



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



In the matter of: )  
)  
) ADP Case No. 14-04135  
)  
Applicant for Public Trust Position )

**Appearances**

For Government: Gina L. Marine, Department Counsel  
For Applicant: *Pro se*

02/23/2016

**Decision**

DAM, Shari, Administrative Judge:

Applicant failed to file Federal income tax returns for years 2009 through 2012, and state returns for years 2008 through 2012. She owes over \$170,000 in student loans, and has other unpaid delinquent debts. She failed to present sufficient evidence to mitigate the outstanding financial trustworthiness concerns. Based upon a thorough review of the pleadings, and exhibits eligibility for access to ADP I/II/III sensitive information is denied.

**Statement of the Case**

On April 9, 1993, the Composite Health Care Systems Program Office (CHCSPO), the Defense Office of Hearings and Appeals (DOHA), and the Assistant Secretary of Defense for Command, Control, Communications and Intelligence (ASD C3I), entered into a memorandum of agreement for DOHA to provide trustworthiness determinations for contractor personnel employed in Sensitive Information Systems Positions (ADP I/II/III), as defined in Department of Defense (DOD) Regulation 5200.2-R, *Personnel Security Program* (January 1987), as amended (Regulation).

On March 1, 2013, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On February 3, 2015, the DOD issued Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns 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); the Regulation (*supra*); and the adjudicative guidelines (AG) effective within the DOD for SORs issued after September 1, 2006.

Applicant answered the SOR on April 30, 2015 (Answer), and requested that her case be decided by an administrative judge on the written record without a hearing. (Item 2.) On July 29, 2015, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing seven Items, was mailed to Applicant on August 7, 2015, and received by her on August 24, 2015. The FORM notified Applicant that she had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. She timely submitted three exhibits, including a letter, which I marked as Applicant Exhibits (AE) A, B, and C, and admitted into the record without objection from Department Counsel. She did not submit any objections to the Government's Items; hence, Items 1 through 7 are admitted into evidence. DOHA assigned the case to me on November 9, 2015.

### **Findings of Fact**

Applicant admitted all 12 allegations contained in the SOR. Her admissions are incorporated into the findings of fact herein.

Applicant is 44 years old and married for the second time since 1998. She has an adult child. She attended college between 1992 and 1995, and in 2004. She started working for her current employer, a defense contractor, in November 2011. Prior to this position she was unemployed from July 2009 to November 2011. During that time she used monies from a severance package that she received from her previous employer for living expenses, along with unemployment benefits and her husband's income. (Items 3, 4.)

The SOR alleged that Applicant failed to file Federal income tax returns for 2009 through 2012, and state income tax returns for 2008 through 2012. (SOR ¶¶ 1.a and 1.b). In her March 2013 e-QIP, she disclosed her failure to file those tax returns and attributed her failure to disorganization and laziness. She stated that she was working with the taxing bodies to resolve the issues. (Item 3.) In her response to the FORM, she indicated that she filed all delinquent tax returns and established a payment plan with the Internal Revenue Service (IRS) for tax years 2008 to 2013. As proof, she submitted an October 2015 invoice from the IRS indicating that in September 2015 she made a \$200 payment on an outstanding tax liability of \$955. The invoice referenced tax year 2008 and not any other years. (AE B.) She did not submit copies of her filed Federal returns for 2009, 2010, 2011, and 2012. Nor did she submit copies of filed state returns for 2008, 2009, 2010, 2011, and 2012. There is no evidence documenting the status of her taxes for years 2009, 2010, 2011, and 2012.

Based on credit bureau reports (CBR) from March 2013, July 2014, and July 2015, the SOR alleged 10 delinquent debts totaling \$178,615, which accumulated between 2007 and 2014. (Items 5, 6, 7.) Five of those debts are student loans and total

\$173,288. (SOR ¶¶ 1.c, 1.d, 1.e, 1.k, and 1.l.) Applicant stated that the loans are now consolidated into one account. On October 19, 2015, she entered into a payment agreement to remove them from a default status and place them into a rehabilitation plan. She agreed to pay \$125 a month for 8 months, and then \$567 a month for 211 months. (AE A, C.) These loans are unresolved.

The remaining five delinquent debts alleged in the SOR are unresolved. Four are medical bills and total \$1,263 (SOR ¶¶ 1.f, 1.g, 1.h, and 1.i). The remaining \$227 debt is a credit card (SOR ¶ 1.j).

### **Policies**

Positions designated as ADP I, II, and III 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, 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.” (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. (Regulation ¶ C8.2.1.)

When evaluating an applicant’s suitability for a public trust position, the 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, which are to be used in evaluating an applicant’s eligibility for access to sensitive information.

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 AG ¶ 2 describing the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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. Directive ¶ E3.1.15 states that, “[t]he applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.”

A person applying for access to sensitive information seeks to enter 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 protected 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 concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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.

This concern is broader than the possibility that an individual might knowingly compromise classified or sensitive information in order to raise money. It encompasses concerns about an individual’s self-control, judgment, and other qualities essential to protecting such information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified or sensitive information.<sup>1</sup>

AG ¶ 19 describes three conditions that could raise trustworthiness concerns and may be disqualifying in this case:

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

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<sup>1</sup> See ISCR Case No. 11-05365 at 3 (App.Bd. May 1, 2012).

(g) failure to file annual Federal, state or local income tax returns as required.

Applicant's financial problems, including failing to timely file Federal and state tax returns, began in 2007 and extend through 2014. Until recently she has been unwilling to fully and timely resolve her tax obligations. She also has accumulated over \$170,000 in student loans and other delinquent debts, which remain unresolved. The evidence raises the above trustworthiness concerns, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate trustworthiness concerns arising from Applicant's financial difficulties:

(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 asserted that she filed all delinquent Federal and state tax returns, but failed to provide evidence to corroborate her assertion. Because she failed to timely file returns for at least four consecutive tax years, and only recently began addressing her large student loan balance, she did not demonstrate that such problems are unlikely to recur. Her reliability and trustworthiness in managing income tax obligations and other financial responsibilities remain a concern. The evidence does not support the application of AG ¶ 20(a).

Applicant did not provide sufficient evidence that circumstances beyond her control contributed to the delinquent tax filings or the long delay in addressing her student loans and other debts. In fact, she admitted that her tax omissions were due to

laziness and disorganization. AG ¶ 20(b) does not provide mitigation. There is no evidence that she participated in financial counseling for her delinquent debts or sought professional assistance with preparing tax returns, until recently. Based on her four or more year history of failing to timely file required tax returns and her long delay in addressing the delinquent student loans and other debts, there are minimal indications that her financial problems are under control; thus, AG ¶ 20(c) has little application. Applicant's recent payment agreements with the IRS and her student loan creditor occurred after the issuance of the SOR, and do not yet demonstrate a good-faith effort to resolve her debts. AG ¶ 20(d) has no application to any of the SOR allegations. There is no evidence that Applicant successfully disputed any debt. AG ¶ 20(e) 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 relevant circumstances. 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. 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.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant is a mature individual who is responsible for her voluntary choices and conduct that underlie the trustworthiness concerns set forth in the SOR. For over four years she chose to ignore her legal obligation to file tax returns and pay outstanding taxes. In addition, she failed to address her large student loan debt for years. She provided no current budget information demonstrating an ability to resolve those obligations and miscellaneous debts, or to avoid additional financial duress. She offered insufficient evidence of financial counseling or better judgment. At this time she has not established a track record of timely filing tax returns or managing delinquent debts. Overall, the record evidence leaves me with substantial doubt as to Applicant's eligibility and suitability for a position of trust. For all these reasons, I conclude Applicant did not mitigate the trustworthiness concerns arising under Guideline F.

## **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:

AGAINST APPLICANT

Subparagraphs 1.a through 1.l:

Against 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 ADP I/II/III sensitive information is denied.

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Shari Dam  
Administrative Judge