



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



In the matter of:	)	
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	)	ADP Case No. 14-03581
Applicant for Public Trust Position	)	

**Appearances**

For Government: Ray T. Blank Jr., Esq., Department Counsel  
For Applicant: *Pro se*

10/23/2015

**Decision**

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to deny her eligibility for a public trust position. She has a history of financial problems or difficulties. Although she did not present a perfect case in mitigation, she presented sufficient evidence to explain and mitigate her problematic financial history. Accordingly, this case is decided for Applicant.

**Statement of the Case**

Applicant completed and submitted a Questionnaire for National Security Positions (SF 86 Format) on February 28, 2013.<sup>1</sup> After reviewing the application and information gathered during a background investigation, the Department of Defense (DOD) sent Applicant a statement of reasons (SOR), dated October 28, 2014, detailing

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<sup>1</sup> Exhibit 1.

a trustworthiness concern under Guideline F for financial considerations.<sup>2</sup> The action was taken under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Review Program* (Jan. 2, 1992), as amended (Directive); Department of Defense Regulation 5200.2-R, *Personnel Security Program* (Jan. 1987), as amended (Regulation); and the adjudicative guidelines (AG)<sup>3</sup> implemented by the DOD on September 1, 2006. The SOR recommended submission of Applicant's case to an administrative judge to determine her eligibility to occupy an automated data processing (ADP) position to support a contract with the DOD.

Applicant answered the SOR on or about November 20, 2014. Her responses to the various allegations were mixed, and she requested a hearing.

The case was assigned to me on May 1, 2015. The hearing was held as scheduled on June 3, 2015. Department Counsel offered Exhibits 1–5, and they were admitted. Applicant offered Exhibits A–G, and they were admitted. She did not call any witnesses other than herself. The hearing transcript (Tr.) was received on June 11, 2015.

### **Findings of Fact**

Applicant is a 54-year-old full-time employee of a health care contractor for the Defense Department. She has been employed with her current employer since February 2013. She is seeking to obtain eligibility to occupy a position of public trust for her current job responsibilities. Eligibility is necessary because her job involves access to sensitive but unclassified information known as personally identifiable information (PII).

Applicant's recent employment history includes a period of unemployment from June 2012 to February 2013.<sup>4</sup> She has otherwise been continuously employed since 2003. Her employment history also includes active duty military service during 1982–1987. During 2009–2013, Applicant lived in a residence for military veterans who are homeless, unemployed, or otherwise in need of assistance. This residence forms the basis of the debt in SOR ¶ 1.a discussed below.

Applicant's first two marriages ended in divorce. She married for the third time in 2008 and separated in 2009. Her current husband has not provided any financial support or assistance during the separation. Applicant has one child, an adult son.

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<sup>2</sup> The SOR was issued by the DOD Consolidated Adjudications Facility, Fort Meade, Maryland. It is a separate and distinct organization from the Defense Office of Hearings and Appeals, which is part of the Defense Legal Services Agency, with headquarters in Arlington, Virginia.

<sup>3</sup> The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines in Enclosure 2 to the Directive.

<sup>4</sup> Tr. 72–73.

Applicant has a history of financial problems or difficulties. The SOR allegations consist of 11 collection or charged-off accounts ranging in amounts from a low of \$125 to a high of \$4,796 for a total of about \$16,658. Applicant has paid two accounts, and another account is in repayment. The other eight accounts remain unresolved, although Applicant intends to resolve them in the future. The three accounts that have been paid or are in repayment are discussed below.

The \$4,796 collection account is SOR ¶ 1.a is in repayment via a garnishment of Applicant's wages at the rate of \$289 every two weeks.<sup>5</sup> As of May 22, 2014, the balance due had been reduced from \$6,096 to \$2,909. In other words, Applicant had a total of \$3,187 withheld from her wages. The account is on track to be paid in full in about ten more biweekly pay periods. Applicant explained that she agreed or consented to the garnishment because she thought doing so was the best way to pay off the debt in a timely manner.

The deficiency balance of \$2,189 in SOR ¶ 1.f, which stems from a vehicle repossession, was paid in full in November 2014.<sup>6</sup> In July 2013, the creditor obtained a judgment against Applicant in the amount of \$8,774. Applicant made biweekly payments beginning in November 2013 and ending in November 2014, and she paid \$6,832 in principal, \$1,331 in interest, and \$170 in fees to satisfy the judgment.

The \$447 collection account was paid in October 2013.<sup>7</sup> This account stems from a civil traffic case in municipal court.

In November 2014, Applicant obtained assistance from a nonprofit service organization.<sup>8</sup> The plan called for her to make a monthly deposit of \$1,000 to be used for repayment of eight accounts. She decided not to follow through with the plan because she thought she could pay off the accounts faster with larger payment amounts on her own.<sup>9</sup>

Applicant meets weekly with a counselor at work.<sup>10</sup> The weekly sessions address budgeting, banking, and how to deal with the stress associated with her financial situation.

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<sup>5</sup> Tr. 45–48; Exhibit D.

<sup>6</sup> Exhibits B and C.

<sup>7</sup> Exhibit A.

<sup>8</sup> Exhibit 6.

<sup>9</sup> Tr. 53.

<sup>10</sup> Tr. 53–54.

Applicant estimated having about \$258 in a checking account and nothing in a savings account.<sup>11</sup> Her gross income for 2014 was about \$32,400.<sup>12</sup> Her plan to resolve the remaining delinquent accounts is to pay off one account at a time, working from the highest amount to the lowest amount owed.<sup>13</sup> She will address the next remaining delinquent account once the garnishment action is concluded for the debt in SOR ¶ 1.a.

### Discussion

Under Guideline F for financial considerations,<sup>14</sup> the suitability of an applicant may be questioned or put into doubt when that applicant has a history of excessive indebtedness or financial problems or difficulties.<sup>15</sup> The overall concern is:

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.<sup>16</sup>

The concern is broader than the possibility that a person might knowingly compromise sensitive information to obtain money or something else of value. It encompasses concerns about a person's self-control, judgment, and other important qualities. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding sensitive information.

The evidence supports a conclusion that Applicant has a history of financial problems or difficulties. Taken together, the evidence indicates inability or unwillingness to satisfy debts<sup>17</sup> and a history of not meeting financial obligations<sup>18</sup> within the meaning of Guideline F.

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<sup>11</sup> Tr. 69.

<sup>12</sup> Tr. 71.

<sup>13</sup> Tr. 70–71.

<sup>14</sup> AG ¶¶ 18, 19, and 20 (setting forth the concern and the disqualifying and mitigating conditions).

<sup>15</sup> ISCR Case No. 95-0611 (App. Bd. May 2, 1996) (It is well settled that “the security suitability of an applicant is placed into question when that applicant is shown to have a history of excessive indebtedness or recurring financial difficulties.”) (citation omitted); and see ISCR Case No. 07-09966 (App. Bd. Jun. 25, 2008) (In security clearance cases, “the federal government is entitled to consider the facts and circumstances surrounding an applicant's conduct in incurring and failing to satisfy the debt in a timely manner.”) (citation omitted).

<sup>16</sup> AG ¶ 18.

<sup>17</sup> AG ¶ 19(a).

<sup>18</sup> AG ¶ 19(c).

In mitigation, I have considered six mitigating conditions under Guideline F,<sup>19</sup> and I have especially considered the following as most pertinent:

AG ¶ 20(b) the conditions that resulted in the financial problems were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or death, divorce, or separation), and the [person] acted responsibly under the circumstances;

AG ¶ 20(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; and

AG ¶ 20(d) the [person] initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's problematic financial history is related, in part, to her period of unemployment during 2012–2013. She has acted responsibly under the circumstances by obtaining new employment in 2013, and then engaging in debt repayment from 2013 to date. So far, approximately \$11,767 has been paid toward the three debts discussed above. Given her means, that is a substantial amount of money. Those repayment efforts, some of which were done via a garnishment, show that Applicant is taking a reasonable, responsible, and serious approach to resolving her delinquent debts.

Of course, the purpose of this case is not aimed at collecting debts.<sup>20</sup> Rather, the purpose is to evaluate an applicant's judgment, reliability, and trustworthiness consistent with the guidelines in the Directive. In evaluating Guideline F cases, the Appeal Board has established the following standard:

The Board has previously noted that the concept of a meaningful track record necessarily includes evidence of actual debt reduction through payment of debts. However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has established a plan to resolve his financial problems and taken significant actions to implement that plan. The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payments of such debts one at a time. Likewise, there is no requirement

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<sup>19</sup> AG ¶ 20(a)–(f).

<sup>20</sup> ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010).

that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.<sup>21</sup>

Here, the evidence supports a conclusion that Applicant has established a plan and is taking steps to implement that plan sufficient to mitigate the concern. In other words, there is a track record of progress as demonstrated by repayment of more than \$11,000 in debt. Although a good portion of the debt repayment was done by essentially involuntary means (e.g., a garnishment), that does not mean Applicant receives no credit in mitigation. After all, it was her labor that earned the wages that were subject to the garnishment. Based on the totality of facts and circumstances, I am persuaded that Applicant is doing the best she can under challenging conditions to resolve this problem.

To conclude, the evidence leaves me with no doubt or concern about Applicant's eligibility and suitability for a public trust position. In reaching this conclusion, I weighed the evidence as a whole and considered if the favorable evidence outweighed the unfavorable evidence or *vice versa*. I gave due consideration to the whole-person concept.<sup>22</sup> For all these reasons, I conclude Applicant mitigated the financial considerations concern.

### **Formal Findings**

The formal findings on the SOR allegations are:

Paragraph 1, Guideline F:	For Applicant
Subparagraphs 1.a–1.k:	For Applicant

### **Conclusion**

In light of the record as a whole, it is clearly consistent with the interests of national security to grant Applicant eligibility for an ADP position. Eligibility for access to sensitive information is granted.

Michael H. Leonard  
Administrative Judge

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<sup>21</sup> ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008) (citations and quotations omitted).

<sup>22</sup> AG ¶ 2(a)(1)–(9).