



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



In the matter of: )  
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XXXXXXXXXXXXXXXXXXXXXXXXXXXX ) ADP Case No. 16-01838  
 )  
Applicant for Public Trust Position )

**Appearances**

For Government: Ross Hyams, Esquire, Department Counsel  
For Applicant: *Pro se*

07/02/2018  
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**Remand Decision**  
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METZ, John Grattan, Jr., Administrative Judge:

Based on the record in this case,<sup>1</sup> I deny Applicant's eligibility for a public trust position.

On 15 June 2016, the Appeal Board (AB) remanded this case to me for further proceedings in accordance with its decision and the Directive. The AB determined that I erred by failing to consider Applicant's husband's 2013 unemployment and by failing to assess that unemployment in view of mitigation condition 20(b).<sup>2</sup>

A review of Applicant's background interview (FORM, Item 5) reflects that she noted certain debts became delinquent in either 2008 or 2013 due to her husband's job losses in those

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<sup>1</sup>Consisting of the File of Relevant Material (FORM), Items 1-7.

<sup>2</sup>¶20(b) the conditions that resulted in the financial problem were largely beyond the person's control . . . and the individual acted responsibly under the circumstances;

respective years and that she became responsible for paying all those bills. More specifically, the interview summary states that certain bills became delinquent between March and August 2013, but it does not reflect the total length of that period of unemployment. In her appeal brief she states, “We went from having an adjusted gross income of \$115,973 in 2012 with both of us working to having an adjusted gross income of \$41,269 in 2013 with only my income.” (Citation omitted) Federal income tax returns in the record (Item 3, Answer, Attch. B) corroborate her claim about the reduction in her and her husband’s adjusted gross income between 2012 and 2013. Additionally, the 2012 Federal income tax return listed her husband’s occupation, while the 2013 return listed his occupation as “unemployed.” (Citation omitted). Based on the examination of the Federal tax returns and Applicant’s pay stubs in the record, it **could** be reasonably be inferred that the reduction in adjusted gross income was due to the husband’s unemployment in 2013. ADP Case 16-01838, at 3, (App, Bd. June 15, 2018.)(my citations to FORM)(my emphasis)

While there is a presumption that an administrative judge has considered all evidence in the record, I readily concede that I overlooked the 2013 period of unemployment. Nevertheless, I affirm my earlier decision, which is based principally on the Applicant’s failure to take meaningful action on her delinquent debts until after she received the Statement of Reasons, and her failure to document why she was unable to resolve those debts sooner, thus failing to establish that she acted responsibly under the circumstances.<sup>3</sup> The AB effectively acknowledged this when it stated that the interview summary did not reflect the total length of the 2013 unemployment.

### **Findings of Fact**

Except as noted below, I incorporate by reference my 28 March 2018 decision.

On 15 April 2015, Applicant completed her application for public trust position for her employment by a defense contractor, for whom she has worked since June 1996. She has also worked as a self-employed consultant since April 2013.

On her application, Applicant answered “yes” to a series of questions designed to elicit any negative financial information. Specifically, she reported that she had tax

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<sup>3</sup>¶20(b) the conditions that resulted in the financial problem were largely beyond the person’s control . . . and the individual acted responsibly under the circumstances;

issues, stating that she failed to pay her 2011 income taxes (SOR 1.c),<sup>4</sup> and failed to timely file her 2012 and 2013 income taxes (SOR 1.a, 1.b).<sup>5</sup> Applicant's Answer (Attch. C) documents that for 14 two-week pay periods (pay stubs covering periods ending 03-29-2015 through 09-27-2015), someone (the Applicant asserts the IRS), levied tax garnishments of \$545.58 per pay period, for a total of \$7,638.12. Applicant's Answer claims that this satisfied her unpaid taxes for 2011, but failed to provide any documentation of that claim.<sup>6</sup>

Applicant also disclosed seven delinquencies involving routine accounts. She disclosed a credit card account for \$692 that fell delinquent in June 2008 when she ran into financial problems (not otherwise described). She claimed the creditor was unwilling to work with her, but the account was closed. She disclosed a second credit card account that also fell delinquent in June 2008, and claimed that she had been offered a settlement agreement in April 2015 to pay \$48.55 monthly for 12 months (or \$582.60). She claimed, without corroboration, to have sent the first payment on 13 April 2015. Neither of these debts was alleged in the SOR.

Applicant also disclosed several delinquent medical accounts which fell delinquent in June 2010 (for unstated reasons), and which were consolidated into a single account under the account number alleged at SOR 1.j: purportedly, the new account combined SOR 1.j (\$133.36), 1.f (\$101.66), an account not alleged in the SOR (\$145.53), SOR 1.i (\$759.99), and SOR 1.k (\$249), for a total of \$1,389.54.<sup>7</sup> Applicant believed these bills should have been covered by her medical insurance, but also acknowledged there might be some patient responsibility for the bills. She claimed, without corroboration, to have agreed in March 2015 to start \$25-50 monthly payments, but did not describe having started payments. She disclosed a medical account, alleged

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<sup>4</sup>Her optional comment, for which she provided no corroboration at the time, stated that a 2013 audit by the Internal Revenue Service (IRS) of tax year 2011 created a reduced refund amount, resulting in additional liability. She claimed that she started the appeal process, but also set up on-line payment arrangements until the appeal could be processed. She also stated that she had filed extensions for tax years 2012 and 2013 (but did not state if she did so by mail or online), but that the returns had been filed late. Both returns showed refunds due. She claimed that she spoke to the IRS in March 2015, and learned that her appeal had not been received, nor had her extensions and tax returns. She stated that she printed and mailed new copies of all the documents.

<sup>5</sup>Her 2012 income tax return was signed on 15 April 2015 (Answer, Attch. A), as was her 2013 income tax return (Answer, Attch. B).

<sup>6</sup>For example, a pay stub from a fifteenth pay period would have shown if the levy had ended. So would any number of IRS documents: tax account statements for 2011, 2012, and 2013 (which would have also shown any seizures of tax refunds), or copies of the written IRS documentation asserting the debt or confirming a payment plan.

<sup>7</sup>The amounts purportedly combined match the amounts and account numbers alleged in the SOR at SOR 1.f and 1.i-1.k, as well as Applicant's 27 May 2015 and 17 May 2016 credit reports (Item 6, 7).

at SOR 1.k, that fell delinquent in August 2010 (again for unstated reasons).<sup>8</sup> Applicant stated that this account had been combined as described above. Noteworthy is the fact that Applicant acknowledged owing SOR debts 1.f and 1.i-1.k on her clearance application, but now denies owing SOR 1.i-1.k simply because they do not appear on her 21 December 2016 credit report (Answer, Attch. I).

Finally, Applicant disclosed three additional delinquent credit cards that fell delinquent in March 2013 (not alleged in SOR)(\$300), April 2013 (SOR 1.d)(\$2,526, and August 2013 (SOR 1.e)(\$399).<sup>9</sup> She claimed repayment plans for the April and August 2013 debts, but neither debt was paid until November 2016 (Answer, Attch. D, E).<sup>10</sup>

On 11 August 2015, Applicant made an unsworn declaration to a Government investigator (Item 5). She discussed all the delinquent debts listed in her May 2015 credit report (Item 6). She discussed her failure to timely file her 2012 and 2013 income tax returns, repeating essentially the same information she provided on her application, but provided some additional detail.<sup>11</sup> She claimed to have paid the first unalleged debt in February 2015, and her May 2015 and May 2016 credit reports show the account paid. The second unalleged account appears on neither of her credit reports. She still thought it was owed. She claimed one payment in April 2015, but none since then because of the IRS garnishment. Applicant discussed her medical debts (SOR 1.f and 1.i-1.k), and stated that she had reached a payment arrangement in March 2015 to pay \$20 monthly, had made two payments, but none since May 2015 because of the IRS garnishments.

Applicant discussed SOR debt 1.d, acknowledging that it had fallen delinquent in April 2013, when her husband was out of work. She stated that she agreed to pay \$90

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<sup>8</sup>With the full account number reflected in the credit reports. The purportedly combined account only lists a partial number.

<sup>9</sup>She attributed the March 2013 debt to disputing some of the charges, and she was still awaiting a response from the creditor. She provided no documentation of the dispute. She attributed the April 2013 debt to financial difficulties brought on by her husband losing his job. She claimed, without corroboration, to have arranged to pay \$90 monthly until the debt was satisfied. Finally, she attributed the August 2013 debt to disputing some of the charges, but she had not received a reply. She most recently contacted them in February 2015. However, she reported receiving a settlement offer before she submitted her application, offering to settle the debt of \$399.55 for \$199.77. Applicant stated she would send the payment on 18 April 2015.

<sup>10</sup>Technically, she did not document that she had paid SOR debt 1.d, only that she had withdrawn the exact amount of the debt from her checking account on the date claimed. However, no harm is done by giving her the benefit of the doubt.

<sup>11</sup>She claimed, without corroboration, that the original debt was about \$4,700. She stated that she paid the IRS \$200, then some varying amounts, but could not recall exact dates or amounts. She stated that the IRS told her in May 2014 that her wages would be garnished \$545.58 bi-weekly., and that she owed \$4,195.58 as of 8 June 2015. She stated that her 2014 Federal and state tax refunds of \$2,914 were seized and applied to her tax liability (no dates or documentation provided). Applicant's pay stubs (Answer, Attch. C) cannot confirm the balance claimed, only the first garnishment, which occurred on pay period ending 29 March 2015, ten months after she claimed she was told about the garnishment.

monthly in March 2015, made two payments, but none since May 2015 because of the IRS garnishment. She did not know when she would be able to resume payments. Similarly, Applicant discussed SOR debt 1.e, acknowledging that it fell delinquent in August 2013 when her husband was out of work. She claimed, as per her application, that she had settled the account in February 2015, for about half the amount due.

Applicant was confronted with the debts at SOR 1.g-1.h, and stated that she was unaware of the accounts, but would research them as soon as possible, and pay them if they were hers. However, she did not know when she would be able to pay them.

All the SOR debts are confirmed by Applicant's May 2015 combined credit report (Item 6). SOR debts 1.d-1.k are reconfirmed by her May 2016 Equifax credit report (Item 7). Applicant's December 2016 Equifax credit report (Answer, Attch. I) confirms SOR 1.d-1.h). Applicant's November 2016 TransUnion credit report confirms SOR 1.d-g. Her November 2016 Experian credit report confirms SOR 1.d-1.e. However, the dates of last activity for SOR debts 1.h-1.l are such that they would have aged off credit reports by 2016. SOR debt 1.k only appeared on the May 2015 combined report, under Experian.

Applicant attributes her financial problems to her husband's unemployment in 2008 [and 2013]. However, she has not provided the details that would establish the impact that unemployment had on her finances beyond the documented drop in income from tax year 2012 to 2013. Moreover, she provided no explanation for her failure to file her Federal income tax returns, or to corroborate her claims that she had filed timely extensions for 2012 and 2013, or to have filed those taxes, even late, before April 2015. Instead the record reflects that she took no action to address her situation with the IRS until April 2015, when she was completing her trustworthiness application, and did not resolve SOR debts 1.d-1.h until after she received the SOR. Department Counsel's argument in the FORM pointed out all these shortcomings, and advised Applicant to avail herself of the opportunity to address these flaws. She received the FORM in February 2017, but did not use her opportunity to document her claimed actions.

Applicant provided no budget or personal financial statement indicating her financial situation. She has not documented any credit or financial counseling. She provided no work or character references, or evidence of civic or community activity.

### **Policies**

The adjudicative guidelines (AG) list factors to evaluate a person's suitability for access to sensitive information. Administrative judges must assess disqualifying and mitigating conditions under each issue fairly raised by the facts and situation presented. Each decision must also show a fair, impartial, and commonsense consideration of the factors listed in AG ¶ 2(d). The applicability of a disqualifying or mitigating condition is not, by itself, conclusive. However, specific guidelines should be followed when a case can be measured against them, as they are policy guidance governing the grant or denial of eligibility for a public trust position. Considering the SOR allegations and the

evidence as a whole, the relevant adjudicative guideline is Guideline F (Financial Considerations).

Trustworthiness decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's public trust position. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to applicant to refute, extenuate, or mitigate the Government's case. Because no one has a right to a public trust position, the applicant bears a heavy burden of persuasion.

Persons with access to sensitive information enter into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring each applicant possesses the required judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels deciding any reasonable doubt about an Applicant's suitability for access in favor of the Government.<sup>12</sup>

### **Analysis**

The Government established a case for disqualification under Guideline F, and Applicant did not mitigate the security concerns. Applicant has an extensive history of financial difficulties that remained largely unaddressed since at least August 2015. Moreover, she failed, without explanation, to timely file her Federal income tax returns for 2012-2013.<sup>13</sup> Despite the enormous amount of detail that can be pulled out of the record to establish a time line, 1) that time line is uncorroborated, except in ways that do not help Applicant, and 2) that time line breaks in August 2015, when she was interviewed, and does not resume until November 2016, after she received the SOR, and 15 months after she spoke to the investigator. None of the potentially mitigating conduct undertaken before August 2015 can overcome the unfavorable inferences of apparent inaction until November 2016.

The most favorable view of Applicant's record, which includes accepting Applicant's uncorroborated statements, and weaving them into the sparse documentation she provided, shows that Applicant's husband lost his job in 2008, leading to several delinquent debts, that Applicant experienced an unforeseen medical problem in 2010, leading to delinquent debts in June and August 2010, and that Applicant's husband again lost his job in 2013, leading to several more debts. Applicant attempted to resolve these debts in 2015, before her April application, but was unable

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<sup>12</sup>See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>13</sup>19(a) inability to satisfy debts; (b) unwillingness to satisfy debts regardless of the ability to do so; (c) a history of not meeting financial obligations; (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required;

to follow through on those plans because the IRS garnished her wages in March 2015, a circumstance not beyond her control.

This case is about a failure of documentation. Once the allegations against Applicant were admitted or proven, she had the obligation of establishing explanation, extenuation, or mitigation. Applicant's application and interview, raised, but did not document, potentially mitigating information, up to August 2015. However, Applicant's Answer provided no clear resolution of her tax issues (SOR 1.a-1.c), documented that she had paid six debts (SOR 1.d-1.h) after she received the SOR, and took no action on three debts (1.-1.k) that she acknowledged were hers, but which she erroneously believed was no longer responsible for. These flaws were pointed out to her by Department Counsel, but she took no action to address them.

Applicant meets none of the mitigating conditions for financial considerations. given that she has provided no documentation about her husband's unemployments or any subsequent returns to work, her medical issues, or any efforts she undertook before August 2015, or between August 2015 and November 2016, to resolve her financial issues.<sup>14</sup> Although the unemployments and her medical issues are conditions beyond her control, the otherwise responsible actions she may have taken in 2015 were interrupted in March 2015 by the IRS garnishment, which purportedly ended in September 2015. The record is silent regarding any action after September 2015. She has not documented that she took responsible action to address her financial problems between then and the time she submitted her Answer.<sup>15</sup>

Applicant has had no credit or financial counseling, and her efforts to resolve her tax issues were apparently spurred by her application and interview, and her efforts to resolve her debts were spurred by the SOR.<sup>16</sup> Paying her debts on the eve of submitting her Answer does not constitute a good-faith effort to address her debts.<sup>17</sup> Accordingly, I conclude Guideline F against Applicant.

### **Formal Findings**

Paragraph 1. Guideline F:

**AGAINST APPLICANT**

Subparagraphs a-k:

**Against Applicant**

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<sup>14</sup>¶20(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur . . .

<sup>15</sup>¶20(b) the conditions that resulted in the financial problem were largely beyond the person's control . . . and the individual acted responsibly under the circumstances;

<sup>16</sup>¶20(c) the person has received or is receiving counseling for the problem . . . and there are clear indications that the problem is being resolved or is under control;

<sup>17</sup>¶20(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

### **Conclusion**

Under the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue eligibility for a public trust position for Applicant. Eligibility for a public trust position denied.

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JOHN GRATTAN METZ, JR  
Administrative Judge