



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



In the matter of:	)	
	)	
	)	ADP Case No. 18-02847
	)	
Applicant for Public Trust Position	)	

**Appearances**

For Government: Eric Price, Esq., Department Counsel  
For Applicant: *Pro se*

1/21/2021

**Second Decision on Remand**

MURPHY, Braden M., Administrative Judge:

Applicant’s delinquent debts are due largely to circumstances beyond her control, such as medical issues, an auto accident, and a period of unemployment .She has mitigated financial trustworthiness concerns. Applicant’s eligibility for access to sensitive information is granted.

**Statement of the Case and Procedural History**

On November 29, 2017, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) in connection with her employment in the defense industry. On December 18, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing trustworthiness concerns under Guideline F (financial considerations). The DOD CAF issued the SOR under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines* (AG), effective June 8, 2017.

Applicant answered the SOR on January 14, 2019, and elected to have her case decided by an administrative judge from the Defense Office of Hearings and Appeals (DOHA) on the administrative (written) record, in lieu of a hearing. With her Answer (Item 2), she included several documents (copies of postal service money orders, a credit report and an excerpt from another credit report), which are marked here as Applicant's Exhibits (AE) A - C, and included as part of Item 2.

On October 15, 2019, Department Counsel submitted the Government's File of Relevant Material (FORM), including documents identified as Items 1 - 10. FORM Items 1 and 2 are the SOR and Applicant's Answer (with attachments, as noted). Item 3 is Applicant's e-QIP. Item 4 is a document containing the summaries of Applicant's two background interviews. Item 4 is the subject of the two remands from the Appeal Board, as discussed below. Items 5, 6, 7, and 10 are documents from public records concerning certain financial judgments issued against Applicant. Items 8 and 9 are credit reports.

Applicant received the FORM on October 22, 2019. She was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. She responded to the FORM on November 20, 2019, with a narrative statement that is marked as AE D. Department Counsel did not object to its admission.

The first paragraph of AE D includes the following statement from Applicant:

I would like to object to the inclusion of the File of Relevant Material in this case. It starts off with incorrect information in the second sentence and just keeps going. I read through the investigator's summary and the attorney's response, while I understand they are just doing their job, these people cannot make a sound judgment on who I am as a person. . . .

The case was initially assigned to a DOHA administrative judge on November 26, 2019. On February 11, 2020, he issued a decision (A.J. Dec. No. 1) denying Applicant eligibility for a public trust position. In that decision, the original administrative judge specifically addressed Item 4, and ruled that Applicant did not object to its admission. (A.J. Dec. No. 1 at 2)

Applicant appealed, and on June 3, 2020, the Appeal Board remanded the case to the original administrative judge for a new decision. The Appeal Board concluded that the judge erred by considering Applicant's interview summaries (Item 4) over her objection, and instructed the judge to issue a new decision in which he did not rely on information contained in the interview summaries. (ADP Case No. 18-02847 (App. Bd., Jun. 3, 2020))

On July 8, 2020, the original administrative judge issued a remand decision in which he again denied Applicant eligibility for a position of public trust. (A.J. Dec. No. 2) In the remand decision, the judge made the following evidentiary ruling:

In compliance with the Appeal Board's decision, I will decide this case without relying on Item 4 (two interview summaries, January and March 2018). Item 4 will be used for explaining Applicant's employment and medical history, and her plan to repay the delinquent creditors. (A.J. Dec. No. 2 at 2) (Emphasis added)

In addition, the initial administrative judge specifically listed Item 4 as one of the exhibits he relied on ("I intend to base my decision on . . . Item 4 . . .") (A.J. Dec. No. 2 at 2). He also cited Item 4 in his Findings of Fact. (A.J. Dec. No. 2 at 3, 5)

Applicant again appealed, and again raised the issue of the original judge's consideration of Item 4. While noting that it was unable to determine the judge's rationale in considering Item 4, the Appeal Board found again that the judge erred "in considering information in Item 4 over Applicant's objection," in violation of ¶ E.3.1.20 of Enclosure 3 of the Directive. The Appeal Board was unable to conclude that the judge's error was harmless. (ADP Case No. 18-02847 at 2 (App. Bd. Oct. 19, 2020)) ("Second Appeal Board Decision")

The Appeal Board concluded that, in the interest of fairness to Applicant and the integrity of the national security eligibility determination process, "the best course of action is to remand the case for assignment to a new Judge for issuance [of] a decision consistent with the requirements of the Directive." (Second Appeal Board Decision at 2 (citing ISCR Case No. 02-23979 at 4 (App. Bd. Aug. 25, 2004)))

On November 2, 2020, the case was assigned to me. On November 19, 2020, I contacted the parties by e-mail to arrange a brief, introductory conference call. The call took place on November 20, 2020. During the call, I assured the parties that I would in no way rely on Item 4 in reaching my decision; indeed, I would not review it at all. As a fail-safe, I have turned Item 4 upside down in the case file, so that I would not read it even inadvertently. The teleconference is memorialized in an e-mail to the parties. (Administrative Document (AD) I)

Given the age of the record evidence in the case and in the interest of fairness to Applicant, I also reopened the record until December 11, 2020, to afford her the opportunity to provide updated information. (In her FORM Response. Applicant had noted that she had made progress on paying her debts, though she did not provide corroborating documentation at that time). (AE D at 2-3) In so doing, I exercised my authority (per the Appeal Board's order) under ¶ E.3.1.10 of Enclosure 3 of the Directive ("The Administrative Judge may rule on questions of procedure, discovery, and evidence and shall conduct all proceedings in a fair, timely, and orderly manner."). Department Counsel did not object. (AD I)

### **Evidentiary Rulings:**

Department Counsel submitted Items 1-10 with the File of Relevant Material. Items 1 and 2 (the SOR and Applicant's Answer) are the pleadings in the case. The

attachments to Applicant's Answer (AE A - C) are admitted without objection. Item 3 and Items 5-10 are also admitted without objection.

As discussed at length above, Applicant objected to admission of Item 4, the unauthenticated summaries of her background interviews, and twice appealed when Item 4 was erroneously considered by the initial administrative judge, over her objection. In accordance with Directive ¶ E.3.1.20 and with the Appeal Board's instructions, Item 4 is not admitted, and I have not considered it.

Applicant's FORM Response (AE D) is admitted without objection. On December 11, 2020, Applicant submitted a narrative statement (AE E) and six documents (AE F – K), all of which are admitted without objection. The record closed on December 11, 2020.

### **Findings of Fact**

In her Answer, Applicant admitted SOR ¶¶ 1.a-1.f, 1.i-1.n, 1.q, 1.r, 1.t, and 1.u, though she asserted that many of these accounts had been paid. She denied SOR ¶¶ 1.g, 1.h, 1.o, 1.p, and 1.s. Her admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following additional findings of fact.

Applicant is 37 years old. She was married from 2010 to 2016. She has three children, ages 4, 8, and 13. (AE E at 1) She graduated from high school in 2001. In 2017, she earned a certification in medical billing from an online university. She is currently pursuing professional certification in project management and a bachelor's degree. (AE E)

Applicant has worked for several years with a defense contractor at a military hospital. From 2010 to 2016, she worked in one position there full time, under various contracts. Between 2013 and 2015, she also held a part-time job there, working nights and weekends. The part-time position ended when that employer lost its contract. In March 2016, Applicant also lost her full-time position, for a similar reason. At the time, Applicant was on maternity leave. (Item 3; AE E)

Applicant was then unemployed until December 2017, when she was hired by her current employer, for another job at the same military hospital. She has remained in that job for the last three years. She earns about \$60,000 annually. She seeks to retain her eligibility for access to sensitive information. (AE; Item 3)

Applicant listed several debts on her e-QIP application. She fell behind on her debts because she experienced difficult pregnancies, leading to significant time away from work on maternity leave. She noted that she had not been able to pay her debts since her difficult pregnancies, but hoped that renewed employment would allow her to do so. She noted that she had considered bankruptcy and had contacted a debt-relief agency. (Item 2; Item 3 at 34-50; AE A; AE E)

Additionally, in December 2014, Applicant was in an auto accident while on her way to work. She incurred medical expenses. The money she received to compensate her as a result (about \$6,000, after lawyers and medical providers were paid) was far less than she expected. Applicant's vehicle was totaled in the accident, so she purchased another car. (AE E)

Applicant gave additional background information about her debts and financial situation in her FORM response. She noted that she had been out of work for a period before finding her current position with a military health care provider. She intended to begin returning to financial stability by paying household bills and loans given to her by family members. She is willing to work out reasonable payment plans. (AE D)

Applicant also asserted that all of the collection accounts had been cleared from her credit report and that more than half of the debt alleged in her SOR had been paid and resolved. She noted that only the large auto collection debt (SOR ¶ 1.d) remains. However, she provided no additional corroborating documentation. She said she had resumed her academic studies. She had researched her financial options and planned to take appropriate action available to her having found stable employment. (AE D)

Applicant's alleged debts total about \$42,930. Most of them are consumer and medical debts. The largest debt, for \$27,209, relates to an auto purchase. The debts are established by the Government's evidence, which includes credit reports from June 2018 and December 2017 (Items 8, 9) and public records concerning certain judgments (Items 5, 6, 10), and by Applicant's admissions in her Answer and on her e-QIP. (Items 2, 3)

SOR ¶ 1.a is an \$803 judgment entered in 2013 relating to a past-due medical debt for \$803. (Item 5) The debt relates to expenses incurred by Applicant during her pregnancy and childbirth. (Item 3 at 36-37) Applicant noted in her Answer that she researched the debt with the court, the creditor's attorney and the medical creditor, whose office was closed. She said she was told by the attorney's office that they were no longer collecting on the debt, though it remained on her credit report. (Item 2) In her most recent submission, Applicant provided a screenshot of the docket list for the case, with a notation that she attempted to challenge the debt in court in November 2019. (AE J) The debt remains pending.

SOR ¶ 1.b is a judgment for \$4,574, filed against Applicant in 2016. (Items 6, 7) It relates to an auto accident. She explained that her car slid on ice at a red light while she was on her way to work. (AE D at 12; Item 3 at 36-37) Applicant reported in her Answer that she had been making monthly payments on the debt, but this is undocumented. (Item 2) Most recently, she explained that she defaulted on payments on the debt once before, and her driver's license was suspended. She contacted the (creditor's) attorney and requested to lower her payments due to the COVID-19 pandemic. She intends to finish paying the bill by 2021 if she remains employed. (AE E at 12) The current status of this debt, and any payments towards it, are undocumented.

SOR ¶ 1.c is a judgment for \$545. The Government conceded in its FORM that this judgment was released in June 2019. (FORM at 2, fn. 2, citing Item 10)

SOR ¶ 1.d is a past-due auto loan debt for \$27,209. Applicant reported this debt on her e-QIP, noting that it was for the purchase of the vehicle she financed after totaling her first car in the accident. (Item 3 at 43-44) She said that the car was expensive but suitable for her growing family. She could afford the monthly payment with her part-time income, but she lost that income when she was laid off. The car was later repossessed. (AE A, AE E at 4, 13)

In her most recent submission, Applicant detailed that she was asked by the creditor to make six monthly payments of \$691 before they would offer a settlement, and she was unable to do so. More recently, she has an offer to make six monthly payments of \$100, for a 50% reduction on the debt. Payments began in November 2020, and the balance is now \$25,121. (AE E at 12, AE H, AE I) The 50% reduction offer from the creditor is undocumented.

SOR ¶ 1.e is a charged-off debt for \$3,776. (Item 8 at 2; Item 9 at 6) This is for unpaid rent for an old lease that ended in October 2015. Applicant admits the debt, but disputes that she owes the full amount (for two month's rent, instead of only one), and disputes that she broke the lease. She asserts that the debt has been removed from her credit reports. (AE E at 12-13) It is not listed on her most recent credit report (AE K) but no payments towards the debt are documented.

SOR ¶ 1.f is a consumer debt in collection for \$882. (Item 8) Most recently, Applicant states that the debt has been settled for \$627, though this is undocumented. (AE E at 15) The debt is not reflected on a recent credit report. (AE K)

SOR ¶ 1.g is a debt in collection, owed to a bank, for \$546. (Item 8) Applicant asserted that the debt is a duplicate of SOR ¶ 1.c, a debt the Government conceded. The two debts are to the same creditor bank and for the same amount, and are likely duplicative.

SOR ¶¶ 1.h-1.n are medical debts, totaling a combined \$803. Applicant provided documentation with her Answer that these debts have been paid. (AE A)

SOR ¶ 1.o (\$507) is a charged-off account to a bank, relating to an auto loan debt. (Item 9) Applicant states that the debt has been paid, and that she disputed the debt. She notes that the account no longer appears on her credit reports. (Item 8; AE K)

SOR ¶ 1.p (\$1,185) is a debt in collection relating to a cellphone contract. (Item 9 at 6) Applicant reported the debt on her e-QIP (Item 3 at 39) She denied the debt because it was no longer on her credit report. (Item 2) She noted that she made a few small payments, but disputed the full amount owed because she cancelled the account. (AE E at 15-16) The account is no longer listed on her credit reports. (Item 8; AE K)

SOR ¶ 1.q is a cellphone debt in collection for \$957. (Item 9 at 7) Most recently, Applicant stated that the debt was settled for \$478 and paid in February 2018.

SOR ¶ 1.r is an account placed in collection by a bank, for \$584. Applicant said this debt is paid and is no longer on her credit report. She documented with her Answer that this debt has been paid. (AE A)

SOR ¶¶ 1.s, 1.t, and 1.u (\$394, \$74, and \$74) are medical debts in collection. Applicant denied these debts because they are no longer on her credit report. She also said they were paid in early 2018. (AE E at 15)

Applicant noted in her most recent submission that she intends to continue working on paying down her debts, so she can advance professionally and provide financial stability for herself and her family. (AE E)

A close friend and co-worker wrote a recommendation letter for Applicant, noting that she had overcome many obstacles, including difficult pregnancies, loss of income, and ongoing physical therapy after her auto accident. (AE F) In a separate reference letter, Applicant's supervisor attests that she is a reliable employee. (AE G)

### **Policies**

It is well established that no one has a right to a security clearance, or, as here, to a determination of public trust. As the Supreme Court held in *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that [trustworthiness] determinations should err, if they must, on the side of denials."

When evaluating an applicant's eligibility for a public trust position, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to sensitive information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the

evidence contained in the record. Likewise, I have not drawn inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and has the ultimate burden of persuasion to obtain a favorable security decision.”

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. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to sensitive information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of sensitive information.

## **Analysis**

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

The trustworthiness 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. . . .

The financial considerations guideline sets forth several conditions that could raise trustworthiness concerns under AG ¶ 19. The following are potentially applicable:

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

Applicant incurred several debts, including medical debts, consumer debts, unpaid rent, a debt related to a vehicle, and other debts, that became delinquent during a period of limited income, medical issues, and unemployment. AG ¶¶ 19(a) and 19(c) apply.

Conditions that could mitigate 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.

Most of Applicant's debts are paid and resolved. Some larger debts remain, so her financial delinquencies are ongoing. Applicant is still paying her delinquencies, which remain ongoing. AG ¶ 20(a) does not apply. AG ¶ 20(c) partially applies, as Applicant pursued financial advice in weighing bankruptcy and debt relief in considering her various options in resolving her debts.

Applicant's debts, however are all due to, or exacerbated by, a variety of circumstances, including difficult pregnancies, an auto accident, and job instability. These are circumstances beyond her control that have impacted her ability to pay her debts and to stay afloat financially. The first prong of AG ¶ 20(b) therefore applies. For full application of AG ¶ 20(b), Applicant must establish that she has acted responsibly under the circumstances. For most of the last 10 years, she has been gainfully employed at the same military hospital, with multiple employers. For a period of time, she worked two jobs. More recently, while on maternity leave, she lost both positions, through no fault of her own, when her employers lost their contracts. Applicant is also raising three children as a single mother on a \$60,000 annual income. In considering Applicant's actions, I take into account that she has never really had much opportunity to make a concerted effort to pay off her debts, by making regular payments through established payment plans. In light of the steps she has taken to pay some of her delinquent debts and her plan to continue paying her debts with her limited surplus income, I conclude that the trustworthiness concerns raised by Applicant's delinquent debts are mitigated under AG ¶¶ 20(b) and AG 20(d).

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a position of public 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):

- (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 position of public trust 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. I credit Applicant's 10 years of employment (with breaks in service due to circumstances beyond her control). Overall, the record evidence leaves me without questions or doubts as to Applicant's continued eligibility for a public trust position.

### **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.u: For Applicant

### **Conclusion**

In light of all of the circumstances presented, it is clearly consistent with the interests of national security to grant Applicant continued eligibility for a public trust position. Eligibility for a public trust position is granted.

---

Braden M. Murphy  
Administrative Judge