



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



In the matter of: )  
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)  
[NAME REDACTED] ) ADP Case No. 19-03716  
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)  
Applicant for Public Trust Position )

**Appearances**

For Government: Jeff Kent, Esq., Department Counsel  
For Applicant: *Pro se*

12/22/2020

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**Decision**

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MALONE, Matthew E., Administrative Judge:

Applicant’s response to the Government’s information was sufficient to mitigate the trustworthiness concerns about her financial problems. Applicant’s request for eligibility for a position of public trust is granted.

**Statement of the Case**

On November 6, 2018, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain or renew eligibility for an ADP I/II/III position for her job with a defense contractor. After reviewing the results of the ensuing background investigation, DOD adjudicators were unable to determine that it is clearly consistent with the interests of national security to grant Applicant’s request for a position of trust, as required by required by Security Executive Agent Directive (SEAD) 4, Section E.4, and by DOD Directive 5220.6, as amended (Directive), Section 4.2.

On February 5, 2020, the DOD CAF issued Applicant a Statement of Reasons (SOR) presenting trustworthiness concerns addressed through the adjudicative guideline (AG) for financial considerations (Guideline F). The adjudicative guidelines applied by adjudicators were issued by the Director of National Intelligence on December 10, 2016, to be effective for all adjudications on or after June 8, 2017.

On March 15, 2020, Applicant responded to the SOR (Answer) and requested a decision without a hearing. On June 22, 2020, as provided for by paragraph E3.1.7 of the Directive, Department Counsel for the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a File of Relevant Material (FORM). The FORM contains eight documents (Items 1 – 8) on which the Government relies to support the factual allegations in the SOR. Applicant received the FORM on July 22, 2020, and was informed she had 30 days from the date of receipt to object to the use of the information included in the FORM and to submit additional information in response to the FORM.

Applicant timely responded to the FORM (FORM Response) with a four-page amended Answer and four attached documents in support thereof. The record closed on August 21, 2020, when Department Counsel waived objection to the FORM Response. I received this case for decision on December 1, 2020.

### **Findings of Fact**

Under Guideline F, the Government alleged that Applicant owed \$52,680 for nine delinquent or past-due debts (SOR 1.a – 1.i). Six of those debts (SOR 1.a – 1.c, and 1.g – 1.i) are for delinquent student loans totaling \$48,761, or about 92.5 percent of the total debt at issue. (FORM, Item 1) In response to the SOR, Applicant denied, with explanations and supporting documents, each of the allegations therein. After reviewing the Government's information and Applicant's submissions in response to the SOR and the FORM, I make the following findings of fact.

Applicant is a 59-year-old employee of a company contracted with the federal government to support management of the health care system used by military members and their families. Her duties include safeguarding members' personally identifiable information (PII) in that system. She has worked in similar positions in both the public and private sectors since May 2008. She served briefly in the United States Army in 1981, and she was married between 1983 and 1984, when she and her husband divorced. Applicant remarried in 1985 and had two children, now adults, before divorcing in 1993.

Applicant was unemployed for two different two-month periods in 2014 due to medical problems. In February 2017, she left a job by mutual agreement with her healthcare employer because of a combination of medical problems and the need to care for her mother, who was suffering from dementia and Alzheimer's disease. Those factors caused Applicant to miss too much time from work. Applicant started at her current employer sometime in 2018 and is now a program manager for that contract. (FORM, Items 2, 3 and 8)

Applicant attended a technical training school for information technology (IT) skills between October 2006 and December 2010. The student loans addressed in the SOR were obtained to pay her tuition. Applicant obtained nine student loans subsidized by the U.S. Department of Education between April 2008 and December 2010 totaling \$47,000. The loans addressed in SOR 1.a – 1.c and 1.g – 1.i became delinquent around the time Applicant left her job in 2017. In June 2018, Applicant began making student loan rehabilitation payments through an agreement with a creditor who took over the loans from the Department of Education. Initially, she was advised that the rehabilitation plan would resolve all of her past-due loans through a single consolidation loan at a monthly payment rate of \$199, and she established that those loans are now in good standing. However, the rehabilitation plan information she provided in support of her SOR response reflected a consolidation loan for about \$16,439, far less than the \$48,761 documented by the Government’s information. After she reviewed the Government’s information, Applicant made further inquiries and learned that a separate creditor owned the remaining student loan debt. Applicant has since entered into another rehabilitation program that addresses her remaining loans. She started making the required minimum debit payments in October 2020. (FORM, Items 2, 3, 4 and 8; FORM Response)

Applicant’s Answer established that she repaid the debt at SOR 1.f through monthly payments of \$350, between January and May 2019, to satisfy a settlement agreement she reached with that creditor. In the FORM, Department Counsel withdrew SOR 1.f. (FORM, Item 2; FORM at page 2)

Available information also shows that Applicant started working with a financial counselor in October 2018 to resolve discrepancies in her credit history, and to improve her personal financial management while repaying her past-due debts. As a result, in addition to the aforementioned student loan repayment plan in 2018 and the resolution of the collection account at SOR 1.f, Applicant successfully disputed the cable television debt alleged at SOR 1.d. Further, in March 2020 she paid the delinquent medical bill alleged at SOR 1.e, albeit after receiving the February 2020 SOR. That medical debt arose from treatment Applicant has received for what appears to be recurring medical problems since 2014. She averred that this debt became delinquent when she inadvertently failed to pay a bill in 2019 while on short-term disability. Available documentation supports this claim. (FORM, Items 2, 7 and 8; FORM Response)

## **Policies**

Eligibility for a position of public trust must be based on a determination that it is “clearly consistent with the interests of national security” to do grant such access. Each 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 adjudicative guidelines. (See Directive, 6.3) Decisions must also reflect consideration of the factors listed in ¶ 2(d) of the guidelines. Commonly referred to as the “whole-person” concept, those factors 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 classified information. This decision is intended only to resolve whether it is clearly consistent with the national interest for an applicant to either receive or continue to have access to sensitive information. (*Department of the Navy v. Egan*, 484 U.S. 518 (1988))

The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke an applicant's eligibility. 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. Because no one has a "right" to a position of public trust, an applicant bears a heavy burden of persuasion. (See *Egan*, 484 U.S. at 528, 531) A person who has access to sensitive or protected 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 judgment, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any unresolved doubt about an applicant's suitability for eligibility in favor of the Government. (See *Egan*; AG ¶ 2(b))

## **Analysis**

### **Financial Considerations**

The Government's information supports the SOR allegations that Appellant accrued more than \$52,000 in delinquent or past-due debt, most of which is comprised of delinquent student loans. As recently as August 2020, the majority of her student loans had not been addressed. These facts reasonably raised some of the trustworthiness concerns stated, in relevant part, at 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. . . . An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds.

More specifically, available information requires application of the following AG ¶ 19 disqualifying conditions:

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

I also considered the following AG ¶ 20 mitigating conditions:

- (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 individual has received or is receiving financial 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; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

AG ¶ 20(a) applies only in part. It does not appear that Applicant has actually incurred any new debt since 2017; however, she still has significant debt yet to be resolved. Accordingly, her financial problems must be viewed as recent. Nonetheless, they arose from circumstances – unemployment, illness, and elder-care obligations – that were not of her own making. Her financial problems are not a product of poor judgment or lack of trustworthiness.

There has been no misconduct here and AG ¶ 20(b) applies because of the circumstances that contributed to Applicant's inability to meet all of her debt repayment obligations. Additionally, the record shows that Applicant acted reasonably under the circumstances. In 2018, two months before she was interviewed by an investigator during this background investigation, and well before the SOR was issued, Applicant engaged the services of a financial counselor to help her resolve her past-due debts. Even before then, when she was still unemployed in 2017, Applicant began participation in a student loan rehabilitation program. As to the loans that were not included in that program, it appears reasonable under the circumstances that she thought everything had been addressed and that all of her loans had been brought current. Her action to address the remaining debts through student loan rehabilitation in response to the FORM, in this instance, indicates good judgment on her part. Likewise, she provided a plausible explanation for why she did not resolve SOR 1.e until recently. The record evidence as a

whole shows that Applicant was proactive in trying to resolve her financial problems well before this investigation, and even before she began her current employment. She acted reasonably under the circumstances with which she was presented. This same information also supports full application of AG ¶ 20(d).

Finally, Applicant engaged a financial counselor with positive results. This has helped to resolve her debts in an organized and effective manner, and to organize her personal finances so as to avoid future shortfalls. AG ¶ 20(c) applies.

Financial problems present a two-fold inquiry. First, does the ongoing presence of unpaid debt or other unresolved financial burdens present a likelihood that Applicant would resort to illegal acts or other conduct that might compromise national interests? Here, that appears highly unlikely as there is no indication anywhere in this record to suggest Applicant has engaged in any misconduct, financial or otherwise. Additionally, the manner in which she has responded to her financial problems is indicative of a willingness to resolve her debts and further manage her finances responsibly.

Second, did Applicant's financial problems arise from irresponsible decisions, poor judgment, or other factors that indicate she is unreliable or untrustworthy? I conclude they did not. Instead, a combination of illness and family obligations caused interruptions in her ability to earn enough money to meet her debt payment obligations. The record as a whole establishes that those circumstances have changed for the better, that Applicant has demonstrated sound judgment in acting to resolve her debts, and that she is now better equipped to manage her finances. On balance, Appellant has presented sufficient information to mitigate the trustworthiness concerns about her finances.

In addition to my evaluation of the facts and application of the appropriate adjudicative factors under Guideline F, I have reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(d). Applicant's responses to her financial problems began before the SOR was issued and reflect a mature, responsible approach to resolving her debts. A fair and commonsense assessment of the record evidence as a whole shows that Applicant has mitigated the trustworthiness concerns about her financial problems.

### **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:	FOR APPLICANT
Subparagraphs 1.a – 1.e:	For Applicant
Subparagraph 1.f:	Withdrawn
Subparagraphs 1.g – 1.i:	For Applicant

## **Conclusion**

In light of all available information, it is clearly consistent with the interests of national security for Applicant to have access to sensitive information. Applicant's request for eligibility for a public trust position is granted.

MATTHEW E. MALONE  
Administrative Judge