



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



In the matter of:	)	
	)	
[Redacted]	)	ADP Case No. 15-05528
	)	
Applicant for Public Trust Position	)	

**Appearances**

For Government: Richard Stevens, Esquire, Department Counsel  
For Applicant: *Pro se*

04/24/2017

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**Decision**

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FOREMAN, LeRoy F., Administrative Judge:

This case involves trustworthiness concerns raised under Guideline F (Financial Considerations). Eligibility for a public trust position is denied.

**Statement of the Case**

Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) on December 9, 2014. On February 3, 2016, the Department of Defense (DOD) sent her a Statement of Reasons (SOR), citing trustworthiness concerns under Guideline F. DOD acted 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) implemented by DOD on September 1, 2006. The AG are codified in 32 C.F.R. § 154, Appendix H (2006), and they replaced the guidelines in Appendix 8 of the Regulation.

Applicant answered the SOR on February 27, 2016, and requested a decision on the record without a hearing. Department Counsel submitted the Government's written case on March 29, 2016. On April 1, 2016, a complete copy of the file of relevant material (FORM) was sent to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence.

Applicant received the FORM on April 18, 2016, and did not respond.<sup>1</sup> The case was assigned to me on March 21, 2017.

### **Findings of Fact**

In her answer to the SOR, Applicant admitted all the delinquent debts alleged in the SOR. I have incorporated her admissions in my findings of fact.

Applicant is a 63-year-old resolution team lead employed by a federal contractor since October 2012. In her e-QIP, she stated that she has never been granted a security clearance, but the record does not reflect whether she has previously been cleared for a public trust position.

Applicant married in July 1974, divorced in November 1985, married in March 1996, and divorced in November 2009. She has a 20-year-old daughter. She obtained an associate's degree from a community college in 1978.

The SOR alleges 14 delinquent debts totaling about \$78,474, which are reflected in a credit bureau report (CBR) from December 2014. Applicant asserted and Department Counsel conceded that the debts alleged in SOR ¶¶ 1.g and 1.j-1.l duplicated other debts alleged in the SOR.

Applicant stated in her answer that the debts alleged in SOR ¶¶ 1.f-1.j were related to a business owned jointly with her husband and that the divorce decree awarded her husband sole ownership of the business. However, she provided no evidence that the divorce decree allocated responsibility for the business-related debts or the non-business marital debts. The December 2014 CBR reflected that the debts alleged in SOR ¶¶ 1.a-1.f, 1.i, and 1.k-1.m were individual accounts in Applicant's name, that Applicant was an authorized user on the account alleged in SOR ¶ 1.n, and that the debt alleged in SOR 1.k was disputed. Applicant provided no documentary evidence that any debts were paid, were being paid, or were otherwise resolved.

### **Policies**

Positions designated as ADP I and ADP II are classified as "sensitive positions." 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 the person's loyalty, reliability, and trustworthiness are such that assigning the person to sensitive duties is "clearly consistent with the

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<sup>1</sup> The FORM included six items, including a summary of a personal subject interview (PSI) conducted in April 2015 and included in a Report of Investigation completed by the Office of Personnel Management (Item 4). The PSI was not authenticated as required by the Directive ¶ E3.1.20. Department Counsel informed Applicant that she was entitled to comment on the accuracy of the PSI summary; make any corrections, additions, deletions or updates; or object to consideration of the PSI on the ground that it was not authenticated. I conclude that Applicant waived any objections to Item 4 by failing to respond. Although *pro se* applicants are not expected to act like lawyers, they are expected to take timely and reasonable steps to protect their rights under the Directive. ISCR Case No. 12-10810 at 2 (App. Bd. Jul. 12, 2016).

interests of national security.” Regulation ¶ C6.1.1.1. DOD contractor personnel are entitled to the procedural protections in the Directive before any final unfavorable access determination may be made. Regulation ¶ C8.2.1.

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. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard sensitive information.

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 an evaluation of the whole person. The administrative judge’s overarching adjudicative goal is a fair, impartial and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The protection of the national security is the paramount consideration. Under AG ¶ 2(b), “[a]ny doubt concerning personnel being considered for access to [sensitive] information will be resolved in favor of national security.” The Government must present substantial evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). An applicant has the ultimate burden of demonstrating that it is clearly consistent with national security to grant or continue eligibility for access to sensitive information.

## **Analysis**

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

The concern under this guideline is set out in AG ¶ 18:

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 a person might knowingly compromise sensitive information to raise money. It encompasses concerns about a

person's self-control, judgment, and other qualities essential to protecting sensitive information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding sensitive information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant asserted and Department Counsel conceded that the debts alleged in SOR ¶¶ 1.g-1.l were duplicates of other debts alleged in the SOR. When the same conduct is alleged twice in the SOR under the same guideline, one of the duplicative allegations should be resolved in Applicant's favor. See ISCR Case No. 03-04704 at 3 (App. Bd. Sep. 21, 2005) (same debt alleged twice). Accordingly, I have resolved SOR ¶¶ 1.g, 1.j-1.l in favor of Applicant.

Applicant was an authorized user on the account alleged in SOR ¶ 1.n. As such, she was not legally liable for this debt. Thus, I have resolved SOR ¶ 1.n in her favor.

Applicant's admissions, corroborated by the December 2014 CBR, establish the debts alleged in SOR ¶¶ 1.a-1.f, 1.h, 1.i, and 1.m, and are sufficient to establish two disqualifying conditions under this guideline: AG ¶ 19(a) ("inability or unwillingness to satisfy debts") and AG ¶ 19(c) ("a history of not meeting financial obligations").

The following mitigating conditions under this guideline are potentially applicable:

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;

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(d): the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(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.

None of the above mitigating conditions are established. Applicant's debts are numerous, recent, and were not incurred under circumstances making them unlikely to recur. Applicant's divorce and its impact on the jointly owned business were conditions

largely beyond her control, but she has not acted responsibly. She provided no evidence of payments, payment agreements, or other attempts to resolve the debts. She disputed the debt alleged in 1.k, but she provided no evidence of the basis for the dispute, and it apparently was resolved against her. She has not disputed any of the other debts, except for pointing out that some of the debts were duplicates.

### **Whole-Person Concept**

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. In applying the whole-person concept, an 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. 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.

I have incorporated my comments under Guideline F in my whole-person analysis and have considered the factors in AG ¶ 2(a). Because Applicant requested a determination on the record without a hearing, I had no opportunity to evaluate her credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003).

After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the trustworthiness concerns raised by her delinquent debts. Accordingly, I conclude she has not carried her burden of showing that it is clearly consistent with national security to grant her eligibility for a public trust position.

### **Formal Findings**

Paragraph 1, Guideline F (Financial Considerations): **AGAINST APPLICANT**

Subparagraphs 1.a-1.f, 1.h-1.i, and 1.m: **Against Applicant**

Subparagraphs 1.g, 1.j-1.l, and 1.n: **For Applicant**

## **Conclusion**

I conclude that it is not clearly consistent with national security to grant Applicant eligibility for a public trust position. Eligibility for a public trust position is denied.

LeRoy F. Foreman  
Administrative Judge