



**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. 15-03166

**Appearances**

For Government: Carroll J. Connelley, Esquire, Department Counsel

For Applicant: *Pro se*

12/02/2016

**Decision**

DAM, Shari, Administrative Judge:

Applicant has a long history of financial problems that began before 2006, and includes unpaid Federal and state taxes and delinquent mortgages. She failed to rebut or mitigate the trustworthiness concerns raised under Guideline F, Financial Considerations. Her eligibility for a public trust position is denied.

**Statement of Case**

On January 3, 2013, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On December 18, 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.

On January 19, 2016, Applicant responded to the SOR in writing and elected to have the case decided on the written record in lieu of a hearing. (Item 2.) On March 1, 2016, Department Counsel prepared a File of Relevant Material (FORM), containing six Items. Applicant received the FORM on March 8, 2016, and had 30 days from its receipt to file objections and submit additional information. Applicant did not submit any additional information or file objections to the Government's evidence; hence, Items 1 through 6 are admitted into evidence. On November 1, 2016, the Defense Office of Hearings and Appeals (DOHA) assigned the case to me.

### **Findings of Fact**

The SOR contained 15 allegations related to delinquent debts. In her answer to the SOR, Applicant admitted all of them. (Item 1.) Those admissions are incorporated into these findings.

Applicant is 52 years old and unmarried. She is a high school graduate. She worked for a state government from 1982 to 2006. She then worked in private positions for a couple years. She was unemployed from January 2009 to July 2010. In August 2010 she started her current position with a defense contractor. (Item 2.)

Applicant attributed her history of financial problems to medical issues; loss of a job and subsequent unemployment; reduction in wages at some jobs; gambling; and her failure to recognize tax consequences from taking a lump-sum payment from a retirement account. (Items 1, 2.)

Based on credit bureau reports (CBRs) from January 2013 and March 2015, the SOR alleged 15 delinquent debts that totaled more than \$80,000, and arose between 2006 and 2012. They consisted of unpaid Federal and state taxes, medical bills, mortgages, and other miscellaneous bills. (Items 4, 5.) Although Applicant stated that she had a payment plan for the unpaid taxes, she did not submit proof of said payments or of the resolution of any of the other alleged debts. The 15 alleged delinquent debts are unresolved.

There is no evidence that Applicant obtained credit or financial counseling. She did not provide a workable plan or budget from which her ability to resolve the delinquencies and avoid additional debt problems can be predicted with any certainty.

### **Policies**

Positions designated as ADP-I/II/III 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 the DoD and 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. (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 AGs. 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(a), describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense 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 the applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion as to obtaining a favorable trustworthiness decision.

A person who applies 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 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

### 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 [sensitive] 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>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 has a history of being unable or unwilling to satisfy financial obligations, which began in 2006 and continues to date. The evidence raises both disqualifying conditions, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes four 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

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

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; and

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

There is insufficient evidence to establish any of the above mitigating conditions. Applicant failed to demonstrate that her financial problems are unlikely to continue or recur, or that her reliability and trustworthiness is not in question. AG ¶ 20(a) does not apply.

Applicant provided some evidence that her financial problems arose as a consequence of medical problems and a period of unemployment. However, she also acknowledged that gambling and ignorance of tax liability contributed to her delinquent debts, which were circumstances within her control. She did not submit evidence that she responsibly attempted to manage the debts under all circumstances. Hence, the evidence establishes minimal mitigation under AG ¶ 20(b).

Applicant did not provide evidence that she participated in credit or financial counseling, established a budget, or developed a plan to manage the debts. There are no indications that the unresolved financial problems are under control. AG ¶ 20(c) does not apply. She did not submit evidence that she made a good-faith effort to resolve any of the debts. AG ¶ 20(d) 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 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.

I considered the potentially disqualifying and mitigating conditions in light of the facts and circumstances surrounding this case. Applicant is a 52-year-old woman, who has worked for a defense contractor since 2010. Her history of financial problems began prior to 2006. In March 2016 DoD placed her on notice that her answer to the SOR failed to include evidence that her financial obligations were resolved or being responsibly managed, and, that similar problems were unlikely to recur. Overall, the record evidence leaves me with questions as to Applicant's eligibility and suitability for a public trust position. For these reasons, I conclude Applicant did not meet her burden to mitigate the trustworthiness concerns arising from her financial problems.

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:

Subparagraphs 1.a through 1.o: Against Applicant

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 ADP information is denied.

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