



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



In the matter of:

ADP Case No. 17-02093

Applicant for Public Trust Position

**Appearances**

For Government: Chris Morin, Esq., Department Counsel

For Applicant: *Pro se*

01/03/2018

**Decision**

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the financial considerations trustworthiness concerns. Eligibility for access to sensitive information is denied.

**Statement of the Case**

On July 18, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing trustworthiness concerns under Guideline F, financial considerations. The action was taken under *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; 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 on June 8, 2017.

On August 8, 2017, Applicant submitted an answer to the SOR, and she elected to have her case decided on the written record. Department Counsel submitted the Government's file of relevant material (FORM). The FORM was mailed to Applicant, and it was received on September 6, 2017. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of

receipt of the FORM. Applicant did not object to the Government's evidence, which are identified as Items 1 through 6. Applicant did not submit any documents or additional information. The Government's documents are admitted into evidence. The case was assigned to me on December 20, 2017.

### **Findings of Fact**

Applicant admitted all of the allegations in the SOR except ¶¶ 1.ccc, 1.eee, and 1.fff. Her admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact.

Applicant is 57 years old. She earned a diploma from a technical institution in 1982 and an Associate's degree the same year. She married in 1986 and was widowed in 2006. She has two adult children from the marriage, ages 28 and 25 years old.<sup>1</sup>

Applicant admits she owes 59 of the 62 debts alleged in the SOR. At least 47 of the debts are medical. Applicant disclosed in her April 2016 public trust application that she made arrangements with the creditor for her medical debts to have them consolidated into one account, and she would begin paying \$50 a month in April 2016, until the consolidated debt was satisfied. She disclosed the consolidated amount was \$8,022. During her March 2017 background interview with a government investigator, she stated that she had been making the \$50 monthly payments. In her answer to the SOR, she stated that she was unable to pay the medical accounts and offered no additional evidence.<sup>2</sup>

Applicant disclosed other delinquent debts in her public trust application and stated she had contacted the creditors and had made arrangements to make monthly payments. During her background interview, she stated she was unable to follow through with any of the payments. In her answer to the SOR, she stated she was unable to pay her delinquent debts.<sup>3</sup>

Applicant told the investigator that her financial difficulties began when her son moved out of the house, and she no longer had his income to help her pay the bills. It is unclear when her son moved out of the house. There are two dates mentioned in her statement to the investigator, one is 2010 and the other is 2014. Some of Applicant's delinquent debts began before 2010. Applicant disclosed in her public trust application that she vacationed in a foreign country for six to ten days in October 2014. In addition to medical debts, Applicant's debts include furniture loans, credit card accounts, a personal loan, a defaulted car loan, unpaid insurance, and other accounts. Credit

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<sup>1</sup> Items 2, 3.

<sup>2</sup> Items 2, 3, 4.

<sup>3</sup> Items 2, 3, 4.

reports from July 2016 and May 2017, along with Applicant's admissions corroborate the delinquent debts.<sup>4</sup>

Applicant stated that she has been a loyal employee for 23 years. Her public trust application discloses that she was widowed in 2006, but she stated that she was a single mother and the father never "was supportive for the care of our children."<sup>5</sup> She explained that she does not earn enough income to pay all of her debts. She also stated that she "was not raised on how to handle my finances and I am in the process of seeking credit counseling for guidance."<sup>6</sup>

## **Policies**

The Deputy Under Secretary of Defense (Counterintelligence and Security) Memorandum, dated November 19, 2004, indicates trustworthiness adjudications will apply to cases forwarded to DOHA by the Defense Security Service and Office of Personnel Management. Department of Defense 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 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 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 access to [sensitive] information will be resolved in favor of national security."

Directive ¶ E3.1.14, states that the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states that 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

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<sup>4</sup> Items 3, 4, 5, 6.

<sup>5</sup> Item 2.

<sup>6</sup> Item 2.

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.

## **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.

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

- (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 delinquent debts that began accumulating in at least 2010 that she is unable or unwilling to pay. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate trustworthiness 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;

(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;

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

(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.

Applicant debts are numerous and ongoing. There is insufficient evidence to conclude they are unlikely to recur. AG ¶ 20(a) does not apply.

Applicant attributed her financial problems to insufficient income and her son moving out of the house and no longer having his income to help pay the bills. These factors were beyond her control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. Applicant indicated that she had consolidated her medical debts and was making monthly payments. She did not provide documentary evidence showing that consistent monthly payments were made. She indicated in her answer that she was unable to pay her debts. Although she initially made an effort to pay her medical bills, without explanation she abandoned that effort and indicated she was unable to make the \$50 payment she had arranged with the creditor. She did not provide information about her monthly expenses, a budget, or changes she made after her son moved out. There is insufficient evidence to conclude Applicant acted responsibly under the circumstances. AG ¶ 20(b) partially applies.

Applicant indicated she intends to seek financial counseling, but had not. There is insufficient evidence to conclude her finances are under control. There is insufficient evidence to conclude she has made a good-faith effort to repay her creditors or otherwise resolve her delinquent debts. Applicant denied three debts alleged, but did not provide evidence as to her actions to dispute their legitimacy or documented efforts to resolve them. There is insufficient evidence to apply AG ¶¶ 20(c), 20(d), or 20(e).

## **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(a):

(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(c), the ultimate determination of whether to grant eligibility for a public trust position 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 Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is a 57 years old. She has two grown children. She accumulated numerous medical and other debts that remain unresolved. At one point, Applicant consolidated her medical debts and the creditor agreed to accept a monthly payment of \$50. It is unknown how long Applicant made the payment, but she abandoned the plan and stated she was unable to pay any of her delinquent debts. Applicant has an unreliable financial track record, which raises questions and doubts about her eligibility and suitability for a public trust position. For all these reasons, I conclude Applicant failed to mitigate the Guideline F, financial considerations trustworthiness concerns.

## **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
Subparagraphs 1.a-1.jjj:	Against Applicant

## **Conclusion**

In light of all of the circumstances it is not clearly consistent with national security to grant Applicant eligibility for a public trust position. Eligibility for access to sensitive information is denied.

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Carol G. Ricciardello  
Administrative Judge