



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



In the matter of: )  
)  
) ADP Case No. 15-05426  
)  
Applicant for Public Trust Position )

**Appearances**

For Government: Michelle Tilford, Esq., Department Counsel  
For Applicant: *Pro se*

08/27/2018

**Decision**

CREAN, THOMAS M., Administrative Judge:

Based on a review of the pleadings, eligibility for a public trust position is granted. Applicant presented sufficient credible information to mitigate financial trustworthiness concerns.

**Statement of the Case**

On December 28, 2014, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) to obtain eligibility for a public trust position to work for a defense contractor. (Item 3) Applicant was interviewed by an agent from the Office of Personnel Management (OPM) on March 3, 2015, and April 1, 2015. (Item 6, Summary of Personal Subject Interview (PSI)) After reviewing the results of the background investigation, the Department of Defense Consolidated Adjudication Facility (DOD CAF) could not make the affirmative findings required to grant Applicant access to sensitive information.

On May 17, 2017, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) for financial trustworthiness concerns under Guideline F. DOD took the action under DoD Manual 5200.02, *Procedures for the DOD Personnel*

*Security Program (PSP)* which became effective on April 3, 2017, and it incorporates and replaces DoD 5200.2-R. While this case was pending a decision, the Director of National Intelligence issued Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position (AG)*, which he made applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The new AGs are effective “for all covered individuals” on or after June 8, 2017.

Applicant answered the SOR on September 5, 2017 (Item 2). She admitted the eight allegations of financial security concern, except she questioned the amount of the debts in SOR 1.g and 1.h. She provided significant information concerning the status of her finances, and requested a decision on the record. Department Counsel submitted the Government’s written case on November 22, 2017. (Item 8). Applicant received a complete file of relevant material (FORM) on January 8, 2018, and was provided the opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant provided additional information in response to the FORM on February 21, 2018. (Item 9) On February 26, 2018, Department Counsel noted that she had no objection to consideration of the additional material. (Item 10) I was assigned the case on April 13, 2018.

### **Procedural Issues**

Applicant was advised in the FORM that the summary of the PSI (Item 6) was not authenticated and could not be considered over her objection. She was further advised that she could make any corrections, additions, or deletions to the summary to make it clear and accurate, and could object to the admission of the summary as not authenticated by a Government witness. She was additionally advised that if no objection was raised to the summary, the Administrative Judge could determine that she waived any objection to the admissibility of the PSI summary. Applicant did not raise any objection to consideration of the PSI when she responded to the FORM. Since there is no objection by Applicant, I will consider information in the PSI in my decision.

### **Findings of Fact**

After a thorough review of the pleadings, I make the following findings of fact. Applicant is 52 years old. She received a bachelor’s degree in August 1990. She was employed as a consultant from May 2003 until March 2011, when she was laid off by her employer because they lacked work for her. She was unemployed until September 2014, when she became a consultant for her present DOD contractor. She never married and has no children. (Item 4, e-QIP, dated November 3, 2015)

The SOR alleges and credit reports (Item 4, dated January 24, 2015; and Item 5, dated February 23, 2017) confirm the following eight delinquent debts for Applicant; a credit-card debt charged off for \$1,219 (SOR 1.a); a telephone-service account in collection for \$484 (SOR 1.b); car loan charged off for \$7,315 (SOR 1.c); a time-share account in collection for \$1,642 (SOR 1.d); a television-service account in collection for

\$144 (SOR 1.e); a waste-disposal account in collection for \$136 (SOR 1.f); an unpaid rent account of \$4,200 (SOR 1.g); and an unpaid tuition account to a university for \$2,600 (SOR 1.h). Applicant admitted the debts in SOR 1.g and 1.h but disputed the amount of the debts. She claims the amount of the SOR 1.g debt is only \$3,300 and the 1.h debt is \$1,661. The amount of the delinquent debt as reported in the SOR is approximately \$17,740.

Applicant did not detail reasons for her delinquent debts. However, it is noted that she was unemployed over three and a half years. She received unemployment compensation and worked two part-time jobs. During her unemployment, she was able to enter a debt relief plan, keep her bills current, pay off some of her past-due debts, and not incur any additional delinquent debts. (Item 2, Response to the SOR; Item 9, Response to FORM)

In her response to the SOR, Applicant provided documents to establish that the credit-card debt listed at SOR 1.a has been resolved. She also provided documents to establish the wireless debt at SOR 1.b was settled for an amount less than the total debt. Applicant provided documents to verify that she paid the settlement resolving the debt. Applicant presented sufficient documents that she paid and resolved the automobile loan at SOR 1.c. Applicant entered a settlement agreement with the developer for the time share. She paid half the debt in one payment and made two additional payments. She has resolved this debt. Applicant paid the television-service debt at SOR 1.e. She also paid the debt at SOR 1.f to the waste-management company. She presented receipts for the payment as well as letters noting the two debts were paid in full. Applicant claims she paid the past-due rent debt. (SOR 1.g). She presented a letter, dated February 8, 2018, that she sent to the landlord requesting that he provide her with a document indicating that the debt was paid in full. She has not received a reply from the landlord. Applicant received a settlement offer for the tuition noted at SOR 1.h. She presented documents that she is making the required payments on this debt.

Applicant also included information on a debt not listed on the SOR, but listed on her credit report. She presented receipts for her payment of this debt and the debt is now resolved. (Item 9, Response to FORM) Of the eight debts on the SOR, six have been paid and resolved, and she is current with the payments on settlement agreements on the remaining two debts.

## **Policies**

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 the factors listed in the adjudicative process. The administrative judge's over-arching adjudicative goal is a fair, impartial and common sense decision. According to AG ¶ 2(a), 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 decision

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 the national security.” 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. 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 applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion as to obtaining 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 protect or 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.

## **Analysis**

### **Financial Considerations**

There is a trustworthiness concern for a failure or inability to live within one’s means, satisfy debts, and meet financial obligations, and may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulation, raising 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 or otherwise questionable acts to generate funds (AG ¶ 18). Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligation to protect sensitive information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person’s relationship with her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a position of trust. An applicant is not required to be debt free, but is required to manage her finances in such a way as to meet her financial obligations.

Adverse information in credit reports can normally meet the substantial evidence standard to establish financial delinquency. Applicant has significant unresolved consumer debts. Her delinquent debts are established by credit reports and her admissions in the e-QIP and her response to the SOR. The debts pose a trustworthiness concern raising Financial Consideration Disqualifying Conditions under AG ¶ 19:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

I considered the following Financial Considerations Mitigating Conditions under 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;
- (b) the conditions that resulted in the financial problems were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce, or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (c) the individual has received or is receiving counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; and
- (d) the individual initiated and is adhering to a good-faith effort to repay the overdue creditors or otherwise resolve debts.

The mitigating conditions apply. Applicant incurred debt because of an extended period of unemployment. She received some unemployment compensation and also worked two part-time jobs. The income she received enabled her to make payments on some of her debts. Applicant has now been employed in her career field for over two years. Even though Applicant's debts are numerous and recent, they were incurred under circumstances making recurrence unlikely since she is now fully employed. Applicant did not present information that she received financial counseling.

Applicant contacted her creditors and made arrangements to either pay or settle her debts. She presented sufficient evidence that she paid four of the debts for the full amount owed, and settled and paid two more debts for less than the amount owed. She claims she paid a debt for rent but has not received a receipt from the landlord. She

wrote to the landlord requesting the receipt. She received settlement agreements from the creditor for the remaining debt, and she presented sufficient documents to establish she is current with payment on the settlement. This is evidence of a good-faith effort to pay delinquent debts. There is sufficient evidence to conclude that Applicant has a reasonable and adequate plan to resolve her financial problems and that she is adhering to the payment plans. There is a firm indication that Applicant's financial problems will be resolved within a reasonable period.

The record contains corroborating or substantiating documentation of Applicant's efforts to mitigate and resolve her financial problems. In requesting an administrative determination, Applicant chose to rely on the written record. She provided sufficient evidence to supplement the record with relevant and material facts regarding her circumstances, articulate her position, and mitigate the financial trustworthiness concerns. She provided adequate credible information regarding her past efforts to address her delinquent debts. She presented a sufficiently credible plan of how and when she planned to resolve her debts. Applicant's reasonable payments on her debts and her responsible plan to pay her debts shows that she has acted reasonably and honestly with regard to her financial duties and obligations.

I find that she acted responsibly and made a good-faith effort to pay her debts. Her financial problems do not cast doubt on her current reliability, trustworthiness and good judgment. Applicant's information is sufficient to establish that she acted responsibly under the circumstances and that her finances are under control. In short, the file provided by Applicant contains sufficient evidence to determine that Applicant paid, arranged to pay, settled, compromised, or otherwise resolved her debts. Applicant has mitigated financial trustworthiness concerns.

### **Whole-Person Analysis**

Under the whole-person concept, the administrative judge must evaluate an applicant's trustworthiness eligibility 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(d):

(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 a trustworthiness clearance 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. Applicant is required to show that she has a credible and reasonable plan to resolve her financial problems and that she has taken significant action to implement that plan. Applicant established her reasonable plan to resolve her delinquent debts, shown that she has taken sufficient actions to implement the plan, and established that she is managing her financial obligations within her resources. Accordingly, she established that she can be trusted to manage sensitive information. Overall, the record evidence leaves me without questions and doubts pertaining to Applicant's judgment, reliability, trustworthiness, and her eligibility and suitability for a position of trust. For all these reasons, Applicant's eligibility for a public trust position is granted.

### **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 – 1.h: For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant Applicant eligibility for a public trust position. Eligibility for access to sensitive information is granted.

---

THOMAS M. CREAN  
Administrative Judge