



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
 REDACTED ) ADP Case No. 19-02425  
 )  
 Applicant for Public Trust Position )

**Appearances**

For Government: Tara R. Karoian, Esq., Department Counsel  
For Applicant: *Pro se*

02/14/2020

**Decision**

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant defaulted on federal student loans that now total \$65,394; on two medical debts totaling \$410; and on a \$3,008 judgment. While the judgment and medical debts have been paid, and she has a repayment plan for her federal student loans, concerns about her financial situation have not been adequately mitigated. Eligibility for a public trust position is denied.

**Statement of the Case**

On September 5, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F, financial considerations. The SOR explained why the DOD CAF was unable to find it clearly consistent with the national interest to grant or continue eligibility for a public trust position for her. The DOD CAF took the action under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *National Security*

*Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position (AG) effective within the DOD on June 8, 2017.*

On October 10, 2019, Applicant responded to the SOR allegations and requested a decision based on the written record in lieu of a hearing. On November 13, 2019, the Government submitted a File of Relevant Material (FORM), including documents identified as Items 1 through 7. The Government forwarded a copy of the FORM to Applicant on November 18, 2019, and instructed her that any response was due within 30 days of receipt. Applicant received the FORM on December 4, 2019. The January 3, 2020 deadline for her response passed without any response from Applicant. On January 24, 2020, the case was assigned to me to determine whether it is clearly consistent with the interests of national security to grant or continue a public trust position for Applicant. I received the case file on February 3, 2020.

### **Evidentiary Ruling**

Department Counsel submitted, as Item 7, a summary report of a personal subject interview (PSI) of Applicant conducted on June 12, 2015. The summary report was part of the DOD Report of Investigation (ROI) in Applicant's case. Under ¶ E3.1.20 of the Directive, a DOD ROI may be received in evidence and considered with an authenticating witness, provided it is otherwise admissible under the Federal Rules of Evidence. The summary report did not bear the authentication required for admissibility under ¶ E3.1.20.

In ISCR Case No. 16-03126 decided on January 24, 2018, the Appeal Board held that it was not error for an administrative judge to admit and consider a summary report of a PSI where the applicant was placed on notice of his or her opportunity to object to consideration of the summary; the applicant filed no objection to it; and there is no indication that the summary contained inaccurate information. In this case, Applicant was provided a copy of the FORM and advised of her opportunity to submit objections or material that she wanted the administrative judge to consider. In the FORM, Applicant was advised as follows:

#### **IMPORTANT NOTICE TO APPLICANT REGARDING GOVERNMENT'S EXHIBIT 7:**

The attached summary of your Personal Subject Interview(s) (PSI) is being provided to the Administrative Judge for consideration as part of the record evidence in this case. In your response to this File of Relevant Material (FORM), you can comment on whether the PSI summary accurately reflects the information you provided to the authorized OPM investigator(s) and you can make any corrections, additions, deletions, and updates necessary to make the summary clear and accurate. Alternatively, you may object on the ground that the report is unauthenticated by a Government witness. If no objections are raised in your response to this FORM, or if you do not respond to this FORM, the Administrative Judge may determine that you have waived

any objections to the admissibility of the summary and may consider the summary as evidence in your case.

Applicant did not respond to the FORM. Concerning whether Applicant understood the meaning of authentication or the legal consequences of waiver, Applicant's *pro se* status does not confer any due process rights or protections beyond those afforded her if she was represented by legal counsel. She was advised in ¶ E3.1.4 of the Directive that she may request a hearing. In ¶ E3.1.15, she was advised that she is responsible for presenting evidence to rebut, explain, or mitigate facts admitted by her or proven by Department Counsel and that she has the ultimate burden of persuasion as to obtaining a favorable trustworthiness decision. While the Directive does not specifically provide for a waiver of the authentication requirement, Applicant was placed on sufficient notice of her opportunity to object to the admissibility of the PSI summary report, to comment on the PSI summary report, and to make any corrections, deletions, or updates to the information in the report. Accordingly, I found that Applicant waived any objections to the admissibility of Item 7. Items 1 through 7 included in the FORM were admitted into the record as exhibits for the Government, subject to issues of relevance and materiality in light of the entire record.

### **Summary of SOR Allegations**

The SOR alleges under Guideline F that, as of September 5, 2019, Applicant owed \$51,817 in federal-loan debt on five accounts in collection (SOR ¶¶ 1.a-1.e); two medical debts in collection for \$245 (SOR ¶ 1.f) and \$165 (SOR ¶ 1.g); and a \$3,008 judgment from September 2017 (SOR ¶ 1.h). (Item 1.) When Applicant answered the SOR allegations, she admitted the debts, but indicated that she had established a repayment plan for her federal student loans, with her first payment to be withdrawn from her bank account on October 4, 2019, and that she had satisfied the other debts. She provided documentation showing that she paid the medical debts and the judgment debt. (Item 2.)

### **Findings of Fact**

After considering the FORM, which includes Applicant's Answer to the SOR (Item 2), I make the following findings of fact.

Applicant is 32 years old. She married in May 2011 and has a five-year-old daughter, who was born in December 2014. Applicant attended a community college from August 2006 to May 2008 and a state university from January 2009 to May 2013. She has yet to earn a college degree. (Items 3, 7.) She paid for her college classes in part with seven federal student loans obtained for \$36,870 between September 2009 and September 2012. (Item 6.)

While attending college, Applicant worked at a regional medical center from February 2007 to March 2011; was unemployed and supported by her husband from March 2011 to June 2011; worked at a pet store from June 2011 to October 2011; returned to work for the regional hospital from October 2011 to January 2013; and was employed by a

different medical facility from January 2013 until September 2013, when she and her spouse moved to another state. (Items 3, 7.) No information is in the record about Applicant's income in any of these jobs.

Applicant was employed in retail in her new locale from October 2013 to February 2014, when she began working for a defense contractor. On May 26, 2015, Applicant completed and certified to the accuracy of a security clearance application (SCA). In response to inquiries concerning any financial delinquency involving routine accounts, Applicant listed as outstanding debts a \$245 collection debt (SOR ¶ 1.f) that she had recently learned was on her credit report, and federal student loans totaling \$36,800 (SOR ¶¶ 1.a-1.e). Applicant explained about her defaulted student loans that her income was insufficient to make monthly payments when the loans first came due in 2013; that "life changes happened;" and that she did not have the money to make payments. Applicant indicated that she would pay the collection debt by June 2015 and that she would start making monthly payments toward her student-loan debts. (Item 3.) She did not specify when she would start repayment of her student loans.

As of June 4, 2015, Applicant owed past-due balances totaling \$45,780 on seven past-due federal student- loan accounts, which reportedly had been inactive since March 2014. She was 90 days past due on an automobile loan obtained for \$8,240 in February 2010 (not alleged), but a joint car loan obtained in March 2014 for \$34,206 was being repaid on time at \$618 per month. The \$245 was a medical debt from August 2013 in collection since January 2015. (Item 6.)

On June 12, 2015, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM). When asked about her financial situation, Applicant explained that she fell behind on her student loans after she had her daughter and was unable to work. She added that the loan servicer was not willing to work with her on lowering her monthly payments because of her spouse's income. She lacked recall of the specifics of the seven student loans. She did not recognize the \$245 medical debt but indicated that she would contact the collection entity holding the debt to arrange for repayment. Applicant was confronted about other debts on her credit report, which had been settled, and about her delinquent car loan. She explained that she fell behind while on maternity leave, and that she was working to get caught up on the account. Applicant denied any intention of becoming delinquent on any accounts in the future. She attributed her financial problems to moving several times, changing jobs, and having a child. Applicant reported changes of address in June 2014, November 2014, and June 2015. (Item 7.) No information was provided about her and her spouse's rent at any of these apartments.

In September 2017, a creditor obtained a \$3,008 judgment against Applicant (SOR ¶ 1.h). (Item 4.) Available information does not indicate when the debt became seriously delinquent. Her joint car loan for \$34,206 was paid off according to terms in July 2018. In February 2019, Applicant satisfied the judgment debt in SOR ¶ 1.h. (Item 2.) It is unclear whether she made installment payments; paid a lump sum; or her wages were garnished to

repay the judgment. In June 2019, Applicant paid off the smaller car loan that had been 90 days delinquent in 2015. (Item 4.)

As of July 2019, Equifax was reporting outstanding delinquency totaling \$51,817 on five of Applicant's student-loan accounts (SOR ¶¶ 1.a-1.e). Two smaller student loans totaling \$2,447 as of June 2015 were no longer on her credit report, although there is no evidence they had been paid. Applicant had not paid her \$245 medical debt in collection (SOR ¶ 1.f). Additionally, a \$165 medical debt from January 2018 was in collection (SOR ¶ 1.g). Applicant had no other past-due debts on her credit record. She was making timely payments on a credit card with a \$1,472 balance. (Item 5.)

On September 5, 2019, the DOD CAF issued an SOR to Applicant because of her past-due federal student loans totaling \$51,817 and her two medical collection debts on her credit record as of June 2019. Available address information for Applicant from financial statements shows that sometime between July 2019 and October 2019, Applicant had moved to another state. (Item 2.) She began working at a plant involved in the destruction of chemical agents, and was being sponsored for a public trust position. (FORM Receipt.)

On September 27, 2019, the entity collecting Applicant's defaulted federal student loans billed her for an accrued balance of \$65,394. Applicant entered into a repayment plan to pay \$366 per month on the federal student loans. She authorized automatic payments from her bank account to start on October 4, 2019. On October 7, 2019, Applicant paid \$245 in full satisfaction of the medical debt in SOR ¶ 1.f. As of October 9, 2019, she had authorized a \$182 debit payment from her bank account to satisfy the medical debt in SOR ¶ 1.g. When Applicant responded to the SOR on October 10, 2019, Applicant provided evidence of her payment arrangement for her student loans and documentation showing she resolved her other debts. (Item 2.) She provided no information about her financial situation, such as her current income and expenses; about the circumstances that led her to delay resolving her past-due accounts; or about any financial counseling.

In the Government's November 13, 2019 FORM, which Applicant received on December 4, 2019, she was advised that she had the burden to establish mitigation, including to address concerns about whether she voluntarily repaid the judgment debt, whether she has made monthly payments on her student loans, and whether her financial situation is currently under control. There is no indication that Applicant filed a response to the FORM.

## **Policies**

Positions designated as ADP I and ADP II are classified as "sensitive positions." 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 national security. The Deputy Under Secretary of Defense (Counterintelligence and Security) Memorandum, dated November 14, 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 adjudicative guidelines. 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 overall adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the entire process is "an examination of a sufficient period and a careful weighing 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.

The 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 that the applicant may deliberately or inadvertently fail to safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of sensitive information. See Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline F: Financial Considerations**

The trustworthiness concerns about financial considerations are articulated in AG ¶ 18:

Failure 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

An applicant for a public trust position is not required to be debt free, but is required to manage her finances in a way as to exhibit sound judgment and responsibility. The

concern is broader than the possibility that an applicant might knowingly compromise sensitive information for the money to satisfy her debts. An applicant's self-control, judgment, and other qualities essential to protecting sensitive information must be considered. See *e.g.*, ISCR 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant was required to start repaying her student loans in late 2013. She made no payments after March 2014. By September 2019, the aggregate balance of her defaulted student loans had accrued to \$65,394. Additionally, a creditor obtained a \$3,008 judgment against Applicant in September 2017. Medical debts of \$245 and \$165 were placed for collection in January 2015 and June 2018, respectively. Disqualifying conditions AG ¶¶ 19(a), "inability to satisfy debts," and 19(c), "a history of not meeting financial obligations," are established.

The burden is on Applicant to mitigate the negative implications for her financial judgment raised by her delinquent debts. Under AG ¶ 20, the following five mitigating conditions may apply in whole or in part:

(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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated and is adhering to 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.

Concerning AG ¶ 20(a), Applicant took out the federal student loans between September 2009 and September 2012. The medical debt in SOR ¶ 1.f was likewise incurred before she completed her May 2015 SCA. It is unclear when Applicant initially incurred the debt that led to the \$3,008 judgment in September 2017. The medical debt in SOR ¶ 1.g became delinquent while Applicant was undergoing consideration for a sensitive position. Even if the debts were incurred some time ago, they are considered recent

because “an applicant’s ongoing, unpaid debts evidence a continuing course of conduct and, therefore, can be viewed as recent for purposes of the Guideline F mitigating conditions.” ISCR Case No. 15-06532 at 3 (App. Bd. Feb. 16, 2017) (citing ISCR Case No. 15-01690 at 2 (App. Bd. Sept. 13, 2016)). The evidence shows that the student loans and medical debts went unaddressed until September 2019. AG ¶ 20(a) does not apply.

Applicant cites lack of income and “life changes” (the birth of her daughter, multiple moves, and changes of jobs) as the causes for her default of her student loans. Insufficient income is a factor that can trigger AG ¶ 20(b). What can be gleaned from the limited information of record is that Applicant stopped paying on her federal student loans while she was working for a defense contractor. By the time her income would have been compromised by her maternity leave around late 2014 into early 2015, her student loans were seriously past due. Reported changes of address for Applicant show that she and her spouse relocated to a new state in September 2013, and that they then changed apartments in June 2014, November 2014, and June 2015. She provided no explanation for her and her spouse’s multiple moves, and no information about their household income or expenses, to include their rent at each residence. What is known about her and her spouse’s financial situation is that they were able to obtain a car loan for \$34,206 in March 2014, and that they made timely payments of \$618 monthly on that loan while her student loans went unaddressed. The loan servicer for her student loans was not willing to reduce her monthly obligation because of her spouse’s income.

Even if the delinquencies were incurred in whole or in part because of circumstances outside of Applicant’s control, I have to consider whether Applicant acted in a responsible manner when dealing with her financial difficulties. See ISCR Case No. 05-11366 at 4, n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). As of her May 2015 SCA, Applicant knew that her student loans were in default. Apparently just prior to her SCA, she checked her credit report and found out about the \$245 collection debt on her credit record. Applicant indicated that she would pay off the medical debt by June 2015, and that she would start making monthly payments on her federal student loans. During her June 2015 interview, she told the OPM investigator that she would contact the collection entity for the \$245 medical debt after her interview to arrange for repayment. There is no evidence that she made any attempts to resolve that medical debt or her student loans before late September 2019, more than four years after her OPM interview. Applicant did not provide information about her income or expenses that could justify her delay in addressing her known delinquencies. AG ¶ 20(b) is only minimally established.

AG ¶ 20(c) has some applicability because Applicant satisfied the judgment debt (SOR ¶ 1.h) in early February 2019 and the medical collection debts (SOR ¶¶ 1.f-1.g) in late September and early October 2019, respectively. Favorable findings are returned as to those debts because they have been fully resolved. Even so, the concerns about Applicant’s trustworthiness are not fully mitigated. The timing of resolution of financial problems is an important consideration in evaluating mitigation. In ISCR Case No. 17-03229 at 6 (App. Bd. June 7, 2019), the Appeal Board stated that “an applicant who takes



action to resolve financial problems only after being placed on notice that his or her clearance is in jeopardy may lack the judgment, and self discipline to follow rules and regulations over time or when there is no immediate threat to his or her own interests.” Applicant satisfied the judgment before the SOR was issued, but an applicant who resolves a debt only in response to a court judgment does not display the same good faith as had she arranged to pay or settle the debt voluntarily. There is no evidence that Applicant has had any financial counseling, which is required for full mitigation under AG ¶ 20(c) and could assuage the trustworthiness concerns raised by her failure to make resolving her delinquencies a priority. AG ¶ 20(e) is partially established because the evidence does not substantiate that the judgment debt remained unpaid as of the September 5, 2019 SOR.

An applicant for a public trust position is not required to establish that he or she has paid off each debt in the SOR, or even that the first debts paid be those in the SOR. See ISCR Case No. 07-06482 (App. Bd. May 21, 2008). However, the Appeal Board reiterated in ADP Case No. 17-0063 (App. Bd. Dec. 19, 2018) that “an applicant must demonstrate a plan for debt repayment, accompanied by concomitant conduct, that is, conduct that evidences a serious intent to resolve the debts.” Applicant is credited with arranging in late September 2019 to make \$336 monthly payments toward her federal student loans totaling \$65,394. She presented no documentation showing that the first payment scheduled for October 4, 2019, cleared her bank account, or that she made timely monthly payments since October 2019. Moreover, without specific information in the record about her income or expenses, it is difficult to conclude that she can be counted on to make timely payments toward her sizeable federal student-loan delinquency. The financial considerations trustworthiness concerns are not adequately mitigated.

### **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 her conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d):

- (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.

Applicant requested a decision on the written record, so it was incumbent on her to show that her financial situation is sufficiently stable and not likely to present an ongoing trustworthiness concern. Too many unanswered questions exist about her financial situation. Even assuming that she has made timely payments since October 2019 toward her federal student loans, five months of payments are not enough to overcome her years of disregard of her obligation to the federal government. Had Applicant not waited until

September 2019 to arrange for repayment of her student loans, she might have been in a better position to demonstrate the sound financial judgment needed for a public trust position. After applying the disqualifying and mitigating conditions to the evidence presented, I conclude that it is not clearly consistent with the national interest to grant or continue a public trust position for Applicant at this time.

### **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, Guideline F: | AGAINST APPLICANT |
| Subparagraphs 1.a-1.e:    | Against Applicant |
| Subparagraphs 1.f-1.h:    | For Applicant     |

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a public trust position. Eligibility for access to sensitive information is denied.

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Elizabeth M. Matchinski  
Administrative Judge