



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



In the matter of: )  
)  
) ADP Case No. 14-06577  
)  
)  
Applicant for Public Trust Position )

**Appearances**

For Government: Bryan Olmos, Esquire, Department Counsel  
For Applicant: *Pro se*

01/19/2016

**Decision**

HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, I conclude that Applicant's eligibility to occupy a public trust position is granted.

**Statement of the Case**

Applicant completed an Electronic Questionnaires for Investigations Processing (e-QIP) on February 27, 2013 and signed it the next day. The Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) detailing the trustworthiness concerns under Guideline F, financial considerations on April 29, 2015. The action was taken under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *Adjudicative Guidelines For Determining Eligibility for Access to Classified Information* (AG) implemented on September 1, 2006.

Applicant acknowledged receipt of the SOR on May 14, 2015. She answered the SOR in writing on July 9, 2015, and she requested a hearing before an administrative judge with the Defense Office of Hearings and Appeals (DOHA). Department Counsel was prepared to proceed on September 10, 2015, and I received the case assignment on September 24, 2015. DOHA issued a notice of hearing on October 2, 2015, and I convened the hearing as scheduled on October 20, 2015. The Government offered five exhibits (GE), 1 through 5, which were received, marked, and admitted into evidence without objection. Applicant testified. Applicant did not submit any exhibits at the hearing. DOHA received the transcript of the hearing (Tr.) on October 29, 2015. I held the record open until November 19, 2015, for the submission of additional matters. Applicant timely requested additional time to submit documentation. By Order dated November 19, 2015, I extended the time for submission of post-hearing documentation until December 1, 2015. Applicant timely submitted six exhibits (AE), A through F, which were received, marked, and admitted into evidence without objection. The record closed on December 1, 2015.

## **Procedural Ruling**

### **Motions**

Based on testimony and Applicant's admission at the hearing, Department Counsel requested leave to amend the SOR to add allegation 1.n: "Applicant is indebted to [XXX] Management Property for an account that has been placed for collection in the approximate amount of \$2,144, and as of the date of the hearing remains unpaid." Applicant did not object to the motion. The motion to amend was granted. The SOR is amended to add allegation 1.n as written above. (Tr. 51)

## **Findings of Fact**

In her Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.b - 1.e, 1.g - 1.i, and 1.n of the SOR, with explanations. She denied the factual allegations in ¶¶ 1.a, 1.f, and 1.m of the SOR.<sup>1</sup> She also provided additional information to support her request for eligibility for a position of public trust.

Applicant, who is 39 years old, works as a customer service representative for a DOD contractor. She began her current employment in March 2013. A co-worker describes Applicant as hard working and a person of integrity. Applicant performs her

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<sup>1</sup>When SOR allegations are controverted, the Government bears the burden of producing evidence sufficient to prove controverted allegations. Directive, ¶ E3.1.14. "That burden has two components. First, the Government must establish by substantial evidence that the facts and events alleged in the SOR indeed took place. Second, the Government must establish a nexus between the existence of the established facts and events and a legitimate security concern." See ISCR Case No. 07-18525 at 4 (App. Bd. Feb. 18, 2009), (concurring and dissenting, in part) (citations omitted). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 08-06605 at 3 (App. Bd. Feb. 4, 2010); ISCR Case No. 08-07290 at 2 (App. Bd. Nov. 17, 2009).

work duties at a high level of competency, arrives to work on time, and works both mandatory and voluntary overtime. Applicant contributes to the daily success of their team. A former manager also wrote a letter of recommendation, stating that Applicant was a self-starter, paid attention to details, and worked well with her peers and customers. She also recommended Applicant. Neither recommendation reflects a knowledge of the trustworthiness issues in this case.<sup>2</sup>

Applicant completed her high school education and received her diploma in June 1996. She currently attends a local community college. She is enrolled in a transfer program, meaning that when she completes the necessary course work, she will transfer to a four-year college or university. Applicant's student loans are in deferment because she is a student.<sup>3</sup>

Applicant married her first husband in 1996, and they divorced in 2003. Applicant married her second husband in 2005, and they divorced in 2011. After her divorce in 2011, Applicant moved from State A to State B in 2013. She has four children from her marriages and a stepson, whom she has raised since the age of three. Her three daughters are 19, 17, and 13. Her stepson is 18, and her youngest son is 8. She receives \$1,119 a month in child support for her three youngest children. The child support for her 17-year-old daughter ends in June 2016. Because her first husband owes back child support, Applicant does not expect the amount of her support to decrease significantly. Her oldest daughter attends college full-time, and her stepson found a job just before the hearing. All her children live at home.<sup>4</sup>

Applicant provided her earnings statements for August, September, October, and November 2015. Her bi-weekly earnings varied between \$1,251 and \$1,898, depending upon overtime worked (zero to 28 hours a pay period), paid-time-off (PTO) pay (none to 16 hours some pay periods), and one eight-hour holiday pay in addition to her actual hours worked, which varied between 70 and 80 hours a pay period.<sup>5</sup> A review of her earnings statements indicates that she did not earn overtime pay until she actually worked 80 hours in a pay period, even though she may have received PTO pay. Her bi-weekly net pay varied between \$896 and \$1,350. Her monthly pay for these four months averaged \$2,078. Most months her net income is lower, but in October 2015, she worked 28 hours of overtime, which increased her overall average. With her child support, Applicant has a total net monthly income of approximately \$3,200.<sup>6</sup>

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<sup>2</sup>GE 1; AE E; AE F; Tr. 37.

<sup>3</sup>GE 1; GE 2; Tr. 14-15, 33, 53.

<sup>4</sup>GE 1; GE 2; Tr. 15-16, 30-31, 51.

<sup>5</sup>Her gross pay for an 80-hour work week is \$1,244, and her net pay for an 80-hour work week is \$896. AE C.

<sup>6</sup>AE B; AE C; Tr. 16.

Applicant's monthly expenses include \$550 for rent, \$284 on her car payment, \$62 on two credit cards, \$155 for car insurance, \$165 for electric, \$90 for water, \$120 for cable and internet, \$300 for gasoline, \$45 for drinking water, \$350 for cell phones, \$20 on a line of credit, and \$600 for food. She did not list clothing, haircuts or other miscellaneous expenses, which I estimate at approximately \$150. Her monthly expenses total approximately \$2,900, leaving about \$300 a month for debt payment. She timely files her federal and state tax returns each year.<sup>7</sup> With her answers to interrogatories, Applicant submitted a completed personal financial statement (PFS). On the PFS, she listed two personal loans for \$1,408 and \$1,855 respectively, and she listed her monthly payment at \$116 and \$236 respectively. Since completing the PFS, she has completed her payments on these non-SOR debts, which are now paid in full.<sup>8</sup>

Applicant denied owing the \$326 medical bill in SOR allegation 1.a in her answer and to the Office of Personnel Management (OPM) investigator. She has since determined that the debt related to the removal of a mole from her oldest daughter's scalp. Unbeknownst to her, her first husband and the father of her oldest daughter changed the insurance coverage from a health maintenance organization (HMO) to a preferred provider (PPO). Thus, she was unaware that she owed money on this medical procedure until she met with the OPM investigator. This debt is not resolved.<sup>9</sup>

When she first moved to State B, Applicant rented a house. At the end of one year, she decided to move and left several messages advising the landlord of her intention. After she moved her belongings out, but before she could remove food and finish cleaning, the landlord changed the locks on the doors. She and the landlord disputed over whether she owed additional rent. The landlord obtained a judgment against her, which has not been paid. (SOR allegation 1.b (\$2,083)).<sup>10</sup>

Applicant co-signed for her sister to obtain satellite television when Applicant lived in State A and was still married. (SOR allegation 1.c (\$483)). Her sister cancelled the service, but has not paid the bill or given money to Applicant to pay the bill. This bill remains unpaid. Applicant acknowledged that the cable bill in SOR allegation 1.d (\$310) is a debt from her second marriage and that she lacked money to pay it. She contacted the creditor after the hearing. The creditor requested the bill be paid in full, but she lacked the money to pay the debt in full. At the close of the record, she was still waiting for a bill and will make payments until the bill is paid in full. The debt remains unpaid.<sup>11</sup>

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<sup>7</sup>During her second marriage, she and her husband owed income taxes to State A. This tax debt was resolved in 2013. GE ; Tr. 36-37.

<sup>8</sup>GE 2; GE 5; AE B; Tr. 53-54.

<sup>9</sup>Response to SOR; GE 2; Tr. 18-19, 39.

<sup>10</sup>Tr. 19-20, 40-41.

<sup>11</sup>AE A; Tr. 21.

SOR allegations 1.e (\$235) and 1.f (\$87) relate to cable bills. Applicant continues to have service with this creditor and believed that her bill had been paid. When she moved from State A to State B, she contacted the creditor to make sure she did not owe any money on her account in State A. She was told she did not. The creditor provided her with new service in State B. As she understands the creditor's policy, it will not give her service if she owes money. After the hearing, Applicant contacted the creditor about the debts. She returned equipment and paid the remaining balance of \$87 in early January 2016. She has not provided a receipt showing return and crediting of the \$235 debt.<sup>12</sup>

SOR allegations 1.g (\$77), 1.i (\$757), 1.j (\$510), 1.k (\$409), and 1.l (\$335) related to fines with a local jurisdiction in State A. When Applicant met with the OPM investigator, she denied knowledge of the debts, but wondered if these debts related to a "wet and reckless" citation she received in 2008, while married to her second husband. At the time of the hearing, she still did not recognize the listed creditor and again opined that the debt may be related to the 2008 "wet and reckless" citation or to parking tickets. In her second marriage, she and her husband owned two cars, both titled in her name. When they divorced, they each took a car, but she did not remove her name from the title on his car. She thought the "wet and reckless" fines were being paid at the rate on \$80 a month. After the hearing, Applicant contacted the local jurisdiction. She learned that she owed \$2,012 on unpaid fees and tickets. She and the local jurisdiction agreed to a \$50 a month payment until the debt was paid.<sup>13</sup>

SOR allegation 1.h (\$1,026) concerns a storage unit leased on a month-to-month lease during her second marriage. Applicant was unaware of the debt until she met with the OPM investigator. She spoke with the creditor, and it appears that the debt is a penalty for vacating the storage unit before one year. After the hearing, Applicant contacted her second husband, who has agreed to pay this debt because she is paying the local jurisdiction debt. She did not submit a signed agreement from her second husband or any proof that he has made payments on this debt.<sup>14</sup>

Applicant contacted the creditor in allegation 1.m (\$250) after the hearing, and it agreed to settle the debt. At the close of the record, she was still waiting for a detailed bill from the creditor. The debt remains unpaid.<sup>15</sup>

The final debt concerns the \$2,144 bill owed to a property management company (SOR amendment ¶ 1.n). When she lived in State A and while still married, Applicant co-signed a lease with her sister in later 2010 or early 2011. At the hearing, it was determined that the debt related to her sister, who owes any debt connected with this

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<sup>12</sup>GE 2; AE A; Tr. 21-22, 43-44.

<sup>13</sup>GE 2 - GE 5; AE A; Tr. 22-25, 33-35.

<sup>14</sup>GE 3; AE A; Tr. 25-26, 44-46.

<sup>15</sup>GE 3; AE A; Tr. 26.

lease. After the hearing, Applicant contacted her sister. Her sister signed a statement advising that she began paying \$75 a month on October 22, 2015 to a firm<sup>16</sup> until the balance of \$2,066 was paid. Her actual payments have not been verified.<sup>17</sup>

Applicant's credit report references at least one name, which is not a name she has used, and addresses at which she has never lived. The June 2014 credit report specifically states that a discrepancy exists between the DOD social security number and the social security numbers from the creditors. After the hearing, Applicant advised that no debts listed on her credit reports came from the names not used by her.<sup>18</sup>

At the hearing, Applicant acknowledged that she had not paid her debts because she lacked the money to pay these obligations. After the hearing, she advised that she would use her tax refund for the tax year 2015 to pay some of her debts. The record lacks any evidence of financial counseling and frivolous or extravagant spending. Applicant has sufficient income to pay her customary living expenses. Overtime provides her with money to make payments on her debts. Finally, in her answers to interrogatories, Applicant advised that one debt had been paid. This debt is not listed in the SOR and is not listed on the more recent credit reports. The credit reports reflect that Applicant timely pays or has paid many of her financial obligations. Several of the unpaid SOR debts were unknown to her until she met with the OPM investigator.<sup>19</sup>

## **Policies**

Positions designated as ADP I and ADP II are classified as "sensitive positions." 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 national interests. 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.

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 over-arching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a

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<sup>16</sup>The name of the firm suggests that it is a law firm. AE D.

<sup>17</sup>GE 5; AE D; Tr. 46-51.

<sup>18</sup>GE 3 - GE 5; AE A; Tr. 27-28, 48-50.

<sup>19</sup>GE 5; AE A; Tr. 29.

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. 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 to obtain 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 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 relating to the guideline for Financial Considerations is set out in AG ¶ 18:

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. 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(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Applicant accumulated some delinquent debts and has been unable to pay all her obligations. The evidence is sufficient to raise these potentially disqualifying conditions.

The Financial Considerations guideline also includes examples of conditions that can mitigate trustworthiness concerns. I have considered mitigating factors AG ¶¶ 20(a) through ¶¶ 20(f), and the following are potentially applicable:

(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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's inability to pay all her debts arose after she and her second husband separated and divorced. Instead of two incomes in the household, her limited earnings plus child support provided the only income to support she and her five children. Applicant paid several debts not listed on the SOR. Most of the debts on the SOR occurred during her second marriage and are the result of the loss of income directly related to her divorce. She pays her current expenses and recently completed her payments on two personal loans. She is current on her rent, utilities, credit card payments, car payment, and other reoccurring expenses. With her income, her options on how to spend her money are limited. She must make choices, which best benefit her family. Thus, paying her current living expenses comes first over the payment of past-due debts, many of which she did not know existed until about 18 months ago. With the recent resolution of her two personal loans, she has some funds available to pay her outstanding debts. She and her second husband reached an agreement about the payment of one joint SOR debt. Her sister has contacted the representative for the property management company and arranged to pay the debt owed, which is listed in Applicant's name as well as her name. Applicant has contacted several creditors and worked out payment plans or a resolution of many of the SOR. Under her current and recent financial circumstances, Applicant's failure to take action on her debts until after the hearing is not held against her as she lacked the resources to do more. The file does not contain any evidence of frivolous or extravagant spending or the accrual of significant, new unpaid debt. AG ¶¶ 20(b)-20(d) apply.<sup>20</sup>

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<sup>20</sup>In ISCR Case No. 08-06567 at 3 (App. Bd. Oct. 29, 2009) the Appeal Board addressed a situation where an Applicant, who had been sporadically unemployed and lacked the ability to pay his creditors, noting that "it will be a long time at best before he has paid" all of his creditors. The Applicant was living on unemployment compensation at the time of his hearing. The Appeal Board explained that such a circumstance was not necessarily a bar to having access to classified information stating:

However, the Board has previously noted that an applicant is not required to be debt-free nor to develop a plan for paying off all debts immediately or simultaneously. All that is required is that an applicant act responsibly given his circumstances and develop a reasonable plan

## 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 all the 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) 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 a public trust position must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. The decision to grant or deny a trustworthiness determination requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a trustworthiness concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a public trust position should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate trustworthiness concern.

In assessing whether an Applicant has established mitigation under Guideline F, the Appeal Board provided the following guidance in ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008):

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts." See, e.g., ISCR Case

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for repayment, accompanied by "concomitant conduct," that is, actions which evidence a serious intent to effectuate the plan. See ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008).

ISCR Case No. 08-06567 at 3 (App. Bd. Oct. 29, 2009). The Applicant in ISCR Case No. 08-06567 used his limited resources to (1) resolve some of his debts; (2) had a repayment plan for the remaining debts; and (3) took "reasonable actions to effectuate that plan." *Id.* The Appeal Board remanded the Administrative Judge's decision because it did not "articulate a satisfactory explanation for his conclusions," emphasizing the Administrative Judge did "not explain[] what he believes that Applicant could or should have done under the circumstances that he has not already done to rectify his poor financial condition, or why the approach taken by Applicant was not "responsible" in light of his limited circumstances." *Id.*

No. 05-01920 at 5 (App. Bd. Mar. 1, 2007). 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. See, e.g., ISCR Case No. 02-25499 at 2 (App. Bd. Jun. 5, 2006). 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.” See, e.g., ISCR Case No. 04-09684 at 2 (App. Bd. Jul. 6, 2006). 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. See Directive ¶ E2.2(a) (“Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.”) 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 payment of such debts one at a time. See, e.g., ISCR Case No. 06-25584 at 4 (App. Bd. Apr. 4, 2008). Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

The evidence in support of granting a trustworthiness determination to Applicant under the whole-person concept is more substantial than the evidence in support of denial. In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant’s divorce created a financial deficit each month. She works full time and tries to work overtime to support her family as child support alone would not be enough to meet her basic living expenses. She does not earn a high wage, but she has sufficient income to pay her basic bills each month, and she does. Unanticipated expenses and unpaid bills from her last marriage are harder to pay. She must carefully weigh how to spend her money each month in order to assure that her children have food and housing and that their basic needs are met. With the final payments made on two personal loans, she has some extra money to allocate to debt resolution. Until now, she has lacked the financial resources to assume additional monthly payments. Although after the hearing, Applicant has started the process of resolving the debts identified in the SOR. She contacted several creditors, discussed past-due marital debts with her former husband, who agreed to pay one marital debt, and got her sister to pay the rental debt she owed. She has a track record for paying her obligations, including unpaid debts, as shown by the resolution of past-due state taxes and an overdue credit card. The credit reports reflect that she pays many of her debts and has done so over the years. Applicant is continuing her studies towards a college degree in an effort to improve her work skills and her earning ability. She plans to pay her debts, some with her next income tax refund.<sup>21</sup> She has set goals both educationally and financially, which will take time to

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<sup>21</sup>The Appeal Board has indicated that promises to pay off delinquent debts in the future are not a substitute for a track record of paying debts in a timely manner and otherwise acting in a financially responsible manner. ISCR Case No. 07-13041 at 4 (App. Bd. Sept. 19, 2008) (citing ISCR Case No. 99-0012 at 3 (App. Bd. Dec.

