



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



In the matter of: )  
)  
) ADP Case No. 07-06556  
)  
)  
Applicant for Public Trust Position )

**Appearances**

For Government: James F. Duffy, Esquire, Department Counsel  
For Applicant: *Pro Se*

December 15, 2008

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**Decision**

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RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the government’s security concerns under Guideline F, Financial Considerations. Applicant’s eligibility for access to sensitive information is denied.

On May 28, 2008, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing the trustworthiness concerns under Guideline F, Financial Considerations. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program*, dated Jan. 1987, as amended (Regulation), and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on June 28, 2008, and elected to have her case decided on the written record. Department Counsel submitted the government’s file of relevant material (FORM) on September 15, 2008. The FORM was

mailed to Applicant on September 16, 2008, and it was received on September 24, 2008. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not object to the FORM and did not submit additional material. The case was assigned to me on November 19, 2008.

### **Findings of Fact**

In her Answer to the SOR Applicant admitted all of the factual allegations. I have considered the entire FORM and make the following findings of fact.

Applicant is a 33-year-old single mother of four children, ages 16, 15, 13 and 4. She has worked for a federal contractor as a claims associate since December 2006.

Applicant has 25 delinquent debts, totaling approximately \$44,775. Her delinquent debts span a period of eight years. She had her automobile and mobile home repossessed in 2003. Some of her delinquent debts are from medical expenses incurred in 2000 or 2001 and 2004, 2005 and 2006. Her medical expenses were covered by insurance, but she was responsible for co-payments that remain unpaid. In her interview on February 21, 2007, with an Office of Personnel Management Investigator that she adopted and swore to on March 20, 2008,<sup>1</sup> she stated she had not received collection notices on these medical debts, believed that her co-payments were up to date and was going to review her credit report and contact the creditors and her health care insurance provider in order to correct or dispute the accounts. Applicant did not provide any further information that she followed up on her plan.

In addition to delinquent medical debts, Applicant also has delinquent debts owed to a telephone company, a loan company for her mobile home that was repossessed, an auto loan, personal loan creditor, a tire company, a bank for overdrafts and other creditors. She admitted owing these debts, but also stated she disputed some, had settlement offers from others and was going to contact the creditors. She did not provide any further information that she has contacted the creditors, or satisfied or resolved any of these delinquent debts. Applicant did provide proof of payment on a delinquent electric bill that was not included in the SOR. She stated in her interview that she intended to pay certain debts listed in the SOR by specific months during 2007. No proof was provided that she followed through on these promises. She stated in her interview that she became financially overextended and could not pay some of her bills.<sup>2</sup>

Applicant did not provide any answers to the interrogatories requesting her to provide information as to what she has done to resolve each specific debt alleged and to provide documentary proof of her actions.<sup>3</sup> No other information was provided.

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<sup>1</sup> Item 6.

<sup>2</sup> *Id.*

<sup>3</sup> Item 7.

## Policies

Positions designated as ADP I and ADP II are classified as “sensitive positions.” (See Regulation ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3.) “The standard that must be met for . . . assignment to sensitive duties is that, based on all available information, 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.” (See Regulation ¶ C6.1.1.1.) The Deputy Under Secretary of Defense (Counterintelligence and Security) Memorandum, dated November 19, 2004, indicates trustworthiness adjudications will apply to cases forwarded to DOHA by the Defense Security Service and Office of Personnel Management. Department of Defense contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination may be made. (See Regulation ¶ C8.2.1.)

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 the factors listed in the adjudicative process. The administrative judge’s over-arching adjudicative goal is a fair, impartial and common sense decision. According to AG ¶ 2(c), 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 access to [sensitive] information will be resolved in favor of national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, 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 as to obtaining 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 protect or safeguard sensitive information. Such decisions entail a certain degree of legally

permissible extrapolation as to potential, rather than actual, risk of compromise of sensitive information.

Section 7 of Executive Order (EO) 10865 provides that 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.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

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

The trustworthiness concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

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. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise trustworthiness concerns. I have considered all of the disqualifying conditions and especially considered AG ¶ 19(a) (“inability or unwillingness to satisfy debts”) and (c) (“a history of not meeting financial obligations”). Applicant has approximately \$44,755 in delinquent debt that she is unable or unwilling to pay. Some of the debts date back approximately eight years. Despite her promises to look into the matter and pay some of the debts, she failed to provide any evidence of such efforts. Both (a) and (c) apply.

The guideline also includes examples of conditions that could mitigate trustworthiness concerns arising from financial difficulties. I have considered all of the mitigating conditions and especially considered 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”); (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, or a death, divorce or separation), and the individual acted responsibly under the circumstances”); (c) (“the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control”); (d) (“the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts”) and (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”).

Applicant did not provide any amplifying information or documentation to support she has contacted her creditors, attempted to resolve her delinquent debts, disputed debts she believed she paid or was not responsible for, or any other information to consider in mitigation. Considering the limited information that was provided I conclude none of the 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 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) 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. Applicant is a single mother of four children. She has numerous delinquent medical debts that she believed her insurance was responsible for, but she failed to provide any evidence that she attempted to resolve these debts with the creditors. She also has numerous other delinquent debts that remain unpaid. She stated that some of the creditors had offered settlements and she was going to accept and pay them, but did not provide any further information to document she paid any of the debts. She has other debts that she is unable to pay. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a public trust position. For all these reasons, I conclude Applicant has failed to mitigate the trustworthiness concerns arising from her 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
Subparagraph 1.a-1.y:	Against Applicant

## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security 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