



**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. 15-02723

**Appearances**

For Government: Charles Hale, Department Counsel  
For Applicant: *Pro se*

11/02/2016

**Decision**

DAM, Shari, Administrative Judge:

Applicant failed to present sufficient evidence to mitigate the alleged financial trustworthiness concerns. Based upon a thorough review of the pleadings and exhibits eligibility for access to ADP I/II/III sensitive information is denied.

**Statement of the Case**

On October 31, 2012, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On October 26, 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) implemented by the DOD on September 1, 2006.

Applicant answered the SOR on November 18, 2015 (Answer), and requested that her case be decided by an administrative judge on the written record without a hearing. (Item 2.) On February 16, 2016, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing six Items, was mailed to Applicant on February 18, 2016, and received by

her on February 29, 2016. The FORM notified Applicant that she had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. She did not submit any additional information or file objections to the Government's evidence. Hence, Items 1 through 6 are admitted into evidence. The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on September 9, 2016.

### **Findings of Fact**

Applicant admitted all 19 allegations contained in the SOR. Her admissions are incorporated into the findings of fact herein.

Applicant is 32 years old, single, and has a young child. She earned a bachelor's degree in 2004. She was unemployed during 2002, and from 2003 to 2005. From 2005 to the 2013 she worked part-time for a retail store. In 2013 she obtained her current position. From 2003 to 2005 she was unemployed. (Items 3, 4.)

Applicant stated that her debts arose between 2009 and 2010 "due to life changing events." (Answer.) She did not elaborate about those events. She stated that she has not had enough money to pay her debts. (Answer.)

Based on credit bureau reports (CBR) from December 2012 and February 2015, the SOR alleged 19 delinquent debts totaling \$42,200, which accumulated between 2009 and 2012. (Items 5 and 6.) They included delinquent credit cards, an automobile loan, an unpaid apartment lease, and student loans.

Applicant provided proof that she paid two debts: SOR ¶¶ 1.q for \$456 and 1.o for \$176. (Answer.) Applicant stated that she consolidated all of her student loans and that she was going to begin making payments in March 2016. Those loans are: SOR ¶¶ 1.a for \$15,335; 1.e for \$1,178; 1.j for \$3,015; 1.l for \$885; 1.m for \$702; and 1.n for \$309. (Answer.) She did not submit proof of that consolidation or that she made any payment. She said that three other debts would be paid in full by December 2015, but submitted no proof.

### **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. 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. (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 classified or sensitive information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting such information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified or sensitive information.<sup>1</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.

Applicant's financial problems began in 2009 and extend into the present. She has numerous unresolved delinquent debts. The evidence raises the above trustworthiness concerns, and shifts 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

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

(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.

Applicant's delinquent debts are ongoing. She did not provide sufficient information that they arose under unusual conditions or circumstances beyond her control. The evidence does not establish mitigation under AG ¶ 20(a) or AG ¶ 20(b). There is no evidence that she participated in financial or budget counseling, or that her financial problems are under control; thus, AG ¶ 20(c) does not apply. Applicant paid two debts, which demonstrated a good-faith effort to resolve those debts and established mitigation under AG ¶ 20(d). There is no evidence that Applicant successfully disputed any debt. 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 a mature individual who is responsible for her choices and conduct that underlie the trustworthiness concerns set forth in the SOR. She provided no current budget information demonstrating an ability to resolve those obligations or a solid plan to avoid additional financial duress. At this time, she has not established a track record of managing delinquent debts. Overall, the record evidence leaves me with doubt as to Applicant's eligibility and suitability for a position of trust. For all these reasons, Applicant did not mitigate the trustworthiness concerns arising under Guideline F.

### **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 through 1.n:	Against Applicant
Subparagraph 1.o:	For Applicant
Subparagraph 1.p:	Against Applicant
Subparagraph 1.q:	For Applicant
Subparagraphs 1.r and 1.s:	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