



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



In the matter of:	)	
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SSN: -----	)	ADP Case No. 07-09114
	)	
Applicant for Public Trust Position	)	

**Appearances**

For Government: Ray T. Blank, Esquire, Department Counsel  
For Applicant: Pro Se

November 19, 2008

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**Decision**  
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MALONE, Matthew E., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, Applicant's request for eligibility for a public trust position is denied.

On August 20, 2004, Applicant submitted a Questionnaire for Public Trust Positions (SF 85P) to request eligibility for an ADP I/II/III position<sup>1</sup> involving access to sensitive information as part of her employment with a defense contractor. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding<sup>2</sup> that it is clearly consistent with the national interest to grant Applicant's request. On February 11, 2008, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns addressed in the Revised

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<sup>1</sup> As defined in Appendix 10 of DoD Regulation 5220.2-R, as amended.

<sup>2</sup> Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.

Adjudicative Guidelines (AG)<sup>3</sup> under Guidelines F (financial considerations) and E (personal conduct).

On April 7, 2008, Applicant responded to the SOR and requested a hearing. The case was assigned to me on July 9, 2008, and I convened a hearing on September 4, 2008. The parties appeared as scheduled. The government presented nine exhibits (Gx. 1 - 9).<sup>4</sup> Applicant testified in her own behalf and offered one exhibit admitted without objection as Applicant's Exhibit (Ax.) A. DOHA received the transcript (Tr.) on September 18, 2008. I left the record open after the hearing to allow Applicant time to submit additional relevant information. The record closed on October 1, 2008, when I received Applicant's post-hearing submission via Department Counsel. It has been admitted without objection as Ax. B.

### Findings of Fact

Under Guideline F, the government alleged Applicant owed approximately \$24,564 for 37 delinquent debts listed in SOR ¶¶ 1.a - 1.kk. Applicant admitted without explanation the allegations in SOR ¶¶ 1.a - 1.p, 1.r, 1.w - 1.y, and 1.ee - 1.ii. She denied without explanation the allegations in SOR ¶¶ 1.q, 1.s - 1.v, 1.z - 1.dd, 1.jj and 1.kk. The government further alleged in SOR ¶ 1.ll that Applicant was charged and convicted in 1996 of embezzlement, for which she received five years supervised probation, including three months home confinement. Applicant also denied this allegation without explanation. In addition to the facts admitted through her response to the SOR, I make the following findings of fact based on my review of the pleadings, transcript, and exhibits.

Applicant is 37 years old and employed by a health care and medical insurance company contracted to manage medical insurance claims and information for TRICARE, the Department of Defense (DoD) medical insurance system for military personnel and their families. She has held her current position for about 12 years, and has performed well in all her assigned duties. Friends and co-workers hold Applicant in high regard for her trustworthiness, hard work and reliability, and her most recent performance appraisal shows she is a good worker. (Ax. B) Applicant has two children, ages 19 and 3, by two different fathers. Her older child still lives with her and attended college for a time. But she now has a child and is working to help support herself. Applicant received child support for her older child until the child turned 18. She has yet to receive child support from the father of her younger child.

From about March 1993 until about August 2002, Applicant lived with her boyfriend, the father of her older child, in a trailer they financed together. Applicant's

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<sup>3</sup> Adjudication of this case is controlled by the Revised Adjudicative Guidelines, approved by the President on December 29, 2005, which were implemented by the Department of Defense on September 1, 2006. Pending official revision of the Directive, the Revised Adjudicative Guidelines supercede the guidelines listed in Enclosure 2 to the Directive.

<sup>4</sup> I excluded Gx. 4 because they do not meet the authentication requirements of Directive Enclosure 3, ¶ E3.1.20. (Tr. 23 - 30)

boyfriend developed a gambling problem, which caused her to eventually move out in 2002. His gambling also caused Applicant to incur delinquent debts because the boyfriend spent money that should otherwise have gone to supporting them both. When she moved out in 2002, Applicant expected her boyfriend to continue paying on the note for their mobile home, but he failed to do so and she is now at least jointly liable for a \$10,000 debt. (SOR ¶ 1.q) Applicant denied this SOR allegation because she feels the balance owed is actually about \$6,800, but could not corroborate her claim. She does not contest the fact that she owes a debt to that creditor. (Tr. 44 - 45, 60)

Before she began working for her current employer in 1996, Applicant worked as a bank teller. For about one year around 1995, she stole between \$100 and \$300 about twice weekly from the automated teller machine at her branch. She was charged and convicted of embezzlement and sentenced to five years probation. She also was ordered to complete financial management and budget training. Applicant admitted at her hearing that this happened and that she stole because of her financial problems at the time. However, she denied the corresponding SOR allegation (SOR ¶ 1.ii) only because she claimed she did not spend a day in jail as alleged. There is no indication in the record that Applicant was ever ordered to make restitution to the bank for stealing between \$10,000 and \$30,000.<sup>5</sup> (Tr. 75)

Applicant has owed the debt on her mobile home since about 2002, and she still owes numerous debts from the time she and her boyfriend were together. However, Applicant has continued to incur new delinquencies through poor decision making. For example, the debt listed in SOR ¶ 1.ee is for cable service she was unable to pay for. The debt listed in SOR ¶ 1.ff is for cable service under her name for a friend in the friend's home. The friend was unable to pay for the cable service either. (Tr. 73 - 74)

Many of the debts Applicant owes are for unpaid medical bills incurred totaling about \$2,475 for her younger child. (SOR ¶¶ 1.a - 1.c, 1.f - n) Those debts are in collection and most are for less than \$100 each. Applicant has implied that they should have been covered by her health benefits at work. Applicant contacted the collection agency and was offered a repayment plan of about \$336 each month. (Gx. 2) However, she has been unable to make such payments. (Tr. 52 - 53)

In November 2007, Applicant had a negative cash flow each month. Her expenses were approximately \$370 more than her income. (Gx. 2) She took on a second job in May 2008, which gives her about \$600 more income each month. Since about August 2008, Applicant has worked with a financial advisor to organize her finances and to repay her debts systematically. According to the information provided, Applicant has been making modest payments to some of her creditors, and her advisor has been helping her correct some of the errors in her credit history. Applicant has also established a monthly budget that accounts for all of her expenses and payments. From the information she provided, it appears her monthly income and her expenses are even. The average payment to her creditors is \$30 each month. (Ax. A)

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<sup>5</sup> Assuming the conduct occurred twice weekly for 50 weeks.

Applicant is trying to reduce her costs by looking for a place to rent for less and reducing her discretionary spending overall. She will have to pay for day care for her younger child for at least another year, but also will have her truck paid off in early 2009, resulting in an extra \$300 available each month.

### **Policies**

Each trustworthiness decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the Revised Adjudicative Guidelines (AG).<sup>6</sup> Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the new guidelines. Commonly referred to as the “whole person” concept, those factor are:

- (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.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to sensitive information. In this case, the pleadings and the information presented by the parties require consideration of the security concerns and adjudicative factors addressed under Guideline F (financial considerations), at AG ¶ 18.

A trustworthiness determination is intended to resolve whether it is clearly consistent with the national interest<sup>7</sup> for an applicant to either receive or continue to have access to automated sensitive information. The government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a position of trust for an applicant. Additionally, the government must be able to prove controverted facts alleged in the SOR. If the government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the government's case.

A person who has access to sensitive information enters into a fiduciary relationship with the government based on trust and confidence. Thus, the government has a compelling interest in ensuring each applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the national interests as his or her

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<sup>6</sup> Directive. 6.3.

<sup>7</sup> See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the government.<sup>8</sup>

## Analysis

### Financial Considerations.

The security concern about Applicant’s finances, as stated in AG ¶ 18, is that

[f]ailure 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.

Notwithstanding the exclusion of Gx. 4, the record evidence (the government’s exhibits, Applicant’s various SOR admissions and her testimony at the hearing) is sufficient to support the allegations in the SOR. Applicant’s denials to several SOR allegations were entered, not to contest the fact she owes those debts, but to take issue with details about amounts owed and whether she had been able to contact the creditors. Available information shows Applicant has owed numerous debts for several years, that she has only recently taken tangible steps to pay or otherwise resolve her debts, and that she has resorted to illegal conduct to get money to pay her expenses. The foregoing requires application of the disqualifying conditions listed at AG ¶¶ 19(a) (*inability or unwillingness to satisfy debts*), 19(c) (*a history of not meeting financial obligations*), and 19(d) (*deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust*).

In response to the government’s information, Applicant has shown she is attacking her debts and financial problems systematically through her work with a financial counselor. This requires consideration of the mitigating condition in 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*); however, she has not presented information that shows her problem is under control. Applicant also presented information showing some of her debt was caused by unforeseen circumstances, which requires consideration of AG ¶ 20 (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*). While the mobile home debt and the medical debts in collection may not have been of her own doing, the record also shows she has not acted in a reasonable and responsible way over the past several years to address these debts. I credit Applicant with working with

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<sup>8</sup> See *Egan*; Revised Adjudicative Guidelines, ¶ 2(b).

a financial counselor for the past few months, but I have also considered that she has taken little or no action to address her debts or improve her financial management since at least 2002. Despite her improved awareness of the need for prudent personal money management, it is too soon to conclude Applicant's finances will not be a security concern in the future. I conclude she has failed to overcome the adverse information about her finances on which DOHA adjudicators relied when they issued the SOR.

### **Whole Person Concept.**

I have evaluated the facts presented and have applied the appropriate adjudicative factors under Guideline F. I have also reviewed the record before me in the context of the whole person factors listed in AG ¶ 2(a). Applicant is 37 years old and is presumed to be a mature responsible adult. She is a reliable worker for her company and a devoted mother and grandmother. While she is sincere in her desire to resolve her financial problems, the steps she has taken are insufficient when compared to several years of unpaid debts and financial mismanagement. The fact remains, as well, that as Applicant tries to repay her debts, she does not have a positive cash flow. Finally, her poor financial management continued even after her conviction for embezzlement and the requirement she complete budget and financial management counseling. In short, the favorable information in her background is insufficient to overcome the security concerns about her lengthy history of bad debt. The facts and circumstances of Applicant's finances present an unacceptable risk were she to be granted access to sensitive information.

A fair and commonsense assessment<sup>9</sup> of all available information bearing on Applicant's finances shows there are still doubts about her ability or willingness to protect the government's interests as her own. Because protection of the national interest is paramount in these determinations, such doubts must be resolved for the government.<sup>10</sup>

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<sup>9</sup> See footnote 6, *supra*.

<sup>10</sup> See footnote 8, *supra*.

### **Formal Findings**

Formal findings 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
Subparagraph 1.a - 1.II:	Against Applicant

### **Conclusion**

In light of all of the foregoing, it is not clearly consistent with the national interest to grant Applicant eligibility for a position of trust. Eligibility for access to sensitive information is denied.

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MATTHEW E. MALONE  
Administrative Judge