulation); and the adjudicative guidelines (AG).

Applicant answered the SOR on November 30, 2015. She admitted 13 and denied 4 of the financial allegations of delinquent debt. Applicant could not recognize the four denied allegations of delinquent debt or she did not have sufficient information

to respond to the allegations. She admitted the one allegation of filing a Chapter 7 bankruptcy petition. Applicant requested a decision on the record. (Item 2) Department Counsel submitted the Government's written case on January 29, 2016. Applicant received a complete file of relevant material (FORM) on March 1, 2016, and was provided the opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant timely submitted information in response to the FORM (Item 9). I was assigned the case on September 27, 2016.

### **Procedural Issues**

Applicant was advised in the FORM that the summary of the Personal Subject Interview (PSI) with an OPM investigator (Item 4) was not authenticated and could not be considered over her objection. She was further advised that she could make any corrections, additions, or deletions to the summary to make it clear and accurate, and could object to the admission of the summary as not authenticated by a Government witness. She was additionally advised that if no objection was raised to the summary, the Administrative Judge could determine that she waived any objection to the admissibility of the PSI summary. Applicant, in her response to the FORM, did not raise any objection to consideration of the PSI. Since there is no objection by Applicant, I will consider information in the PSI in my decision.

### **Findings of Fact**

After a thorough review of the pleadings, I make the following findings of fact. Applicant is a 44-year-old high school graduate. She has been a customer care specialist for a DOD health care contractor since August 2004. She was granted eligibility for a position of trust in 2004. She married in April 1992 and divorced in July 1997. She has been married to her present husband since 2003. She has one teenage child still living at home, and two adult children and an adult stepchild- living independently. The health care agency is sponsoring her for a renewal of her public trust position. (Item 3, e-QIP, dated September 11, 2014; Item 4, PSI, dated January 6, 2015)

The SOR alleges that Applicant filed a Chapter 7 bankruptcy in October 2005 that was discharged in April 2006. (SOR 1.a) Applicant requested that the 2005 bankruptcy at SOR 1.a not be considered since it is beyond the seven years for reporting a bankruptcy on the e-QIP. I will consider the bankruptcy for the purposes of showing a pattern of financial problems. However, since bankruptcy is a legal and permissible means of resolving delinquent debt and the bankruptcy was filed and resolved almost ten years ago, I will find SOR 1.a for Applicant.

The SOR alleges and credit reports (Item 5, dated October 5, 2014; and Item 6, dated October 6, 2015) confirm the following delinquent accounts for Applicant; a judgment on a medical debt for \$182 (SOR 1.b); a charged-off medical bill for \$1,115 (SOR 1.c); a credit card debt in collection for \$1,141 (SOR 1.d); a credit card charged off for \$1,128 (SOR 1.e); two credit card accounts for the same bank charged off for \$483 (SOR 1.f), and \$423 (SOR 1.g); a credit card debt charged off for \$517 (SOR 1.h);

an online retail account charged off for \$761 (SOR 1.i); an account placed for collection for \$762 (SOR 1.j); and delinquent medical accounts for \$313 (SOR 1.k), \$232 (SOR 1.l), \$218 (SOR 1.m), \$83 (SOR 1.n), \$54 (SOR 1.o), \$32 (SOR 1.p), \$29 (SOR 1.q), and \$13 (SOR 1.r). The total amount of the debt is approximately \$7,486. All of Applicant's delinquent debts and the bankruptcy are listed on her credit reports. She admitted all of the debts except the debts at SOR 1.j, 1.p, 1.q. and 1.r. She discussed these delinquent debts with the security investigator during her PSI. (Item 2, Response to SOR, dated November 20, 2015; Item 3, e-QIP, dated September 11, 2014; Item 4, PSI, dated January 6, 2017)

The 2005 Chapter 7 bankruptcy at SOR 1.a was based on Applicant's present husband's financial problems. Since they were married, she had to be included on the bankruptcy petition. (Item 4, Response to the SOR)

Applicant and her husband experienced medical problems in 2008 and 2009 which were not covered by medical insurance. Her husband's medical condition caused him to be out of work for an extended period of time. Applicant noted that over a four-year period of time, her son was injured 11 times playing high school sports requiring Applicant to pay some medical expenses not covered by health insurance. Her husband was out of work for almost four months because of a back injury. His employer did not have short-term disability coverage. Her mother developed Alzheimer's and had to move into Applicant's house thereby increasing Applicant's expenses. Applicant and her family incurred unexpected expenses from having to attend three funerals out of state, and help raise a grandchild. Applicant also had medical tests to learn she suffered from a thyroid disease. The family only had Applicant's salary as income, and the family could not afford to pay all of their bills. Applicant prioritized her debts and took care of her mortgage, utilities, and car payments first. The funds remaining were rotated for payments on her other accounts and medical bills. This resulted in the delinquent debts listed in the SOR. (Item 4 at 4)

SOR debt 1.b, is a judgment for a delinquent medical debt. Applicant included information in her response to the SOR that the judgment was satisfied by garnishment in October 2010. (Item 2, Response to SOR)

The debt at SOR 1.c is a bill for Applicant's mother's hearing aids. Applicant co-signed for part of the debt, so her mother could qualify to receive the hearing aids. After Applicant's husband lost his job, Applicant could no longer afford to make the payments required on her part of the debt. Applicant tried to establish a payment plan with the creditor, but the creditor requested payments more than Applicant could afford. Applicant continued to try to reach an agreement with the creditor. At that time, the creditor could not locate a bill attributed to Applicant, so the creditor transferred the debt solely to Applicant's mother's account. The debt has been resolved as to Applicant. (Item 2, Response to SOR; Item 9, Response to FORM)

The debts at SOR 1.d, 1.e, 1.f, 1.g and 1.h are delinquent credit card debts. Applicant reached payment plans with the creditors for monthly payment of \$25 for each of the debts. Applicant provided sufficient documents that the debts at SOR 1.f and 1.g

have been paid in full as a result of completing their payment plans. Applicant is current with her remaining payments. (Item 9, Response to the FORM, Receipts for payments attached)

SOR debts 1.i and 1.j are delinquent debts to the same on-line merchant. Applicant provided sufficient documents to establish that the debts are the same debt. Since the debts are duplicates, I find for Applicant as to SOR 1.i. Applicant reached an agreement on a payment plan with the creditor to pay \$50 a month starting when she can afford the payments. Even though Applicant reached an agreement on a payment plan for the debt at SOR 1.j, payments on the plan have not yet started. (Item 9, Response to FORM, Payment plan agreement attached)

The debt at SOR 1.k is a delinquent medical bill. Applicant applied for and received assistance from a charity to pay this debt. She believes the debt was paid by the charity but she did not provide any documents to establish that the charity paid the debt. (Item 9, Response to FORM)

SOR debt 1.l is another delinquent medical debt. Applicant attempted to establish a payment plan for this debt but the creditor wanted payments more than Applicant could afford. She will attempt to work with the creditor when she has paid off other debts and can afford to pay more towards the debt. (Item 9, Response to FORM)

SOR debts 1.m, 1.n, and 1.o are medical debts for treatment of Applicant's son's sports injury. Applicant's former husband is responsible for their son's medical bills under their divorce decree. However, Applicant provided documentation that she is paying the debt at SOR 1.m, and she completed payment of the debt at SOR 1.n. The debt at SOR 1.o has been paid by her son's school athletic insurance. (Item 9, Response to FORM)

SOR debts at 1.p, 1.q, and 1.r, are medical debts. Since the creditor is only noted as an unidentified creditor, Applicant has not been able to learn the identity of the creditor to pay the debts or establish payment plans. She will pay the debts in full if the creditor is identified. (Item 9, Response to FORM)

### **Policies**

Positions designated as ADP I and ADP II are classified as "sensitive positions." (See 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 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 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 over-arching adjudicative goal is a fair, impartial and common sense 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 applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion as to obtaining 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 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**

### **Financial Considerations**

There is a trustworthiness concern for a failure or inability to live within one's means, satisfy debts, and meet financial obligations indicating 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 (AG ¶ 18). Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligation to protect sensitive information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his or her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to meet their financial obligations. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a public trust position. An applicant is required to manage his or her finances in such a way as to meet financial obligations. Unless there are extreme circumstances, failure to pay voluntarily incurred delinquent debts raises questions about a person's judgment and trustworthiness. One who does not pay his or her financial obligations in a timely and responsible fashion, may also show lack of responsibility in the proper handling of sensitive information. The person who is trustworthy in very small matters may also be trustworthy in great matters. And the person who is dishonest in very small matters may be dishonest in great ones.

Adverse information in credit reports can normally meet the substantial evidence standard to establish financial delinquency. Applicant has a history of delinquent debts as documented in her credit reports, by her admissions to the OPM investigator, and her response to the allegations in the SOR. All of Applicant's SOR debts are listed on the credit reports at Items 6, 7, and 8. The information concerning the debts raised in the SOR, as well as the 2005 bankruptcy, show a history of not meeting financial obligations. The evidence is sufficient to raise security concerns under Financial Considerations Disqualifying Conditions AG ¶ 19(a) (inability or unwillingness to satisfy debts), and AG ¶ 19(c) (a history of not meeting financial obligations). The information raises an inability and not an unwillingness to pay delinquent debt. Once the Government has established delinquent debts, the Applicant has the responsibility to refute or mitigate those debts.

SOR allegations 1.i and 1.j allege that the same debt is delinquent. Since the debts are duplicates. I find for Applicant as to SOR 1.i.

I considered the following Financial Considerations Mitigating Conditions under AG ¶ 20:

(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 problems were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce, or separations) 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; and

(d) the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts.

Applicant incurred delinquent debt starting in 2008 and 2009, when she, her son, and her husband had extensive medical bills that were not covered by health insurance. Her husband was out of work for about four months because of a back injury, so the family had to rely only on Applicant's salary. They were unable to pay all of their bills. Applicant prioritized the bills to pay the mortgage, utilities, and car payments first. The remaining bills were paid when funds were available. Her mother developed Alzheimer's and had to move in with Applicant thereby increasing their expenses. Applicant also had other unanticipated expenses.

The mitigating conditions at AG ¶ 20(a) and AG ¶ 20(b) apply. Even though Applicant's debts are numerous and recent. They were incurred under circumstances making recurrence unlikely. Her husband is now working and her son is no longer involved in school sport's activities. Applicant established that she acted reasonably and responsibly under the circumstances. She has contacted the creditors she could identify, and set up payment plans for her delinquent debts. She has paid or is paying most of the debts. She has also shown that she is not responsible for some of the debts.

Applicant did not present information that she received financial counseling. However, there is substantial indications that her financial problems are being resolved and are under control. AG 20(c) applies.

Applicant established a good-faith effort to pay her debts. For a good-faith effort, there must be an ability to repay the debts, the desire to repay, and evidence of a good-faith effort to repay. Good faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty and obligation. A systematic method of handling debts is needed. Applicant must establish a meaningful track record of debt payment. A meaningful track record of debt payment can be established by evidence of actual debt payments or reduction of debt through payment of debts. A promise to pay delinquent debts is not a substitute for a track record of paying debts in a timely manner and acting in a financially responsible manner. Applicant must establish that she has a reasonable plan to resolve financial problems and has taken significant action to implement that plan.

Applicant established that she has a reasonable plan to resolve her financial problems, that she has taken action to implement that plan, and has shown a meaningful track record of debt payments. When Applicant and her husband first experienced financial problems in 2005, they turned to bankruptcy as a legal and permissible means to resolve their debt situation. In 2008 and 2009, when Applicant again encountered financial problems, she sought a good-faith way to pay their delinquent debts. She established a systematic way to resolve the debts, and she has shown a meaningful track record of payment of her debts. She contacted all of her creditors to verify her debts, and to establish payment plans. She has provided substantial evidence that she paid four of the debts (SOR 1.b, 1.g, 1.f, and 1.n), that two

of the debts were not her responsibility (SOR 1.c and 1.o), and that she has implemented payment plans to pay seven of the debts. (SOR 1 d, 1.e, 1.h, 1.j, 1.k, and 1.m). She also established that one creditor would not work with her to establish a reasonable payment plan (SOR 1.l) and that three of the creditors could not be identified to seek payment plans with them. (SOR 1.p, 1.q, and 1.r) Applicant's plans to pay her debts and actual payment of some debts, show that she acted reasonably and honestly with regard to her financial duties and obligations. She is managing her personal financial obligations responsibly. Based on all of the financial information, I conclude that Applicant has mitigated trustworthiness concerns based on financial considerations.

### **Whole-Person Analysis**

Under the whole-person concept, the administrative judge must evaluate an applicant's trustworthiness eligibility by considering the totality of the applicant's conduct and all relevant circumstances. An 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 a trustworthiness clearance 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. Applicant is required to show that she has a plan to resolve her financial problems and that she has taken significant action to implement that plan.

Applicant established that she has taken sufficient actions to reasonably and responsibly within her limited finances resolve her delinquent debts. Applicant has shown that she can responsibly manage her financial obligations. Overall, the record evidence leaves me without questions and doubts as to Applicant's judgment, reliability, trustworthiness, and eligibility and suitability for a trustworthiness clearance. For all these reasons, I conclude that Applicant has mitigated trustworthiness concerns arising under the financial considerations guideline. Eligibility for a trustworthiness position is granted.

### **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:           FOR APPLICANT

Subparagraphs 1.a – 1.r:           For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a public trust position. Eligibility for access to sensitive information is granted.

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THOMAS M. CREAN  
Administrative Judge