



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



In the matter of:

---

Applicant for Public Trust Position

)  
)  
)  
)  
)

ADP Case No. 15-05871

**Appearances**

For Government: Douglas R. Velvel, Esquire, Department Counsel

For Applicant: *Pro se*

08/26/2016

**Decision**

GALES, Robert Robinson, Administrative Judge:

Applicant has mitigated the trustworthiness concerns regarding financial considerations. Eligibility to occupy a public trust position is granted.

**Statement of the Case**

On December 10, 2014, Applicant applied for a public trust position and submitted an Electronic Questionnaire for Investigations Processing (e-QIP).<sup>1</sup> On February 28, 2016, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to her, pursuant to DOD Regulation 5200.2-R, *Personnel Security Program*, dated January 1987, as amended and modified (Regulation); DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (effective within the DOD on September 1, 2006) (AG) for all adjudications and other determinations made under the Directive. The SOR alleged trustworthiness concerns under Guideline F (Financial Considerations), and detailed

<sup>1</sup> GE 1 (e-QIP, dated December 10, 2014).

reasons why the DOD adjudicators were unable to make an affirmative finding under the Directive that it is clearly consistent with the interests of national security to grant or continue Applicant's eligibility for occupying a public trust position to support a contract with the DOD. The SOR recommended referral to an administrative judge to determine whether such eligibility should be granted, continued, denied, or revoked.

Applicant acknowledged receipt of the SOR on March 14, 2016. In a sworn statement, dated March 24, 2016, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. On April 19, 2016, Department Counsel indicated the Government was prepared to proceed. The case was assigned to me on June 6, 2016. A Notice of Hearing was issued on June 28, 2016. I convened the hearing, as scheduled, on July 14, 2016.

During the hearing, four Government exhibits (GE 1 through GE 4), ten Applicant exhibits (AE A through AE J), and one administrative exhibit were admitted into evidence without objection. Applicant testified. The transcript (Tr.) was received on July 26, 2016. I kept the record open to enable Applicant to supplement it. Applicant took advantage of that opportunity. She timely submitted a number of additional documents, which were marked as AE K through AE P, and admitted into evidence without objection. The record closed on August 11, 2016.

### **Findings of Fact**

In her Answer to the SOR, Applicant admitted, with comments and explanations, all of the factual allegations pertaining to financial considerations (§§ 1.a. through 1.e.) of the SOR. Applicant's admissions, comments, and explanations, are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 56-year-old employee of a defense contractor. She has been a full-time claims auditor for a defense contractor since July 1999.<sup>2</sup> She is seeking to retain her eligibility for occupying a public trust position to support a contract with the DOD. She has never served in the U.S. military.<sup>3</sup> She is a 1978 high school graduate.<sup>4</sup> Applicant was married in October 1989 and has been informally separated since December 1999.<sup>5</sup> She has two daughters, born in 1990 and 1995.<sup>6</sup>

---

<sup>2</sup> GE 1, *supra* note 1, at 9-10.

<sup>3</sup> GE 1, *supra* note 1, at 11.

<sup>4</sup> GE 1, *supra* note 1, at 8-9.

<sup>5</sup> GE 1, *supra* note 1, at 13-14.

<sup>6</sup> GE 1, *supra* note 1, at 17.

## Financial Considerations<sup>7</sup>

There was nothing unusual about Applicant's finances until sometime in late 1999 when her husband left the marital residence, leaving Applicant with two small children and zero child support.<sup>8</sup> With insufficient income to fully support her children, Applicant resorted to credit card utilization and reliance. The result was increased account balances, and the commencement of a downward spiral of her finances, eventually leading to account delinquencies. Accounts were placed for collection. Starting in April 2013, and continuing for approximately one year, Applicant utilized the professional services of a debt consolidation, settlement, and payment organization, in an effort to resolve her debts. She paid the company \$500 each month during that period, but had to stop when she had insufficient funds to continue doing so.<sup>9</sup> As soon as she had accumulated additional funds to be able to restart her debt resolution efforts, Applicant contacted her creditors to set up repayment plans and start making payments.

The SOR identified five purportedly continuing delinquent accounts, totaling approximately \$15,523, as reflected by the December 2014 credit report,<sup>10</sup> and the June 2015 credit report.<sup>11</sup> Those debts and their respective current status, according to the credit reports, other evidence submitted by the Government and Applicant, and Applicant's comments regarding same, are described below:

SOR ¶ 1.a.: This is a credit card with a \$13,200 credit limit and a past-due balance of \$13,904 that was placed for collection. In October 2013, \$15,238 was charged off.<sup>12</sup> Some payments were made through the debt consolidation, settlement, and payment organization in 2013, but they eventually stopped. Applicant subsequently contacted the collection agent to establish a repayment plan, and under that plan, with the initial payment of \$100 made in March 2016,<sup>13</sup> commencing in April 2016, she has made monthly payments of \$200.<sup>14</sup> In July 2016, the collection agent noted that the remaining balance had been reduced to \$13,004.82, and it offered Applicant a settlement of \$5,000 to resolve the account.<sup>15</sup> It is unclear if Applicant accepted the offer

---

<sup>7</sup> General source information pertaining to the financial accounts discussed below can be found in the following exhibits: GE 1, *supra* note 1; GE 3 (Combined Experian, TransUnion, and Equifax Credit Report, dated December 20, 2014); GE 2 (Equifax Credit Report, dated June 2, 2015); GE 4 (Personal Subject Interview, dated March 24, 2015); Answer to the SOR, dated March 24, 2016. More recent information can be found in the exhibits furnished and individually identified.

<sup>8</sup> GE 4, *supra* note 7, at 2; Tr. at 28-30.

<sup>9</sup> GE 4, *supra* note 7, at 2; Tr. At 48-49.

<sup>10</sup> GE 3, *supra* note 7.

<sup>11</sup> GE 2, *supra* note 7.

<sup>12</sup> GE 3, *supra* note 7, at 5.

<sup>13</sup> Answer to the SOR, *supra* note 7, at 3.

<sup>14</sup> AE G (Letter, dated April 8, 2016); AE H (Letter, dated May 9, 2016); Tr. at 42.

<sup>15</sup> AE K (Letter, dated July 20, 2016).

or if she simply continues to make her monthly payments. The account is in the process of being resolved.

SOR ¶ 1.b.: This is a bank credit card with a \$1,000 credit limit and unpaid and past-due balance of \$1,031 that was placed for collection.<sup>16</sup> Applicant contacted the collection agent to establish either a settlement agreement or a repayment plan, and both were achieved. Under the settlement agreement, the balance was reduced to \$515.69, and Applicant made an initial payment of \$91.67 in March 2016.<sup>17</sup> Applicant was obligated to make four monthly payments of \$106, for a total of \$424, and the remainder would be forgiven and the account satisfied.<sup>18</sup> She made those four payments.<sup>19</sup> The account has been resolved.

SOR ¶¶ 1.c., 1.d., and 1.e.: These are medical accounts for professional services received by Applicant or her daughters with unpaid balances of \$438, \$55.60, and \$93.60 that were placed for collection.<sup>20</sup> Applicant was not aware of the outstanding balances until she saw them in her credit report because she has health insurance. She contacted the collection agents to set up repayment plans. Using her debit card, Applicant paid one collection agent \$55.60 and \$93.60 on March 15, 2016,<sup>21</sup> and the other collection agent \$438 the following day.<sup>22</sup> The accounts have been resolved.

Applicant has vowed to never put herself into this type of financial situation again, and indicated she would get a second job if necessary. She stopped using credit cards, and she only uses her debit card or cash for all her financial transactions. Now that her daughters are independent, her expenses have been substantially reduced.<sup>23</sup> Applicant's Personal Financial Statement indicates a monthly net income of \$2,200, and normal monthly expenses, including her continuing credit card payments and miscellaneous payments, of \$2,209. Although she calculated that she had a monthly remainder of \$332 available for saving or spending,<sup>24</sup> it appears that she erred somewhere because, based on her figures, she would have a \$9 deficit each month.<sup>25</sup>

---

<sup>16</sup> GE 3, *supra* note 7, at 5; GE 2, *supra* note 7, at 2.

<sup>17</sup> Answer to the SOR, *supra* note 7, at 3.

<sup>18</sup> AE C (Letter, dated March 22, 2016).

<sup>19</sup> AE D (Letter, dated April 6, 2016); AE E (Letter, dated May 6, 2016); AE F (Letter, dated June 7, 2016); AE A (Letter, dated July 6, 2016).

<sup>20</sup> GE 3, *supra* note 7, at 8.

<sup>21</sup> Answer to the SOR, *supra* note 7, at 4; AE B (Letter, dated March 16, 2016); Tr. At 45-47.

<sup>22</sup> Answer to the SOR, *supra* note 7, at 4; AE I (Letter, dated March 18, 2016); Tr. At 45-47.

<sup>23</sup> Tr. at 37, 44.

<sup>24</sup> AE O (Personal Financial Statement, undated).

<sup>25</sup> Applicant received a salary increase three days before the hearing, and it appears that she may have failed to consider that increase when calculating her monthly net income. See Tr. at 30, 34; AE J (Letter, dated June 30, 2016).

She has between \$5,000 and \$10,000 in her 401(k) retirement account.<sup>26</sup> Applicant has no other outstanding debts. In the absence of any additional unidentified delinquencies, it appears that Applicant's financial problems are finally under control.

## **Character References and Community Service**

Applicant's direct supervisor, currently the manager of customer service, has known Applicant since July 1999. He characterized her as a detailed, hardworking, loyal, and trustworthy team member who requires very little supervision. He noted that Applicant had been promoted several times, taking on higher levels of responsibility each time.<sup>27</sup> The vice president of the engagement center described Applicant as possessing a strong work ethic, dedication, and organization skills. She is an exemplary employee who has received high marks on her annual evaluations for exceeding expectations.<sup>28</sup>

## **Policies**

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a [position of public trust]."<sup>29</sup> As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. Positions designated as ADP-I and ADP-II are classified as "sensitive positions."<sup>30</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 interests of national security."<sup>31</sup> DOD contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination may be made.<sup>32</sup>

When evaluating an applicant's suitability for a public trust position, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating

---

<sup>26</sup> Tr. at 35.

<sup>27</sup> AE M (Character Reference, dated July 19, 2016).

<sup>28</sup> AE N (Character Reference, dated July 21, 2016).

<sup>29</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

<sup>30</sup> Regulation ¶¶ C3.1.2.1.1.7, C3.1.2.1.2.3, and C3.1.2.2. See also Regulation app. 10, ¶ 10.2.

<sup>31</sup> Regulation ¶ C6.1.1.1.

<sup>32</sup> Regulation ¶ C8.2.1. It should be noted that a memorandum from the Deputy Under Secretary of Defense for Counterintelligence and Security, *Adjudication of Trustworthiness Cases*, dated November 19, 2004, covers the handling of trustworthiness cases under the Directive. The memorandum directed the Defense Office of Hearings and Appeals (DOHA) to continue to utilize the Directive in ADP contractor cases for trustworthiness determinations.

conditions, which are used in evaluating an applicant's eligibility for a public trust position.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging 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 common sense decision. 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 meaningful decision.

In the decision-making process, facts must be established by "substantial evidence."<sup>33</sup> The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government's case. The burden of disproving a mitigating condition never shifts to the Government.<sup>34</sup>

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 as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those 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 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. Furthermore, security clearance determinations, and by inference, public trust determinations, should err, if they must, on the side of denials.<sup>35</sup> 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.

---

<sup>33</sup> "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994).

<sup>34</sup> See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

<sup>35</sup> *Egan*, 484 U.S. at 531.

## Analysis

### Guideline F, Financial Considerations

The trustworthiness concern relating to the guideline for Financial Considerations 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. . . .

The guideline notes several conditions that could raise trustworthiness concerns. Under AG ¶ 19(a), an "inability or unwillingness to satisfy debts" is potentially disqualifying. Also, under AG ¶ 19(c), "a history of not meeting financial obligations" may raise trustworthiness concerns. Applicant's initial financial problems arose in 1999 when she started resorting to credit card utilization and reliance to pay her bills. Increased account balances and insufficient funds to maintain those balances in a current status resulted in delinquencies. Accounts were placed for collection and one was charged off. AG ¶¶ 19(a) and 19(c) have been established.

The guideline also includes examples of conditions that could mitigate trustworthiness concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where "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." Also, under AG ¶ 20(b), financial trustworthiness concerns may be mitigated where "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." Evidence that "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" is potentially mitigating under AG ¶ 20(c). Similarly, AG ¶ 20(d) applies where the evidence shows "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts."<sup>36</sup>

---

<sup>36</sup> The Appeal Board has previously explained what constitutes a good-faith effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the "good-faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term "good-faith." However, the Board has indicated that the concept of good-faith "requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation." Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy [or statute of limitations]) in order to claim the benefit of [the "good-faith" mitigating condition].

AG ¶¶ 20(b), 20(c), and 20(d) apply. AG ¶ 20(a) does not apply. The nature, frequency, and recency of Applicant's continuing multi-year period of financial difficulties since 1999 make it difficult to conclude that it occurred "so long ago" or "was so infrequent." Applicant's initial financial problems were caused by events that were largely beyond her control: her husband left the marital residence, leaving Applicant with two small children and zero child support. What followed was an extended period of her reliance on credit cards to pay her bills. With insufficient income to address her debts, those accounts lay dormant until 2013.

During 2013 and 2014, Applicant utilized the professional services of a debt consolidation, settlement, and payment organization in an effort to resolve her debts. She paid the company \$500 each month during that period, but had to stop when she had insufficient funds to continue doing so. As soon as she had accumulated additional funds to be able to restart her debt resolution efforts, Applicant contacted her creditors to set up repayment plans and started making payments. She is on a repayment plan with one creditor and has reduced the original unpaid balance of \$15,238 to a more manageable settlement offer of \$5,000. It is unclear if she accepted the offer or if she simply is continuing with her monthly payments. She resolved the four other SOR debts.

Given Applicant's new appreciation of financial stability and her focused efforts to resolve her one remaining delinquent debt, it appears that Applicant's financial problems are finally under control. Applicant's actions no longer cast doubt on her current reliability, trustworthiness, or good judgment.<sup>37</sup>

### **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

---

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

<sup>37</sup> See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).



consideration of the guidelines and the whole-person concept. Moreover, I have evaluated this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.<sup>38</sup>

There is some evidence against mitigating Applicant's conduct. She initially failed to exercise restraint on her use of credit cards and saw several accounts become delinquent. Her large debt was charged off and four other relatively moderate debts languished past-due and unpaid. She started making payments under a debt consolidation plan but eventually abandoned it.

The mitigating evidence is more substantial and compelling. There is no evidence of misuse of information technology systems, mishandling protected information, or substance abuse. After her husband abandoned Applicant and their two small daughters without ever sending Applicant any child support, she tried to maintain her monthly payments but soon fell short because of limited funds. In order to survive, she resorted to charging her bills to her credit cards. It worked for a short time, but those accounts also had to be paid. Applicant waited until her finances improved, and, with the assistance of a debt consolidation, settlement, and payment organization, three years before the SOR was issued, she started making large monthly payments as long as she had the funds to continue doing so. After another period of inaction, and with sufficient funds to start addressing her debts again, she contacted her creditors and collection agents. The result, so far, is four accounts resolved and one account in a repayment plan. There are no other delinquencies.

Applicant finally embraced the paradigm of fiscal responsibility. Applicant did not conceal her financial difficulties when completing her e-QIP. Instead, she was honest and forthright, and she reported them. The undisputed developed evidence enables me to conclude that there are clear indications that Applicant's financial problems are now under control.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts." However, an applicant is not required, as a matter of law, to establish that he [or she] has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he [or she] has ". . . established a plan to resolve his [or her] financial problems and taken significant actions to implement that plan." The Judge can reasonably consider the entirety of an applicant's financial situation and his [or her] actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) ("Available,

---

<sup>38</sup> See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); See also ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.”) There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.<sup>39</sup>

Applicant has demonstrated a good track record of debt reduction and elimination efforts, limited only by her modest earnings. She no longer has expenses associated with her children and she has chosen not to use credit cards, instead opting for her debit card.

Overall, the evidence leaves me without questions or doubts as to Applicant’s eligibility and suitability for a position of public trust. For all of these reasons, I conclude Applicant has mitigated the trustworthiness concerns arising from her financial considerations. See AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

### **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

Subparagraphs 1.a. through 1.e.: For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant Applicant eligibility to occupy a public trust position to support a contract with DOD. Eligibility is granted.

---

ROBERT ROBINSON GALES  
Administrative Judge

---

<sup>39</sup> ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).