



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



In the matter of: )  
)  
) ADP Case No. 15-03170  
)  
)  
Applicant for Public Trust Position )

**Appearances**

For Government: Gina L. Marine, Department Counsel  
For Applicant: *Pro se*

January 20, 2017

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**Decision**

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LOKEY ANDERSON, Darlene D., Administrative Judge:

On April 9, 1993, the Composite Health Care Systems Program Office (CHCSPO), the Defense Office of Hearings and Appeals (DOHA), and the Assistant Secretary of Defense for Command, Control, Communications and Intelligence (ASDC3I) entered into a memorandum of agreement for DOHA to provide trustworthiness determinations for contractor personnel employed in Information Systems Positions as defined in DoD Regulation 5200.2-R, Personnel Security Program (Regulation), dated January of 1987.

Applicant submitted her Electronic Questionnaire for Investigations Processing (e-QIP) on November 2, 2012. (Government Exhibit 3.) On November 10, 2015, the Department of Defense (DoD), issued an SOR detailing the trustworthiness concerns under Guideline F regarding Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), effective within the Department of Defense after September 1, 2006.

Applicant responded to the SOR in writing on December 18, 2015, and she elected to have the case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) to Applicant on or about February 10, 2016. Applicant received the FORM on March 7, 2016. Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant submitted no reply to the FORM. This case was assigned to the undersigned on November 1, 2016. Based upon a review of the pleadings and exhibits, eligibility for access to sensitive information for a position of trust is denied.

## **FINDINGS OF FACT**

Applicant is 55 years old and unmarried. She is employed with a defense contractor and is seeking to obtain access to sensitive information in connection with this employment.

The Government opposes Applicant's request for access to sensitive information on the basis of allegations set forth in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR:

Paragraph 1 (Guideline F - Financial Considerations) The Government alleges that Applicant is ineligible for a public trust position because she is financially overextended and at risk of having to engage in illegal acts to generate funds.

There are nineteen delinquent debts, totaling in excess of \$36,000, set forth in the SOR. Applicant admits all of the debts except, 1.c., and 1.m. She is not aware of the debt set forth in allegation 1.c., and she does not believe that she owes the debt in 1.m. She has failed to provide any documentary evidence whatsoever to substantiate her claims. Applicant's credit reports dated December 15, 2012; March 18, 2015; and October 9, 2015, which include information from all three credit reporting agencies, reflect that Applicant is indebted to each of the creditors listed in the SOR. (Government Exhibits 5, 6 and 7.)

Applicant stated that she was unemployed from December 2006 through July 2009 after the facility she was working at closed. She received unemployment benefits until May 2009. From May 2007 to May 2009, Applicant was a full time student. Applicant attributes her excessive indebtedness to loss of income, job changes, and low pay. Applicant has also placed her adult children as a priority, and has helped them financially when they need it. She also took a trip to the Bahamas in September 2008. Applicant acknowledges that she had not made the best choices in the past about her finances. She obtained a part-time job with Wal-mart in July 2009. There is no further information provided concerning Applicant's present employment.

There is insufficient evidence in the record to show that Applicant has mitigated her financial situation. There is no evidence that she has paid off any of the debts, nor

has she set up any payment plans that she is following. The following debts listed in the SOR are delinquent to those respective creditors listed, and remain owing:

- 1.a. A delinquent medical account in the approximate amount of \$506.
- 1.b. A delinquent account charged off in the approximate amount of \$8,157.
- 1.c. A delinquent debt placed for collections in the approximate amount of \$1,698.
- 1.d. A delinquent debt placed for collections in the approximate amount of \$530.
- 1.e. A delinquent bank debt charged off in the approximate amount of \$11,129.
- 1.f. A delinquent debt placed for collections in the approximate amount of \$3,269.
- 1.g. A delinquent debt placed for collections in the approximate amount of \$1,899.
- 1.h. A delinquent debt charged off in the approximate amount of \$1,703.
- 1.i. A delinquent debt charged off in the approximate amount of \$530.
- 1.j. A delinquent debt charged off in the approximate amount of \$729.
- 1.k. A delinquent debt placed for collection in the approximate amount of \$1,617.
- 1.l. A delinquent debt placed for collections in the approximate amount of \$763.
- 1.m. A delinquent medical account placed for collection in the approximate amount of \$142.
- 1.n. A delinquent debt placed for collection in the approximate amount of \$1,100.
- 1.o. A delinquent debt placed for collection in the approximate amount of \$1,033.
- 1.p. A delinquent debt placed for collection in the approximate amount of \$217.
- 1.q. A delinquent debt placed for collection in the approximate amount of \$61.
- 1.r. A delinquent debt placed for collection in the approximate amount of \$361.
- 1.s. A delinquent debt 120 days or more past due in the approximate amount of \$600.

## POLICIES

Positions designated as ADP I, II, or 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 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 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 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.

#### Guideline F (Financial Considerations)

18. *The Concern.* 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.

##### Conditions that could raise a security concern:

19.(a) inability or unwillingness to satisfy debts; and

19.(c) a history of not meeting financial obligations.

##### Conditions that could mitigate security concerns:

None.

In addition, as set forth in Enclosure 2 of the Directive at pages 18-19, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

a. The nature, extent, and seriousness of the conduct and surrounding circumstances;

b. The circumstances surrounding the conduct, to include knowledgeable participation;

c. The frequency and recency of the conduct;

d. The individual's age and maturity at the time of the conduct;

e. The extent to which participation is voluntary;

f. The presence or absence of rehabilitation and other permanent behavioral changes;

g. The motivation for the conduct;

h. The potential for pressure, coercion, exploitation or duress; and

i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct, which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is “clearly consistent with the national interest” to grant an Applicant’s request for access to sensitive information.

The DoD Directive states, “The adjudicative process is an examination of a sufficient period of a person’s life to make an affirmative determination that the person is an acceptable security risk. Eligibility for access to [sensitive] information is predicated upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole-person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination.” The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence, which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, “Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned.”

## **CONCLUSION**

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours per day, seven days per week. The Government is therefore appropriately concerned when available information indicates that an Applicant for clearance may be involved in financial irresponsibility, which demonstrates poor judgment or unreliability.

It is the Government’s responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant’s conduct and the trustworthiness determination. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation, which is sufficient to overcome or outweigh the Government’s case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a public trust position.

In this case the Government has met its initial burden of proving that the Applicant has been financially irresponsible (Guideline F). This evidence indicates poor judgment, unreliability and untrustworthiness on the part of the Applicant. Because of the scope and nature of the Applicant’s conduct and circumstances, I conclude there is a nexus or connection with his eligibility for access to sensitive information.

The evidence shows that Applicant has done nothing to resolve her delinquent debts. It can be argued that Applicant’s debts could be deemed to have resulted from circumstances beyond her control, however, Applicant has failed to provide sufficient

evidence to that she acted reasonably to address the debt. From the limited evidence presented, she has been unable to pay her debts due to bad financial decisions, periods of unemployment, and low wages. She has also had other priorities more important to her than paying off her delinquent debts. In order to be eligible to hold a position of trust, a person must show a pattern of financial responsibility. The Applicant must be capable of living within her means, and must budget her lifestyle accordingly. There is insufficient evidence in the record to show that Applicant can live within her means. It is evident that her finance situation is not under control.

Under the particular circumstances of this case, Applicant has not met her burden of proving that she is eligible for a public trust position. It appears that she does not have a concrete understanding of his financial responsibilities. She has sufficiently addressed her delinquent debts in the SOR. Thus, it cannot be said that she has made a good-faith effort to resolve her past-due indebtedness. She has not shown that she is or has been reasonably, responsibly, or prudently addressing her financial situation. Considering all of the evidence, Applicant has not introduced persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government's case.

Under Guideline F (Financial Considerations), Disqualifying Conditions 19.(a) *inability or unwillingness to satisfy debts*; and 19.(c) *a history of not meeting financial obligations*, apply. None of the mitigating conditions are applicable.

I have also considered the "whole-person concept" in evaluating Applicant's eligibility for access to sensitive information. Under the particular facts of this case, the totality of the conduct set forth above, when viewed under all of the guidelines as a whole, support a whole-person assessment of poor judgement, untrustworthiness, unreliability, and an unwillingness to comply with rules and regulations, and/or other characteristics indicating that the person may not properly safeguard sensitive and protected information.

I have considered all of the evidence presented. It does not mitigate the negative effects that her financial indebtedness can have on her ability to safeguard sensitive and protected information. On balance, it is concluded that Applicant has not overcome the Government's case opposing her request for a public trust position. Accordingly, the evidence supports a finding against Applicant as to the factual and conclusionary allegations expressed in Paragraphs 1 of the SOR.

## FORMAL FINDINGS

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1:	Against the Applicant.
Subpara. 1.a.	Against the Applicant.
Subpara. 1.b.	Against the Applicant.
Subpara. 1.c.	Against the Applicant.

Subpara.	1.d.	Against the Applicant.
Subpara.	1.e.	Against the Applicant.
Subpara.	1.f.	Against the Applicant.
Subpara.	1.g.	Against the Applicant.
Subpara.	1.h.	Against the Applicant.
Subpara.	1.i.	Against the Applicant.
Subpara.	1.j.	Against the Applicant.
Subpara.	1.k.	Against the Applicant.
Subpara.	1.l.	Against the Applicant.
Subpara.	1.m.	Against the Applicant.
Subpara.	1.n.	Against the Applicant.
Subpara.	1.o.	Against the Applicant.
Subpara.	1.p.	Against the Applicant.
Subpara.	1.q.	Against the Applicant.
Subpara.	1.r.	Against the Applicant.
Subpara.	1.s.	Against the Applicant.

### **DECISION**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a public trust position for the Applicant.

Darlene Lokey Anderson  
Administrative Judge