



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



In the matter of:

Applicant for Public Trust Position

)  
)  
)  
)  
)

ADP Case No. 15-02741

**Appearances**

For Government: Braden M. Murphy, Esq., Department Counsel  
For Applicant: *Pro se*

09/23/2016

---

**Decision**

---

CREAN, THOMAS M., Administrative Judge:

Based on a review of the pleadings, eligibility for a public trust position is denied. Applicant did not present sufficient information to mitigate financial trustworthiness concerns.

On November 15, 2012, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) to obtain eligibility for a public trust position with a defense contractor. (Item 4) Applicant was interviewed by a security investigator from the Office of Personnel Management (OPM) on January 25, 2013. (Item 6) After reviewing the results of the OPM investigation, the Department of Defense (DOD) could not make the preliminary affirmative findings required to grant Applicant access to sensitive information. On October 27, 2015, DOD issued Applicant a Statement of Reasons (SOR) for financial trustworthiness concerns under Guideline F. The action was taken under DOD 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 in writing on November 20, 2015. She admitted 6 and denied 5 of the 11 financial allegations without explanation. Applicant requested a decision on the record. Department Counsel submitted the Government's written case on January 14, 2016. Applicant received a complete file of relevant material (FORM) on February 8, 2016, and was provided the opportunity to file objections and submit

material to refute, extenuate, or mitigate the disqualifying conditions. Applicant did not submit any information in response to the FORM. I was assigned the case on September 2, 2016.

### **Procedural Issues**

Applicant was advised in the FORM that the summary of the Personal Subject Interview with an OPM investigator (Item 6) 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 Personnel Subject Interview summary. Applicant did not respond to the FORM, so she did not raise any objection to consideration of the Personal Subject Interview. Since there is no objection by Applicant, I will consider information in the Personal Subject Interview in my decision.

### **Findings of Fact**

After a thorough review of the case file, I make the following findings of fact. Applicant is a 36 year old high school graduate with some college credits. She has been a benefits analyst for a defense contractor since 1999. She never married but has two teenage children. (Item 4, e-QIP, dated November 18, 2012; Item 6, Personal Subject Interview, dated January 25, 2013)

Applicant reported on the e-QIP (Item 4) that in the last seven years she had property and vehicles repossessed; defaulted on a loan; had bills or debts turned over to a collection agency; had an account or credit card suspended, charged off or cancelled for failure to pay as agreed; and has been or is over 120 days delinquent on a debt. Applicant listed a car repossession (SOR 1.a), utility bill (SOR 1.i), medical bill (SOR 1.g), and a mail order bill (SOR 1.h) as delinquent debts on her e-QIP. The SOR alleges, and credit reports (Item 5, Credit Report, dated January 12, 2013; Item 7, Credit Report, dated March 5, 2015) confirm the following delinquent debts for Applicant; a vehicle repossession in 2011 with a charged off balance of \$4,907 (SOR 1.a); a vehicle repossession in 2008 (SOR 1.b); a vehicle repossession in 2005 (SOR 1.c); an account 180 days past due for \$1,502 (SOR 1.d); a credit account charged off for \$808 (SOR 1.e); a cell phone account in collection for \$354 (SOR 1.f); a medical account in collection for \$248 (SOR 1.g); a mail order account in collection for \$71 (SOR 1.h); a utility debt charged off for \$637 (SOR 1.i); an account in collection for \$328 (SOR 1.j); and another account in collection for \$493 (SOR 1.k). The total delinquent amount due is approximately \$9,348.

While Applicant admitted some debts and denied others, she did not provide any reasons or circumstances for her delinquent debts. She told the security investigator that her current financial status is "okay", and she is able to meet her current financial obligations. She reported that some of her delinquent debts were due to circumstances

beyond her control while others were not. She did not list any circumstances beyond her control which led to delinquent debt. She has no financial problems in general and she does not intend to have any delinquent debt in the future. (Item 6, PSI, at 3)

Applicant acknowledged to the security investigator in the PSI the repossession of a vehicle in 2011 as noted at SOR 1.a. She reported only that the vehicle was having mechanical problems and she had the creditor repossess the vehicle. She did not know when the account was opened, how long she paid on the account, the amount the creditor received for the vehicle, and the outstanding balance. She did not provide any documents to establish she made payments on the debt or her plan to resolve the debt.

Applicant told the security investigator that she had a vehicle repossessed in 2008 because it had mechanical problems which led to the debt at SOR 1.b. She did not know the amount owed but believes she should have been given credit for the sale of the vehicle. She did not provide any documents to establish that she made any payments on this debt. Applicant could not provide any information on the 2005 car repossession at SOR 1.c. (Item 6, PSI, at 5)

Applicant admitted the delinquent loan at SOR 1.d. The loan was used to purchase a laptop computer and a television. Applicant insured the laptop against damage. She reported that the laptop was damaged and did not make any additional payments on the loan because she thought the insurance would pay the loan. The loan was not paid by the insurance company. Applicant attempted to reach a settlement with the creditor. The creditor offered to settle the debt for half the amount owed. Applicant has not decided to accept the offer but plans to still negotiate with the creditor. She has not provided any additional information on the status of the debt. (Item 6, PSI at 5)

Applicant told the OPM investigator that she had no knowledge of the delinquent debts listed at SOR 1.e and 1.f. Applicant admitted other delinquent debts to the investigator. She admitted the medical debt at SOR 1.g which resulted from medical treatment for her. She made payments on the overall debt when she had the funds which resulted in the balance listed in the SOR. She plans to contact the doctor to establish a payment plan. She disputed the mail order debt as noted in SOR 1.h. She never ordered from this merchant. She admitted the utility debt at SOR 1.i. She reported that she made some payments on the overall debt and plans to call the utility and establish a payment plan for the remaining amount of the debt as listed on the SOR. She has no knowledge of the debts for the same creditor listed at SOR 1.j and 1.k. She did not know when the accounts were opened, the reason for the delinquency, and the amount owed. She told the security investigator that she planned to research to resolve the debts. (Item 6, PSI, at 4-5)

Applicant provided no additional details, except for her admissions and denials of individual debts, in her response to the SOR (Item 3) Applicant had an opportunity to provide additional financial information in response to the FORM but chose not to respond. In general, Applicant did not provide any information on the reasons for the debts, any payments made on the debts, or her plans to resolve the debts.

## 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 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 her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed terms. 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 security clearance. An applicant is not required to be debt free, but is required to manage her finances in such a way as to meet her financial obligations.

Adverse information in credit reports can normally meet the substantial evidence standard to establish financial delinquency. Applicant has significant delinquent debts that she has not resolved. Applicant's delinquent medical bills, loan payments, utility payments, and charges from repossession are established by credit reports and Applicant's admissions. These debts pose a trustworthiness concern raising Financial Consideration Disqualifying Conditions AG ¶ 19(a) (inability or unwillingness to satisfy debts), and AG ¶ 19(c) (a history of not meeting financial obligations).

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.

The mitigating conditions do not apply. Applicant's debts are numerous, recent, and were not incurred under circumstances making recurrence unlikely. She did not present any information to establish that the debts were incurred by circumstances beyond her control. She presented no information on payment of any debts, attempts to contact creditors, or any plans to resolve the debts. She did not establish that she acted responsibly under the circumstances. AG ¶¶ 20(a) and 20(b) do not apply.

Applicant presented no information that she received financial counseling. There is no indication that her financial problems are being resolved and are under control. AG 20(c) does not apply.

Applicant did not establish 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 was aware that her financial problems were a trustworthiness concern when she submitted her trustworthiness application in December 2012. She has been gainfully employed since 1999. She has not established that she paid any of her delinquent debts, nor did she present a plan to resolve her financial issues. She did not show a meaningful track record of debt payments, Applicant's failure to pay and establish a plan to pay her debts shows that she has not acted reasonably and honestly with regard to her financial duties and obligations. The evidence does not support responsible management of her finances, and her financial problems are not under control. Her lack of reasonable and responsible action towards her finances is a strong indication that she may not protect and safeguard sensitive information. Based on all of the financial information, I conclude that Applicant has not mitigated trustworthiness concerns based on financial considerations. AG ¶ 20(d) does not apply

### **Whole-Person Concept**

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for access to classified information by considering the totality of the applicant's conduct and all relevant 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 for access to classified information 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 did not provide sufficient credible documentary information to establish that she paid or is paying her delinquent debts. She has not established that she has a reasonable and responsible plan to resolve her financial problems. Applicant did not demonstrate appropriate management of her finances and a consistent record of action to resolve financial issues. Overall, the record evidence leaves me with questions and doubts concerning Applicant's judgment, reliability, trustworthiness, and eligibility and suitability for a trustworthiness clearance. She has not established her suitability for access to sensitive information. For all these reasons, I conclude Applicant has not mitigated the trustworthiness concerns arising from her financial situation. Eligibility for a trustworthiness position is denied.

### **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:	AGAINST APPLICANT
Subparagraphs 1.a – 1.k:	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 for a public trust position. Eligibility for access to sensitive information is denied.

---

THOMAS M. CREAN  
Administrative Judge