



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



In the matter of:)
)
) ADP Case No. 20-01835
)
Applicant for Public Trust Position)

Appearances

For Government: Nicole Smith, Esq., Department Counsel
For Applicant: *Pro se*

11/18/2022

Decision

BENSON, Pamela C., Administrative Judge:

Applicant has mitigated the trustworthiness concerns under Guideline J (criminal conduct), G (alcohol consumption), F (financial considerations), and E (personal conduct.). Eligibility for a public trust position is granted.

Statement of the Case

On November 27, 2018, Applicant submitted an application for a public trust position. On February 17, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) issued a statement of reasons (SOR) to Applicant 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 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.

On February 18, 2021, Applicant responded to the SOR, and she requested a hearing before an administrative judge. On September 21, 2021, the Defense Office of Hearings and Appeals (DOHA) Department Counsel issued an amendment to the SOR by withdrawing 11 SOR allegations and adding two SOR allegations, all under Paragraph 1 (Guideline J) of the SOR. Department Counsel amended the single allegation in Paragraph 2 (Guideline G), and under Paragraph 4 (Guideline E), she withdrew two allegations, and she amended the remaining allegation.

On April 19, 2022, Department Counsel was ready to proceed. On May 6, 2022, the case was assigned to me. DOHA issued the hearing notice on September 8, 2022, setting the hearing for September 27, 2022. The hearing proceeded as scheduled.

During the hearing Department Counsel requested that SOR ¶¶ 1.e and 1.h be withdrawn since they were already included in SOR ¶ 1.bb, which I granted without objection. Department Counsel submitted 11 documents, which I admitted into evidence as Government Exhibits (GE) 1 through 11, without objection. Applicant did not submit any documentation, but I held the record open for two weeks in the event either party wanted to supplement the record. Applicant timely submitted Exhibits (AE) A through E, which I admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on October 4, 2022.

Findings of Fact

Due to extensive changes to the original SOR, I had Applicant confirm at the hearing her admission or denial to the remaining SOR allegations alleged under Guidelines J, G, F, and E. She admitted SOR ¶¶ 1.a, 1.d, 1.f, 1.g, 1.m, 1.n, 1.o, 1.t, 1.u, 1.y, 1.aa, 1.bb, 3.a through 3.j, and 4.c. She denied SOR ¶¶ 1.l, 1.q, 1.v, 2.a, 3.k, and 3.l. SOR ¶¶ 1.b, 1.c, 1.e, 1.h, 1.i, 1.j, 1.k, 1.p, 1.r, 1.s, 1.w, 1.x, 1.z, 4.a, and 4.b were withdrawn. SOR ¶¶ 1.aa, and 1.bb were added to the SOR. Having thoroughly considered the evidence in the record, including Applicant's admissions, I make the following findings of fact: (Tr. 7-8, 11-14)

Applicant is 40 years old. She recently married in September 2022, and she has two daughters, ages 14 and 16, from a previous relationship. She receives \$200 monthly in child support. She earned an associate's degree in 2006. She began working for her current employer in November 2018. She started out as a customer service representative, and in 2021, she was promoted to a clinical support coordinator position with a pay increase. Her employer requires her to be cleared for a position of trust to perform specific employment duties. (GE 1; Tr. 27-30, 69)

The SOR alleged approximately 25 incidents of criminal conduct and rule violations under Guideline J, as follows:

During the hearing, SOR ¶ 1.a. was determined to be a duplicate of SOR ¶ 1.aa. It alleged an incorrect date of the same offense. (Tr. 30-33, 62-65; GE 1) The allegation in SOR ¶ 1.a is mitigated.

Applicant was arrested in 2012 and again in 2017, for operating a motor vehicle while under the influence of alcohol. (SOR ¶¶ 1.t, 1.u, and 1.aa.) She was found guilty of both offenses, and she was required to go to an alcohol education class for the first conviction, and a multiple offender class for her second conviction. Both sentences included a requirement that she install an interlock device on her car for one year, and the court also restricted her driving privileges for one year. Applicant served five days in jail for her second conviction. (Tr. 30-33, 51-58, 62-65; GE 2, GE 3, GE 8; AE A)

Applicant was arrested for disorderly conduct in 2013, 2014, 2015, and in 2018. (SOR ¶¶ 1.d, 1.f, 1.m, and 1.y) She admitted these offenses and acknowledged she had been drinking alcohol during some of these incidents, but she could not recall how much alcohol. The SOR alleged two other incidents of disorderly conduct in 2015 and 2017, which Applicant denied, and she provided documentation that she was actually the “victim” in one of the disorderly conduct incidents. There was no evidence to support the other denied allegation. (SOR ¶¶ 1.l and 1.v) She admitted that most of her disorderly conduct issues stemmed from domestic disputes and her involvement in arguments inside various bars. (Tr. 33-40, 43-47, 58- GE 2, GE 3, GE 4, GE 6, GE 7; AE A)

Applicant was cited in 2014 for being a passenger in a motor vehicle with an open container. She was cited in 2015 for violation of a recreational fire pit regulation. In July 2015, a warrant for her arrest was issued due to an unpaid fine. (SOR ¶¶ 1.g, 1.n, and 1.o) Applicant admitted these offenses. She explained that she frequently had bonfires in her backyard. The police requested she put out the fire because she did not have a fire permit. She used a garden hose to put out the fire. She was later cited by police because the fire re-started. She also explained that she forgot to pay a fine. When she found out that a warrant had been issued, she immediately paid the fine. She denied that she had been issued a citation for speeding in December 2015, and the Government was unable to provide evidence to support the SOR allegation. (SOR ¶ 1.q.) (Tr. 40-43, 47-51; GE 5; AE A)

SOR ¶ 1.bb alleges that between March 2011 to September 2015, Applicant was charged on 13 occasions with operating a motor vehicle without proof of insurance, and/or operating a motor vehicle after license or registration was suspended or revoked. Applicant admitted these allegations. She could not remember all of the details, but she admitted during that time period, she could not afford car insurance, and she was immature and irresponsible. (Tr. 65-69; GE 9; AE A)

Paragraph 2 of the SOR (Guideline G - Alcohol Consumption) cross-alleged Applicant’s 2012 and 2017 arrests for operating a motor vehicle while under the influence of alcohol. There is no new information cited under this Guideline. During the hearing, Applicant stated she has taken steps to improve her quality of life. She moved to a different part of town, and no longer associates with her old friends. She rarely drinks alcohol anymore, and her spouse does not drink at all. At the most, she may drink one or two beers twice a month. She rarely goes out and she is very busy with her daughters’ after school activities. Most importantly, she has matured and considers

herself a responsible adult. She has not been in any trouble since starting her job in late 2018. (Tr. 77-80, 82-84)

Under Guideline F, the SOR alleged 12 delinquent accounts totaling \$42,268, as follows:

SOR ¶¶ 3.a through 3.j allege Applicant is indebted to the U.S. Department of Education in the amount of \$40,443 for ten unpaid student loans that had been referred for collection. She admitted these debts. She obtained these student loans to pay for her college education. After graduation, her loans were placed in forbearance. Once she was employed in November 2018, she called the student loan creditor to arrange payments to be deducted directly from her paycheck. She provided documentation which showed that beginning in June 2019, she had approximately \$150 deducted from each paycheck to pay her student loans. In March 2020, the payroll deductions automatically stopped due to the COVID-19 emergency relief for federal student loans. The student loan payment pause was extended through December 31, 2022. It is Applicant's intention to resume her student loan payments beginning in January 2023. She also stated that she has never had a tax refund intercepted due to non-payment of student loans, and she always files her income tax returns on a timely basis. (Tr. 69-71, 75; AE D, AE E)

SOR ¶ 3.k alleges that Applicant is indebted to a cellular phone service account that was referred for collection in the amount of about \$1,600. She disputed this debt because it was an account that belonged to her ex-boyfriend. She believed this account was successfully disputed because this account is no longer on her credit report. (Tr. 72; GE 10, GE 11)

SOR ¶ 3.l alleges that Applicant is indebted to a childcare facility account that was referred for collection in the amount of about \$225. She disputed this debt because at the time she was receiving support from the county to pay for her childcare expenses. (Tr. 72; GE 10, GE 11)

Applicant explained that she developed financial issues due to unemployment, underemployment, and a lack of maturity. She is now current on all of her financial accounts and denied that she had developed any new delinquent debts. She has two more car loan payments before her car loan is paid in full. She provided a personal financial statement which reflected a monthly net income (including the \$200 child support) of approximately \$2,700. She is the only source of income for the family. Her spouse was employed by a temp agency, but his work assignment was recently completed. He is currently unemployed, and he is not receiving any unemployment benefits while looking for another job. She is able to support the family with her income. After paying their monthly expenses, she has a net remainder of approximately \$800. She has never participated in a consumer counseling program, but she does receive assistance from her mom when she has any financial questions. (Tr. 72-74, 76, 85; AE B, AE C)

Paragraph 4 of the SOR (Guideline E – Personal Conduct) cross-alleged Applicant’s arrests and citations under Guideline J (Criminal Conduct). There is no new information cited under this Guideline.

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. Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. 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 J: Criminal Conduct

The trustworthiness concern related to the criminal conduct guideline is set out in AG ¶ 30:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations.

AG ¶ 31 lists conditions that could raise a trustworthiness concern and may be disqualifying. Two potentially apply:

(a) a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness; and

(b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.

The record evidence establishes AG ¶¶ 31(a), and 31(b). Applicant was involved in two alcohol-related arrests in 2012 and in 2017, four arrests for disorderly conduct in 2013, 2014, 2015, and in 2018, and she has a history of other minor offenses.

AG ¶ 32 lists two conditions that could mitigate the trustworthiness concerns:

(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(c) no reliable evidence to support that the individual committed the offense; and

(d) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

Applicant's pattern of criminal conduct raises serious trustworthiness concerns, and calls into question her ability to follow laws, rules, and regulations. She has a long history of multiple offenses that occurred from approximately 2011 through 2018. She has also demonstrated several positive changes she made to improve her quality of life. She moved to a different part of town and no longer associates with her old friends. She rarely consumes alcohol and is involved in her daughters' after school activities. She is newly married and believes she has matured and is now more responsible. She has also been successful in her job. She was promoted in 2021 to a clinical support coordinator position with a pay increase. Four years have passed since her last criminal offense. I find there is sufficient evidence in the record to demonstrate through the

passage of time that Applicant's criminal conduct will not recur. Criminal conduct trustworthiness concerns are mitigated.

Guideline G: Alcohol Consumption

AG ¶ 21 describes the trustworthiness concern about alcohol consumption:

Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness.

AG ¶ 22 provides a condition that could raise a trustworthiness concern and may be disqualifying as follows:

(a) alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of the frequency of the individual's alcohol use or whether the individual has been diagnosed with alcohol use disorder.

The record evidence establishes AG ¶ 22(a). Applicant was arrested for operating a motor vehicle while under the influence of alcohol in 2012 and in 2017. In 2014 she was charged with [being? having? a]passenger with open container. She admitted some of her other criminal offenses took place after she had been drinking alcohol.

AG ¶ 23 lists two conditions that could mitigate trustworthiness concerns:

(a) so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or judgment; and

(b) the individual acknowledges his or her pattern of maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations.

Applicant has not been involved in any alcohol-related offenses since 2018. She has demonstrated a clear pattern of modified and responsible alcohol use. I find that sufficient time has passed without any alcohol-related offenses, and that Applicant is unlikely to be involved in alcohol-related incidents in the future. Alcohol consumption trustworthiness concerns are mitigated.

Guideline F: 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 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. . . .

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified (or sensitive) information.

The record evidence establishes the following disqualifying conditions under AG ¶ 19:

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

AG ¶ 20 describes conditions that could mitigate trustworthiness concerns. The following are potentially applicable in this case:

- (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 or provides evidence or actions to resolve the issue.

Applicant developed financial issues due to unemployment, underemployment, and a lack of maturity. She successfully disputed two delinquent accounts totaling \$1,825 with a cellular service company and a child care center. The significant financial concern, however, is that she indebted to the U.S. Department of Education in the amount of \$40,443 for ten unpaid student loans that had been referred for collection.

Applicant obtained student loans to enroll in college, and in 2006, she earned an associate's degree. The loans were placed in forbearance. After she became employed in November 2018, she initiated a payment plan with her student loan creditor to deduct payments directly from her paycheck. She provided documentation that verified loan payments were taken from her paychecks from mid-2019 to March 2020, when the deductions automatically stopped due to the COVID-19 student loan payment pause. This federal relief is in effect until December 31, 2022. It is Applicant's intention to resume her student loan payments in January 2023. It is important to note that Applicant took the initiative to contact the student loan creditor, and she adhered to a good-faith payment plan to resolve her student loans well before the SOR was issued. Financial consideration trustworthiness concerns are mitigated.

Guideline E: Personal Conduct

AG ¶ 15 expresses the trustworthiness concern for personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. . . .

AG ¶ 16 describes the following condition that could raise a trustworthiness concern and may be disqualifying:

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-

person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information.

Guideline J SOR allegations ¶¶ 1.a through 1.bb are cross-alleged under Guideline E. Each of them is established by the record evidence and addressed under the appropriate guideline. Applicant's history of criminal conduct supports application of AG ¶ 16(c).

AG ¶ 17 provides conditions that could mitigate trustworthiness concerns in this case:

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

As stated under Guideline J, Applicant has taken positive steps to eliminate complications from her life. She moved to a different part of town, no longer associates with old friends, and she drinks alcohol in a responsible manner. In 2021, she was promoted by her employer and given a pay raise. Four years have passed since her last criminal offense. I find there is sufficient evidence in the record to demonstrate that Applicant's criminal conduct will not recur. Personal conduct trustworthiness concerns are mitigated.

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 Guidelines J, G, F, and E in my whole-person analysis.

Applicant took positive action to turn her life around. She has not been involved in criminal conduct over the last four years, and she took positive steps to resolve her financial delinquencies, well before the SOR was issued. Her financial issues are currently under control. I find that future delinquencies and criminal misconduct are unlikely to recur. After evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated all of the trustworthiness concerns alleged in the SOR.

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 J:	FOR APPLICANT
Subparagraphs 1.b, 1.c, 1.e, 1.h, 1.i, 1.j, 1.k, 1.p, 1.r, 1.s, 1.w, 1.x, 1.z, 4.a, and 4.b:	Withdrawn
Subparagraph 1.a:	For Applicant
Subparagraphs 1.d, 1.f, 1.g, 1.l, 1.m, 1.n, 1.o, 1.q, 1.t, 1.u, 1.v, 1.y, 1.aa, and 1.bb:	For Applicant
Paragraph 2, Guideline G:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Paragraph 3, Guideline F:	FOR APPLICANT
Subparagraphs 3.a-3.l:	For Applicant
Paragraph 4, Guideline E:	FOR APPLICANT
Subparagraph 4.c:	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