



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



In the matter of:	)	
	)	
	)	ADP Case No. 20-00209
	)	
Applicant for Public Trust Position	)	

**Appearances**

For Government: Nicholas T. Temple, Esq., Department Counsel  
For Applicant: *Pro Se*

09/14/2021

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**Decision**

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CERVI, Gregg A., Administrative Judge

This case involves trustworthiness concerns raised under Guideline F (Financial Considerations). Eligibility for access to sensitive information is denied.

**Statement of the Case**

Applicant submitted an application for a public trust position on February 21, 2019. On April 29, 2020, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) sent her a Statement of Reasons (SOR) alleging trustworthiness concerns under Guideline F. The DCSA CAF acted under Executive Order (Exec. Or.) 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 adjudicative guidelines (AG) effective June 8, 2017.

Applicant answered the SOR on March 5, 2021 (Ans.), and requested a decision based on the written record without a hearing. The Government’s written brief with supporting documents, known as the file of relevant material (FORM), was submitted by Department Counsel on April 19, 2021. A complete copy of the FORM was provided to

Applicant, who was afforded an opportunity to file objections and submit material to refute, rebut, or mitigate the security concerns. Applicant received the FORM on May 3, 2021, but did not submit a reply. The case was assigned to me on August 26, 2021. Government Exhibits (GE) 1 through 6 are admitted into evidence without objection.

### **Findings of Fact**

Applicant is a 30-year-old analyst, employed by a government contractor since August 2018. She reported being unemployed from March to May 2018, and December 2017 to January 2018. She graduated from high school in 2009, and earned a bachelor's degree in 2013. Applicant is unmarried and has never applied for a trustworthiness position.

The SOR alleges under Guideline F that Applicant has nine delinquent debts including a state tax debt of \$1,260 owed for tax year 2017, and eight student loan debts totaling about \$54,405. Applicant admitted the student loan debt allegations, and denied the tax debt. She provided no explanations with her answer or any documentary evidence in mitigation. Applicant's public trust application and credit reports support the SOR allegations.

In her public trust application, Applicant listed that she failed to pay 2017 state income taxes for \$1,260. She noted that she was waiting for a tax refund from another state before she paid the state tax debt. She also noted that she was "in contact with the IRS and have yet to hear back." Presumably, Applicant was speaking of the state tax authority to whom she owes the debt, not the Federal agency. In addition, Applicant noted that she owed about \$65,000 in student loans since 2013. She stated that she was "working on getting out or deferment, then paying on my student loans." She also stated that "I am currently paying on my student loans do not know the physical address to which I owe my student loans to."

Since submitting her Answer to the SOR, no further information has been provided despite the Department Counsel's notation of the absence of mitigating evidence in the FORM.

### **Policies**

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. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard sensitive information.

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. Directive ¶ E3.1.14. Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). 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**

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

The trustworthiness concern under this guideline 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. . . .

The relevant disqualifying conditions under AG ¶ 19 include:

- (a) inability to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

Applicant's admissions and the documentary evidence in the record are sufficient to establish the disqualifying conditions above.

The following mitigating conditions under AG ¶ 20 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;

(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

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

The DOHA Appeal Board has long held that trustworthiness requirements generally include consideration of a person's judgment, reliability, and a sense of his or her legal obligations. Failure to comply with tax laws suggests that an applicant has a problem with abiding by well-established government rules and regulations. Voluntary compliance with rules and regulations is essential for protecting sensitive information.

Applicant's failure to pay her state income taxes from tax year 2017 as required raises questions about her judgment and willingness to abide by rules and regulations. No explanation or evidence of attempts to resolve the debt were provided. In addition, Applicant failed to provide any explanation for her unresolved student loan debts, or efforts to mitigate the Government's concerns.

There is a paucity of persuasive evidence regarding the debts, Applicant's financial history, and her current financial status. Applicant choose to have a decision issued on the record, but has done little to provide mitigating information for my consideration. In addition, Applicant has an employment history that belies her inability or unwillingness to pay satisfy her financial obligations.

There is insufficient evidence in the record of action taken to resolve the debts. Additionally, there is no evidence of financial counseling or satisfactory evidence of Applicant's current financial status. I am not persuaded that Applicant has a handle on her debts, has taken sufficient action to resolve them, or has shown financial responsibility over the years. As a result and without more documentary evidence, I remain doubtful about Applicant's reliability, trustworthiness, and good judgment. None of the mitigating conditions apply.

### **Whole-Person Concept**

Under AG ¶¶ 2(a), 2(c), and 2(d), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a position of trust 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).

I considered all of the potentially disqualifying and mitigating conditions in light of the facts and circumstances surrounding this case. I have incorporated my findings of fact and comments under Guideline F, in my whole-person analysis. I considered Applicant's current employment status and past periods of unemployment. However, Applicant has not provided evidence to show the resolution of the SOR debts and her overall financial responsibility.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a public trust position. For these reasons, I conclude Applicant has not 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:	AGAINST APPLICANT
Subparagraph 1.a – 1.i:	Against Applicant

### **Conclusion**

I conclude that it is not clearly consistent with the interests of national security to grant Applicant eligibility for a public trust position. Eligibility for access to sensitive information is denied.

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Gregg A. Cervi  
Administrative Judge