



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



In the matter of:

Applicant for Public Trust Position

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ADP Case No. 17-04154

**Appearances**

For Government: Aubrey M. De Angelis, Esq., Department Counsel  
For Applicant: *Pro se*

10/12/2018

**Decision**

HEINTZELMAN, Caroline E., Administrative Judge:

Applicant mitigated trustworthiness concerns raised by her debts. Eligibility for a public trust position is granted.

**History of the Case**

Applicant submitted an application for a public trust position on March 28, 2017. On December 28, 2017, the Department of Defense (DOD) sent her a Statement of Reasons (SOR), citing trustworthiness concerns under Guideline F. DOD acted under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); 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 January 18, 2018, and requested a hearing before an administrative judge.

I was assigned to the case on May 1, 2018. On May 15, 2018, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for June 11, 2018, and I issued an order to both parties to produce their documentary evidence by June 1, 2018. Department Counsel submitted her documentation as requested. I convened the hearing as scheduled. Government's Exhibits (GE) 1 through

6 and Applicant's Exhibits (AE) A through F, were admitted without objection. Applicant and her domestic partner testified. I held the record open until July 16, 2018, to allow Applicant to submit additional documentation. I received the completed transcript (Tr.) on June 20, 2018. On July 16, 2018, Applicant submitted AE G through Q, which were admitted without objection, and the record closed.

### **Findings of Fact**

Applicant is 54 years old. Since May 2017, she has been a supervisor of medical review and appeals for a defense contractor. She requires a public trust position for her employment. In 1991, she received an associate's degree in nursing and became a licensed practical nurse. (Tr. 10) She divorced in 1998 after 10 years of marriage and has two adult children. She has been in a committed relationship with her partner for the past 13 years. (Tr. 11)

The SOR alleges that Applicant has 46 delinquent debts totaling \$19,217, 40 of which are medical debts. These debts became delinquent between 2011 and 2017. She admitted to all of the debts in the SOR with the exception of SOR ¶¶ 1.w, 1.aa, and 1.ii.<sup>1</sup> Her finances were negatively affected by her divorce, medical issues, her daughter's medical bills, her partner's medical bills, and various periods of unemployment. (Tr. 33-34, 48)

In 2003, Applicant filed for Chapter 7 bankruptcy.<sup>2</sup> The bankruptcy was the result of her 1998 divorce and her ex-husband's failure to pay various bills. (Tr. 33-34)

In approximately 2004, Applicant was diagnosed with three chronic diseases. A few years later, she was hospitalized 13 times within an 18-month period. Her illnesses caused her to miss work, which resulted in periods without pay<sup>3</sup> and ultimately led to terminations from multiple employers due to absenteeism. Her last period of unemployment was from February to May 2017. When she did have health insurance, it covered only approximately 80% of her medical expenses. Additionally, during her various periods of unemployment, she did not have medical insurance. (Tr. 13, 20-23, 25, 29, 35-38; AE B; AE G)

Applicant provided documentation that she paid SOR ¶ 1.a in May 2018. (Tr. 46; AE C; AE D) In January 2018, Applicant started working with a credit-counseling program. Since March 2018, she has made bi-weekly payments of \$75 to the program. The money is automatically withdrawn from her paychecks and is applied to various bills held by a single medical creditor. As of July 8, 2018, she has paid almost \$1,275 toward this plan.

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<sup>1</sup> Applicant's credit-counseling program informed her that SOR ¶ 1.w is a duplicate of SOR ¶ 1.v; SOR ¶ 1.aa is a duplicate of SOR ¶ 1.z; and SOR ¶ 1.ii is a duplicate of SOR ¶ 1.hh. (Tr. 55-56)

<sup>2</sup> Because it was not alleged in the SOR, I will only consider this information as a factor in evaluating credibility, mitigation, and whole-person factors.

<sup>3</sup> When Applicant was employed, she often missed weeks of work due to her multiple medical issues. Because she had exhausted her leave, she did not always receive a paycheck. (Tr. 29-30)

The debts alleged in SOR ¶¶ 1.b, 1.c, 1.e, 1.f, 1.h, 1.j, 1.k, 1.l, 1.m, 1.o, 1.p, 1.q, 1.s, 1.y, 1.bb, 1.dd, 1.ee, 1.ff, 1.hh, 1.jj, 1.mm, 1.nn, 1.qq, 1.rr, and 1.ss are included in the payment agreement. (Tr. 13, 17, 42-44, 46; AE E; AE F; AE G; AE H)

Prior to entering the credit-counseling program, Applicant made intermittent payments, totaling between \$3,000 and \$4,000, toward her medical debts. (Tr. 26-27, 33) In June 2018, Applicant started working with an additional medical creditor to pay \$100 a month for unalleged debts. (Tr. 37-38, 41, 53; AE B; AE G)

Applicant has filed all of her state and federal income tax returns, and her taxes are current. (Tr. 39) She has a written budget and an emergency savings account. Her budget demonstrates that her income exceeds her expenses. (Tr. 39-41; AE F) She is up to date on her current financial obligations, including her home loan, car loan, student loan, credit cards, utilities, and auto and whole life insurance policies. Additionally, she is not accumulating new debt. Her July 2018 credit report indicates her credit score is increasing. (Tr. 46-47, 54; GE 3; AE G; AE H; AE K; AE L; AE M; AE N; AE O; AE P; AE Q)

Applicant submitted documentation reflecting her positive work performance for her current employer. (Tr. 15-16; AE A) Additionally, she received a cash bonus of \$1,200 from her employer last year. (Tr. 19) Applicant's witness testified to her honesty, trustworthiness, hard work, and desire to resolve her financial issues. (Tr. 49-51, 61)

### **Policies**

The standard set out in 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. (AG ¶¶ 1(d) and 2(c).) 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 adjudicative guidelines. 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 national security eligibility 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 national security eligibility.

## **Analysis**

### **Guideline F: Financial Considerations**

The concern under Guideline F (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 . . . .

The record evidence establishes two disqualifying conditions under this guideline: AG ¶ 19(a) (inability to satisfy debts) and AG ¶ 19(c) (a history of not meeting financial obligations).

AG ¶ 20 describes conditions that could mitigate security concerns. The following are potentially applicable in this case:

- (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 experienced personal financial issues related to her chronic medical issues and employment, which were circumstances beyond her control. The vast majority of her debts are related to medical treatment. Her financial issues were not the result of frivolous or irresponsible spending. She sought credit counseling to resolve her debts in a responsible manner. Applicant provided proof that she has resolved or is making payments toward many of her delinquent debts. Although she has not provided proof of payment toward all of her debts, her actions demonstrate an overall good-faith effort to repay creditors. She is willing and able to live within her means, which is reflected in the testimonial and documentary evidence. She has no new delinquent debts, demonstrating her circumstances have changed and she is reliable. Mitigation under AG ¶¶ 20(a), 20(b), 20(c), and 20(d) is established.

### **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 the 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(d), 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.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a public trust position. For all these reasons, I conclude Applicant mitigated the trustworthiness concerns arising from her financial considerations.

### **Formal Findings**

I make the following formal findings on the allegations in the SOR:

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

Subparagraphs 1.a-1.tt:

For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant Applicant eligibility for a public trust position. Eligibility for access to sensitive information is granted.

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CAROLINE E. HEINTZELMAN  
Administrative Judge