



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



In the matter of:	)	
	)	
[Redacted]	)	ADP Case No. 17-04322
	)	
Applicant for Public Trust Position	)	

**Appearances**

For Government: Brittany Muetzel, Esq., Department Counsel  
For Applicant: *Pro se*

08/29/2018

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**Decision**

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FOREMAN, LeRoy F., Administrative Judge:

This case involves trustworthiness concerns raised under Guideline F (Financial Considerations). Eligibility for a public trust position is granted.

**Statement of the Case**

Applicant submitted an application for a public trust position on July 13, 2017. On January 24, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent her a Statement of Reasons (SOR), citing trustworthiness concerns under Guideline F. The DOD CAF acted under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); DOD Manual 5200.02, *Procedures for the DoD Personnel Security Program (PSP)* (April 3, 2017) (Manual); and the adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016), for all adjudicative decisions on or after June 8, 2017.

Applicant answered the SOR on March 9, 2018, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on April 17, 2018, and the case was assigned to me on May 17, 2018. The Defense Office of Hearings and Appeals (DOHA) sent her a notice of hearing on May 22, 2018, scheduling the hearing for June 13, 2018. I convened the hearing as scheduled. Government Exhibits (GX) 1

through 7 were admitted in evidence without objection. Applicant testified but did not present the testimony of any other witnesses or submit any documentary evidence. DOHA received the transcript (Tr.) on June 25, 2018.

### **Findings of Fact**

In Applicant's answer to the SOR, she admitted the allegations in SOR ¶¶ 1.a, 1.b, and 1.d. She denied the allegations in SOR ¶¶ 1.c and 1.e. Her admissions in her answer to the SOR and at the hearing are incorporated in my findings of fact.

Applicant is a 48-year-old pharmacy technician employed by a defense contractor since August 2017. She has never held a security clearance or eligibility for a public trust position.

Applicant obtained a certificate as a nursing assistant from a technical school in July 1989, but the record does not reflect any employment as a nursing assistant. She has been employed as a pharmacy technician in the private sector since at least April 2003. When she submitted her application for a public trust position, she was employed full time in an addiction center and had a second part-time job in a commercial pharmacy.

Applicant married in July 2000. She and her husband have two children, a 20-year-old daughter and 12-year-old son. Their daughter is a college student living at home. Applicant and her husband pay \$125 per month for their daughter's student loans. (Tr. 40.)

SOR ¶ 1.e alleges that Applicant filed a Chapter 13 bankruptcy petition in June 1993, which was dismissed in January 1994. The court records do not reflect the reason for the dismissal. (GX 2.) In Applicant's answer to the SOR, she denied filing a Chapter 13 bankruptcy petition in June 1993 and asserted that any bankruptcy filed in her name was fraudulent.

SOR ¶ 1.d alleges that Applicant filed a Chapter 7 bankruptcy petition in September 1993 and received a discharge in June 1997. Applicant admits this bankruptcy. In her answer to the SOR and at the hearing, she explained that she is an only child and incurred substantial medical and other debts caring for her terminally ill mother. (Tr. 16.) The court records reflect that she initially filed a Chapter 13 petition and it was converted to a Chapter 7 petition, which may explain why the court records reflect the two bankruptcy petitions filed in 1993. (GX 3; Tr. 46.)

SOR ¶ 1.c alleges that Applicant filed a Chapter 13 bankruptcy petition in March 2006, which was dismissed in December 2007. Applicant testified that she filed this bankruptcy petition after she was laid off. She did not list any periods of unemployment in her application for a public trust position; however, she indicated that her employment from April 2003 to September 2008 ended when she was laid off. (GX 1 at 14.) Applicant could not remember with specificity the debts that were included, but her recollection was that they included a car loan and medical bills. She testified that no credit-card debts were included, because she did not have any credit cards. (Tr. 28.) The bankruptcy was

terminated before the payment plan was completed. The trustee's final report reflected that a total of \$14,297 was disbursed to creditors. (GX 4 at 9; Tr. 27.)

SOR ¶ 1.b alleges that Applicant filed a Chapter 13 bankruptcy petition in May 2012, and it was dismissed in July 2014 for failure to make the required payments. Applicant testified that she was employed when she filed this petition but that she was paid hourly and her hours fluctuated between 20 and 40 hours per week. Her husband was employed at a resort, and his hours during the off-season were drastically reduced. (Tr. 29-30.) When she filed her petition, she and her family had been evicted from their home, her car was inoperable due to engine and transmission problems, leaving them with no transportation, and the car eventually was repossessed. (Answer to SOR.)

Court records reflect that the bankruptcy trustee filed a motion to dismiss the petition in November 2012 and a hearing was scheduled on the motion, but the hearing was cancelled in December 2012. Applicant testified that she made the required payments for about a year and a half, but she did not complete the payment plan because she was laid off again in July 2014. (Tr. 29.) Her employment history in her application for a public trust position reflects that her full-time employment ended in June 2014, when her work hours were cut, but that she had begun a second part-time job in May 2014 and kept it until July 2017. (GX 1 at 12.) Court records reflect that 23 months elapsed between the filing of the petition and its dismissal, and that \$7,758 was disbursed to creditors. (GX 5.)

SOR ¶ 1.a alleges that Applicant filed a Chapter 13 bankruptcy petition in July 2017. The confirmed plan provides for payments of \$350 per month for 48 months. The petition is solely in Applicant's name, and her income is reflected as \$2,664 per month. The petition listed assets of \$14,187 and liabilities of \$30,027. It listed \$10,926 in secured debts and \$19,101 in unsecured debts. The largest debt was a deficiency of \$7,497 after an automobile repossession. (GX 6.) The plan requires payment of \$178 every two weeks. When she answered the SOR in March 2018, she provided documentation that all required payments had been made from September 2017 through the end of February 2018. (Tr. 35; Enclosure to Answer.)

Applicant's current job provides a steady and predictable income, because she works 40 hours every week. Her husband's employment continues to fluctuate. (Tr. 36-37.) Applicant manages the family finances. (Tr. 48.) Her current pay is higher than her pay in any of her previous jobs. (Tr. 48.) She estimates that she and her husband have a combined family income of about \$50,000 per year, and their net monthly remainder after paying all the bills is about \$300. (Tr. 36-40.) She and her husband have no credit cards. (Tr. 43.) She has not sought or received any financial counseling beyond the counseling required by the bankruptcy court. (Tr. 44.) In her current employment, she has good medical insurance and is unlikely to be overwhelmed with medical expenses as she has in the past. (Tr. 46.)

## **Policies**

A memorandum from the Under Secretary of Defense, dated November 19, 2004, treats public trust positions as sensitive positions, and it entitles applicants positions to the procedural protections in the Directive before any final unfavorable determination may be made. The standard set out in the Manual and the adjudicative guidelines for assignment to sensitive duties is that the person's loyalty, reliability, and trustworthiness are such that assigning the person to sensitive duties is clearly consistent with the interests of national security. Manual ¶ 7.1a(2); AG ¶ 2.b.

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. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard sensitive information.

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 overarching 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.

The protection of the national security is the paramount consideration. Under AG ¶ 2(b), "[a]ny doubt concerning personnel being considered for access to [sensitive] information will be resolved in favor of national security." The Government must present substantial evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). An applicant has the ultimate burden of demonstrating that it is clearly consistent with national security to grant or continue eligibility for access to sensitive information.

## **Analysis**

### **Guideline F, Financial Considerations**

The concern under this guideline 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. . . . An individual who is financially

overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

This concern is broader than the possibility that a person might knowingly compromise sensitive or classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting sensitive or classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding sensitive or classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's admissions and the evidence submitted at the hearing establish the following potentially disqualifying conditions:

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

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

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

The following mitigating conditions are potentially applicable:

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 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

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

AG ¶ 20(a) is not fully established. Applicant's debts are numerous and recent. The bankruptcies in 1993 were caused in large part by her mother's terminal illness. However, the delinquent debts included in the bankruptcies in 2006, 2012, and 2017 were not incurred under circumstances making them unlikely to recur. The bankruptcies between 1993 and the current petition are not mitigated by passage of time, because they are a part of a constant stream of financial problems from 1993 to the present.

AG ¶ 20(b) is established. The medical expenses and other debts related to the demise of Applicant's mother, Applicant's recurring periods of underemployment and uninsured or underinsured medical expenses were conditions largely beyond her control. She acted responsibly by holding two jobs, seeking legal help, and filing her most recent bankruptcy petition.

AG ¶ 20(c) is established. Applicant has received the financial counseling required by the bankruptcy court. Her earlier attempts at resolution of her debts through a Chapter 13 bankruptcy were thwarted by her unpredictable income. She now has a steady job with a predictable and dependable income. Her current pay is sufficient to make the required payments to the trustee, and her payments are current.

AG ¶ 20(d) is established. Applicant has chosen to pay her creditors through a Chapter 13 bankruptcy, and she has complied with the payment plan. She has a credible plan to resolve her debts and has taken significant steps to implement the plan.

### **Whole-Person Concept**

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. In applying the whole-person concept, an 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. An 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.

I have incorporated my comments under Guideline F in my whole-person analysis, and I have applied the factors in AG ¶ 2(a). Applicant was candid and sincere at the hearing. Unfortunately, she has a track record of failed bankruptcy attempts. However, her past failures were attributable to inadequate and unpredictable income. She now has a steady and predictable income. I am confident that she recognizes that another failed bankruptcy attempt may result in reconsideration of her suitability for a public trust position.<sup>1</sup> After weighing the disqualifying and mitigating conditions under Guideline F,

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<sup>1</sup> "The Government has the right to reconsider the security significance of past conduct or circumstances in light of more recent conduct having negative security significance." ISCR Case No. 10-06943 at 4 (App. Bd. Feb. 17, 2012). Violation of a promise to pay legitimate debts could result in revocation of eligibility for a public trust position.

and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the trustworthiness concerns raised by her history of delinquent debts. Accordingly, I conclude she has carried her burden of showing that it is clearly consistent with national security to grant her eligibility for a public trust position.

### **Formal Findings**

Paragraph 1, Guideline F (Financial Considerations): FOR APPLICANT

Subparagraphs 1.a-1.e:

For Applicant

### **Conclusion**

I conclude that it is clearly consistent with the interests of national security to grant Applicant eligibility for a public trust position. Eligibility for a public trust position is granted.

LeRoy F. Foreman  
Administrative Judge