



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



In the matter of:	)	
	)	
	)	ADP Case No. 14-03461
	)	
Applicant for Public Trust Position	)	

**Appearances**

For Government: Robert J. Kilmartin, Esq., Department Counsel  
For Applicant: *Pro se*

08/27/2015

**Decision**

COACHER, Robert E., Administrative Judge:

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

**Statement of the Case**

On October 28, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns under Guideline F, financial considerations. DOD acted under Department of Defense 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) effective within the DOD on September 1, 2006.

Applicant answered (Ans.) the SOR on December 3, 2014, and requested a hearing before an administrative judge. The case was assigned to me on April 27, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 5, 2015, and the hearing was convened as scheduled on May 20, 2015. The Government offered exhibits (GE) 1 through 4, which were admitted into evidence

without objection. Applicant testified and offered exhibits (AE) A through G, which were admitted into evidence without objection. The record was held open for Applicant to submit additional information. She did not submit any additional information. DOHA received the hearing transcript (Tr.) on May 28, 2015.

### **Findings of Fact**

Applicant admitted the following SOR allegations: ¶¶ 1.a, 1.c - 1.k, and 1.q - 1.t. She denied ¶¶ 1.b, 1.l - 1.p. The admissions are incorporated as findings of fact. After a review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is a 41-year-old employee of a federal contractor. She has worked for this employer since January 2013. She does not have a high school diploma and has not fulfilled her general educational developments (GED) requirements, but she has taken college courses. She is married and has six children, three of which still reside with her. She has never received child support. She has no military service and this is her first time seeking a trustworthiness determination.<sup>1</sup>

The SOR alleges 20 delinquent debts, including two judgments, totaling \$37,161. The debts were listed in credit reports from March 2013 and April 2014.<sup>2</sup>

Applicant's financial problems arose because she is a single mother with six children and has not received child support. Her current husband works and helps support the family. In January 2015, she hired a debt relief company to assist her in attempting to settle some of the debts. She provided documentation showing she entered into an agreement with the debt relief company, but she failed to show documentation of any settlements achieved by the company. The status of the SOR-related debts is as follows:<sup>3</sup>

#### **SOR ¶¶ 1.a - 1.b (judgments- \$2,600, \$1,300):**

Applicant terminated a lease early. The creditor sought a judgment against her in court. She contested the action because of an infested swimming pool on the property, but lost. She does not know why there are two judgments. She failed to produce evidence showing the judgments were duplicative. These debts are unresolved.<sup>4</sup>

#### **SOR ¶¶ 1.c - 1.d (automobile accounts- \$1,593, \$7,913):**

Applicant submitted documentation showing that the debt relief company offered a settlement to the creditor of SOR ¶ 1.c; however, the documentation is incomplete

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<sup>1</sup> Tr. at 6, 28; GE 1.

<sup>2</sup> GE 3-4.

<sup>3</sup> Tr. at 28, 54, 63, 65-66; AE E-F; Ans.

<sup>4</sup> Tr. at 43-46, 48; AE G.1-G.3.

and does not show the terms of the settlement offer. No proof of settlement was submitted. Regarding SOR ¶ 1.d, Applicant testified that this was a student loan that she was repaying through a wage garnishment action every two weeks. Her bi-weekly pay stubs show the amount deducted ranged from \$184 to \$252. The April 2014 credit report describes SOR ¶ 1.d as a charged-off automobile account. I find that Applicant was mistaken that her wage garnishments were repaying the debt listed in SOR ¶ 1.d. These debts are unresolved.<sup>5</sup>

**SOR ¶¶ 1.e - 1.k (student loan debt- \$3,497; \$3,349; \$3,323; \$3,262; \$2,478; \$1,870; \$1,868):**

Applicant admitted she had over \$26,000 in student loan debt. She also testified that the wage garnishment payments were not going toward these particular student loans. She is seeking to participate in a student loan forgiveness program for these loans. She provided a partially completed certification form for the forgiveness program, but she did not include information on whether she qualified for it or what the terms were. Since documentation shows that the wage garnishment is being applied to a student loan account, I find that Applicant is making payment on one account; however, the remaining accounts are not resolved.<sup>6</sup>

**SOR ¶¶ 1.l - 1.o (consumer debts- \$829; \$817; \$505; \$190):**

Applicant denied these accounts, but provided no supporting documentation. These debts are unresolved.<sup>7</sup>

**SOR ¶ 1.p (telecommunications debt- \$106):**

Applicant provided documentation showing payment of this account in May 2015. This debt is resolved.<sup>8</sup>

**SOR ¶¶ 1.q - 1.t (miscellaneous debts- \$76; \$613; \$441; \$531):**

Applicant admitted these accounts, but provided no documentation showing payment or the establishment of a payment plan. She also indicated SOR ¶¶ 1.t and 1.c were duplicate accounts, but she failed to provide evidence showing duplication. These debts are unresolved.<sup>9</sup>

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<sup>5</sup> Tr. at 39-40, 42; GE 4; AE B.

<sup>6</sup> Tr. at 35-36, 42; GE 4; AE B-D.

<sup>7</sup> Tr. at 52; Ans.

<sup>8</sup> Tr. at 55; AE A.

<sup>9</sup> Tr. at 56-59; Ans.

Applicant did not provide any documentation about her current financial status. She admitted that she did not file her 2014 federal income tax return.<sup>10</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 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

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<sup>10</sup> Tr. 60-61.

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.

## **Analysis**

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

The trustworthiness concern for financial considerations is set out in AG ¶ 18 as follows:

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 classified 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 potentially applicable in this case:

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

Applicant has numerous delinquent debts. The evidence is sufficient to raise the above disqualifying conditions.

Several financial considerations mitigating conditions under AG ¶ 20 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's debts are recent, multiple, and cast doubt on her reliability, trustworthiness, and good judgment. No evidence of debt payments was offered, other than for one debt and a garnishment action toward an unspecified student loan account. AG ¶ 20(a) is not applicable.

Applicant is a single mother who supported six children without receiving child support. This is a condition beyond her control. She has made minimal efforts to resolve the debts. The record evidence does not support that Applicant's actions were responsible under the circumstances. AG ¶ 20(b) is partially applicable.

Other than hiring a debt resolution company, there is no evidence of financial counselling. Given the unpaid status of the SOR debts, there are not clear indications that Applicant's financial problems are under control. Evidence of good-faith efforts to pay or resolve the remaining debts is lacking. AG ¶ 20(c) does not apply and ¶ 20(d) partially applies.

Applicant failed to produce documentary evidence to support her dispute of any of the debts. AG ¶ 20(e) does not apply.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for access to sensitive information 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 access to sensitive information must be an overall commonsense assessment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all relevant 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.

I considered the circumstances by which Applicant became indebted. However, I also considered that she has taken minimal action to resolve her financial situation. She has not established a meaningful track record of financial responsibility, which causes me to question her ability to resolve her debts.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for access to sensitive information. For all these reasons, I conclude Applicant has not mitigated the 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.d:	Against Applicant
Subparagraph: 1.e:	For Applicant
Subparagraphs: 1.f – 1.o:	Against Applicant
Subparagraph: 1.p:	For Applicant
Subparagraphs: 1.q – 1.t:	Against Applicant

### **Conclusion**

In light of all of the circumstances, it is not clearly consistent with national security to grant Applicant eligibility for access to sensitive information. Eligibility for access to sensitive information is denied.

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Robert E. Coacher  
Administrative Judge