



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

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Applicant for Public Trust Position

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ADP Case No. 15-04205

**Appearances**

For Government: Pamela C. Benson Esquire, Department Counsel

For Applicant: *Pro se*

05/15/2017

**Decision**

HOWE, Philip S., Administrative Judge:

Applicant submitted her Electronic Questionnaires for Public Trust Position (e-QIP), on April 12, 2012. On December 31, 2015, the Department of Defense Consolidated Adjudications Facility (DoDCAF) issued a Statement of Reasons (SOR) for Applicant detailing the trustworthiness concerns under Guideline F (Financial Considerations). The action was taken under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program*, dated Jan. 1987, as amended (Regulation); and the adjudicative guidelines effective within the Department of Defense after September 1, 2006.

Applicant acknowledged receipt of the SOR on January 15, 2016. Applicant answered the SOR in writing on January 28, 2016, when she requested a hearing before an Administrative Judge. Her answer was incomplete and on February 12, 2016, she admitted or denied each allegation as required. Department Counsel was prepared to proceed on April 19, 2016. This case was originally assigned to another administrative judge on May 2, 2016. It was reassigned to me on October 14, 2016.

The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on November 21, 2016, and I convened the hearing as scheduled on December 21, 2016. The government offered Exhibits (Ex.) 1 through 4 which were received without objection. Applicant testified and submitted Exhibits A through F, without objection. I granted Applicant's request to keep the record open until January 31, 2017, to submit additional matters. She did not submit any additional exhibits. Department Counsel submitted a credit report dated January 6, 2017, as Exhibit 5. It was admitted without objection. The record closed on January 31, 2017.

DOHA received the transcript of the hearing (Tr.) on January 4, 2017. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to sensitive information is denied.

### **Findings of Fact**

In her Answer to the SOR Applicant admitted all the factual allegations in Paragraph 1 of the SOR, with explanations about the three debts (Subparagraph 1.a and two other debts she does not specifically identify in her Answer) she is paying, and the three debts (Subparagraphs 1.e, 1.f, and 1.l) she is seeking a bill with which to repay the debts. She also claims Subparagraph 1.q is not her debt. She also provided additional information to support her request for eligibility for a public trust position.

Applicant is 35 years old. She is currently married, following her previous divorce. Applicant has a child and an adult step-daughter with one grandchild from her present marriage. Her husband has been disabled since 2006. His payments each month are about \$800. She has an associate's degree in travel and tourism. She is employed by a defense contractor as a call center supervisor since 2013 earning about \$15 per hour, and her annual income is about \$30,000. She pays about \$525 for rent, having moved to a less expensive apartment. She also has car payments totaling about \$900 monthly. Applicant does not have any prior unemployment except in 2004 or military service. Applicant does not have a budget plan with which to resolve her delinquent debts. She does not have any credit cards, only a debit card. (Tr. 20-30, 59, 60; Exhibit 1)

Applicant has 20 delinquent debts totaling \$43,890. She is paying some of her debts by involuntary garnishment from her paycheck twice a month from 2012 to 2015 onward to the present. She paid \$15,079.34 by this method. She could not identify which debts were paid by garnishment and testified she would supply that information after the hearing, but never did so. She submitted exhibits showing she paid \$7,420.33 on her student loans (Subparagraph 1.a). Her employer reimbursed her corporate credit card (Subparagraph 1.q) and that debt of \$10,355 is paid. All other debts remain unpaid (Subparagraphs 1.b-1.p, 1.r to 1.t). They became delinquent starting in 2012. (Tr. 17-19, 31-54; Exhibits 2-5, A-F)

In June 2016, Applicant consulted once with a counseling service that helps people organize their finances and repay debts. There has not been any further action taken. (Tr. 48-50)

## 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 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 Administrative Guidelines (AG) ¶ 2 (a). 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 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 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**

### **Guideline F, Financial Considerations**

The trustworthiness concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

AG ¶ 18 expresses the security concern pertaining to financial considerations:

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 over-extended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

AG ¶ 19 describes nine conditions that could raise a trustworthiness? concern and may be disqualifying. Four conditions apply:

- (a) inability or unwillingness to satisfy debts;
- (b) indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt;
- (c) a history of not meeting financial obligations; and
- (e) consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis.

Applicant has significant delinquent debts with no realistic plan to repay them in an orderly and regular manner. Some debts were paid by garnishment in 2012 and 2013, but Applicant could not identify specifically which debts were paid as listed in the SOR. Her spending habits in view of her income during the past four years is irresponsible, and she lacks a realistic plan to repay the debt. The only debt she is paying on her own volition is her student loan. None of the other 19 delinquent debts are being paid. She has a history for at least the past four years of not meeting her financial obligations. Applicant consistently spent beyond her income as shown by her

excessive indebtedness and high debt-to-income ratio. These four disqualifying conditions are established.

The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination. The burden of proof is on Applicant to show which, if any, mitigating conditions apply.

AG ¶ 20 provides six conditions that could mitigate security concerns. None of them apply to Applicant's financial situation:

- (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;
- (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; and
- (f) the affluence resulted from a legal source of income.

Applicant's financial situation is current and continuing. She has not established a plan to repay her debts except regarding her student debt, the details of which she did not disclose. Other debts were paid by garnishment, but Applicant could not state which debts were paid by that method. Garnishment does not demonstrate a good-faith effort to resolve debts because the money is taken involuntarily by law and paid to the creditor. AG ¶ 20 (a) and (d) are not established.

There are no periods of unemployment nor unexpected medical emergencies. Applicant did not show she acted responsibly under the circumstances. AG ¶ 20 (b) is not established.

Applicant consulted only once with some type of financial advisor in June 2016. She did not show that any positive action regarding her debts resulted from that

consultation. There is no evidence her delinquent debt problem is resolved or under control. AG ¶ 20 (c) is not established.

Applicant did not dispute any debt. There is no affluence involved in Applicant's financial situation. Neither AG ¶ 20 (e) or (f) are established.

### **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 the 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 a public trust position 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 voluntarily spent the money which she borrowed and now owes. She incurred various debts by contracting for particular services. She has not repaid them and the behavior continues to the present day. There is no plan to pay the debts except for the student debt. She resolved the debt owed on her company credit card that she used only for business purposes. Applicant spends monthly nearly what she earns because of rent and auto loan costs. Her financial situation is likely to continue for some time.

Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a public trust position. For all these reasons, I conclude Applicant did not mitigate the trustworthiness concerns arising from her financial considerations.

## **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
Subparagraph 1.a and 1.q:	For Applicant
Subparagraph 1.b to 1.p:	Against Applicant
Subparagraph 1.r to 1.t:	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.

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PHILIP S. HOWE  
Administrative Judge