



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



In the matter of:	)	
	)	
	)	ADP Case No. <sup>1</sup> 14-05537
	)	
	)	
Applicant for Public Trust Position	)	

**Appearances**

For Government: Daniel F. Crowley, Esq., Department Counsel  
For Applicant: *Pro se*

06/28/2016

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**Decision**

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COACHER, Robert E., Administrative Judge:

Applicant did not mitigate the financial considerations trustworthiness concerns. The personal conduct trustworthiness concerns were not established. Eligibility for access to sensitive information is denied.

**Statement of the Case**

On July 7, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing the trustworthiness concerns under Guidelines F and E. The DOD acted under Executive Order (EO) 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); DOD Regulation 5200.2-R, *Personnel Security Program*, dated January 1987, as amended (Regulation); and the adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the DOD on September 1, 2006.

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<sup>1</sup> This case was originally styled as an ISCR case, however, at the hearing and post-hearing, it was determined that this was a trustworthiness determination and not a security clearance case. I have styled this Decision as an ADP case. See Tr. at 34-36; Hearing Exhibit (HE) II.

Applicant answered the SOR in writing on August 14 and August 19, 2015. The case was assigned to me on October 19, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on November 10, 2015, and the hearing was convened as scheduled on December 11, 2015. The Government offered Exhibits (GE) 1 through 5, which were admitted into the record without objection. Department Counsel's discovery letter dated September 10, 2015, which contained an index of government exhibits, was marked HE I. Applicant testified and offered exhibits (AE) A through J, which were admitted without objection. I kept the record open until February 11, 2016, to allow Applicant to submit additional information and she submitted AE K through O, which were admitted without objection. Department Counsel's transmittal email is marked as HE III. DOHA received the transcript of the hearing (Tr.) on December 24, 2015.

### **Findings of Fact**

In Applicant's answer (Ans.) to the SOR, she admitted all the debts listed in the SOR and the allegation that she provided false information on her trustworthiness application. She also provided extensive explanations, particularly regarding the allegations of providing false information, which essentially amounts to her denying any intent required to establish those allegations. After a careful review of the pleadings and evidence, I make the following findings of fact.<sup>2</sup>

Applicant is a 40-year-old employee of a government contractor. She has worked for her current employer since May 2014. Her previous employment was in the private sector. She is married with four children, three of which live at home, including a one year old. Her husband stays home to care for the children. She is the family's sole source of income. She has taken some college courses. She does not have military experience.<sup>3</sup>

The SOR lists 30 delinquent debts totaling approximately \$35,452. The debts include 23 collection accounts, 3 delinquent medical accounts, 2 repossessed vehicles, a charged-off account, and a judgment. The debts are supported by credit reports from April 2014 and April 2015, and by Applicant's statements to a defense investigator in April 2014.<sup>4</sup>

The personal conduct allegations include deliberately providing false information while completing her trustworthiness application in March 2014 by failing to list her past-due financial obligations and by failing to list her 1996 felony arrest.

On March 18, 2014, Applicant completed her trustworthiness questionnaire. She answered "yes" to the question concerning whether she had any financial delinquencies over 180 days. She listed her student loan debts as the delinquent debts. She failed to

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<sup>2</sup> Ans.

<sup>3</sup> Tr. at 6, 25-26, 37-39; GE 1.

<sup>4</sup> GE 2-4.

list the remaining debts, which are the subject of the SOR. She credibly explained that she did not have her credit report with her when she completed the application and was not sure of the amounts of the other debts. I find Applicant did not deliberately conceal her financial debt information.<sup>5</sup>

Applicant also failed to list her felony arrest on her application. She explained the warrant was for a food stamp fraud charge, which really amounted to unlucky circumstances. The case was eventually dropped to a misdemeanor. She read the question as asking if she had ever been *convicted* of any felony offense. She stated she had no intent to deceive the Government when she completed the form. I find Applicant’s testimony credible and that she could have made such a mistake. I also find Applicant did not deliberately provide false information concerning her criminal record.<sup>6</sup>

Applicant has always had financial troubles. She provides the sole support for her family. Her husband does not work and was incarcerated from 2005 to 2007. She admitted that she lives paycheck to paycheck. For 14 years, up until her current job, she went without health insurance and some of her medical debts are because of this. Since taking her current position, she received a raise which allowed her to pay some of her debts. She was given an opportunity to submit post-hearing documents showing any additional debt payoffs she accomplished as well as any budgetary information. She provided some documents, however, no additional payoffs were included, nor was there any budget information. She has not received any financial counseling.<sup>7</sup>

The status of the debts is described in the table below:

DEBT SOR ¶	AMOUNT	STATUS	EVIDENCE
1.a	\$1,089	Remains unpaid. She received a settlement offer from collection service in May 2015. Applicant said she would pay by January 2016. No proof of payment submitted. Unresolved.	Tr. at 41-42; Ans.; AE E.
1.b	\$218	Remains unpaid, no contact with creditor. Unresolved.	Tr. at 42, 44; Ans.
1.c – 1.g	\$436 \$430 \$280 \$508 \$502	Applicant provided documentation showing these five medical accounts were paid between April 2015 and June 2015. These debts are resolved.	Tr. at 44-49; Ans.; AE A, M.
1.h	\$2,000	School debt for dropped class. Made one \$25 payment in June	Tr. at 50-51; AE D.

<sup>5</sup> Tr. at 26; Ans.; GE 1.

<sup>6</sup> Tr. at 28-30; Ans.; GE 1.

<sup>7</sup> Tr. at 28, 39, 65; GE 3

		2015 and a \$105 payment in July 2015, no further payments made. Stated she would begin payments again in January 2016, but provided no proof of payments. Unresolved.	
1.i	\$483	Applicant received an offer to settle this account in August 2015. No proof of payment. Unresolved.	Tr. at 52; AE F.
1.j	\$321	Applicant has made payments (last payment in March 2015) to decrease the balance owed to \$160. Account is being resolved.	Tr. at 53; Ans.; AE A
1.k – 1.l	\$6,780 \$4,706	Applicant completed student loan rehabilitation program and getting these two loans out of delinquency. She has not started making regular payments on the rehabilitated loans. All her student loans total over \$40,000. Unresolved.	Tr. at 53-54; Ans.; GE 3; AE A.
1.m – 1.n	\$4,253 \$5,403	Two deficiency balances from repossessed vehicles. Applicant contacted one creditor after hearing and received a settlement offer in January 2016, but provided no proof of payment. No proof of contact with the second creditor. Unresolved.	Tr. at 54-55; Ans.; AE O.
1.o	\$1,030	Applicant contacted creditor post-hearing and received a settlement offer in January 2016, but provided no proof of payment. Unresolved.	Tr. at 56; Ans.; AE N.
1.p	\$311	Judgment remains unpaid. Applicant pointed out she paid a non-SOR judgment in December 2014. The SOR judgment remains unpaid. Unresolved.	Tr. at 56-57; AE H.
1.q	\$344	This account was removed from Applicant's credit report, but she admitted that it was not paid. Unresolved.	Tr. at 57; Ans.
1.r	\$957	Applicant provided proof of payment. Resolved.	Tr. at 58; Ans.; AE A.
1.s	\$586	This account was removed from Applicant's credit report, but she admitted that it was not paid. Unresolved.	Tr. at 59; Ans.

1.t – 1.aa	\$447 \$39 \$386 \$2,532 \$235 \$91 \$27 \$508	These accounts were removed from Applicant's credit report, but she admitted that they were not paid, except for 1.x, but she failed to provide proof of payment. Unresolved.	Tr. at 59-61; Ans.
1.bb – 1.dd	\$260 \$88 \$202	Debts unpaid. Applicant stated she would pay by January 2016. No proof of payment. Unresolved.	Tr. at 62-63; Ans.

### 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 AG. 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 overarching adjudicative goal is a fair, impartial and commonsense 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 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).

#### **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 under AG ¶ 19. Two are applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant accumulated numerous delinquent debts and was unable or unwilling to pay her obligations for a period of time. The evidence is sufficient to raise AG ¶¶ 19(a) and 19(c).

Several financial considerations mitigating conditions under AG ¶ 20(a) are potentially applicable:

- (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 debts 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.

Although some of Applicant's debts occurred several years ago and she has paid some of the debts, the majority are still owed and no payment plans were offered into evidence. AG ¶ 20(a) is not applicable at this time.

Applicant's husband's situation and her lack of health insurance contributed to her financial distress. Those are conditions that were largely beyond her control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances. Applicant has taken the first steps toward resolving her debts by contacting some creditors and paying several of the debts. She receives some credit under this condition, however most of her higher balance debts remain unpaid. AG ¶ 20 (b) partially applies.

Applicant presented no evidence of financial counseling. Although she has made some progress toward resolving some of her debts, there is insufficient evidence to conclude her total financial situation is being resolved or under control. Applicant receives partial consideration under AG ¶ 20(c). She has made a limited good-faith effort to repay overdue creditors or otherwise resolve debts, but that effort, given the totality of debt, is insufficient to receive full credit under this mitigating condition. AG ¶ 20(d) is partially applicable. She provided proof that SOR debts 1.c – 1.g, 1.j, and 1.r were paid. AG ¶ 20(e) is applicable to those debts.

### **Guideline E, Personal Conduct**

AG ¶ 15 expresses the personal conduct trustworthiness concern:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect

sensitive information. Of special interest is any failure to provide truthful and candid answers during the trustworthiness determination process or any other failure to cooperate with the trustworthiness determination process.

AG ¶ 16 describes conditions that could raise a trustworthiness concern and may be disqualifying in this case. The following disqualifying condition is potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Based upon my earlier findings, there is insufficient evidence to support that Applicant provided intentional false information on her public trust application in order to deceive the Government about her past criminal and financial record. AG ¶ 16(a) does not 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) 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 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. I have incorporated my comments under Guidelines F and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment. Applicant has made the initial steps to get her finances on track, however at this point it is too early to determine whether she will be able to right her financial ship. Many of her larger debts remain unpaid and unaddressed.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a position of trust. For all these reasons, I conclude Applicant has not mitigated the financial considerations trustworthiness concerns. Trustworthiness concerns under Guideline E, personal conduct, were not established.

### **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
Subparagraphs 1.a – 1.b:	Against Applicant
Subparagraphs 1.c – 1.g:	For Applicant
Subparagraphs 1.h – 1.i:	Against Applicant
Subparagraph 1.j:	For Applicant
Subparagraphs 1.k – 1.s:	Against Applicant
Subparagraph 1.r:	For Applicant
Subparagraphs 1.t – 1.dd:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a - 2.b:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant eligibility for a public trust position. Eligibility for access to sensitive information is denied.

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Robert E. Coacher  
Administrative Judge