



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



In the matter of:

ADP Case No. 17-00960

Applicant for Public Trust Position

**Appearances**

For Government: Robert B. Blazewick, Esq., Department Counsel

For Applicant: *Pro se*

02/16/2018

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**Decision**

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MURPHY, Braden M., Administrative Judge:

Applicant mitigated the trustworthiness concerns about her personal conduct under Guideline E. She did not provide sufficient information to mitigate the trustworthiness concerns about her financial situation under Guideline F, financial considerations. Applicant's eligibility for access to sensitive information is denied.

**Statement of the Case**

Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) on September 25, 2015. On July 1, 2017, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing trustworthiness concerns under the financial considerations and personal conduct guidelines.<sup>1</sup>

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<sup>1</sup> The action was taken under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (AG), effective June 8, 2017.

Applicant answered the SOR on July 21, 2017, and requested a hearing. The case was assigned to me on September 22, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on October 27, 2017, scheduling the hearing for November 16, 2017. The hearing convened as scheduled. Government Exhibits (GE) 1-5 were admitted into evidence without objection. Applicant and one other witness testified. Applicant's Exhibits (AE) A through AE F were marked and admitted without objection. I held the record open until December 1, 2017, to allow Applicant to submit additional information. Applicant did not provide any additional documents by the deadline. DOHA received the hearing transcript (Tr.) on December 1, 2017.

### **Procedural Issues and Amendments to the SOR**

Based on Applicant's testimony and the record evidence, the Government moved to withdraw ¶ 2.c. The motion was granted without objection. (Tr. 82-87) After the hearing, based on a representation from Department Counsel, the caption of the SOR was amended to reflect that Applicant was an "Applicant for a Position of Public Trust" rather than an "Applicant for a Security Clearance." (HE II)<sup>2</sup>

### **Findings of Fact**

Applicant admitted the Guideline F allegations (SOR ¶¶ 1.a -1.q) but denied the Guideline E allegations (SOR ¶¶ 2.a-2.c), with a narrative explanation and some documents.<sup>3</sup> Her admissions and explanations are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 43 years old. She has never married and she has no children. She served on active duty in the United States Navy from September 1992 to May 1997. She worked as a real estate agent from December 2005 to December 2007, but lost her job when the real estate market collapsed. She held a variety of other jobs while going to school for her associate's degree, which she earned in 2011. (GE 1)

From 2011 to 2014, Applicant worked in human resources administration as a DOD civilian. She was granted a security clearance in September 2013. (Tr. 10, 13, 25, 68-72)<sup>4</sup>

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<sup>2</sup> Applicant's proper level of access was also discussed during the hearing. (Tr. 10-22)

<sup>3</sup> The documents Applicant provided with her Answer are included in the record.

<sup>4</sup> At hearing, Applicant took issue with the fact that, although she had been granted access to classified information in 2013, her access to sensitive information was now being questioned only a few years later. (Tr. 68-72; GE 1 at 32). However, the Government is not precluded from making an adverse determination even where an applicant had a previous favorable decision. ISCR case No. 14-02155 at 2-3 (App. Bd. Apr. 7, 2015 (citing ISCR Case No. 11-07094 at 3 (App. Bd. Sep. 5, 2014))).

In 2011, Applicant also began working for a cleaning business. She left DOD employment when an opportunity arose to become a partner in the business. The partnership did not materialize, though Applicant testified that the business remains a going concern. (Tr. 55-57; GE 1)

Until 2016, Applicant's business made small profits but not enough for her to sustain a living.<sup>5</sup> She had no other employment until February 2016, when she began working as an administrative clerk for a defense contractor. She worked full time, earning \$15.37 an hour. She held that position until she was terminated in July 2017, shortly after the SOR was issued. (Tr. 10-17, 24-25, 56-57)<sup>6</sup>

Applicant filed for Chapter 7 bankruptcy protection in December 2012. She declared about \$95,000 in liabilities. The bankruptcy was discharged in April 2013. (SOR ¶ 1.a) (GE 4) About \$40,000 of her declared debts were federal student loans, which were not discharged. At the time of the hearing, the federal student loans were in deferment. (Tr. 46-48; GE 3)

Applicant disclosed her bankruptcy filing on her September 2015 e-QIP. She also disclosed unfiled federal income tax returns and past-due taxes for tax years 2012, 2013, and 2014. She also stated, "I have been overwhelmed with bills and did not have money to pay." She reported that she had signed up with a debt consolidation service. (GE 1 at 34-37)

Applicant denied SOR ¶¶ 2.a and 2.b, concerning her failure to fully disclose other delinquent debts. (SOR ¶¶ 1.b, 1.e, and 1.g-1.i) She testified that she was not aware that a judgment (SOR ¶ 1.i, for \$4,044) had been specifically re-affirmed during the bankruptcy. (Tr. 72-75, 78-81) She acknowledged that she had other debts that became past due after the bankruptcy, but testified that she did not intend to mislead the Government when she failed to disclose them more specifically on her e-QIP. (Tr. 54, 75-81, 91)

In reporting the details of her military service on her e-QIP, Applicant wrote that she received a "General" discharge, but also wrote, "Discharge Detail Other Than Honorable," and gave the reason for the discharge as "Enlistment Expired." (GE 1 at 21) During the hearing, it became clear that Applicant's discharge from active duty was, in fact a "General Discharge, Under Honorable Conditions," and that she was later discharged honorably from the Naval Reserve. (Tr. 82-87; AE F) As a result, SOR ¶ 2.c was withdrawn, since it was disproven.

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<sup>5</sup> Applicant's federal income tax returns for tax years 2012 and 2013 include a Schedule C-EZ (Net Profit for Business- Sole Proprietorship), showing small profits each year. (AE C, AE D) For tax year 2014, she filed a Schedule C (Profit or Loss from Business – Sole Proprietorship). It also showed a small profit. (AE E) The Schedule C in Applicant's 2016 federal income tax return showed a \$19,400 loss. (AE B)

<sup>6</sup> Department Counsel verified that DOHA retained jurisdiction over this case because Applicant remained sponsored by her employer. (Tr. 15; HE II)

Applicant's delinquent debts in the SOR (§§ 1.b-1.i) total about \$15,560. But for SOR § 1.i, these debts occurred after Applicant's bankruptcy discharge. Applicant had a car voluntarily repossessed in 2015, when she was out of work. (Tr. 75) (SOR § 1.b, for \$7,487) She provided proof with her Answer that the creditor for SOR § 1.f (a \$718 phone bill) had agreed to settle the account, but she provided no proof of any subsequent payments. SOR § 1.c (\$829) is another past-due phone bill. SOR § 1.e (\$811) is a credit card account in collection. Applicant's intends to settle and pay these debts as best she can. (Tr. 58, 76-77, 93-94) SOR § 1.g (\$452) is a past-due credit card account that has been paid. (AE A) SOR § 1.h (\$486) is a past-due cable bill. Applicant stated that she paid it but did not provide supporting documentation. (Tr. 57) Applicant found that the debt consolidation service was not providing any services "that I couldn't do myself," so she stopped using them. (Tr. 77; GE 1)

On her September 2015 e-QIP, Applicant disclosed unfiled federal income tax returns for 2012, 2013 and 2014. (GE 1) Unfiled state tax returns for those years are also alleged. (SOR §§ 1.j-1.o) A tax preparation service prepared those returns in May 2016. (AE C, AE D, AE E) There is no indication in the documents, however, that these returns had in fact been filed, though Applicant testified that they had been. (Tr. 60)

In 2012, Applicant earned about \$31,400 in adjusted gross income. She owes \$2,184 in past-due federal income taxes and \$284 in past-due state income taxes for tax year 2012. (AE C) In 2013, Applicant earned about \$31,400 in adjusted gross income. She owes \$2,261 in past-due federal income taxes and \$290 in past-due state income taxes for tax year 2013. (AE D) In 2014, Applicant earned about \$21,500 in adjusted gross income. She owes \$1,732 in past-due federal income taxes and \$218 in past-due state income taxes for tax year 2014. (AE E) These taxes remain unpaid. (Tr. 62-63)

SOR §§ 1.p and 1.o concern Applicant's alleged failure to file her 2015 state and federal income tax returns, as required. Applicant testified that she was unemployed throughout tax year 2015, and therefore did not make enough taxable income to warrant filing returns. (Tr. 59, 63-64; GE 1 at 12-13)<sup>7</sup> Notwithstanding Applicant's admissions, these allegations are therefore not established, as the Government conceded. (Tr. 108-109)

Applicant provided an unsigned copy of her 2016 federal income tax return (not alleged). She declared that her cleaning business lost about \$19,400 during that tax year. She declared \$12,555 in adjusted gross income, and owed a nominal amount (\$5.00) in taxes. (AE B)

Applicant also testified about earlier tax years. She testified that for tax years 2007 and 2008, she filed her tax returns on time, but owed taxes that she could not pay. She said she did not file her 2009 and 2010 returns on time. She testified that, "I was already on a payment plan. Yes, I should have filed, but I did not file, because I was already in debt with the IRS." (Tr. 60) She testified that she later filed those returns, and

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<sup>7</sup> Applicant's testimony did not address any income she may have made from her cleaning business in tax year 2015, and there are no tax returns from that year in the record, so the record is silent on this point.

established a payment plan for her past-due taxes (estimated at about \$8,000-9,000) and paid that debt prior to 2012 (the year she filed bankruptcy). (Tr. 61-63)

Since she was laid off by her sponsor, Applicant has worked part-time delivering packages. She otherwise supports herself through a monthly disability payment from the Veterans' Administration. (Tr. 50)

Applicant's former supervisor has worked for many years in the human resources field, both in the United States Navy and as a DOD civilian. He worked with Applicant in both of her prior positions, both as a DOD civilian and in her contractor position. He testified that Applicant was a reliable worker who came to work on time and consistently performed at a high level. He trusts her with personally identifiable information (PII) something Applicant handled regularly. (Tr. 96-105)

### **Policies**

It is well established that no one has a right to a security clearance, or, as here, to a determination of public trust.<sup>8</sup> As the Supreme Court noted in *Department of the Navy v. Egan*, "the clearly consistent standard indicates that security [and trustworthiness] determinations should err, if they must, on the side of denials."<sup>9</sup>

The adjudicative 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 overarching adjudicative goal is a fair, impartial, and commonsense 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 national security eligibility 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, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable [trustworthiness] decision."

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<sup>8</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988) ("it should be obvious that no one has a 'right' to a security clearance").

<sup>9</sup> 484 U.S. at 531.

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 that an 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.

## **Analysis**

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

The trustworthiness concern relating to the guideline for financial considerations is set out in AG ¶ 18:

Failure 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 classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

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 classified information.<sup>10</sup>

AG ¶ 19 provides conditions that could raise financial trustworthiness concerns. The following are potentially applicable:

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

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<sup>10</sup> See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

(f) failure to file . . . annual Federal, state, or local income tax returns . . . as required.

Applicant has a history of financial instability and accruing delinquent debts. She filed Chapter 7 bankruptcy in 2012. About half of her declared \$90,000 debt was discharged. Her federal student loans are not dischargeable in bankruptcy, so that debt (about \$40,000) remains, though they are currently in deferment and are not delinquent.

Applicant incurred several delinquent debts in the years after she filed bankruptcy. Her cleaning business has not been particularly profitable. Applicant was otherwise unemployed for more than a year after she left DOD in 2014, and her financial woes continued. AG ¶¶ 19(a) and (c) apply.

Applicant failed to timely file state and federal income tax returns for tax years 2012-2014. AG ¶ 20(f) applies. The Government did not establish that Applicant was required to file income tax returns for tax year 2015 given her limited income. AG ¶ 20(f) does not apply to SOR ¶¶ 1.p and 1.q.

The financial considerations guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

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

(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.

Applicant's financial instability is attributable to a variety of circumstances. She had several years of unstable employment before taking a job with DOD in 2011. To at least some extent, this was a circumstance beyond her control. She filed Chapter 7 bankruptcy in 2012 and some of her debts were discharged. Under the circumstances, this was a reasonable action, and SOR ¶ 1.a is therefore mitigated. Applicant left DOD in 2014 to pursue a business opportunity. That was not successful, and a significant period

of underemployment followed. She worked for her current sponsor from February 2016 until July 2017. She has had limited employment ever since. These circumstances led to additional financial woes, and have impacted her ability to resolve them. AG ¶ 20(b) therefore has some application to her delinquent debts.

Applicant's financial issues, however, are both long-term and ongoing. She has not established that her financial issues are being resolved, are under control, or are unlikely to recur. AG ¶¶ 20(a) does not apply.

Applicant paid SOR ¶ 1.g. She indicated that she intends to settle and pay her remaining debts as best she can. The Appeal Board has held that it is not necessary to pay off all the debts alleged in the SOR, nor is it required that they be paid off in any particular way. It is only required that an Applicant have a reasonable plan to pay off her debts, and have taken some steps towards execution of that plan.<sup>11</sup> Applicant has been hampered by the instability of her employment instability, but she is not yet in position where she can put her intentions into effect. AG ¶ 20(d) does not apply.

For several years, Applicant did not timely file her state and federal income tax returns, because she was unable to afford to pay what she owed. She nonetheless had a duty to file her tax returns responsibly, not only as a citizen, but as a DOD employee. From 2012 to 2014, she did not do this. This was not a circumstance beyond her control, so AG ¶ 20(b) does not apply to those allegations. The fact that these tax returns have since been filed, in May 2016, only gets Applicant a limited amount of credit for good-faith effort under AG ¶ 20(d). Applicant also failed to timely file tax returns in previous years. Those returns are not alleged in the SOR, and therefore cannot be considered as disqualifying conduct. However, they can be considered in weighing evidence of mitigation, rehabilitation, and changed circumstances.<sup>12</sup>

Applicant's ongoing tax debt is also not alleged, but can also be similarly considered. Although she has not made arrangements with the IRS and state tax authorities to pay what she owes, Applicant has filed her past-due income tax returns. AG ¶ 20(g) therefore applies. Applicant's eligibility for a position of public trust, however, does not turn on the application of one mitigating condition.

## **Guideline E, Personal Conduct**

AG ¶ 15 expresses the security concern for personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to

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<sup>11</sup> See, e.g., ISCR Case No. 09-08462 at 3 (App. Bd. May 3, 2011).

<sup>12</sup> ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006).



cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. . .

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

On her e-QIP, Applicant disclosed her bankruptcy and her past-due federal taxes and unfiled income tax returns. She did not specifically disclose certain other debts. However, she stated, “I have been overwhelmed with bills and did not have money to pay.” She also reported that she had signed up with a debt consolidation service. She denied any intent to falsify and she testified credibly that she did not intend to mislead the Government when she failed to disclose her debts more specifically. I find that Applicant put the Government on sufficient notice about her financial issues, and rebutted SOR ¶¶ 2.a and 2.b. AG ¶ 16(a) is not established.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant’s eligibility for a trustworthiness determination 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(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(a), the ultimate determination of whether to grant eligibility for a determination of public trust 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 Guidelines F and E in my whole-person analysis. I observed Applicant’s demeanor during the hearing. I found her a credible witness. Applicant rebutted the personal conduct allegations. I believe that she intends to put her finances in order. However, at this time, Applicant’s finances remain unstable. While this is due in part to her history of

unemployment and underemployment, she nonetheless needs to establish more of a track record of financial stability and responsibility before she can again be considered a suitable candidate for access to sensitive information. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for access to sensitive information. For all these reasons, I conclude that Applicant did not mitigate the financial trustworthiness concerns arising in this case.

### **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
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b-1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraphs 1.h-1.o:	Against Applicant
Subparagraphs 1.p-1.q:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a-2.b:	For Applicant
Subparagraph 2.c:	Withdrawn

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national security interests of the United States to grant Applicant's eligibility for access to sensitive information. Eligibility for access to sensitive information is denied.

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Braden M. Murphy  
Administrative Judge