



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



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

**Appearances**

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

03/28/2018

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**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 29 October 2016, the Department of Defense (DoD) sent Applicant a Statement of Reasons (SOR) raising trustworthiness concerns under Guideline F, Financial Considerations.<sup>2</sup> Applicant timely answered the SOR, requesting a decision without hearing by the Defense Office of Hearings and Appeals (DOHA). The record in this case closed 16 March 2017, when Applicant's Response to the FORM was due.

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

<sup>2</sup>DoD conducts trustworthiness determinations for contractor personnel employed in Information Systems Positions pursuant to DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive). The SOR was issued under the adjudicative guidelines (AG) effective within the DoD for SORs issued after September 1, 2006. However, on 10 December 2016, the Director of National Intelligence (DNI) signed Security Executive Agent Directive 4, implementing new AG, effective with any decision issued on or after 8 June 2017. My decision is the same under both guidelines.

Applicant provided no additional evidence. DOHA assigned the case to me 1 October 2017.

### **Findings of Fact**

Applicant admitted the SOR financial allegations, except for SOR 1.i-1.k. She is a 48-year-old claims lead sponsored for a public trust position by a defense contractor, for whom she has worked since June 1996. She had a favorable trustworthiness determination in August 2004. She has been married since 1988, and has two grown children.

The SOR alleges, and Government exhibits (Items 3-7) establish, nine delinquent debts totaling over \$8,000. Applicant admits all but \$1,100 in delinquent medical accounts (SOR 1.i-1.k) on the grounds that they do not appear on the November 2016 credit report she submitted with her Answer. She also admits failing to timely file her 2012 and 2013 Federal income tax returns. The debts consist of \$4,200 unpaid Federal tax, \$2,900 in two charged-off consumer credit accounts, and six unpaid medical debts totaling about \$1,400.

Applicant disclosed her failure to file her Federal tax returns, SOR debts 1.c-1.e and 1.k, and some debts not alleged in the SOR on her April 2015 trustworthiness application (Item 4). She discussed these debts, along with the remaining SOR debts during an August 2015 interview with a Government investigator (Item 5), based on her May 2015 credit report (Item 6). She told the investigator that she had obtained a credit report in February 2015 to complete her trustworthiness application. She specifically discussed, and acknowledged as hers, SOR debts 1.f-1.j. She stated that she had entered into repayment plans on some of the debts, and made a couple of payments on each.<sup>3</sup>

Applicant's Answer documented that she filed her 2012 and 2013 Federal income tax returns in April 2015 (Answer, A and B), and paid the Internal Revenue Service over \$7,000 for tax year 2011 (Answer C).<sup>4</sup> She paid SOR debts 1.d-1.e in November 2016 (Answer D and E),<sup>5</sup> and paid SOR debts 1.f-1.h. in December 2016 (Answer, F-H). She took no action on the three debts that did not appear on her November 2016 credit reports (Answer H).

Applicant attributes her financial problems to her husband's unemployment in 2008. However, she has not provided the details that would establish the impact that

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<sup>3</sup>However, she never documented those payments, and the payment records she submitted with her Answer show payments-in-full of the documented debts.

<sup>4</sup>Which she paid by garnishment between April and October 2015.

<sup>5</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.

unemployment had on her finances. Moreover, she provided no explanation for her failure to file her Federal income tax returns, or her failure to maintain the repayment plans she claimed to have put in place during her May 2015 interview. 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.

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 involvement.

### **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>6</sup>

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<sup>6</sup>See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

## 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 April 2015. Moreover, she failed, without explanation, to timely file her Federal income tax returns for 2012-2013.<sup>7</sup>

Applicant meets none of the mitigating conditions for financial considerations. given that she has provided no details about her husband's unemployment or any subsequent return to work.<sup>8</sup> Although the unemployment is a circumstance beyond her control, she has not documented that she took responsible action to address her financial problems before she submitted her trustworthiness application (IRS)<sup>9</sup> or before the SOR was issued (remaining debts).<sup>10</sup> Applicant has had no credit or financial counseling, and her efforts to resolve her tax issues were spurred by her interview and her efforts to resolve her debts were spurred by the SOR.<sup>11</sup> Paying her debts on the eve of submitting her Answer does not constitute a good-faith effort to address her debts.<sup>12</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>7</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;

<sup>8</sup>¶20(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur . . .

<sup>9</sup>¶20(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

<sup>10</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>11</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>12</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