



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



In the matter of: )  
)  
) ADP Case No. 15-04025  
)  
Applicant for Public Trust Position )

**Appearances**

For Government: Ross Hyams, Esq., Department Counsel  
For Applicant: *Pro se*

05/19/2017

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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 denied. Applicant did not present sufficient information to mitigate financial trustworthiness concerns.

On November 20, 2012, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) to obtain eligibility for a public trust position with a defense agency. (Item 4) Applicant was interviewed by a security investigator from the Office of Personnel Management (OPM) on February 21, 2013. (Item 5) 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 December 6, 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) implemented by DOD on September 1, 2006.

Applicant answered the SOR on January 4, 2016 (Item 3). She admitted 14 of the 15 allegations of delinquent debt. Applicant denied allegation SOR 1.b because it

was no longer on her credit report. Applicant also noted that SOR allegations 1.d through 1.l and allegation 1.o are not on her latest credit report. Applicant also claims that SOR allegation 1.c was paid, and that she is establishing payment plans for allegations 1.m and 1.n. She requested a decision on the record. Department Counsel submitted the Government's written case on April 13, 2016. Applicant received a complete file of relevant material (FORM) on April 14, 2016, and 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 on May 26, 2016. (Item 8) The case was assigned to me on February 23, 2017.

### **Procedural Issues**

Applicant was advised in the FORM that the summary of the Personal Subject Interview (PSI) with an OPM investigator (Item 5) 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 33 years old and graduated from high school in May 2003. She has post-high school education and has a certificate to operate a medical device. She never married but has a young child. Applicant experienced various periods of unemployment, some lengthy, since 2003. She did not receive unemployment compensation during her periods of unemployment but relied on her parents for support. She has been employed as a medical claims examiner for a health care agency with government contracts since February 2013. The health care agency is sponsoring her for a public trust position. (Item 4, e-QIP, dated November 19, 2012; Item 5, PSI, dated February 21, 2013)

The SOR alleges and credit reports (Item 6, dated December 18, 2012; Item 7, dated March 27, 2015) confirm 15 delinquent debts for Applicant from student loans, credit cards, telephone service, and medical bills. Applicant, in her answer to the SOR, admitted all of the debts except SOR 1.b. She denied this debt because it was no longer on her credit report. While she admitted other debts, she stated that some are not shown on her credit reports (SOR 1.d – 1.g, 1.k -1.l, and 1.o), or have been removed from the credit reports. (SOR 1.h – 1.j, and 1.i) She notes that two accounts has been paid in full (SOR 1.c, and 1.n), and that she has a payment plan in place for two others. (SOR 1.a and 1.m)

The total amount of the delinquent debt is approximately \$25,174. Applicant listed most of her delinquent debt on her e-QIP. She attributes her delinquent debt to

opening too many credit cards from 2004 and 2006. She used the cards to pay for living expenses, gas, food, and household items. Even though her mother advised her not to open the credit card accounts, she did not understand the consequences of credit debt until she fell behind on payments. (Item 5, PSI, at 4)

Applicant claims that she is making payments on her student loans at SOR 1.a, and 1.c. In response to the FORM, Applicant provided sufficient information to establish payments for the debt at SOR 1.a, and that the debt at SOR 1.c is paid in full. Applicant claims in her response to the SOR that she is establishing payment plans for the credit card debt at SOR 1.m and the medical debt at SOR 1.n. In her response to the FORM, Applicant provided sufficient information that the debts at SOR 1.m and 1.n are paid. (Item 8, Response to FORM)

In her answer to the SOR, Applicant claims that her remaining debts are no longer on her credit reports. Applicant did not provide any information on her plans to pay the debts, any payments on the debts, or the reasons why the debts were removed from the credit reports. As noted in the credit reports at Items 6 and 7, most of these debts were incurred from 2005 until 2010. The credit report states that most debts are removed seven years after being incurred. Thus, the debts are eligible to be removed from the credit reports because of their age. The credit reports provided by Applicant in answer to the FORM, do not state that the debts are being paid, have been paid, or otherwise settled. I conclude that Applicant failed to prove that the accounts were not deleted from the credit reports because of the passage of time.

### **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, thereby indicating poor self-control, lack of judgment, or unwillingness to abide by rules and regulation. These issues 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 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 position of trust. 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 debts 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.

These mitigating conditions do not apply. Applicant incurred delinquent debt starting in 2004, when she opened too many credit cards and had insufficient income to make her required debt payments. She had and used a number of credit cards, so she incurred debt frequently. Applicant's debts are numerous, recent, and were not incurred under circumstances making recurrence unlikely. She opened and used the credit cards herself so the conditions causing the debts were not unusual, beyond her control, and can recur. Applicant paid or is paying a limited number of her debts. However, she did not present information that she is addressing and resolving the majority of her debts. She has not established that she acted reasonably and responsibly under the circumstances. She did not present information on attempts to contact several creditors, payments made on several debts, or plans to resolve some debts. Instead, she appears to be relying on her debts being removed from her credit reports by the simple passage of time. While some debts may have been dropped from the current credit report, this occurrence does not necessarily establish mitigation. There is more than one plausible explanation for the absence of debts from a credit report, such as the removal of debt due to the passage of time. The absence of unsatisfied debts from an individual's credit report does not extenuate or mitigate the overall history of financial difficulties or constitute evidence of financial reform or rehabilitation.

Applicant presented no information that she received financial counseling. There is no indication that her financial problems are being resolved and are under control.

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 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 did not present any documents to establish any direct payment on most of the debts. She presented information that a medical debt, a personal loan, and a student loan were paid, and she is making payments on another student loan. However, she presented no information concerning her plans to pay her other debts. Without payment plan information, Applicant failed to establish a good-faith effort to the remaining debts alleged in the SOR. Applicant's failure to establish payment of or a plan to pay her debts shows that she has not acted reasonably and honestly with regard to her financial duties and obligations. She is not managing her personal financial obligations responsibly. Based on all of the financial information, I conclude that Applicant has not 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 has not established that she has a plan to resolve her delinquent debts except to let them come off her credit reports because of

the passage of time. She has not taken sufficient actions to reasonably and responsibly resolve her delinquent debts and manage her financial obligations within her resources. Accordingly, she has not established that she can be trusted to manage sensitive information. Overall, the record evidence leaves me with questions and doubts pertaining to Applicant's judgment, reliability, trustworthiness, and her eligibility and suitability for a trustworthiness clearance. For all these reasons, Applicant's 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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraphs 1.d – 1.l:	Against Applicant
Subparagraphs 1. m – 1.n	For Applicant
Subparagraph 1.o:	Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a public trust position. Eligibility for access to sensitive information is denied.

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THOMAS M. CREAN  
Administrative Judge