



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



In the matter of:	)	
	)	
	)	ADP Case No. 14-04890
	)	
Applicant for Public Trust Position	)	

**Appearances**

For Government: Gregg A. Cervi Esq., Department Counsel  
For Applicant: *Pro se*

10/28/2015

**Decision**

LYNCH, Noreen A., Administrative Judge:

On November 12, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant listing trustworthiness concerns arising under Guideline F (Financial Considerations). The action was taken under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), implemented in September 2006.

Applicant timely answered the SOR and requested a decision based on the written record in lieu of a hearing. Department Counsel submitted a File of Relevant Material (FORM), dated August 4, 2015.<sup>1</sup> Applicant received the FORM on August 14, 2015. She submitted additional information for the record. I received the case assignment on October 9, 2015. Based on a review of the case file, I find Applicant has mitigated the trustworthiness concerns raised. Eligibility for a position of trust is granted.

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<sup>1</sup>The Government submitted six items in support of its case.

## Findings of Fact

In her answer to the SOR, Applicant admitted the allegations under Guideline F, with explanations. She also provided some documentation concerning payments and receipts. (Item 2)

Applicant is 48 years old. She is employed with a health insurance company. Applicant obtained a technical degree in medical billing and coding in June 2006. In June 2012, she obtained a technical diploma for medical assistance. She is divorced and has three children. (Item 3) She has been employed with her current employer since September 2013. This is her first application for a position of trust, which she completed on February 28, 2013. (Item 3)

The SOR alleges 14 delinquent debts totaling approximately \$28,000. These debts include medical accounts and collection accounts. (Item 1) Credit reports confirm the debts. (Items 4 and 5) Applicant produced documentation that the debts listed at 1.g (\$88) and 1.n (\$50) were paid.

Applicant explained in her Answer that she contacted her creditors listed in the SOR and arranged payment plans. She was unemployed from February to August 2010; February 2007 to January 2008; and June 2012 to February 2013. She had temporary jobs and she took care of her mother. (Item 6) Her mother has since died.

In 2013, during an investigative interview, Applicant explained that she did not know of some of the debts until she obtained a 2013 credit report. (Item 6) During the interview she stated that the largest debt, \$14,809 for a 2012 emergency hospital visit (SOR 1.a), was in a payment plan, but she has not been able to complete the monthly payments due to unemployment. She states that the credit collection company wants the entire medical bill to be paid in full. ( Response to FORM)

As to the remaining SOR debts, Applicant provided documentation to support that she has paid all accounts or is in a repayment plan for them. In 2015, Applicant paid the debt in 1.b (\$703). The documentation shows a zero balance, paid in full. (Response to FORM, Attachment B)

The debt in 1.c (\$345) was paid in three payments. (Response to FORM, Attachment C) The debt in 1.d (\$280) was paid in full in December 2014. (Response to FORM, Attachment D) The debt in 1.e (\$265) has been paid in full. (Response to FORM, Attachment E) The debt in 1.f (\$75) was paid in December 2014. (Response to FORM, Attachment F) The debt in 1.h (\$1,995) was paid in April 2015. (Response to FORM, Attachment H) The debt in 1.i (\$2,139) was paid in nine payments. (Response to FORM, Attachment I) The debt in 1.j (\$695) was reported in error. It was part of another medical bill. (Response to FORM, Attachment J) The debt in 1.k (\$500) was paid in full. (Response to FORM, Attachment K) The debt in 1.l (\$414) was settled for \$214, and paid in full. (Response to FORM, Attachment L) The debt in 1.m (\$155) was settled and paid in full. (Response to FORM, Attachment M) The debt in 1.n (\$50) was paid in full in December 2014. (Response to FORM, Attachment N)

The record does not indicate Applicant's current salary. Applicant did not list any financial counseling or provide a budget. There is no record of use of a credit counseling organization.

## Policies

Positions designated as ADP I and ADP II are classified as "sensitive positions." 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 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." Regulation C6.1.1.1 Department of Defense contractor personnel are entitled to the procedural protections in the Directive before any final unfavorable access determination may be made. Regulation ¶¶8.2.1

When evaluating an applicant's suitability for a public trust position, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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 the national interest."

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. . . ." <sup>2</sup> The burden of proof is something less than a preponderance of evidence. <sup>3</sup> The ultimate burden of persuasion is on the applicant. <sup>4</sup>

A person seeking access to sensitive information enters into a fiduciary relationship with the Government based on 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

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<sup>2</sup> See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

<sup>3</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

<sup>4</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

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

## **Analysis**

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

The trustworthiness concern for Financial Considerations is set out in AG ¶ 18:

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

Applicant's admissions establish her delinquent debts and her credit reports confirm the debts. Consequently, Financial Considerations Disqualifying Conditions (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations) apply. With such conditions raised, it is left to Applicant to overcome the case against her and mitigate trustworthiness concerns.

The nature, frequency, and relative recency of Applicant's financial difficulties make it difficult to conclude that it occurred "so long ago." An unpaid debt is a continuous course of conduct for the purposes of DOHA adjudications. See, ISCR Case No. 10-11083 at 2 (App. Bd. Dec. 17, 2012). Applicant has paid all but one debt. Consequently, Financial Considerations Mitigating Condition (FC MC) 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) partially applies.

FC MC AG ¶ 20(b) (the conditions that resulted in the behavior 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) does not apply. Applicant listed information concerning unemployment on three different occasions and that she was divorced. She also provided financial support for her mother. The majority of the accounts were medical. She did not initially produce documentary evidence when she answered the SOR, but in Response to the FORM provided evidence that nearly all the debts have been paid or settled. The exception is the largest debt, the hospital emergency bill for \$14,809, Applicant states that she contacted the creditor and made payment arrangements in 2014, but she was unable to finish paying the debt and the collection company wants the payment be paid in full. In response to the FORM, Applicant presented new information concerning update on the status of her debts.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) partially applies. Applicant has paid all the debt listed in the SOR. She initiated a payment arrangement for the hospital bill at 1.a, but could not continue. The collection company wanted the entire amount. She did not present evidence that she received financial counseling. AG ¶ 20(c) (the person has received or is receiving counseling for the problem) does not apply. Consequently, I find that there are clear indications that her financial problems are being resolved and are under control.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a position of trust by considering the totality of an applicant's conduct and all the relevant 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(c), the ultimate determination of whether to grant eligibility for a position of trust must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. As noted above, the ultimate burden of persuasion is on the applicant seeking a public trust position.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors. Applicant is 48 years old. She has worked for her current employer since 2013. She has been unemployed and is divorced. She has had many temporary jobs and supported her mother. She contacted her creditors and made payment arrangements. She has shown a track record with nearly all the SOR debts. She acted responsibly. She has taken sufficient steps to mitigate the security concerns under the financial considerations guideline.

### **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.n:	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 a position of public trust. Eligibility for a position of public trust is granted.

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NOREEN A. LYNCH.  
Administrative Judge