



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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----- ) ADP Case No. 17-00970  
 )  
Applicant for Public Trust Position )  
 )

**Appearances**

For Government: David F. Hayes, Esquire, Department Counsel  
For Applicant: *Pro se*

October 12, 2018

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**Decision**  
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ROSS, Wilford H., Administrative Judge:

On February 22, 2016, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). (Item 2.) On May 3, 2017, the Department of Defense (DoD) 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) effective within the DoD for SORs issued after September 1, 2006.<sup>1</sup> On May 16, 2017, Applicant answered the SOR in writing (Answer) and elected to have her case decided on the written record in lieu of a hearing. (Item 1.) On June 14, 2017, Department Counsel prepared a File of Relevant Material (FORM), which was sent to Applicant on June 15, 2017. Applicant received the FORM on June 29, 2017, and had 30 days from its receipt to file objections and submit additional information.<sup>2</sup> Applicant

<sup>1</sup> I considered the previous AG, effective September 1, 2006, as well as the new AG, effective June 8, 2017. My decision would be the same under either set of guidelines.

<sup>2</sup> Department Counsel submitted five Items in support of the SOR allegations. Item 3 is inadmissible. It will not be considered or cited as evidence in this case. It is the summary of an unsworn interview of

submitted additional information. Department Counsel had no objection and the documents are admitted into evidence as Applicant Exhibit A. On October 1, 2017, the Defense Office of Hearings and Appeals (DOHA) assigned the case to me.

### **Findings of Fact**

Applicant is 45 years old and single with one child. She received a doctorate degree in 2011. Applicant began work with her current employer in October 2015. She requires access to sensitive personal information in connection with her employment. (Item 2 at Sections 12, 13A, 17, and 18.)

The SOR contained 18 allegations under Guideline F, Financial Considerations. The allegations relate to delinquent student loans and consumer debts. Applicant admitted allegations 1.a, 1.b, 1.c, 1.d, 1.i, 1.j, 1.k, 1.l, 1.m, 1.n, 1.o, and 1.r of the SOR. She denied the remaining allegations (1.e, 1.f, 1.g, 1.h, 1.p, and 1.q).

Evidence for the existence of the debts set forth in the SOR is found in credit reports of Applicant dated March 23, 2016; and March 1, 2017. (Items 5 and 6.) Additional evidence can be found in Section 26 of Item 2. The total amount of past-due indebtedness owed by Applicant is alleged to be approximately \$366,266. Past-due student loans account for \$330,541 of the delinquencies.

Applicant described her financial history this way on page 1 of her Answer:

I have been a student for the majority of my life which means I often have had to work low paying jobs while still paying for my existence. As a result, I have often had to compromise my credit in exchange for meeting my daily living needs. In addition, I had to take on raising my nephew for three years while my brother was incarcerated with no financial support. Finally I partnered with an individual that chose to use my credit destructively just as I was starting to rebuild. I am [a] single mother who does not receive any support for her child and yet, I am still able to support myself with no issues. For the past 18 months, I have finally secured a position that has provided me an income to support all of my debts. (Item 1 at 4.)

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Applicant conducted by an interviewer from the Office of Personnel Management on November 1, 2016. Applicant did not adopt the summary as her own statement, or otherwise certify it to be accurate. Under Directive ¶ E3.1.20, this Report of Investigation summary is inadmissible in the absence of an authenticating witness. See Executive Order 10865 § 5. In light of Applicant's admissions, Item 3 is also cumulative. Applicant is not legally trained and might not have understood Department Counsel's FORM footnote 1, which described the potential admissibility of Item 3. I therefor reviewed it for any potentially mitigating information that Applicant might have thought would be considered. Any such mitigating information will be discussed later in this Decision.

The current status of the debts set forth in the SOR is as follows:

1.a. Applicant admitted that she was indebted to a creditor for a past-due student loan in the amount of \$181,743. Applicant stated that she was in school for 11 years and had to defer her loans. She further stated, "Since I have graduated, I have not been able to afford loan repayment due to the interest on the loans so therefore I have not paid." Applicant applied to the Federal government to rehabilitate this loan. Applicant submitted a form she signed on May 30, 2017, indicating that she would start making monthly payments to rehabilitate her loan on June 17, 2017. No further information was provided, including whether Applicant made any payments in accordance with this agreement. This debt is not resolved. (Item 2 at Section 26; Item 4 at 5; Applicant Exhibit A.)

1.b. Applicant admitted that she was indebted to a creditor for a charged-off debt in the amount of \$9,917. Applicant stated on page 1 of her Answer, "This car has been sold and majority of the debt paid off. I am working with credit bureau to remove this from my credit report." No further information was provided. This debt is not resolved. (Item 1 at 4.)

1.c. Applicant admitted owing a past-due debt to a property company in the amount of \$6,644. She stated on page 1 of her Answer, "I went to court to resolve this issue and the complex refused to accept this payment. This amount declared is incorrect. I am working with the credit bureau to remove this from my credit report." No further information was provided. This debt is not resolved. (Item 1 at 4.)

1.d. Applicant admitted owing a charged-off debt to a creditor in the amount of \$4,146 for an automobile that was totaled in an accident and paid off. Applicant stated that she is attempting to have this debt removed from her credit report. No further information was provided. This debt is not resolved. (Item 1 at 4.)

1.e. Applicant denied being indebted to a creditor for a past-due debt in the amount of \$2,069. She stated in her Answer that the debt is not hers, and that she would work with the credit bureau to have it removed from her credit report. No further information was provided. This debt is not resolved. (Item 1 at 4.)

1.f. Applicant denied being indebted to a creditor for a past-due debt in the amount of \$1,616. She stated in her Answer that the debt is not hers, and that she would work with the credit bureau to have it removed from her credit report. No further information was provided. This debt is not resolved. (Item 1 at 4.)

1.g. Applicant denied being indebted to a creditor for a past-due debt for cable television service in the amount of \$875. She stated in her Answer that the debt is not hers, and that she would work with the credit bureau to have it removed from her credit report. No further information was provided. This debt is not resolved. (Item 1 at 4.)

1.h. Applicant denied being indebted to a creditor for a past-due debt in the amount of \$635. She stated in her Answer that the debt is not hers, and that she would work with the credit bureau to have it removed from her credit report. No further information was provided. This debt is not resolved. (Item 1 at 4.)

1.i. Applicant admitted owing a past-due debt in the amount of \$443. She stated in her Answer, "This debt is old." Applicant further stated that she would work with the credit bureau to have it removed from her credit report. No further information was provided. This debt is not resolved. (Item 1 at 5.)

1.j. Applicant admitted owing a past-due debt in the amount of \$441. She stated in her Answer, "This debt is old." Applicant further stated that she would work with the credit bureau to have it removed from her credit report. No further information was provided. This debt is not resolved. (Item 1 at 5.)

1.k. Applicant admitted owing a past-due debt in the amount of \$271. She stated in her Answer, "This debt is old." Applicant further stated that she would work with the credit bureau to have it removed from her credit report. No further information was provided. This debt is not resolved. (Item 1 at 5.)

1.l. Applicant admitted owing a past-due medical debt to a creditor in the amount of \$109. She stated in her Answer, "I will find out the source of this debt and pay it off." No further information was provided. This debt is not resolved. (Item 1 at 5.)

1.m. Applicant admitted owing a creditor \$2,052 for an unsatisfied judgment. Applicant stated, and the record supports, that this is the same creditor as set forth in allegation 1.c. However, it is unclear whether this is the same, or a different, debt. No further information was provided. This debt is not resolved. (Item 1 at 5.)

1.n. Applicant admitted owing a creditor \$6,067 for an unsatisfied judgment. She stated in her Answer that the debt was resolved, and she was working with the credit bureau to remove it from her credit report. The judgment appears on her 2016 credit report, but not on the 2017 report. Given the state of the record, I find that the Government has not proved Applicant still owed this debt at the time the record closed. This allegation is found for Applicant. (Item 1 at 5, Item 4 at 4, Item 5 at 3.)

1.o. Applicant admitted that she was indebted to a creditor for a past-due student loan in the amount of \$148,798. Applicant applied to the Federal government to rehabilitate this loan, along with the one in allegation 1.a. She submitted a signed form indicating that she would begin payments to rehabilitate her loan on June 17, 2017. No further information was provided, including whether Applicant made any payments in accordance with this agreement. This debt is not resolved. (Item 2 at Section 26, Item 4 at 5; Applicant Exhibit A.)

1.p. Applicant denied being indebted to a creditor for a past-due medical debt in the amount of \$269. She stated in her Answer that the debt is not hers, and that she

would work with the credit bureau to have it removed from her credit report. No further information was provided. This debt is not resolved. (Item 1 at 5.)

1.q. Applicant denied being indebted to a creditor for a past-due debt in the amount of \$115. She stated in her Answer that the debt is not hers, and that she would work with the credit bureau to have it removed from her credit report. No further information was provided. This debt is not resolved. (Item 1 at 5.)

1.r. Applicant admitted being indebted to a creditor for a past-due debt in the amount of \$56. She stated in her Answer that she would pay this debt off. No further information was provided. This debt is not resolved. (Item 1 at 5.)

Applicant did not provide a workable plan or budget, from which her ability to pay her delinquent debts, or avoid additional debt problems, can be predicted with any certainty. She submitted no evidence concerning the quality of her professional performance, or the level of responsibility her duties entail. She provided no character references describing her judgment, trustworthiness, integrity, or reliability.

### **Policies**

Positions designated as ADP I/II/III are classified as “sensitive positions.” The Deputy Under Secretary of Defense (Counterintelligence and Security) Memorandum, dated November 19, 2004, indicates trustworthiness adjudications will apply to cases forwarded to the DoD and DOHA by the Defense Security Service and Office of Personnel Management. DoD contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination may be made.

When evaluating an applicant’s suitability for national security eligibility for a public trust position, the administrative judge must consider the disqualifying and mitigating conditions in the AGs. 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 AG ¶ 2(d), describing the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), 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.

Directive ¶ E3.1.14 requires the Government to 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 the applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion as to obtaining a favorable trustworthiness decision.

A person who applies for access to sensitive information seeks to enter 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**

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

The trustworthiness concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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 personal 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.

AG ¶ 19 describes three conditions that could raise trustworthiness concerns and may be disqualifying in this case:

- (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.

Applicant has a history of being unable or unwilling to fully satisfy her debts, most of which remain unresolved and delinquent. The evidence raises all three trustworthiness concerns, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes four conditions in AG ¶ 20 that could mitigate trustworthiness concerns arising from Applicant's financial difficulties:

- (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, 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 financial 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 overdue creditors or otherwise resolve debts.

The evidence does not support the application of any of these mitigating conditions in this case. Applicant submitted no information that would show how she intended to resolve her debt issues, other than arranging to begin rehabilitation payments towards her more than \$300,000 in student loans. However, no evidence was submitted showing that any payments had been made. Applicant stated that she would contest several of her debts with the credit bureaus. There is no evidence that she did this. There is insufficient information to demonstrate that her financial problems are unlikely to continue or recur, calling into question her reliability and trustworthiness. None of the mitigating conditions apply.

As stated, allegation 1.n is found for Applicant. With that exception, Guideline F is found against Applicant.

### **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(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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility for a trustworthiness determination 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 the facts and circumstances surrounding this case. Applicant failed to submit sufficient information, from which to conclude that her financial obligations are being responsibly managed and that similar problems are unlikely to recur. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a public trust position. For these reasons, I conclude Applicant did not meet her burden to mitigate the trustworthiness concerns arising from her financial problems.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	Against Applicant
Subparagraph 1.n:	For Applicant

Subparagraph 1.o:	Against Applicant
Subparagraph 1.p:	Against Applicant
Subparagraph 1.q:	Against Applicant
Subparagraph 1.r:	Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant national security eligibility for a public trust position. Eligibility for access to sensitive ADP information is denied.

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WILFORD H. ROSS  
Administrative Judge