



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



In the matter of: )  
)  
) ADP Case No. 20-00180  
)  
Applicant for Public Trust Position )

**Appearances**

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

08/19/2021

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**Decision**

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BENSON, Pamela C., Administrative Judge:

Applicant has mitigated the trustworthiness concerns under Guideline F (Financial Considerations). The statement of reasons (SOR) lists ten delinquent debts. She has paid, resolved, or is in the process of paying six of the ten delinquent accounts alleged in the SOR. She has made sufficient progress in resolving her delinquent debt. Eligibility for access to public trust position is granted.

**Statement of the Case**

On June 27, 2019, Applicant submitted a security clearance application (SCA). On April 10, 2020, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant an SOR, detailing trustworthiness concerns under Guideline F. The action was taken 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* (AG) effective within the DoD on June 8, 2017.

On May 5, 2020, Applicant responded to the SOR, and she requested a hearing before an administrative judge. She admitted all of the SOR allegations. (¶¶ 1.a-1.j.) Processing of the case was delayed due to the COVID-19 pandemic. On March 17, 2021, the case was assigned to me. The Defense Office of Hearings and Appeals (DOHA) issued the hearing notice on May 27, 2021, setting the hearing for June 22, 2021. On June 22, 2021, Applicant requested a continuance, because she had filed for divorce the day before, and she was unable to stay in her home to participate in the Defense Collaboration Services (DCS) video-teleconferencing system hearing. She visited the local library to participate in the hearing, but she experienced technical issues which prevented her from fully connecting with the DCS platform. I granted the continuance without objection. The Defense Office of Hearings and Appeals (DOHA) reissued the hearing notice on June 28, 2021, setting the hearing for July 8, 2021. The hearing proceeded as scheduled on the DCS video-teleconferencing system.

Department Counsel submitted eight documents, which I admitted into evidence as Government Exhibits (GE) 1 through 8, without objection. Applicant submitted six documents, labeled Applicant Exhibits (AE) A through F, which were admitted into the record without objection. I held the record open until July 22, 2021, in the event either party wanted to provide additional documentation. No additional documentation was submitted. DOHA received the hearing transcript (Tr.) on July 16, 2021, and the record closed.

### **Findings of Fact**

Having thoroughly considered the evidence in the record, including Applicant's admissions, I make the following findings of fact:

Applicant is 48 years old. She has been married to her spouse for 27 years, but last month she filed for divorce. She has two sons, ages 19 and 24. Beginning in about 2014, she attended college one night a week and earned a bachelor's degree in December 2019. Since June 2019, Applicant is employed as a human resources assistant for a DoD contractor. Her annual salary is about \$40,000. Her employer requires her to be issued a position of trust to perform specific employment duties. (Tr. 11, 25-26, 38; GE 1)

Applicant and her spouse have struggled financially since they married in 1994. He handled all of the finances and was the primary wage earner of the household working as a police officer. Her husband's income did not provide much money for a family of four, and they did not have a monthly budget in place to live within their means. In 2005, they filed for Chapter 7 bankruptcy. They began to experience financial difficulties again after she and her husband separated in 2013. She left with her two sons and was required to obtain food stamps in order to make ends meet. At that time, she was working part time at her sons' school as a reading aide, which did not provide much income. After about a year, she and her husband reunited in an effort to save their marriage. Applicant also opened up her first checking account in her name only in

an effort to assert some financial independence from her controlling spouse. (Tr. 10-11, 28-30, 37; GE 3)

The SOR alleged Applicant's ten delinquent debts which totaled approximately \$26,450. The credit reports corroborate the delinquent accounts. The current status of these debts is as follows: (GE 2, GE 8)

SOR ¶ 1.a alleged a \$338 Comcast account referred for collection. Applicant admitted this debt and testified at the hearing that she was in the process of paying this debt, but unforeseen circumstances in her marriage caused her to file for divorce. She stated that it was her intention to arrange a payment plan with the creditor after the hearing. There is no evidence in the record that shows that this debt is resolved or in the process of being repaid. (Tr. 28-31)

SOR ¶ 1.b alleged a \$17,583 timeshare account that was charged-off as a bad debt. Applicant admitted this debt occurred a number of years ago. She and her spouse attended a timeshare meeting. Her husband believed that they could afford the timeshare, but she was against making the purchase. They had a 30-day cancellation grace period in the purchase contract in the event they changed their minds. She believed they had cancelled their timeshare purchase within the 30-day period. When she discovered the existing timeshare debt, she confronted her spouse about it. He informed her that the timeshare company had gone out of business. At the hearing she admitted that she is not certain how to resolve this debt, which is the largest debt alleged in the SOR. She will eventually address this debt, but she has other debts that are considered a higher priority to resolve at the present time. (Tr. 31-32)

SOR ¶ 1.c alleged a \$129 collection account. Applicant provided documentation to show that this account was paid in full. (Tr. 32-33; AE A)

SOR ¶ 1.d alleged a \$106 Comcast account referred for collection. Applicant admitted this debt and testified at the hearing that she was in the process of paying this debt, but circumstances in her marriage caused her to file for divorce earlier than planned. While trying to communicate with the collection agency to arrange a payment plan, she received an email response indicating that the collection agency had discontinued collection efforts and would submit an account deletion request to the credit bureaus. The email communication is in the record, and this account is considered resolved. (Tr. 44-45; AE E)

SOR ¶ 1.e alleged a \$1,842 Sprint account referred for collection. Applicant provided documentation showing that she paid \$1,114.87 of this debt to date, with a remaining balance of \$736.61. She intends to continue her payment arrangements with the creditor until this debt is paid in full. This account is in the process of being resolved. (Tr. 33; AE G)

SOR ¶ 1.f alleged a \$2,438 gym membership account that was referred for collection. Applicant admitted this debt and testified at the hearing that she cancelled

her gym membership in 2013, after she provided medical documentation that she was having surgery and was unable to continue her gym membership. She believed that this issue was fully resolved until recently. She will contact the creditor in the near future, and will set-up a payment plan if needed. (Tr. 34)

SOR ¶¶ 1.g, 1.h, and 1.i alleged three unpaid medical accounts totaling \$1,740. Applicant testified that she has paid most of her medical accounts. In June 2021 she paid \$759.32 on these accounts. She provided documentation of her payment arrangements with the medical provider. She is currently in the process of resolving these debts. (Tr. 34-35; AE A)

SOR ¶ 1.j alleged a \$2,275 account charged off as a bad debt. Applicant stated this account was for a car her husband purchased, and she was listed as a co-signer on the loan. She recently confronted her spouse about this account and he claimed that he had paid this account in full. She will address this unresolved account with her husband again, and if he does not resolve it, she will take responsibility for the account and will make payment arrangements with the creditor. (Tr. 35)

Although not alleged in the SOR, Applicant and her spouse owed state taxes in the total amount of \$807.55. Tax liens had been filed against them in 2019 and 2020. She believed these state tax issues developed from her husband's off-duty assignments which were not taxed. Applicant provided documentation showing that these state tax liens were paid in full. (Tr. 36, 38; GE 4, GE 5; AE C)

Applicant's credit report dated June 2021 also showed an unpaid account in the amount of \$218 from the college Applicant attended. This account was not alleged in the SOR. She testified that she was looking into the matter and that she intended to pay the week after the hearing. (Tr. 36; GE 8)

Applicant has never participated in a consumer counseling program. She is currently residing rent-free with her parents and using her income to pay her financial responsibilities. She does not want to begin her new single life creating debt that she cannot afford. She has a monthly budget in place, and she has saved money in an emergency account. She believes that she made progress in reducing and resolving her delinquent debts. Once her delinquent debts are resolved, she will move out of her parents' home and live a lifestyle suited to her financial means. (Tr. 41-43)

Applicant provided documentation of her performance reviews at her current place of employment. Her annual review for 2019 and 2020 showed that she meets or exceeds expectations for every element of her employment duties. (AE D)

### **Policies**

A memorandum from the Under Secretary of Defense dated November 19, 2004, treats public trust positions as sensitive positions, and it entitles applicants to the procedural protections in the Directive before any final unfavorable determination may

be made. The standard set out in the adjudicative guidelines for assignment to sensitive duties is that 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.

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.

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 an evaluation of the whole person. The administrative judge's overarching adjudicative goal is a fair, impartial and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The protection of the national security is the paramount consideration. Under AG ¶ 2(b), "[a]ny doubt concerning personnel being considered for access to [sensitive] information will be resolved in favor of national security." The Government must present substantial evidence to establish controverted facts alleged in the SOR.<sup>1</sup> Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts.<sup>2</sup> An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government.<sup>3</sup> An applicant has the ultimate burden of demonstrating that it is clearly consistent with national security to grant or continue eligibility for access to sensitive information.

## **Analysis**

### **Financial Considerations**

AG ¶ 18 articulates the trustworthiness concern for financial problems:

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

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<sup>1</sup> Directive ¶ E3.1.14.

<sup>2</sup> Directive ¶ E3.1.15.

<sup>3</sup> See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

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. . . .

The guideline notes several conditions that could raise trustworthiness concerns under AG ¶ 19. The SOR alleged Applicant's ten delinquent debts totaled approximately \$26,450. The Government produced substantial evidence to raise the disqualifying conditions in AG ¶ 19(a) (an inability to satisfy debts) and AG ¶ 19(c) (a history of not meeting financial obligations). Further inquiry about the applicability of mitigating conditions is required.

Conditions that could mitigate the financial considerations trustworthiness concerns are provided under AG ¶ 20. The following are potentially applicable:

(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.

Clearance decisions are aimed at evaluating an applicant's judgment, reliability, and trustworthiness. They are not a debt-collection procedure. The guidelines do not require an applicant to establish resolution of every debt or issue alleged in the SOR. An applicant needs only to establish a plan to resolve financial problems and take significant actions to implement the plan. There is no requirement that an applicant immediately resolve issues or make payments on all delinquent debts simultaneously, nor is there a requirement that the debts or issues alleged in an SOR be resolved first. Rather, a reasonable plan and concomitant conduct may provide for the payment of such debts, or resolution of such issues, one at a time.

Applicant's debts became delinquent at various periods during her 27-year marriage. Her husband was the breadwinner and controlled the finances in the

household. He did not suitably manage their money, and in 2005 they filed for Chapter 7 bankruptcy protection. In 2013, Applicant separated from her husband and moved out of the family home with their two sons. She was required to use food stamps to make ends meet. They reunited in 2014, and she decided to enroll in college and get her bachelor's degree, which she obtained in December 2019. She was hired by her current employer in 2019. In June 2021, she moved out of the house and filed for divorce. She is currently living with her parents and using her income to resolve the delinquent accounts.

Applicant's 2013 year-long separation from her spouse and her recent move out of the family home due to a pending divorce contributed to her financial troubles and were circumstances beyond her control. She provided documentation showing that she took responsible action to resolve delinquent debts after she became aware of her financial issues. She has paid, resolved, or is in the process of paying six out of the ten delinquent accounts alleged in the SOR. Although not alleged in the SOR, but brought to her attention by Department Counsel, Applicant immediately paid delinquent state taxes of \$808 after she received notice of this debt. She provided sufficient documentation of her payment efforts and the current status of her debts. She has acted responsibly under the circumstances, and there are clear indications that the problem is being resolved and is under control. Overall, Applicant has shown that she is working dutifully to be financially responsible, which makes her reliable and trustworthy. Applicant has mitigated the financial considerations trustworthiness concerns.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a trustworthiness determination 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(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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a trustworthiness determination must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis.

Applicant took affirmative action to resolve her financial delinquencies after it was brought to her attention, and her financial issues are currently under control. I find that future delinquencies are unlikely to recur. After evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the financial considerations trustworthiness concerns.

### **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:	FOR APPLICANT
Subparagraphs 1.a-1.j:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national security to grant Applicant eligibility for a public trust position. Eligibility for public trust position is granted.

Pamela C. Benson  
Administrative Judge