



**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. 17-04026

**Appearances**

For Government: Robert B. Blazewick, Esquire, Department Counsel

For Applicant: *Pro se*

06/13/2018

**Decision**

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

**Statement of the Case**

The Applicant seeks eligibility to occupy an automated data processing (ADP) position designated ADP-I/II/III. On December 28, 2017, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued her a Statement of Reasons (SOR) detailing concerns under Guideline F (Financial Considerations).<sup>1</sup> In a response dated January 22, 2018, she admitted 11 of 13 allegations and requested a determination based on the written record. On February 13, 2018, the Government issued a File of Relevant Material (FORM) with five attachments ("Items"). The case was assigned to me on May 10, 2018. Based on my review of the record as a whole, I find Applicant mitigated financial considerations trustworthiness concerns.

**Findings of Fact**

Applicant is a 31-year-old single mother of two. She is currently employed as a claims processor. She has held multiple jobs over the past few years, but was unemployed from September 2016 to May 2017, May 2015 to January 2016, and March

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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.

2013 to September 2013. Applicant has earned a high school diploma and a bachelor's degree. There is no evidence she has received financial counseling.

At issue in the SOR are 13 allegations, each reflecting a different delinquent debt. Those obligations amount to about \$12,900. At least nine of those debts, amounting to about \$10,500, are medical in nature. In her SOR answer, Applicant admitted responsibility for all but two of the debts at issue, denying the allegations at 1.l and 1.m. She wrote that the debts noted in allegations 1.a-1.c and 1.e-1.f are in "dormant hold" and, therefore, cannot be consolidated into one repayment plan. Consequently, she would have to make an individual payment arrangement for each of those debts, an action to which she cannot commit at this time. (SOR Response) She noted that she has consolidated the delinquent debts noted at SOR allegations 1.g-1.i and is currently making monthly \$50 payments on that plan, and expected to satisfy the debts at allegations 1.d and 1.j by April 2018. In addition, with regard to the debt at allegation 1.k, Applicant reported that she intended to resolve the outstanding balance before the end of 2018.

In response to the FORM, however, Applicant provided documentary evidence of full payment on the debt at 1.m (\$176). Three \$50 monthly payments were noted as paid between January 2018 and March 2018 toward the repayment plan encompassing the debts noted at 1.g, 1.h, and 1.i. The \$632 delinquent debt at 1.d was satisfied with a payment of approximately \$348. She also settled the \$811 delinquent debt at 1.j with a payment of \$365.

Applicant's income is highly limited. She is paid an hourly wage of \$9.21 an hour. Overtime is also limited at her workplace, and she has not been offered the opportunity to perform such work. Her regular bills, however, are timely met. She has not increased her debt with new delinquent accounts. She attributed most of her delinquent medical debts to the delivery of a child and emergency room visits. (FORM, Item 4) She receives no healthcare benefits, and she accrues neither medical leave nor vacation leave. Any time missed from work is unpaid, including missed time due to inclement weather. It is her intent to satisfy all of her debt.

## **Policies**

In this matter, The Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines* (AG), effective June 8, 2017, is controlling. The DOD considers ADP positions to be "sensitive positions." For a person to be eligible for sensitive duties, the person's loyalty, reliability, and trustworthiness must be such that assigning the person to a sensitive position is clearly consistent with the national security interests of the United States. AG ¶ 2.c. Applicants for ADP positions are entitled to the procedural protections in the Directive before any final unfavorable access determination is made. (Under Secretary of Defense's Memorandum for the Director, Defense Office of Hearings and Appeals, dated November 19, 2004)

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 an evaluation of the whole person. The administrative judge's adjudicative goal is a fair, impartial and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

A public trust position decision resolves whether it is clearly consistent with the interests of national security to grant or continue an applicant's access to sensitive information. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national security interest of the United States to grant or continue his or her access to sensitive information.

Persons with access to sensitive information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national security as their own. The "clearly consistent with the interests of national security" standard requires that "any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." AG ¶ 2(b). An eligibility for a public trust position decision is not a determination of the loyalty of the applicant concerned. It is merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing access to sensitive information.

### **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 sensitive information.

Here, Applicant admits, and her credit reports reveal, that she has nearly \$12,900 in unaddressed delinquent debt. This is sufficient to invoke 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.

Five conditions could 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;

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 delinquent debts at issue are multiple in number and, based on the scant evidence offered, largely unaddressed. Despite Applicant's limited income, approximately \$1,040 has been expended toward her overall debt of almost \$12,900. The reasons as to how this situation was created and why it continues, however, are mostly unknown, although she represents that "most" of the medical debt at issue is related to the birth of a child and emergency room visits. While it can be assumed that those medical debts may have created the underlying debts for those delinquent debts, insufficient facts were offered to gauge whether Applicant acted responsibly at the time they were acquired through today. Further, there is no evidence she has received financial counseling, and there is no suggestion she has formally disputed any of the debts cited. At best, AG ¶ 20(b) applies in part, and AG ¶ 20(d) fully applies. None of the other available mitigating conditions 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 adjudicative process factors listed in the AG. Under AG ¶ 2(a), the need to utilize a "whole-person" evaluation is set forth. 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, 31, is a single mother of two preteen children. Her present workplace pays her \$9.21 an hour, offers no healthcare or leave benefits, and does not offer opportunities for notable overtime. As a threshold issue, it is apparent from the facts that Applicant has the genuine desire and intention of addressing the delinquent debts at issue. The majority of her delinquent debt is medical in nature, with most of those debt related to childbirth and emergency room visits. Applicant admits her financial resources are tight, but she nevertheless is making progress on the debts at issue.

Despite her limited income, Applicant has made a good-faith effort to settle or satisfy multiple delinquent debts by payment of nearly \$1,050 on the delinquent debt at issue. While her pace in addressing or settling these debts may be slow, her methodology appears at this point to be appropriately measured and successful. Given her efforts to date, and in light of her demonstrated intent to satisfy her financial issues, financial considerations trustworthiness concerns are mitigated.

### **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
Subparagraphs 1.a-1.m:	For Applicant

### **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 eligibility for a public trust position. Eligibility for a public trust position is granted.

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Arthur E. Marshall, Jr.  
Administrative Judge