



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



In the matter of:	)	
	)	
	)	ADP Case No. 14-03077
	)	
	)	
Applicant for Position of Trust	)	

**Appearances**

For Government: Braden Murphy, Esq., Department Counsel  
For Applicant: *Pro se*

08/11/2015

**Decision**

RICCIARDELLO, Carol G., Administrative Judge:

Applicant has not mitigated the financial considerations trustworthiness concerns. Eligibility for access to sensitive information is denied.

**Statement of the Case**

On August 12, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) detailing trustworthiness concerns under Guideline F, financial considerations. The action was taken under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); Department of Defense Regulation 5200.2-R, *Personnel Security Program* (January 1987), as amended (Regulation); and the adjudicative guidelines (AG) implemented by the Department of Defense on September 1, 2006.

On February 9, 2015, Applicant submitted an answer to the SOR and requested a hearing before an administrative judge.<sup>1</sup> The case was assigned to me on June 12,

<sup>1</sup> Applicant's answer is dated September 5, 2014, but she did not sign it or have it notarized until February 9, 2015.

2015. Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on June 19, 2015, and the hearing was convened as scheduled on July 27, 2015. Government Exhibits (GE) 1 through 6 were admitted in evidence without objection. Applicant testified and submitted Applicant Exhibits (AE) A through G, which were admitted without objection. DOHA received the hearing transcript (Tr.) on August 4, 2015.

### **Findings of Fact**

Applicant admitted the allegations in SOR ¶¶ 1.a, 1.c through 1.f, 1.h through 1.q, and 1.t through 1.w. She denied the remaining allegations. Her admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 39 years old. She earned a master's degree in 2004. She married in 2004 and does not have children. She has not served in the military. She has been employed by a federal contractor since May 2013. Before then she was employed in another state from January 2011 to March 2013. Previous to then, she was steadily employed with the same employer from January 1999 to January 2011. She indicated she was unemployed for one month in 2013 while she was moving. She also has a part-time job where she works approximately 20 hours a week. Her husband has a child and pays child support.<sup>2</sup>

Applicant filed Chapter 13 bankruptcy in January 2009. It was dismissed in July 2009, upon Applicant's request, after she was able to refinance her mortgage loan. She stated she filed bankruptcy to save her house. When her house was no longer in jeopardy the bankruptcy was dismissed.<sup>3</sup>

Applicant denied that she failed to file her federal income tax returns for tax years 2005, 2006, 2007, 2009, 2010, and 2011. She timely filed "married filing separately." She admitted she owes taxes, but could not afford to make a lump-sum payment when the taxes were due. She stated she had a payment arrangement with the IRS to pay her 2005 tax debt beginning in 2006. Her explanation for not paying her taxes each year on time was that she did not have enough money withheld, and she thought she corrected the problem each year. She testified she has a payment agreement with the IRS to satisfy the 2009 tax lien alleged in SOR ¶ 1.c (\$11,243).<sup>4</sup> She stated the total balance owed to the IRS is now \$7,728. She believed that the balance also includes unpaid taxes for years 2007, 2008 and 2011, and she has an agreement to pay \$100 a month until they are satisfied.<sup>5</sup> Based on the documents Applicant provided, I am not convinced that the balance includes other tax years. She has an installment agreement

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<sup>2</sup> Tr. 25-32, 88.

<sup>3</sup> GE 6.

<sup>4</sup> AE C includes documents from the IRS. I am unable to verify the current balance on the 2009 tax lien.

<sup>5</sup> AE C. It is unknown what the current balance owed is for tax years Applicant failed to pay.

with the IRS that appears to include tax years 2007, 2008 and 2011, but she has not started making payments. Her 2011 tax lien (SOR ¶ 1.d-\$397) is unpaid. Applicant made monthly payments of \$112 toward her tax debts from July 2006 to April 2013. She indicated that she stopped making installment payments to the IRS for a period when she filed bankruptcy in 2009 because she did not have the money. She resumed payments, but then stopped paying in April 2013, because she again did not have enough money. Some of the early tax-year debts were paid from refunds from later tax years and through installment payments. Applicant testified she filed her 2012 through 2014 tax returns on time.<sup>6</sup>

The debt in SOR ¶ 1.f (past-due balance of \$5,743) is a mortgage loan. Applicant stated that she purchased a house in 2007. She and her husband moved to a new state in January 2011 and rented the house. She had difficulty paying the mortgage loan when the tenants defaulted on the rent payments in November 2012. She then fell behind with the mortgage payments in February 2013 and defaulted in June 2013. She attempted to modify the loan several times with the bank, but was unsuccessful. Applicant testified that she tried to make mortgage loan payments after she defaulted on the loan, but the creditor would not accept them. She and her husband lived in the house during this period. They used the extra money to pay other bills. She participated in a loan rehabilitation program and made payments from August 2014 to February 2015, when the loan was modified. She testified and provided documents to show her loan payments are now current.<sup>7</sup>

Applicant testified she obtained student loans from 2000 to 2004 to attend graduate school (SOR ¶ 1.g balance \$93,639). She assumed that because the creditor did not contact her the loans were in forbearance. She never made a regular payment on the loans. She never contacted the creditor to advise it that she was employed. She began making \$300 payments in June 2014 as part of a rehabilitation program and subsequently completed the nine required payments. She stated this loan is now in forbearance until 2016. The documents provided show there is a new holder of the loan and that two student loans were purchased by the new creditor and consolidated. The current balance owed on the two loans including accrued interest is \$171,309. The documents show that Applicant's first payment is not due until June 2016. It will be approximately \$757 a month.<sup>8</sup>

Applicant obtained additional student loans in 2008 to take online courses. (SOR ¶¶ 1.h - \$2,960; 1.i - \$1,140, 1. n- \$174, 1.t - \$3,402, and 1.u - \$3,171) She took classes for a year and a half., but did not earn a degree. She assumed the loans were in forbearance or deferred. Applicant's documents reflect a combined balance for the loans is now \$56,844. She provided a document to show she began a rehabilitation program in June 2015 for these loans and is required to pay \$71 for nine months.

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<sup>6</sup> Tr. 32- 48; AE C.

<sup>7</sup> Tr. 48-59; AE D.

<sup>8</sup> Tr. 60-65, 69-72; Answer to SOR; AE E.

Applicant admitted she was working at the time, and she used some of the student loan money to pay other expenses.<sup>9</sup>

Credit reports from May 2013, June 2014, and May 2015 confirm the alleged debts.<sup>10</sup> Applicant provided proof she has paid the debts in SOR ¶¶ 1.r (\$61) and 1.s (\$50).<sup>11</sup> She provided a document from July 2015 that shows she consulted with a debt management company, which provided a proposed payment plan to resolve her debts. The total balance of the debts listed in the plan is \$39,890. This does not include her student loans.<sup>12</sup> Other than the two debts noted above, none of her delinquent debts are paid. Her goal is to pay her debts. She believes her husband also has student loan debt and tax debt. Her current salary is \$45,000 and her husband's is \$49,000. She does not know how much she earns from her part-time job.<sup>13</sup>

Applicant provided a document to show she received 66% of her income for a six-week period from July 2014 to September 2014, and in January 2015 due to medical issues.<sup>14</sup> She provided performance appraisals showing she fully meets the expectations of her employer. She also provided an award certificate. Applicant intends to satisfy her other debts before she has to start paying down her student loans.<sup>15</sup>

A character witness testified on behalf of Applicant. She previously worked for Applicant and described her as a fair supervisor, who treated her subordinates as individuals, and as a person who emphasized the importance of following rules and complying with the manuals. Applicant always emphasized doing the right thing. The witness considered Applicant trustworthy.<sup>16</sup>

## **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

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<sup>9</sup> Tr. 65- 75; AE E.

<sup>10</sup> GE 2, 4, and 5.

<sup>11</sup> Tr. 80-82; AE F.

<sup>12</sup> Tr. 75-83; AE B.

<sup>13</sup> Tr. 82-83, 91-92.

<sup>14</sup> Tr. 83-87; AE A.

<sup>15</sup> Tr. 83, 87-89; AE G.

<sup>16</sup> Tr. 93-98.

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."

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 to obtain 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 safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of sensitive information.

## **Analysis**

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

The trustworthiness concern 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. Three are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

There is insufficient evidence to conclude Applicant failed to file federal income tax returns from 2005 to 2011. AG ¶ 19(g) does not apply. I find in her favor on that allegation. Applicant has two tax liens from 2009 and 2011. She has 11 delinquent consumer debts totaling approximately \$38,000. She has student loans that were delinquent and total over \$220,000. Most of her debts have been delinquent for many years. Applicant is unable or unwilling to pay or resolve her delinquent debts. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate financial considerations trustworthiness concerns are provided under AG ¶ 20. The following 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 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 failed to timely pay her federal income taxes and tax liens were entered against her. Although she has made payments towards some years' taxes, she still owes taxes. She appears to have a current payment plan to pay \$100 a month to resolve her 2007, 2009, and 2011 tax debts. Applicant's mortgage was past due, but

after obtaining a modification for the loan, it is now current. She filed bankruptcy, but it was later dismissed.

Applicant's student loans were delinquent. She participated in a rehabilitation program and two of the debts are in forbearance until June 2016. The balance on these loans is more than \$172,000. Regarding her other student loans, she is currently participating in a rehabilitation program that began in June 2015. The balance on these loans is more than \$56,000.

Applicant has numerous debts that are unpaid and unresolved. Based on Applicant's past and current financial history, I cannot find that future financial problems are unlikely to recur. Her financial situation casts doubt on her current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

Applicant provided some information that she received less than her full salary when she had medical needs in 2014 and 2015. These were conditions beyond her control. For the full application of AG ¶ 20(b) Applicant must have acted responsibly under the circumstances. Applicant failed to provide evidence that she acted responsibly regarding her finances and delinquent debts, many of which were seriously delinquent before her medical problems arose. She contracted with a debt management company in July 2015 and made a plan to resolve her financial issues, but she has not yet fully implemented it. She has numerous consumer debts that she has not made payments. She incurred additional student loans, even though she had substantial student loans that were deferred. She admitted she was working full time when she incurred the additional student loans and used some of the money for other expenses. She never made a regular payment on her student loans, until she participated in a rehabilitation program. AG ¶ 20(b) only partially applies.

There is some evidence of financial counseling through the debt management contract Applicant recently signed. Applicant paid two small debts in the SOR (¶¶ 1.r and 1.s). AG ¶ 20(d) applies to those debts. There are not clear indications that her financial problems are being resolved or are under control. She has tax debts that she is making small payments on. The \$172,000 of student loans will require payments in the next year, and after she rehabilitates her other student loans, she will have additional payments. The amount of the payments is unknown. She has not made payments on any of the numerous consumer debts, which includes a judgment from 2008. AG ¶ 20(c) partially applies, and AG ¶ 20(d) 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 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 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 Guideline F 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 numerous delinquent debts that she is unwilling or unable to pay. She has not made sufficient attempts to resolve her debts. Although, she has a payment plan with the IRS, she repeatedly failed to adequately address the problem. She owes more than \$220,000 in student loans, which, when the full monthly payments become due, will likely seriously affect her ability to pay other delinquent debts. She made no efforts prior to receiving the SOR to address her consumer debts. Her debt repayment plan has not yet been fully implemented. She failed to offer a reasonable explanation for her financial problems. She does not have a credible track record to show she will repay her creditors. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a public trust position. For all these reasons, I conclude Applicant has not mitigated financial considerations' trustworthiness concerns.

### **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:	For Applicant
Subparagraphs 1.c-1.e:	Against Applicant
Subparagraphs 1.f-1.i:	For Applicant
Subparagraphs 1.j-1.m:	Against Applicant
Subparagraph 1.n:	For Applicant
Subparagraphs 1.o-1.q:	Against Applicant
Subparagraphs 1.r-1.u:	For Applicant
Subparagraphs 1.v-1.w:	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