



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



In the matter of: )  
)  
) ADP Case No. 15-07367  
)  
Applicant for Public Trust Position )

**Appearances**

For Government: Gina Marine, Esq., Department Counsel<sup>1</sup>  
For Applicant: *Pro se*

05/31/2017

**Decision**

MURPHY, Braden M., Administrative Judge:

Applicant failed to mitigate the financial considerations trustworthiness concerns. Eligibility for access to sensitive information is denied.

**Statement of the Case**

On April 3, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns under Guideline F, financial considerations. The action was taken under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.<sup>2</sup>

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<sup>1</sup> This decision was originally issued on May 31, 2017. On June 5, 2017, it came my attention that I had erroneously listed my name as both the Department Counsel and the Administrative Judge for this case. The name of the Department Counsel has now been corrected. I have made no other changes in the decision.

<sup>2</sup> ADP Case No. 14-01655 (App. Bd. Nov. 3, 2015) ("The Guidelines apply to all adjudications under the Directive, including both security clearance and public trust cases.")

On May 9, 2016, Applicant submitted an answer to the SOR and elected to have her case decided on the written record. Her answer included documents that she marked as Exhibits A through J. On June 29, 2016, Department Counsel submitted the Government's file of relevant material (FORM), including documents identified as Items 1 through 6. Applicant received the FORM on July 18, 2016. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. On August 11, 2016, Applicant responded to the FORM. She provided a narrative statement and additional documents, which I have marked Applicant's Exhibits (AE) K through V, following the labeling sequence begun by Applicant with her answer.<sup>3</sup> Applicant's exhibits are all admitted without objection. Applicant did not object to the Government's exhibits. The SOR and the answer (Items 1 and 2) are the pleadings in the case. Items 3 through 6 are admitted into evidence. The case was assigned to me on April 10, 2017.

### **Findings of Fact**

The SOR concerns 27 financial allegations. Applicant admitted all the allegations but for SOR ¶¶ 1.x, 1.y, 1.z and 1.aa. Her admissions and other statements are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact.

Applicant is 39 years old. She is a high school graduate and has attended some classes at a local technical college. Applicant was married from 2004 to 2011. Applicant has twin girls, born in 2008 (age nine) and a son, born in 2014 (age three).<sup>4</sup>

Applicant has worked for the same employer, a defense contractor in the health care industry, since 1997. In connection with her employment, she submitted an application for a position of public trust in May 2015. In answering questions about her financial record, she disclosed various delinquent debts, including a judgment over a personal loan, a past-due mortgage, and several medical debts.<sup>5</sup>

Applicant attributes her financial problems to her divorce, and health issues. Applicant's twin girls were born several weeks prematurely, and required lengthy hospitalization and medical care after they were born. Applicant later had surgery and other medical issues. She had to miss work for a period of time, causing a financial strain.<sup>6</sup>

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<sup>3</sup> Applicant marked her FORM Response attachments as Exhibits A through L, but I have re-labelled the FORM Response and the attachments so that they run sequentially after the documents she included with her answer to the SOR.

<sup>4</sup> Item 3; Answer.

<sup>5</sup> Item 3.

<sup>6</sup> Answer.

During this time, Applicant and her husband took out a personal loan, which was later charged off. The creditor obtained a judgment against them in 2009. Applicant disclosed the account on her application.<sup>7</sup> She denied this debt (SOR ¶ 1.y for \$9,104) in her answer because it was no longer on her credit report.<sup>8</sup> However, with her FORM response, she provided a copy of the public record showing the judgment remained outstanding.<sup>9</sup> There was no indication that she had taken any steps to pay or resolve it. SOR ¶ 1.y is unresolved.

Applicant and her husband separated in 2010 and divorced in 2011. Applicant was granted custody of their children. They were to be covered by Applicant's medical insurance, and the parents were to evenly divide any uncovered medical expenses. Applicant indicated that she did not receive any such payments from her ex-husband. She also had to pursue a garnishment order against him for payment of child support, which was increased from \$521 a month to \$737 a month in 2014.<sup>10</sup>

Applicant and her husband jointly purchased their marital home. Their divorce decree contained a provision noting that Applicant and her husband had entered into an installment sales contract for their home and would transfer it to the purchasers when the contract was fulfilled.<sup>11</sup>

Their intended purchasers were also their tenants. Under their agreement, these tenants were to pay the bank directly (*i.e.*, effectively assuming the mortgage payments) rather than to pay rent to Applicant and her (now former) husband. There is no indication that the bank approved of this arrangement. These payments proved insufficient to cover the mortgage. When Applicant learned in October 2012 that the tenants were not making the payments, she evicted them and moved back into the home with her children.<sup>12</sup>

Applicant attempted to cure the deficiency with a \$1,788 payment to the bank a month later. The bank returned the money, but allowed Applicant to apply for a loan modification. Applicant's ex-husband remained listed on the mortgage, and he refused to participate in the process. Applicant was approved for a loan modification in February 2013. She made three payments of \$720 as required. However, when she learned during the closing process that her husband was still listed on the mortgage, she gave up and let the home go to foreclosure.<sup>13</sup>

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<sup>7</sup> Item 3 at 41-42.

<sup>8</sup> Answer, AE B.

<sup>9</sup> AE U. The \$9,104 figure (which may include interest on the judgment) is taken from Applicant's June 2015 credit report, Item 5.

<sup>10</sup> Answer, AE G, AE H.

<sup>11</sup> Answer, AE G.

<sup>12</sup> Answer.

<sup>13</sup> Answer, AE C, AE D, AE K.

Applicant remained in the home until January 2014, when she moved in with her parents after becoming pregnant. She then rented from a friend for about a year. In April 2015, she began renting from her brother and his wife. She now lives in that home with the boy's father and her three children.<sup>14</sup> As of August 2016, the mortgage for the marital home (SOR ¶ 1.i, for \$40,260) remained past due and in foreclosure.<sup>15</sup> There is no indication that she took any action to resolve the mortgage debt since she moved out in early 2015.

The remaining 25 debts in the SOR are medical debts, totaling a combined \$14,819. SOR debts ¶¶ 1.a-1.k and 1.l -1.x are found on Applicant's March 2016 credit report.<sup>16</sup> Applicant denied SOR debts ¶¶ 1.x, 1.y and 1.aa, because they are no longer on her current credit report (though they are on an earlier one, from June 2015). The debts are for medical care for either Applicant or her children.<sup>17</sup>

None of the medical creditors are identified in the SOR, though Applicant named each one in her answer. Many of the medical creditors are also identified in Applicant's credit reports from May 2016 and August 2016, which she provided.<sup>18</sup>

Applicant's largest medical creditor is a medical center, to whom she owed about \$6,378. In March 2015, Applicant entered into a payment plan to resolve that debt by paying \$20 a month. She made some payments into this plan, but was not able to keep up with it.<sup>19</sup> The medical center is the creditor for SOR debts ¶¶ 1.m – 1.x, including SOR ¶ 1.t (\$40), which has been paid.<sup>20</sup>

With her FORM Response, Applicant provided bank statements from 2015 showing that she made small payments towards some of the medical debts in the SOR (SOR ¶¶ 1.a, 1.c and 1.m) and other medical accounts. These payments, which total about \$175, all occurred in 2015 and all pre-date the SOR.<sup>21</sup> In her answer and her FORM Response, Applicant acknowledged that she was unable to meet the medical payment plan, and instead has been focused on her current bills. She indicated that her plan going forward is to address the medical debts as she is able, and then to address

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<sup>14</sup> Answer.

<sup>15</sup> AE K.

<sup>16</sup> Item 6.

<sup>17</sup> Answer; Items 2, 5.

<sup>18</sup> AE B. AE S.

<sup>19</sup> AE K, AE T.

<sup>20</sup> AE A.

<sup>21</sup> AE K, AE M – AE R.

the foreclosure, though she hopes the bank will resolve it.<sup>22</sup> There is no evidence that she has pursued financial counseling.

Applicant provided a personal financial statement with her answer. In May 2016, she had monthly net income of about \$3,000, supplemented by \$1,180 in child support (for a total of \$4,181). She listed \$2,467 in expenses, for a monthly surplus of \$1,714. In the summer, her expenses increase by \$1,036 due to her daughters' daycare (changing the monthly surplus to \$651).<sup>23</sup>

Applicant provided letters of recommendation from three character references who have known Applicant for many years. One is from a friend and former landlord, who considers Applicant to be honest, dependable, hard-working and an excellent tenant. Another letter is from her brother's wife, also her current landlord. She regards Applicant as dependable, trustworthy and an excellent tenant. She trusts Applicant to care for her children. A third letter is from Applicant's former boss. She spoke highly of Applicant's character, integrity, dependability and trustworthiness. She trusted Applicant to handle the most complicated and sensitive assignments, and to follow correct procedures for quality, privacy and timeliness.<sup>24</sup>

## **Policies**

Positions designated as ADP I and ADP II are classified as sensitive positions. 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>25</sup>

When evaluating an applicant's eligibility for a position of trust to support a DOD contract, an administrative judge must consider the disqualifying and mitigating conditions in the AG.<sup>26</sup> These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies the guidelines in a commonsense manner, considering all available and reliable information, in arriving at a fair and impartial decision.

In addition to the guidelines, the Directive sets forth procedures that must be followed in trustworthiness adjudications. The Government must present evidence to establish controverted facts alleged in the SOR. While an 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. An applicant has the

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<sup>22</sup> Answer, AE K.

<sup>23</sup> Answer.

<sup>24</sup> Exhibits AE I, AE J, AE V.

<sup>25</sup> Directive, § 3.2.

<sup>26</sup> Directive, Enclosure 2.

ultimate burden of persuasion to establish their eligibility for a public trust position.<sup>27</sup> 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.” The applicant has the ultimate burden of persuasion to obtain 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 safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of sensitive information.

## **Analysis**

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

The trustworthiness concern 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.

This concern is broader than the possibility that an individual might knowingly compromise sensitive information in order to raise money. It encompasses concerns about an individual’s self-control, judgment, and other qualities essential to protecting sensitive information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding sensitive information.<sup>28</sup>

The guideline notes several conditions that could raise trustworthiness concerns under AG ¶ 19. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

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<sup>27</sup> Directive, Enclosure 3, ¶¶ E3.1.14, E3.1.15.

<sup>28</sup> See ISCR Case No. 11-05365 at 3 (App.Bd. May 1, 2012).

The government alleged that Applicant had incurred 27 delinquent debts, including medical debts of about \$14,819, a charged-off loan of \$9,104 and a past-due mortgage in foreclosure. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate financial considerations trustworthiness concerns are provided under AG ¶ 20. The following are potentially applicable:

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

Applicant's financial problems began after the premature birth of her twins in 2008 led to unexpected medical complications and related costs. These circumstances caused a financial strain on her marriage. Applicant and her husband later divorced, in 2011. Applicant assumed the medical costs for her children, with little help from her ex-husband. She had to pursue him in court for child support. These were all circumstances beyond her control that contributed to her financial instability. To fully apply AG ¶ 20(b), Applicant must have acted responsibly. Applicant has made an effort to pay her medical debts, and provided proof of some payments. AG ¶ 20(b) applies to mitigate Applicant's medical debts, which clearly result from circumstances beyond her control.

Applicant and her husband took out a loan during their marriage during a period of financial strain. After they were not able to pay it back, a judgment was issued against them in 2009 (SOR ¶ 1.y). Since it was accrued during their marriage, Applicant's ex-husband is likely partially responsible for it. Nonetheless, Applicant has taken no action to pay or resolve it and it remains outstanding.

Applicant and her husband attempted to dispose of their jointly-owned marital home through an installment sales contract with their tenants. The tenants were to pay the bank directly rather than to pay rent to Applicant and her husband. The rental payments were not enough to cover the mortgage. When Applicant learned that the mortgage was in arrears in late 2012, she evicted the tenants and moved back into the

home. She initially undertook responsible steps to seek a loan modification, which was approved. However, once she learned that her ex-husband remained on the mortgage, she stopped making payments, moved out and allowed the home to go to foreclosure. This was not a responsible act. There is no record of what she has done since then to resolve this debt, which is significant. As of August 2016, the mortgage (SOR ¶ 1.I) was significantly past due and in foreclosure.

There is no evidence that Applicant received financial counseling. She provided a personal financial statement from May 2016, and bank statements from 2015. Her budget showed that she had some available funds each month to pay her debts. She made some payments on her medical debts, but has not been able to do so for some time. Other significant debts remain. There is insufficient evidence to conclude her financial problems are being resolved or are under control. There is insufficient evidence to conclude Applicant has made a good-faith effort to repay overdue creditors or otherwise resolve her debts. AG ¶¶ 20(a), 20(c) and 20(d) do not apply.

### **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 relevant 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. I have incorporated my comments under Guideline F in my whole-person analysis. Applicant has an unstable financial track record. Without additional explanations, information, and documents, I cannot conclude that Applicant's finances are under control. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a public trust position. For all these reasons, I conclude Applicant failed to mitigate the Guideline F, financial considerations trustworthiness concerns.



## **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.k:	For Applicant
Subparagraph 1.l:	Against Applicant
Subparagraphs 1.m – 1.x:	For Applicant
Subparagraph 1.y:	Against Applicant
Subparagraphs 1.z - 1.aa:	For Applicant

## **Conclusion**

In light of all of the circumstances it is not clearly consistent with national security to grant Applicant eligibility for a public trust position. Eligibility for access to sensitive information is denied.

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Braden M. Murphy  
Administrative Judge