



**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. 17-03926

**Appearances**

For Government: Tara R. Karoian, Esq., Department Counsel

For Applicant: *Pro se*

05/18/2018

**Decision**

MARSHALL, Jr., Arthur E., Administrative Judge:

Applicant failed to mitigate security concerns pertaining to Guideline F (financial considerations). Clearance is granted.

**Statement of the Case**

The Applicant seeks eligibility to occupy an automated data processing (ADP) position designated ADP-I/II/III. On November 30, 2017, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued to her a Statement of Reasons (SOR) detailing concerns under Guideline F (Financial Considerations).<sup>1</sup> In a response signed on December 21, 2017, and in an email dated January 3, 2018, she admitted the sole allegation raised and requested a determination based on the written record. On January 31, 2018, the Government issued a File of Relevant Material (FORM) with eight attachments ("Items"). The case was assigned to me on May 10, 2018. Based on my

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<sup>1</sup> The action was taken under Executive Order 10865, *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 or after June 8, 2017.

review of the record as a whole, I find Applicant mitigated financial considerations trustworthiness concerns.

### **Findings of Fact**

Applicant is a 43-year-old health technician seeking a position with a defense contractor. She has earned a high school diploma and completed at least a semester of community college. She is single and has no children.

Applicant first acquired a certain credit card in 2000 and always made “steady payments” on the account. (SOR Response) In 2005, she used the card to purchase a vehicle, which led her to a monthly obligation of \$150 a month. This was a manageable sum that she timely honored on a regular basis. In about 2009, however, her monthly minimum payments were raised to approximately \$275, a sum she could not afford. Working with the credit card company, she was put on a special payment plan for one year, where she timely paid \$125 a month. However, in 2011, one payment arrived late. The credit card company reinstituted its former requirement of about \$275 a month. With no increase in income, the ability to meet this monthly obligation remained elusive.

In March 2012, the credit card company prevailed in a judgment against Applicant for \$17,000. The first law firm to handle collections on the debt was initially willing to accept monthly payments of \$25. Applicant adjusted her budget accordingly. Eventually, however, it demanded \$100 a month, which Applicant could no longer afford. The collection effort was then transferred to another law firm, which demanded monthly payments of \$200. Applicant explained her situation to no avail. When she failed to meet the \$200 monthly payment, the new law firm sought to freeze Applicant’s bank account and garnish her wages.

In July 2016, Applicant met with an investigator from the Office of Personnel Management (OPM) in relation to this process. She discussed this situation, providing proof of the payments she had been making to the law firm. She explained the matter as best she could. At the time, her net monthly income was approximately \$2,600. Her rent, payment on the credit card at issue, a second credit card in good standing, car insurance, gasoline, utilities, cable bill, groceries, tithing, and entertainment amounted to about \$2,395, while her monthly cell phone charge and student loan payments amounted to another \$162.<sup>2</sup> Consequently, she had insufficient funds to meet the ever-increasing demands for higher minimum payments or financially survive garnishment of the sums contemplated by the law firm.

Feeling she had no other options, Applicant filed for Chapter 7 bankruptcy protection in February 2017. As a prerequisite to filing for bankruptcy, Applicant received financial counseling.<sup>3</sup> Her bankruptcy was discharged in May 2017. The sum at issue was approximately \$22,000, although Applicant only recalls the credit card as

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<sup>2</sup> The student loans have since been deferred. (FORM, Item 5)

<sup>3</sup> See, e.g., [https://www.justice.gov/sites/default/files/ust/legacy/2011/07/13/FTC\\_Consumer\\_AlertCC.pdf](https://www.justice.gov/sites/default/files/ust/legacy/2011/07/13/FTC_Consumer_AlertCC.pdf).

being at issue.<sup>4</sup> (FORM, Item 8, at 6) Now free of the obligation related to that credit card and related collection effort, and with her student loan now in deferral, Applicant's "current financial status is that her bills are being paid on time and [she] does not have any other financial issues."<sup>5</sup> (FORM, Item 8, at 4) She presently has assets of about \$10,500. Her most recent credit report reflects no delinquent accounts, other than references to the adverse judgment by the credit card company and the bankruptcy action discussed here. (FORM, Item 5)

## **Policies**

When evaluating an applicant's suitability for a trustworthiness position, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to protected information.

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. 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, in making a decision.

The protection of the national security is the paramount consideration. Any doubt concerning personnel being considered for access to protected information will be resolved in favor of the national interest. In reaching this decision, I have only drawn conclusions that are reasonable, logical, and based on the evidence provided.

Under the Directive, the Government must present evidence to establish controverted facts alleged in the SOR. 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 to obtain a favorable trustworthiness decision.

A person seeking eligibility for a trustworthiness position enters into a fiduciary relationship with the Government based on trust and confidence. This relationship transcends normal duty hours. Decisions include consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard protected information. Such

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<sup>4</sup> Applicant most recent credit report reflects that two other accounts were included in the bankruptcy petition, one of which was a student loan account that could not be discharged through bankruptcy. Elsewhere, that student loan account is noted as deferred. (FORM, Item 5)

<sup>5</sup> Elsewhere, it was noted: "[Her] financial status since this bankruptcy is good as [she] is paying her bills on-time." (FORM, Item 8, at 7)

decisions shall be in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.

### **Analysis**

Under Guideline F, AG ¶ 18 sets forth that the trustworthiness concern under this guideline is that failure or inability 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.

Here, the Government introduced credible evidence indicating that Applicant filed for Chapter 7 bankruptcy in February 2017, which was discharged in May 2017. She sought bankruptcy protection after becoming substantially delinquent on a credit card used to buy a car. This is sufficient to apply financial considerations disqualifying conditions:

AG ¶ 19(a): inability to satisfy debts;

AG ¶ 19(b): unwillingness to satisfy debts regardless of the inability to do so; and

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

Under these facts, the following conditions could potentially mitigate the finance-related security concerns posed here:

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(c) the person has received or is receiving counseling for the problem from a legitimate and credible source, such as a non-profit counseling service, and there are clear indications that the problem is being resolved or is under control; and

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

From the day she first acquired the credit card at issue in 2000, Applicant made timely payments on the account. After Applicant purchased a vehicle with her credit card in 2005, she continued to make regular and timely payments of \$150 for a number of years. About four years later, the credit card company raised the minimum payment to \$275, a sum beyond her budget. From there, she struggled to work with the company as its collection entity made ever-increasing demands. The demands included minimum monthly payments of up to \$200, and threats to impose garnishment and freeze her bank account. Fearing such action would prohibit her from meeting any obligations, and unable to negotiate an alternative solution to the lawyers most recent demands, she completed financial counseling and filed for Chapter 7 bankruptcy.

Today, Applicant is living within her means and making timely payments on her bills. Her income has been increased not just by the discharge of her credit card debt, but with her student loans transferred into deferment status. While bankruptcy is not the perfect method for addressing one's delinquent obligation, and is not considered a good-faith solution to debt resolution, Applicant's situation with this particular credit card was something of an aberration, given her past history of timely payments. It was the main reason she resorted to filing for bankruptcy protection. Throughout the time the terms on the credit card payments became more onerous, Applicant tried to work with the credit card company, then with its lawyers. Today, she is living within her means and honoring her monthly obligation in a timely manner. Given these facts, AG ¶ 20(a)-(c) apply.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed in the AG. Under the AG, the ultimate determination of whether to grant eligibility for a security clearance 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 incorporated my comments under the guideline at issue in my whole-person analysis.

Applicant is a 43-year-old woman seeking a position with a defense contractor. She has earned a high school diploma and completed at least a semester of community college. She is single and has no children.

Although Applicant handled her credit card payments responsibly for several years, Applicant's credit card company nearly doubled the minimum payment owed. This increase was unmanageable given her limited income. She worked with the company and its collection entities until they ceased taking any action but increasing

their terms. Left with no other alternatives to address the account and preserve her ability to meet her other obligations, she filed for Chapter 7 bankruptcy.

Today, Applicant is living within her means and making timely payments on her regular obligations. Her available income has increased with the elimination of the credit card payments and the deferment of her student loan. Now with a fresh start, Applicant is in a good position for reformulating her personal finances and avoiding similar problems in the future. Consequently, I find Applicant has mitigated financial considerations trustworthiness.

### **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:	FOR APPLICANT
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Subparagraph 1.a:	For Applicant
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### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant access to sensitive information. Eligibility for access to sensitive information is granted.

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Arthur E. Marshall, Jr.  
Administrative Judge