



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



In the matter of:

ADP Case No. 17-02495<sup>1</sup>

Applicant for Public Trust Position

**Appearances**

For Government: Chris Morin, Esq., Department Counsel

For Applicant: *Pro se*

11/26/2018

**Decision**

RICCIARDELLO, Carol G., Administrative Judge:

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

**Statement of the Case**

On August 23, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Statements of Reasons (SOR) to Applicant detailing trustworthiness concerns under Guidelines E, personal conduct, and 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 on June 8, 2017.

Applicant answered the SOR on April 23, 2018, and requested a hearing before an administrative judge. The case was assigned to me on June 28, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on July 5, 2018,

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<sup>1</sup> This case was incorrectly labeled as an ISCR case.

scheduling the hearing for August 16, 2018. I convened the hearing as scheduled. The Government offered exhibits (GE) 1 through 4. Applicant testified, called one witness, and offered exhibit (AE) A.<sup>2</sup> There were no objections to any exhibits and all were admitted into evidence. DOHA received the hearing transcript on August 23, 2018.

### **Findings of Fact**

Applicant admitted all of the SOR allegations. Applicant's admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings, testimony, and exhibits, I make the following findings of fact.

Applicant is 32 years old. She earned an associate's degree in 2014. She has a seven-year-old child. She married the father of her child in 2015. She has been employed by a federal contractor since June 2014. From February 2014 to June 2014, she chose to stay home to care for her child. She attended school full-time from August 2011 until February 2014, and did not work. From August 2010 to August 2011, Applicant stayed home with her infant child and the child's father supported them.<sup>3</sup>

Applicant testified that she is aware of her financial problems and delinquent debts. She stated that none of the debts are paid. When she started her job, she was unable to pay them because she was living paycheck to paycheck and her income was insufficient. She contacted some creditors, but it was a long time ago. She wanted to hire a company to consolidate the delinquent debts, but has not done so. She has looked into filing bankruptcy.<sup>4</sup>

Applicant acknowledged that she obtained student loans in 2011 and 2012, and has never made payments on them (SOR ¶ 1.a-\$8,514 and ¶ 1.b-\$8,175). She testified that she contacted the lender in the past, but was not able to pay the loans. When she got a job, she did not address her debts. She stated that in 2014 her father was diagnosed with cancer and she helped him financially. She gave him about \$1,000.<sup>5</sup>

Applicant testified that she always intended to pay her debts. She stated until she went through the clearance process, she was unaware of the extent of her indebtedness. She does not have money to pay her delinquent debts. She does not have medical insurance. Her son has medical needs.<sup>6</sup>

In Applicant's application for a public trust position, she responded "No" to questions that asked if in the past seven years a judgment had been entered against

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<sup>2</sup> The Government's exhibit list is Hearing Exhibit HE) I and the discovery letter is HE II. Applicant provided as part of her answer to the SOR numerous character letters.

<sup>3</sup> Tr. 19-23; GE 1, 2.

<sup>4</sup> Tr. 23-31.

<sup>5</sup> Tr. 30-34.

<sup>6</sup> Tr. 36-37.

her; are you currently delinquent on any federal debt; have you defaulted on any type of loan; have your bills or debts been turned over to a collection agency; have you had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed.<sup>7</sup>

Applicant was interviewed by a government investigator in January 2016. She acknowledged numerous delinquent medical debts that were incurred for her son. She told the investigator that the medical accounts were in collection status. She did not have medical insurance, and she was trying to pay the bills with cash. She told the investigator that she had not been contacted by the creditors. She said she attempted to make small monthly payments to the original creditors. She could not verify the amounts or dates of the payments. She was unaware of other debts that were delinquent, including two judgments (SOR ¶ 1.hh-\$862 entered 2010 and ¶ 1.ii-\$4,291 entered 2014).<sup>8</sup>

Regarding Applicant's delinquent student loans, she explained to the investigator that she was aware the loans became due six months after she completed school. She was unable to pay them. She did not contact the lender at that time they became due. She moved frequently. Her mother was contacted in the summer of 2015 by the lender. Applicant's mother notified Applicant. Then Applicant contacted the lender and advised it that she was not financially able to pay the loans at that time. She told the investigator that she was advised by the lender that they only wanted to make sure they had reliable contact information for her. Applicant told the lender that she intended to repay the loan, but did not know when. She said the lender advised her that they expected her to repay the debts in a timely manner. Since this contact, Applicant has not made any payments or had contact with the lender. She told the investigator she did not realize the lender was characterizing the debts as late since she had spoken to them.<sup>9</sup>

Applicant's explanation to the investigator for her failure to disclose her delinquent medical debts in her application for a public trust position was because she overlooked the question when completing the application. She did not disclose other delinquent debts because she was unaware of them. She did not disclose delinquent student loans because she believed after she contacted the lender in the summer of 2015, it had allowed her more time to begin making payments.<sup>10</sup>

Applicant told the investigator that her future intentions were to hire a credit counselor to help her manage and resolve the delinquent accounts within the year (2016), but she needed time to save money so she could afford its services. She also intended to obtain a copy of her credit report, so she could contact her creditors in an attempt to clarify and resolve any outstanding debts. She was going to do this no later

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<sup>7</sup> GE 1.

<sup>8</sup> GE 2.

<sup>9</sup> GE 2.

<sup>10</sup> Tr.38-43; GE 2.

than March 2016. She also intended to contact her student loan lender in January 2016, to resolve issues with her accounts. She was not in a financial position at that time to make payments, but was hoping the lender would defer payments without additional penalties.<sup>11</sup>

Applicant testified that she was aware at the time she completed her public trust application that she had delinquent debts, but was not aware of the amounts. Applicant testified that the reason she did not disclose her delinquent debts on the application was because she did not understand the questions. She said she did not disclose the medical debts because she felt there was a difference between the doctor's office medical debts and collection accounts. She did not have an explanation for why she told the investigator that she "overlooked" the questions and then testified that she did not understand the question.<sup>12</sup> I did not find Applicant's testimony regarding her failure to disclose financial delinquencies credible.

Applicant stated in her October 2017 answer to the SOR that in the past her wages were garnished by the IRS. They are no longer being garnished. Applicant's husband testified on her behalf. He acknowledged that his wages were garnished for unpaid taxes for years 2011 and 2013. He failed to have sufficient money withheld from his pay and then was unable to pay his taxes when due. He did this intentionally because he needed the money while his wife was not working. He confirmed that his wife's wages were previously garnished for state taxes because her employer did not withhold taxes.

Applicant testified that her federal and state income tax refunds are involuntarily withheld. She believes the IRS is applying her refunds to her delinquent student loans. She testified that she likely has received letters from the IRS and state tax authority, but her husband takes care of them. They file their taxes jointly.<sup>13</sup>

Applicant testified that she and her husband pay what they are able to at the moment. They do not have a written budget. She does not know how much her husband earns. They have \$50 in savings and the amount in their checking account varies. They have little money remaining at the end of each month after paying monthly expenses. She stated she wanted to consolidate her debts, but could not afford the services of a credit agency. She stated she contacted a credit agency, but it was a long time ago.<sup>14</sup>

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<sup>11</sup> GE 2.

<sup>12</sup> Tr. 30-37.

<sup>13</sup> Tr. 44-55, 66-73; Answer to the SOR. I have not considered any derogatory information for disqualifying purpose that was not alleged in the SOR. I may consider information when making a credibility determination, in the application of mitigating conditions, and in my whole person analysis.

<sup>14</sup> Tr. 55-64.

The debts are corroborated by Applicant's admissions, testimony, and credit reports from July 2015 and July 2017.<sup>15</sup>

Applicant provided character letters. In them she is described as professional, outstanding, helpful, task-oriented, respectful, compassionate, knowledgeable, experienced, excellent, positive, kind, invaluable, honest, trustworthy, conscientious, and a phenomenal worker.<sup>16</sup>

## **Policies**

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are to be used in determining an applicant's eligibility for a position of trust.

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(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."

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 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

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<sup>15</sup> GE 1, 2, 3, 4.

<sup>16</sup> Answer to the SOR, AE A.

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; and
- (c) a history of not meeting financial obligations.

Applicant has unpaid judgments, delinquent student loans, and other delinquent debts that began accumulating in 2014, which she is unable to pay or resolve. 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; and

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

Applicant attributed her financial problems to underemployment and lack of medical insurance. She did not provide sufficient evidence that she is paying or attempting to resolve any of her delinquent debts at this time. Her debts are recent and ongoing. She has not established a reliable financial track record. There is insufficient evidence to conclude future financial problem are unlikely to recur. AG ¶ 20(a) does not apply.

Applicant was underemployed for periods of time and did not have medical insurance, which contributed to her financial problems and were circumstances beyond her control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. Applicant has been steadily employed since 2014. Her husband is also employed. During her 2016 background interview, she said she would obtain a credit report; begin to address her delinquent debts; work with a credit counselor to resolve her debts; and contact her student loan lender. She has not done this and is unable to pay her delinquent debts. Insufficient evidence was provided to show she has acted responsibly regarding any of her delinquent debts. AG ¶ 20(b) partially applies.

There is insufficient evidence Applicant sought financial counseling or that there are clear indications her financial problems are being resolved or are under control. Applicant told the government investigator in 2016 that she intended to resolve her delinquent debts in the future. She testified she intended to pay her delinquent debts. She provided no evidence that she has taken any action to begin this process, including paying some of the small debts. None of the debts in the SOR are resolved. AG ¶¶ 20(c) and 20(d) do not apply.

## **Guideline E: Personal Conduct**

AG ¶ 15 expresses the trustworthiness 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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a trustworthiness concern and may be disqualifying. I find the following 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.

Applicant did not disclose any financial problems under Section 26 of the public trust application. She told the government investigator that she overlooked these questions. She testified that she did not understand the financial section questions. She stated that she believed she was not required to disclose her delinquent student loans because she did not think the creditor considered the debts late after she had contacted them. Her testimony and explanations were not credible. The above disqualifying condition applies.

The guideline also includes conditions that could mitigate security concerns arising from personal conduct. I have considered the following mitigating conditions under AG ¶ 17:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

There is insufficient evidence that Applicant made a prompt good-faith effort to correct the omissions and disclose her financial problems before being confronted by the government investigator. Applicant testified that she did not have medical insurance in 2013 and 2014 and was unable to pay her medical bills. She was aware of the expenses associated with her son's medical issues and that she had bills owed. She was also aware that she had not made any payments on her student loans that were due six months after she completed her education in 2014. It is not reasonable to believe she merely overlooked the questions or misunderstood them. Applicant responded "no" to each specific question and did not provide any comments. She admitted she lives paycheck to paycheck. Applicant's failure to truthfully provide answers on her application is not minor. The Government relies on those seeking positions of trust to honestly disclose information, which may be derogatory. Failure to do so raises questions about a person's reliability, trustworthiness, and good judgment. I find AG ¶¶ 17(a) and 17(c) do not apply.



## **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.

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 Guidelines F and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is 32 years old. She accumulated delinquent debts due to underemployment. She was aware that she had delinquent debts when she completed her public trust application. She did not disclose any financial issues on her application. Applicant provided insufficient evidence of action she has taken to resolve or pay her delinquent accounts. Her testimony supported that she is unable to do so. She intends to resolve her delinquent debts in the future. Applicant has not established a sufficient reliable financial track record. 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 failed to mitigate the security concerns arising under Guideline E, personal conduct, and Guideline F, financial considerations.

## **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.jj:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT

Subparagraph 2.a:

Against Applicant

**Conclusion**

In light of all of the circumstances, it is not clearly consistent with the national interest 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