



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



In the matter of: )  
 )  
----- ) ISCR Case No. 20-03823  
 )  
Applicant for Public Trust Position )

**Appearances**

For Government: Raashid Williams, Esq., Department Counsel  
For Applicant: *Pro se*

12/02/2021

**Decision**

WESLEY, ROGER C. Administrative Judge

Based upon a review of the case file, pleadings, and exhibits, Applicant did not mitigate financial considerations concerns. Eligibility for a public trust position is denied.

**Statement of the Case**

On February 15, 2021, the Department of Defense (DoD) Consolidated Adjudications Facility (CAF) issued a statement of reasons (SOR) to Applicant detailing reasons why under the financial considerations guideline the DoD could not make the preliminary affirmative determination of eligibility for a public trust position, and recommended referral to an administrative judge to determine whether eligibility for a trust position should be granted, continued, denied, or revoked. The action was taken under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960); *Defense Industrial Personnel Security Clearance Review Program*, DoD Directive 5220.6 (January 2, 1992) (Directive); and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017.

Applicant responded to the SOR (undated), and requested a hearing. This case was assigned to me on August 21, 2021. A hearing was scheduled for October 21, 2021, and heard on that date.. At the hearing, the Government's case consisted of four exhibits (GEs 1-5). Applicant relied on no exhibits and one witness (herself). The transcript (Tr.) was received on October 29, 2021

### **Procedural Issues**

Before the close of the hearing Applicant requested the record be kept open to permit her the opportunity to supplement the record with debt payment plans. For good cause shown, Applicant was granted 20 days to supplement the record. (Tr. 45-46) Department Counsel was afforded five days to respond. Within the time permitted, Applicant supplemented the record with three submissions addressing her delinquent accounts. Applicant's submissions were admitted without objection as AEs A-C.

### **Summary of Pleadings**

Under Guideline F, Applicant allegedly accumulated 14 delinquent medical, consumer, and state tax debts exceeding \$15,000. Allegedly, these debts remain unresolved and outstanding.

In her response to the SOR, Applicant admitted all of the allegations with explanations. She claimed she has struggled with keeping jobs, as the contracts she was assigned to were constantly being canceled or terminated.

Applicant further claimed she is doing all she can to manage her personal finances and has every intention to address her debts when circumstances permit. And, she claimed she is continuing to look for another job to help her with her bills.

### **Findings of Fact**

Applicant is a 56-year-old senior professional planner of a defense contractor who seeks eligibility to hold a public trust position. The admitted allegations are incorporated and adopted as relevant and material findings. Additional findings follow.

### **Background**

Applicant married in March 2006 and divorced in June 2011. (GE 1) She has no children from this marriage. (GE 1) She remarried in August 2016 and divorced in November 2018. (GE 1) She has no children from this marriage. Applicant attended college classes from 1983 to 1986, but did not earn a degree or diploma. (GE 1) She reported no military service. (GE 1)

Since 2019, Applicant has been employed by her current employer. (GE 1; Tr. 25-26) She reported periods of unemployment while seeking new jobs following layoffs due to lost employer contracts, and while she recovered from surgical procedures. (GE 1; Tr. 26) She has never possessed a public trust position. (GE 1)

## **Applicant's finances**

Between 2012 and 2019, Applicant accumulated 14 delinquent debts. (GEs 1-4) Her listed delinquent debts are comprised of 12 delinquent consumer accounts exceeding \$14,000, one delinquent medical account of \$46, and one state tax debt of \$6,230, covering tax years 2012-2013 and 2015-2016. (GEs 1-4) Applicant attributed her debt delinquencies to a combination of involuntary, fault-free layoffs due to employer contract losses and emergency surgeries to repair an anterior collateral ligament (ACL) for the second time in 2019. (AE A)

While Applicant is credited with entering into a recent tax payment agreement with her state of residence, she has not to date documented any payments to the state's taxing agency, and the outstanding balance remains unresolved. (GEs 1-4 and AE A; Tr. 35-36) Since her hearing, she has received installment payment offers from three of her listed SOR creditors (covered by SOR ¶¶ 1.c. for \$1,997, 1.e for \$1,070, and 1.g for \$886.00). Each of these installment offers propose monthly payment plans and seek written acceptance of the respective offers from Applicant. (AEs B-C)

Applicant's submissions include neither documented acceptances nor good-faith upfront payments accompanying her formal acceptances. (AEs A-C) Without verified acceptances of the creditor settlement offers and documented first payments in compliance with the terms of the respective offers, resolution of these debts remain works in progress.

Of the debts covered by the SOR, only one of them can be considered resolved for evidentiary purposes. Applicant could not identify SOR debt ¶ 1.m (a medical debt for \$46), which was unfamiliar to her. (GEs 1-4) It is a small debt that could reasonably have been resolved earlier or simply forgotten by Applicant. Either way, inferences are warranted that the debt is resolved in Applicant's favor.

By her own acknowledgements, Applicant is not in a position at this time to make any serious inroads into addressing her delinquent accounts. She is doing all she can just to cover her necessities. (Tr. 49) She has no 401(k) retirement or savings accounts to draw from. (Tr. 38)

While Applicant is current with her non-SOR debts, she has not sought financial counseling to help her with her finances and needs a second job to address her delinquent accounts. (Tr. 49) Finding a part-time dog-walking job promises to help Applicant with her accounts, but is not likely in the short-run to produce enough extra income to enable her make any meaningful initiatives in addressing her accrued debts.

## **Policies**

By virtue of the jurisprudential principles recognized by the U.S. Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance [or public trust position]." As Commander in Chief, "the President has

the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information [and hold a public trust position].” *Id.* at 527. Eligibility for holding a public trust position may only be granted “upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility to hold a public trust position is predicated upon the applicant meeting the criteria contained 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 an evaluation of the whole person. An 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 AGs list guidelines to be considered by judges in the decision-making process covering DOHA cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual’s reliability, trustworthiness, and ability to protect privacy information. The guidelines include conditions that could raise a trustworthiness concern and may be disqualifying (disqualifying conditions), if any, and all of the conditions that could mitigate trustworthiness concerns, if any. These AG guidelines must be considered before deciding whether or not eligibility to hold a public trust position should be granted, continued, or denied. Although, the guidelines do not require judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision.

In addition to the relevant AGs, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in ¶ 2(a) of the AGs, which are intended to assist the judges in reaching a fair and impartial, commonsense decision based on a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period of an applicant’s life to enable predictive judgments to be made about whether the applicant is an acceptable trust risk.

When evaluating an applicant’s conduct, the relevant guidelines are to be considered together with the following ¶ 2(d) factors: (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 of the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Viewing the issues raised and evidence as a whole, the following individual guidelines are pertinent herein:

## Financial Considerations

*The Concern:* 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 personal 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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage. AG ¶ 18.

## Burdens of Proof

The Government reposes a high degree of trust and confidence in persons with access to protected privacy information. 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 protected privacy information.

Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risks of compromise of protected privacy information. Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See Exec. Or. 10865 § 7. See also Exec. Or. 12968 (Aug. 2, 1995), § 3.1.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

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 ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his [or her] clearance [eligibility to hold a public trust position]." ISCR Case No. 01-20700 at 3 (App. Bd. Dec.

19, 2002). *The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations [to include public trust position eligibility] should err, if they must, on the side of denials.” Egan, 484 U.S. at 531; see AG ¶ 2(b).*

### **Analysis**

Trustworthiness concerns are raised over Applicant’s accumulation of delinquent debts between 2013 and 2019. With the exception of a \$46 medical debt that she does not recognize, she acknowledges all of the listed delinquent debts in the SOR as her own.

### **Jurisdictional issues**

Holding a public trust position involves the exercise of important fiducial responsibilities, among which is the expectancy of consistent trust and candor in protecting and guarding personally identifiable information (PII). DoD Manual 5200.02, which incorporated and canceled DoD Regulation 5200.2-R, covers both critical-sensitive and non-critical sensitive national security positions for DoD civilian personnel. See 5200.02, ¶ 4.1(3)(c).

Definitions for critical-sensitive and non-critical sensitive positions provided in 5200.02, ¶ 4.1a(3)(c) contain descriptions similar to those used to define ADP I and II positions under DoD Regulation 5200.2-R. (32 C.F.R. § 154.13 and Part 154, App. J). ADP positions are broken down as follows in 32 C.F.R. § 154.13 and Part 154, App. J: ADP I (critical-sensitive positions covering the direction, design, and planning of computer systems) and ADP II (non-critical-sensitive positions covering the design, operation, and maintenance of computer systems). Considered together, the ADP I and II positions covered in DoD Regulation 5200.2-R refine and explain the same critical-sensitive and non-critical sensitive positions covered in DoD Manual 5200-02, ¶ 4.1a(3)(c) and are reconcilable as included provisions in 5200.02.

So, while ADP trustworthiness positions are not expressly identified in DoD Manual 5200.02, they are implicitly covered as non-critical sensitive positions that require ‘access to automated systems that contain active duty, guard, or personally identifiable information or information pertaining to Service members that is otherwise protected from disclosure by DoD 5400.11-R . . .’ DoD 5200.02, ¶ 4.1a(3)(c). See DoD Directive 5220.6, ¶ 4.1a(3)(c). See DoD Directive 5220.6 ¶¶ D5(d) and D8. By virtue of the implied retention of ADP definitions in DoD Manual 5200.02, ADP cases continue to be covered by the process afforded by DoD 5200.6

### **Financial concerns**

On the strength of the evidence presented, two disqualifying conditions of the Adjudicative Guidelines (DCs) for financial considerations apply to Applicant’s situation: DC ¶¶ 19(a), “inability to satisfy debts,” and 19(c), “a history of not meeting financial obligations.”

Applicant's admitted delinquent debts require no independent proof to substantiate them. See Directive 5220.6 at E3. 1.1.14; *McCormick on Evidence* § 262 (6<sup>th</sup> ed. 2006). Her admitted debt delinquencies are fully documented and create judgment issues as well over the management of her finances. See ISCR Case No. 19-02593 at 2 (App. Bd. Oct. 18, 2021); ISCR Case No. 03-01059 at 3 (App. Bd. Sept. 24, 2004).

Financial stability in a person cleared to protect sensitive privacy information is required to inspire trust and confidence in the holder of a public trust position that entitles the person to access protected privacy information. While the principal concern of a public trust position holder's demonstrated financial difficulties is vulnerability to coercion to disclose protected privacy information, judgment and trust concerns are implicit in cases involving debt delinquencies.

Historically, the timing and resolving of debt delinquencies are critical to an assessment of an applicant's trustworthiness, reliability and good judgment in following rules, regulations, and guidelines necessary for those seeking access to protected privacy information. See ISCR Case No. 14-06808 at 3 (App. Bd. Nov. 23, 2016; ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 18, 2015). Applicant's history of financial difficulties associated with her delinquent consumer and state tax debts raises considerable concerns over her ability to manage her finances in a responsible and reliable way.

Extenuating circumstances associated with her past periods of unemployment appear to have played a considerable role in Applicant's delinquent debt accruals. Mitigating condition (MCs) ¶ 20(b), "the conditions that resulted in the financial problem were likely 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 has acted responsibly under the circumstances," partially applies to Applicant's situation. Because Applicant has heretofore failed to address her consumer and state tax debt delinquencies once she returned to full-time employment in 2019, she is not positioned to take full advantage of the "acting responsibly" prong of MC ¶ 20(b). With so little financial information to work with over the course of the past two years, and still unperfected payment plans, no meaningful extenuation credits can be assigned at this time.

In evaluating Guideline F cases, the Appeal Board has stressed the importance of a "meaningful track record" that includes evidence of actual debt reduction through the voluntary payment of accrued debts. ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) In Applicant's case, she has failed to take sufficiently meaningful good-faith voluntary steps to either pay off or establish completed payment plans with her consumer and state tax creditors to address her delinquent consumer and state tax debts. For lack of any fully documented repayment or financial counseling initiatives by Applicant, other potentially available mitigating conditions cannot be applied to her situation.

Based on her failure to date to establish a meaningful track record of addressing her delinquent consumer and tax debt deficiencies, it is too soon to make safe predictive assessments as to whether Applicant can restore her finances to stable levels consistent with minimum requirements for holding a public trust position. Mitigation requirements are not met. Only the \$46 medical debt covered by SOR ¶ 1.m is mitigated by virtue of the small amount of the debt, its age, and Applicant's inability to identify the debt.

### **Whole-person assessment**

Whole-person assessment of Applicant's eligibility to hold a public trust position requires consideration of whether her accrued delinquent debts and her failure to address them heretofore are otherwise compatible with DoD requirements for holding a public trust position. While Applicant is entitled to credit for her contributions to the defense industry, her employment contributions are not enough at this time to overcome her accumulated delinquent debts and her lack of a meaningful track record for dealing with them. Based on what Applicant has been able to achieve to date with the financial resources available to her, she will need more time in addressing her debts before safe predictions can be made that she has her finances stabilized and under control.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude that financial considerations concerns covered by SOR ¶¶1.b-1.o are not mitigated. Applicant is credited with mitigating the allegations covered by SOR ¶ 1.a. Eligibility to hold a public trust position is denied.

### **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:

#### **GUIDELINE F (FINANCIAL CONSIDERATIONS): AGAINST APPLICANT**

Subparagraphs 1.a-1.l and 1.n:	Against Applicant
Subparagraph 1.m:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's eligibility to hold a public trust position. Eligibility to hold a public trust position is denied.

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Roger C. Wesley  
Administrative Judge