



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



In the matter of:	)	
	)	
	)	ADP Case No. 20-02637
	)	
Applicant for Public Trust Position	)	

**Appearances**

For Government: David F. Hayes, Esq., Department Counsel  
For Applicant: *Pro se*

08/10/2021

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**Decision**  
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RIVERA, Juan J., Administrative Judge:

Applicant did not mitigate the financial considerations trustworthiness concerns. Eligibility for access to sensitive information is denied.

**Statement of the Case**

On December 16, 2020, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing trustworthiness concerns under Guideline F, financial considerations. Applicant responded to the SOR on January 26, 2021, and requested a decision based on the written record in lieu of a hearing.

The Government’s written case was submitted on March 31, 2021. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on May 5, 2021. She timely responded to the FORM with a one-line statement and documents that included receipts for some payments made. The case was assigned to me on July 16, 2021. The Government exhibits included in the FORM and Applicant’s FORM response are admitted in evidence.

## Findings of Fact

Applicant is a 46-year-old employee of a federal contractor. She is applying for a position of trust for the first time. She is a high school graduate, and attended college between 1993 and 1997, earning her bachelor's degree. She has been in a civil marriage since January 2009. She has one child, age 10, and two stepchildren, ages 25 and 26. (Item 2)

Applicant's work history indicates she worked for a private company as a software developer between 1998 and 2019. In addition, she had a part-time job as a Mary Kay Beauty Consultant. She was hired by her current employer and sensitive position sponsor, a federal contractor, in November 2019. She submitted her first application to hold a sensitive position in December 2019.

The SOR alleges eight delinquent medical accounts in collection totaling \$5,913 (SOR ¶¶ 1.a - 1.f, 1.i, and 1.k); a 2014 charged-off loan for \$252 (SOR ¶ 1.g); a 2012 - 2013 charged-off auto loan for \$18,198 (SOR ¶ 1.h); and a 2015 collection by a communications provider for \$174 (SOR ¶ 1.j).

Applicant admitted the SOR allegations. In her SOR response, Applicant stated that the medical debt alleged in SOR ¶ 1.a was originally for about \$2,448, and she paid \$1,489 in 2020. In June 2020, her state intercepted her state income tax refund for \$1,618, and applied it to the medical debt alleged in SOR ¶ 1.a. The total owed was reduced to \$958. (See, Applicant's FORM Response) Concerning the medical debts alleged in SOR ¶¶ 1.b - 1.d, Applicant stated she accrued the debts as a result of neck surgery around 2018-2019. She promised to aggregate the three debts into a payment plan to be paid in 2022.

Applicant initially claimed she paid the \$152 medical debt alleged in SOR ¶ 1.e. Later she indicated she had scheduled payments and promised the debt would be paid by March 2021. She presented no documentary evidence to corroborate her claims. Applicant claimed that she had scheduled payments for all of the remaining SOR debts, and promised to pay them in 2021. She presented no documentary evidence to corroborate her claims. The SOR debts are listed on a January 2020 credit report, a September 2020 credit report, or both credit reports. (Items 4, 5)

The \$18,198 charged-off auto loan (SOR ¶ 1.h) is a joint account. Applicant asserted that she cosigned the loan for her husband. Later, he changed jobs with a resulting loss of \$400 income, and they could not afford to pay the loan. The dealer refused to modify the auto loan and they returned the car to the lender. There is no evidence of payments on this account.

Applicant submitted documentary evidence showing that she established a payment agreement and paid a \$252 medical debt to a collection agency (SOR ¶ 1.h). She paid \$50 in February 2020, and made three \$50 payments and one of \$52 in 2021. She presented receipts for three payments of \$50 made toward the \$498 debt alleged in

SOR ¶ 1.f. Additionally, she made \$50 payments in February and April 2021 towards a \$1,352 debt that apparently was not alleged in the SOR.

In her answer to the SOR, Applicant claimed the following debts were scheduled to be paid in February-March 2021: SOR ¶¶ 1.e, 1.j, and 1.k. She presented no documentary evidence to corroborate her claims. She noted that the following debts had not been addressed as of her SOR answer: SOR ¶¶ 1.h and 1.i. Except as noted previously, there is no evidence of payments toward the remaining SOR debts.

Applicant attributed her financial problems to not making sufficient money to pay her living expenses and debts; her husband's failure to provide her with financial assistance; his changing jobs and making less money; and his periods of underemployment and low-paying jobs. The record also shows she apparently provided financial assistance to her mother, and had medical problems associated with a neck operation.

Applicant did not present evidence of her current financial situation (gross monthly income, deductions, monthly expenses, and monthly net remainder). She did not present evidence to show that she has a working budget. There is no evidence to show she has had recent financial counseling or has a working budget.

### **Policies**

In issuing the SOR, DOD acted under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive);<sup>1</sup> and the *National Security Adjudicative Guidelines* (AG) promulgated by Directive 4 of the Security Executive Agent, effective June 8, 2017.

The DOD considers ADP positions to be sensitive positions. For a person to be eligible for sensitive duties, the person's loyalty, reliability, and trustworthiness must be such that assigning the person to a sensitive position is clearly consistent with the national security interests of the United States. SEAD 4, E(4); SEAD 4, App. A ¶ 2.d. Applicants for ADP positions are entitled to the procedural protections in the Directive before any final unfavorable access determination is 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 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.

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<sup>1</sup> ADP cases are adjudicated under the provisions of the Directive. (Deputy Under Secretary of Defense Memorandum for the Director, DOHA, dated November 19, 2004.)

A public trust position decision resolves whether it is clearly consistent with the interest of national security to grant or continue an applicant's access to sensitive information. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national security interest of the United States to grant or continue his or her access to sensitive information.

Persons with access to sensitive information enter 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 those who must protect national security as their own. The "clearly consistent with the national security interest of the United States" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government. Access to sensitive information determinations should err, if they must, on the side of denials. SEAD 4, ¶ E(4); SEAD 4, App. A, ¶¶ 1(d) and 2(b). Eligibility for a public trust position decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing access to sensitive information.

## **Analysis**

### **Guideline F, Financial Considerations**

The security concern for financial considerations is set out 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

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

Applicant has a history of financial problems, established by her admissions and record evidence, showing eight delinquent medical accounts in collection totaling

\$5,913; a charged-off loan for \$252; a 2012 - 2013 charged-off auto loan for \$18,198; and a 2015 collection by a communications provider for \$174. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate the financial considerations security 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;

(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.

Applicant attributed her financial problems to not making sufficient money to pay her living expenses and debts; her husband's failure to provide her with financial assistance; and his periods of underemployment and low-paying jobs. Apparently, she also provided financial assistance to her mother, and had medical problems associated with a neck operation. Those events qualify as conditions that were largely beyond her control.

SOR ¶ 1.a, a \$958 medical collection is being paid via application of state tax refunds. It is inconclusive whether this was Applicant's voluntary action or a garnishment by the state. Applicant paid SOR ¶ 1.g, a \$252 medical collection. This allegation is mitigated and concluded for Applicant. She also made payment arrangements and is paying SOR ¶ 1.h, a \$498 medical collection. She reduced the amount that was past due by \$150. That is sufficient effort to mitigate SOR ¶ 1.h.

There is no evidence of payments toward the remaining SOR debts. As a cosigner of the \$18,198 charged-off auto loan, she is liable for the debt, even if she

expected the other cosigner to pay it. She stated her intentions to pay her debts in the future; however, those intentions are not a substitute for a track record of debt repayment or other responsible approaches. See ISCR Case No. 11-14570 at 3 (App. Bd. Oct. 23, 2013).

Although Applicant is starting to make progress addressing her delinquent obligations, she does not have a sufficient track record to establish confidence that she will pay her debts. There is insufficient evidence for a determination that her financial problems will be resolved within a reasonable period. I am unable to find that she acted responsibly under the circumstances or that she made a good-faith effort to pay her debts. Her financial issues are recent and ongoing. They continue to cast doubt on her current reliability, trustworthiness, and good judgment. Applicant may reach a point where her finances are sufficiently improved to warrant a security clearance, but she has not established that she is there at this time. I find that financial considerations security concerns remain despite the presence of some mitigation.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant 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 security clearance 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.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the financial considerations security 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:	Against Applicant
Subparagraphs 1.a, 1.f, 1.g:	For Applicant
Subparagraphs 1.b-1.e, 1.h-1.k:	Against Applicant

**Conclusion**

It is not clearly consistent with the national interest to grant Applicant eligibility for a position of trust. Eligibility for access to sensitive information is denied.

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JUAN J. RIVERA  
Administrative Judge