



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



In the matter of:

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ADP Case No. 15-05246

Applicant for Public Trust Position

**Appearances**

For Government: Caroline E. Heintzelman, Esq., Department Counsel

For Applicant: *Pro se*

03/31/2017

**Decision**

Noel, Nichole L., Administrative Judge:

Applicant contests the Defense Department's intent to deny her eligibility for a public trust position in the defense industry. Applicant admits having financial problems spanning more than 20 years. She failed to present the evidence of financial rehabilitation or reform needed to mitigate the concerns raised in the SOR. Accordingly, her eligibility for access to sensitive information is denied.

**Statement of the Case**

On March 21, 2016, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing trustworthiness concerns under the financial considerations guideline.<sup>1</sup> DOD adjudicators were unable to find that it is clearly consistent with national security to grant or continue Applicant's access to sensitive information and

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<sup>1</sup> This case is adjudicated under DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). The *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply to this case. The AG replace the guidelines in Enclosure 2 to the Directive.

recommended that the case be submitted to an administrative judge for a determination whether to revoke or deny Applicant's eligibility to occupy a public trust position.

Applicant timely answered the SOR and requested a hearing. On June 23, 2016, I issued a pre-hearing order to the parties regarding the exchange and submission of discovery, the filing of motions, and the disclosure of any witnesses. The parties complied with the order. At the hearing, which proceeded as scheduled on July 14, 2016, I admitted Hearing Exhibits I through II and Government's Exhibits (GE) 1 through 4, without objection. I left the record open until August 31, 2016, to allow Applicant to submit additional documentation regarding her finances. She timely submitted AE A and B, which are also admitted without objection.<sup>2</sup> The Defense Office of Hearing and Appeals (DOHA) received the transcript (Tr.) on July 22, 2016.

### **Findings of Fact**

Applicant has worked for a federal contractor since February 2015. Her position requires access to personally identifiable information (PII), and requires that she obtain eligibility to occupy a public trust position. Based on the disclosures in her January 2015 eligibility application, her March 2013 subject interview, and the two credit reports in the record from February 2015 and 2016, respectively, the SOR alleges that Applicant owes approximately \$22,500 in delinquent debt on eight accounts and that she has at least one delinquent student loan account.<sup>3</sup>

Applicant testified that her financial problems began after her second marriage ended in divorce in 1993. She struggled to raise her two children, now adults, without child support. However, Applicant could not identify any events occurring within the last five to ten years that have negatively affected her ability to pay her bills.<sup>4</sup>

Applicant worked as federal employee from July 2009 to September 2014. She was a GS-7, step 6, earning approximately \$50,000 annually. Applicant testified that because of the rising cost of living in her city, she could not afford to meet all of her financial obligations. She decided to relocate to a city with a lower cost of living. Applicant took a two-month unpaid leave of absence to look for employment in the new location. She resigned her federal position and relocated in October 2014, taking a significant pay cut. She liquidated her TSP account and used the funds, approximately \$8,500, to pay some bills and buy furniture for her new apartment. Applicant currently earns \$15.75 per hour. She struggles to make ends meet on her current salary. After paying her recurring bills, Applicant testified that she only has enough money to pay for gas and food.<sup>5</sup>

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<sup>2</sup> HE III.

<sup>3</sup> Tr. 17; GE 1-4.

<sup>4</sup> Tr. 18.

<sup>5</sup> Tr. 19-24, 34; GE 1.

Currently, Applicant has resolved two of the alleged SOR debts, ¶¶1.a. and 1.g, which she settled for less than the full amounts. In March 2016, the Government began an involuntary garnishment to recover the balance of Applicant's delinquent student loans. (SOR ¶ 1.b) Applicant claims to have resolved the debts alleged in SOR ¶¶ 1.g and 1.i, but she did not provide any corroborating documentation. In her post-hearing submissions, Applicant provided an August 2016 certificate of debtor education, showing that she completed the financial counseling class required before an individual can petition a court for bankruptcy protection. It is unclear if Applicant filed for bankruptcy protection.<sup>6</sup>

## **Policies**

Positions designated as ADP I and ADP II are classified as "sensitive positions."<sup>7</sup> "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 national interests."<sup>8</sup> 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.<sup>9</sup> An administrative judge's objective is a fair, impartial, and commonsense decision that embraces all available, reliable information about the person, past and present, favorable and unfavorable.

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 to obtain a favorable security decision.

A person who seeks access to a public trust position 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 classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of sensitive information.

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<sup>6</sup> Tr. 25-35; AS A-B.

<sup>7</sup> Regulation ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3.

<sup>8</sup> Regulation ¶ C6.1.1.1.

<sup>9</sup> See Regulation ¶C8.2.1.

## Analysis

### Guideline F, Financial Considerations

Unresolved delinquent debt is a serious concern because failure to “satisfy debts [or] 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.”<sup>10</sup> Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding sensitive information.

The SOR alleges that Applicant owes approximately \$22,500 in delinquent debt and she has past-due student loans. The credit reports in the record establish the Government’s *prima facie* case. Applicant has demonstrated an inability to pay her bills and a history of financial problems resulting in unresolved delinquent debts.<sup>11</sup> Applicant failed to submit sufficient evidence to mitigate the trustworthiness concerns. She admits having financial problems dating back to the early 1990s caused by a divorce. While a divorce may have negatively affected her finances for some time, it does not explain the financial problems she has experienced for the better part of the last two decades. Even after undertaking a major move with the intention of lowering her cost of living, Applicant’s financial problems seem to persist. Although she has settled two of the alleged accounts and her wages are being garnished to resolve her student loans, this is not enough to demonstrate financial rehabilitation or reform.

After reviewing the record, I have doubts about Applicant’s suitability for access to sensitive information. In reaching this conclusion, I have also considered the whole-person factors at AG ¶ 2(a). Ultimately, Applicant did not meet her burdens of production or persuasion to merit a favorable decision in this case. She did not present sufficient evidence to establish that her finances are under control or that she has a plan for resolving her remaining delinquent accounts.

### 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.i:

Against Applicant

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<sup>10</sup> AG ¶ 18.

<sup>11</sup> AG ¶¶ 19(a) and (c).

## **Conclusion**

In light of all of the circumstances presented, it is not clearly consistent with the interests of national security to grant Applicant access to sensitive information. Applicant's eligibility to occupy a position of trust is denied.

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Nichole L. Noel  
Administrative Judge