



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



In the matter of:

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Applicant for Public Trust Position

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ADP Case No. 17-01604

**Appearances**

For Government: Erin P. Thompson, Esq., Department Counsel

For Applicant: *Pro se*

01/02/2018

**Decision**

KATAUSKAS, Philip J., Administrative Judge:

Applicant contests the Defense Department's intent to deny her eligibility for a public trust position. Applicant presented sufficient evidence to explain, extenuate, or mitigate the trustworthiness concern stemming from her problematic financial condition. Accordingly, this case is decided for Applicant.

**Statement of the Case**

Applicant completed and submitted a Questionnaire for National Security Positions (SF 86 format) on December 14, 2015. On May 26, 2017, after reviewing the application and the information gathered during a background investigation, the Department of Defense Consolidated Adjudications Facility, Fort Meade, Maryland, sent Applicant a statement of reasons (SOR), detailing trustworthiness concerns under Guideline F for financial considerations.<sup>1</sup> It detailed the factual reasons for the action under the guideline

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<sup>1</sup> This action was taken under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive). In addition, Security Executive Agent Directive (SEAD) 4, *National Security Adjudication Guidelines* (AG), effective within the Defense Department on June 8, 2017, apply here. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2016). In this case, the SOR was issued under Adjudicative Guidelines effective within the Defense Department on September 1, 2006. My decision and formal findings under the revised Guideline F would not be different under the 2006 Guidelines.

known as Guideline F for financial considerations. Applicant answered the SOR on July 11, 2017, and requested a decision based on the written record without a hearing.

On July 26, 2017, Department Counsel submitted a file of relevant and material information (FORM).<sup>2</sup> Included in the FORM were six items of evidence, which are marked as Government Exhibits (GE) 1 through 6. GE 1 through 3, 5 and 6 are admitted into evidence. GE 4 is discussed below. The FORM was mailed to Applicant on July 27, 2017, and Applicant received it on August 7, 2017. Applicant responded to the FORM on September 28, 2017. She submitted one document, which I marked as Applicant's Exhibit A (AE A), and it was admitted into evidence without objection. The case was assigned to me on December 7, 2017.

On December 14, 2017, I reopened the record *sua sponte* until close of business December 22, 2017, to allow Applicant (1) to review the revised AG effective June 8, 2017, and (2) to supplement the record as to the status of the SOR debts. Applicant responded via email on December 22, 2017, and submitted the following four documents, which are marked as AE B through AE E and are admitted into evidence without objection:

AE B - Letter from Creditor B to Applicant dated July 6, 2017;  
AE C - Letter from Creditor C to Applicant dated July 6, 2017;  
AE D - Letter from Creditor D to Applicant dated October 19, 2017; and  
AE E - Letter from Creditor E to Applicant dated July 6, 2017.

### **Procedural Matters**

The FORM includes GE 4, which is a report of investigation (ROI) summarizing Applicant's interview that took place during the December 2016 background investigation. The ROI is not authenticated as required under ¶ E3.1.20 of the Directive.<sup>3</sup> Department Counsel's written brief includes a footnote advising Applicant that the summary was not authenticated and that failure to object may constitute a waiver of the authentication requirement. Department Counsel's written brief includes a footnote advising Applicant that the summary was not authenticated and that failure to object may constitute a waiver of the authentication requirement. The footnote is prominently prefaced with a bolded, upper-case notice to Applicant and flagging for Applicant the importance of the footnote, which then explains the concepts of authentication and waiver. In a case such as this, where Applicant has responded to the FORM, it is fair to conclude that Applicant read the footnote, understood it, and chose not to object to GE 4. GE 4 is, therefore, admitted into evidence.

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<sup>2</sup> The file of relevant material consists of Department Counsel's written brief and supporting documentation, which are identified as evidentiary exhibits in this decision.

<sup>3</sup> See *generally* ISCR Case No. 12-10933 (App. Bd. Jun. 29, 2016) (In a concurring opinion, Judge Ra'anani notes the historical concern about reports of investigation in that they were considered by some to present a heightened problem in providing due process. Judge Ra'anani raises a number of pertinent questions about using an unauthenticated ROI in a non-hearing case with a pro se applicant.).

## Findings of Fact

Applicant is 38 years old, married, and has two daughters (ages 19 and 16) and a stepdaughter (age 23). She earned her Bachelor's degree in 2013 and has worked at a Defense Department healthcare provider since April 2016. Applicant was unemployed for about one year, while she cared for her ailing father (from March 2015 to the date of her security clearance application – December 2015). She left a full-time job to care for her father. She also experienced brief periods of unemployment in 2012, 2010, and 2008.<sup>4</sup>

The SOR alleged nine delinquent debts totaling more than \$36,000.<sup>5</sup> In her answer to the SOR, Applicant provided documentation that she has resolved three SOR debts (SOR ¶¶ 1.b, 1.f, and 1.g).<sup>6</sup> Applicant submitted a document showing that she has a reasonable basis to dispute SOR ¶ 1.i.<sup>7</sup> SOR debt ¶ 1.a is a charged off auto loan for \$20,925. With her answer, Applicant documented that the auto was voluntarily repossessed, thus reducing the deficiency to \$13,896, which she will begin paying monthly (\$300) in January 2018.<sup>8</sup>

In her response to the reopened record, Applicant documented that she has resolved SOR ¶¶ 1.c, 1.d, 1.e, and 1.h.<sup>9</sup> In sum, Applicant has addressed each of the SOR debts.

The "Dates of Last Activity" on credit reports are good indicators of when an account first went delinquent.<sup>10</sup> The delinquency indicators for SOR ¶¶ 1.a through 1.h range from April 2015 to February 2016.<sup>11</sup> This is consistent with Applicant leaving her full-time job (and thus losing her income) in March 2015 to care for her father.

## 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

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<sup>4</sup> GE 3 and 4.

<sup>5</sup> GE 1.

<sup>6</sup> GE 2, enclosures 2, 5, and AE A.

<sup>7</sup> GE 2, enclosure 6.

<sup>8</sup> GE 2, enclosure 1.

<sup>9</sup> AE B through AE E. *See also* GE 5, p. 8; GE 6, p. 2 (pertaining to SOR ¶ 1.h).

<sup>10</sup> For a collection account, the indicator is the date when the account was assigned or reported. For a judgment, the relevant date is when it was filed (although the delinquency had to precede the filing).

<sup>11</sup> GE 5.

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(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."

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 to obtain 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 safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of sensitive information.

## **Discussion**

### **Guideline F – Financial**

Under Guideline F for financial considerations,<sup>12</sup> the suitability of an applicant may be questioned or put into doubt when that applicant has a history of excessive indebtedness or financial problems or difficulties. The overall concern is:

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.<sup>13</sup>

The concern is broader than the possibility that a person might knowingly compromise sensitive information to obtain money or something else of value. It

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<sup>12</sup> AG ¶¶ 18, 19, and 20 (setting forth the concern and the disqualifying and mitigating conditions).

<sup>13</sup> AG ¶ 18.

encompasses concerns about a person's self-control, judgment, and other important qualities. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding sensitive information.

In analyzing the facts of this case, I considered the following disqualifying and mitigating conditions or factors:

AG ¶ 19(a) inability to satisfy debts;

AG ¶ 19(c) a history of not meeting financial obligations;

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;

AG ¶ 20(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;

AG ¶ 20(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

The record shows that Applicant gave up her full-time job in March 2015 to care for her ailing father. In doing so, she lost her employment income for almost a year. And the evidence is clear that her delinquent debts were caused by that loss of income. I conclude that those were circumstances largely beyond her control under AG ¶ 20(b). The next question under AG ¶ 20(b) is whether she acted responsibly to address her indebtedness under those circumstances.

Individuals applying for a position of public trust are not required to be debt free. Nor are they required to resolve all past-due debts simultaneously or even resolve the SOR debts first. They are, however, expected to present evidence to mitigate trustworthiness concerns raised by their delinquent debts.<sup>14</sup> That is, an applicant is required to demonstrate that he or she has "established a plan to resolve his [or her]

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<sup>14</sup> ISCR Case No. 07-10310 at 2 (App. Bd. Jul. 30, 2008).

financial problems and taken significant actions to implement that plan.”<sup>15</sup> In this case, Applicant has addressed responsibly each of the SOR debts, reducing her SOR indebtedness from about \$36,000 to \$13,896, the amount of the deficiency of her auto loan, which she will begin defraying beginning in January 2018. AG ¶ 20(b) applies fully, as do AG ¶¶ 20(d) and (e).

The record does not create doubt about Applicant’s trustworthiness, good judgment, and ability to protect sensitive information. In reaching this conclusion, I weighed the evidence as a whole and considered if the favorable evidence outweighed the unfavorable evidence or *vice versa*. I also considered the “whole-person” concept.<sup>16</sup> Accordingly, I conclude that Applicant satisfied her ultimate burden of persuasion to show that it is clearly consistent with the interests of national security to grant her eligibility for access to sensitive information.

### **Formal Findings**

The formal findings on the SOR allegations are:

Paragraph 1, Guideline F:	For Applicant
Subparagraphs 1.a – 1.i:	For Applicant

### **Conclusion**

In light of the record as a whole, it is clearly consistent with the interests of national security to grant Applicant eligibility for access to sensitive information.

Philip J. Katauskas  
Administrative Judge

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<sup>15</sup> ISCR Case No. 07-06482 at 2 (App. Bd. May 21, 2008). *See also* ISCR Case No. 14-00504 at 3 (Aug. 4, 2014).

<sup>16</sup> AG ¶¶ 2(a) and (d)(1)-(9).