



**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. 15-05668

**Appearances**

For Government: Jeff A. Nagel, Esquire

For Applicant: *Pro se*

03/29/2017

**Decision**

MARSHALL, Jr., Arthur E., Administrative Judge:

**Statement of the Case**

On April 20, 2016, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing concerns under Guideline F (Financial Considerations) regarding her eligibility to occupy an automated data processing (ADP) position designated ADP-I/II/III. 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 the Adjudicative Guidelines (AG) effective within the DOD on September 1, 2006.

Applicant timely responded to the SOR, admitting all allegations, and requested a determination based on the written record. On June 6, 2016, the Government issued a File of Relevant Material (FORM) with five attachments ("Items"). Applicant timely responded to the FORM with a letter and financial attachments (10 pages). The case was assigned to me on March 23, 2017. Based on my review of the case file and submissions, I find Applicant mitigated financial considerations security concerns.

**Findings of Fact**

Applicant is a 46-year-old quality auditor. She has worked for the same employer for almost 10 years. She earned an associate's degree in 1992 and a non-degree diploma

for other studies in 1995. She is married and has one adult child. She has maintained some level of clearance since 2006. (FORM, Item 2 at 24-26)

In 2000, Applicant started having financial difficulties when her husband lost his job. He was unemployed off and on until 2012. During that time, they got behind on their bills, but still managed to meet their regular obligations. In 2013, Applicant's husband was in an automobile accident. His injuries demanded a protracted period of time off from his new place of employment. Meanwhile, while the couple lived off her income, a replacement family car had to be obtained. In the end, the accident led to some accounts going into collection.

Applicant no longer acquires debt. She apparently did not know the full extent of her old debt issues until she met with investigators in 2015. She acted on most of the debts noted in the April 2016 SOR before responding to the June 2016, FORM. She now lives within her means and has both expressed and demonstrated her willingness to pay her delinquent debts, but has not received financial counseling. [FORM, Item 3]

At issue are eight delinquent debts, amounting to about \$15,400. They are reflected in the SOR under allegations 1.a-1.h and are based on a credit report.<sup>1</sup> The related debts are noted below with comments by the Applicant and, where applicable, reference to offered documentation:

1.a-1.b – Student loans - \$3,981, \$2,839 – “In the process of making payment arrangements with [named entity],” but no documentary evidence was offered reflecting these efforts.

1.c – Telecommunications collection - \$70 – “I have paid this balance off.” Applicant then noted a balance paid (\$70) and a reference number, but no documentary evidence concerning the transaction for verification.

1.d – Collection account - \$1,686 – “Paid off,” with an account number and reference number provided. The Government's Ex. 5 reflects considerable improvement on this general merchandise card balance since the credit report at Ex. 4, including a reduced balance of \$286. Applicant's materials include a letter from the creditor with an account number reflecting the one at issue noting it was paid in full. (FORM Response)

1.e – Bank collection - \$1,859 – “Payment arrangement.” Applicant provided documentary evidence reflecting she made a payment of \$158 on this credit card account on May 31, 2016, thus reducing her balance. (FORM Response)

1.f – Bank collection - \$4,708 – “I have made payment arrangements.” Applicant provided a June 3, 2016, letter showing that a repayment plan had been negotiated, including a

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<sup>1</sup> The FORM includes two credit reports. Item 4 is a full data credit report dated October 18, 2004, and February 10, 2015. Item 5 contains Equifax reports dated March 11, 2016, and June 5, 2016. The Government noted that the June 5, 2016, shows three accounts charged-off and two accounts in collection. See FORM at 2.

schedule for future payments toward this credit card balance, but no evidence was submitted showing repayments have commenced. (FORM Response)

1.g – Telecommunications collection - \$171 – “Made payment arrangement for 7/21/16 & 8/21/2016 to pay off.” Applicant provided a reference number for the contemplated transaction, but no corroborative documentary evidence was offered for verification.

1.h – Medical account - \$111 – “I called, no one answered. I will call back. I don’t recall a medical bill. Will make a payment arrangement.” No documentary evidence reflecting an arrangement was offered for verification.

## **Policies**

When evaluating an applicant’s suitability for a position of trust, the administrative judge must consider the adjudicative guidelines. The adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant’s eligibility for access to protected information.

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. Under 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 in making a decision. The protection of secure information is paramount.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and has the ultimate burden of persuasion to obtain a favorable decision.”

A person who seeks a public trust position enters into a fiduciary relationship with the Government predicated upon trust and confidence that transcends normal duty hours. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard information. Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

## **Analysis**

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

Under Guideline F, AG ¶ 18 sets forth the applicable trustworthiness 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 classified information. Here, the Government introduced credible evidence showing Applicant has eight delinquent debts. Such facts raise the following disqualifying conditions:

AG ¶ 19(a) inability or unwillingness to satisfy debts, and

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

Five conditions could mitigate these financial concerns:

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.

From 2000 through 2012, Applicant's husband went from losing a job, then bouncing between periods of unemployment and employment for a dozen years. Despite these setbacks, Applicant struggled to make ends meet. Then, in 2013, Applicant's husband was in a car accident. Injured, he missed work for a period of time as he recuperated. Meanwhile, a replacement vehicle needed for family transportation was acquired. Applicant's use of credit and store cards in times when money was tight can be seen through the delinquent credit card balances. Throughout that time, Applicant maintained steady employment and endeavored to ward off the acquisition of new delinquent debt. It appears that since her husband's accident, Applicant has been able to pay off the balance on at least one of those credit cards. Given the circumstances and Applicant's efforts to manage their debts in a way to diminish their acquisition of more delinquencies, AG ¶ 20(b) applies.

Applicant's explanations are helpful for her cause, but her lack of documentation does her a disservice. This is true even though her inclusion of reference numbers for payments tends to be persuasive, but cannot substitute for tangible documentation in this proceeding. However, on her salary as a quality auditor in pursuit of ADP eligibility, it is notable that she paid in full the credit account at 1d, started payment on the equally substantial debt at 1.e, and recently negotiated a repayment schedule on the debt at 1.f.

Applicant is working with her creditors to set up an appropriate plan for addressing her approximately \$6,700 in student loans, which can be a manageable, but protracted and confusing process. The rest are in want of attention or better corroboration than the reference numbers provided. However, given the progress made between learning of all the debts at issue from investigators and the issuance of the FORM, I find the progress thus far documented reflects a good faith effort to address her debts, and measured movement toward resolving her debts. Therefore, I find AG ¶ 20(c)-(d) apply.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a position of trust by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the adjudicative process factors listed at AG ¶ 2(a). Under AG ¶ 2(c), the final determination of whether to grant eligibility for a position of trust must be an overall commonsense judgment based on 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. I incorporate my comments under the guideline at issue in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is a 46-year-old quality auditor seeking new or continued eligibility for an ADP position. She has worked for the same employer for almost 10 years, maintaining some level of clearance without adverse incident. Applicant has both an associate's degree and a subsequent non-degree diploma for other studies. She is married and has one adult child.

With family coffers compromised for much of 2000 to 2012, while her husband maintained intermittent employment, Applicant continued to manage their household and raise her child with their varying income. In 2013, Applicant's husband was injured in an automobile accident. As a result, he required time away from his new job to recuperate, and they had to acquire a new vehicle for family transportation. Although Applicant had tried to keep her creditors paid, this development was overwhelming. Credit cards, in particular, were overused and became delinquent.

Applicant met with investigators in 2015, then received the April 2016 SOR. By the time she responded to the June 2016 FORM, she had paid off one notable credit card debt of close to \$1,700; started repayment on an account with a balance of about \$1,850;

negotiated and received a repayment plan and schedule from one creditor; and made contact with others. Clearly, more progress is needed to resolve her past debt. Today, however, she is living within her means. She has not only expressed, but demonstrated, the willingness and intent to address all of her delinquent debts.

This process does not require an applicant to address all debts at issue. It does however, expect an applicant to demonstrate or reflect a workable plan to address delinquent debts, and show that the plan has been successfully implemented. Sufficient facts and documentation were shown to indicate progress is being made in a measured, manageable manner. I find financial considerations security concerns are mitigated.

### **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:	FOR APPLICANT
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Subparagraphs 1.a-1.h:	For Applicant
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### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to permit Applicant to maintain a public trust position. Eligibility for a public trust position is granted.

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Arthur E. Marshall, Jr.  
Administrative Judge