



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



In the matter of: )  
)  
) ADP Case No. 14-05073  
)  
Applicant for a Public Trust Position )

**Appearances**

For Government: Gregg A. Cervi, Esq., Department Counsel  
For Applicant: *Pro se*

03/31/2016

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**Decision**

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NOEL, Nichole L., Administrative Judge:

Applicant contests the Defense Department’s intent to deny her eligibility for a public trust position to work in the defense industry. Although Applicant’s financial problems were caused by events beyond her control, she did not present any information regarding her efforts to resolve her delinquent accounts. Accordingly, her eligibility to occupy a position of trust is denied.

**Statement of the Case**

On March 28, 2015, the Department of Defense (DOD) issued a Statement of Reasons SOR detailing trustworthiness concerns under the financial guideline.<sup>1</sup> DOD adjudicators were unable to find that it is clearly consistent with national security to grant or continue Applicant’s access to sensitive information and recommended that the case be submitted to an administrative judge for a determination whether to revoke or deny Applicant’s eligibility to occupy a public trust position.

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<sup>1</sup> This case is adjudicated under DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). The *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply to this case. The AG replace the guidelines in Enclosure 2 to the Directive.

Applicant answered the SOR and requested a decision without a hearing.<sup>2</sup> The Government submitted its written case on October 8, 2015. A complete copy of the file of relevant material (FORM) and the Directive were provided to Applicant. She received the FORM on October 30, 2015, and did not respond. The case was assigned to me on February 8, 2016. The documents appended to the FORM are admitted as Government's Exhibits (GE) 1 through 5, without objection. GE 6 is omitted for the reasons explained below.

### **Procedural Issues**

GE 6 is a report of investigation (ROI) summarizing the interview Applicant had with a background investigator during her October 2013 investigation. The interview is not authenticated as required under ¶ E3.1.20 of the Directive. Footnote 1 of the FORM advises Applicant of that fact and further cautions Applicant that if she fails to object to the admission of the interview summary in her response to the FORM that her failure may be taken as a waiver of the authentication requirement. Applicant's failure to respond to the FORM does not demonstrate that she understands the concepts of authentication, or waiver and admissibility. It also does not establish that she understands the implications of waiving an objection to the admissibility of the interview. Accordingly, GE 6 is inadmissible and I have not considered it.

### **Findings of Fact**

Applicant, 52, has worked for a federal contractor in a temporary position since September 2013. Her position requires access to personally identifiable information (PII), and requires her to obtain eligibility to occupy a public trust position. Based on the disclosures in her September 2013 eligibility application and the ensuing investigation that revealed that Applicant is indebted owes \$17,400 on 34 delinquent accounts.<sup>3</sup>

On her eligibility application, Applicant indicated that her financial problems were caused by her husband's cancer diagnosis and her unemployment while she attended college between November 2009 and November 2011. She was also unemployed for 11 months before beginning her current position. Applicant's September 2013 credit report revealed \$9,200 in delinquent debts. By September 2014, Applicant had accumulated an additional \$5,500 in delinquent accounts, including \$2,300 in past-due student loan payments, \$2,300 in delinquent medical bills, and \$900 in other delinquent accounts. In her answer to the SOR, Applicant cited her husband's deteriorating health and her treatment for a serious health issue as the reason for her increased delinquent debt.<sup>4</sup>

Applicant did not provide any information about her current finances or her plans for resolving her delinquent accounts.

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<sup>2</sup> GE 2.

<sup>3</sup> GE 3-5.

<sup>4</sup> GE 2-5.

## Policies

Positions designated as ADP I and ADP II are classified as “sensitive positions.”<sup>5</sup> “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.”<sup>6</sup> 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.<sup>7</sup> An administrative judge’s objective is a fair, impartial, and commonsense decision that embraces all available, reliable information about the person, past and present, favorable and unfavorable.

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 the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain a favorable decision.

A person who seeks access to a public trust position 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

Unresolved delinquent debt is a serious security concern because failure to “satisfy debts [or] 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.”<sup>8</sup>

The SOR alleges that Applicant owes \$14,700 in delinquent debt. The record supports a *prima facie* case that Applicant has a history of not meeting her financial

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<sup>5</sup> DOD Regulation 5200.2-R, *Personnel Security Program* (January 1987), as amended (Regulation) ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3.

<sup>6</sup> Regulation ¶ C6.1.1.1.

<sup>7</sup> See Regulation ¶ C8.2.1.

<sup>8</sup> AG ¶ 18.

obligations and that she has demonstrated an inability to do so.<sup>9</sup> Applicant's financial problems were caused by events beyond her control: her husband's deteriorating health, her two lengthy periods of unemployment, and her own health issues. However, Applicant has not provided any evidence to show that she has acted responsibly in light of his circumstances, that she is making a good-faith effort to address her delinquent debt, or that her finances are otherwise under control. The Appeal Board has repeatedly held that an applicant is not required to be debt free or have a plan for paying off all debts immediately or simultaneously. All that is required is that Applicant act responsibly given her circumstances and develop a reasonable plan of repayment accompanied by conduct showing intent to effectuate the plan.<sup>10</sup> Applicant has not provided this information.

Accordingly, doubts remain about Applicant's trustworthiness. In reaching this decision, I have considered the whole-person factors at AG ¶ 2. An adverse decision in this case is not a finding that Applicant does not possess the good character required of those with access to sensitive information. However, even good people can pose a trustworthiness risk because of facts and circumstances not entirely under their control.<sup>11</sup> While a favorable decision is not warranted at this time, Applicant may well present persuasive evidence of financial rehabilitation and reform in the future.

### **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, Financial Considerations:	AGAINST APPLICANT
Subparagraphs 1.a-1.hh:	Against Applicant

### **Conclusion**

In light of all of the circumstances presented, it is not clearly consistent with the interests of national security to grant Applicant access to sensitive information. Applicant's eligibility to occupy a position of trust is denied.

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Nichole L. Noel  
Administrative Judge

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<sup>9</sup> AG ¶¶ 19(a) and (c).

<sup>10</sup> See ISCR Case No. 08-06567 at 3 (App. Bd. Oct. 29, 2009)(citations omitted).

<sup>11</sup> ISCR Case No.01-26893 at 8 (App. Bd. Oct. 16, 2002); See also *Department of Navy v. Egan*, 484 U.S. 518, 527-28 (1988).