



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



In the matter of:	)	
	)	
	)	ADP Case No. 20-03777
	)	
Applicant for Public Trust Position	)	

**Appearances**

For Government: Kelly Folks, Esq., Department Counsel  
For Applicant: *Pro se*

02/02/2023

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**Decision**  
\_\_\_\_\_

GARCIA, Candace Le'i, Administrative Judge:

Applicant mitigated the financial considerations trustworthiness concerns. Eligibility for access to sensitive information is granted.

**Statement of the Case**

On September 6, 2021, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing trustworthiness concerns under Guideline F (financial considerations). The action was taken under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the adjudicative guidelines (AG) implemented by DOD on June 8, 2017.

Applicant responded to the SOR on October 4, 2021 (Answer 1), and requested a hearing before an administrative judge. She submitted a supplemental response to the SOR on February 1, 2022 (Answer 2). The case was assigned to me on July 21, 2022. On August 17, 2022, DOHA issued a notice of video teleconference (VTC) hearing, scheduling the hearing for September 23, 2022. I convened the hearing as scheduled.

I admitted Government Exhibits (GE) 1 through 8 in evidence without objection. Applicant testified. At her request, I kept the record open until October 7, 2022, to allow her the opportunity to submit additional documentation. Without objection, I granted Applicant's request for an extension of time and kept the record open until October 21, 2022. By that date, Applicant submitted documentation, which I marked collectively as AE A and admitted in evidence without objection. DOHA received the hearing transcript (Tr.) on October 17, 2022.

### **Findings of Fact**

Applicant admitted all of the SOR allegations in Answer 1. She is 47 years old, single, and she has three children, all of whom are adults. As of the date of the hearing, her children resided with her. (Answer 1; Tr. at 6-7, 23-26, 29-32; GE 1)

Applicant obtained her general education development (GED) in 2009. She attended a community college from 2009 to 2015, and she earned an associate's degree. She attended a four-year university from 2015 to 2019, and she earned a bachelor's degree in health information management. As of the date of the hearing, she was attending classes towards a master's degree in public health with a specialty in epidemiology. She expected to complete her master's degree program in May 2023. She was unemployed from January 2009 to July 2012, February 2017 to July 2017, January 2018 to August 2018, and April 2019 to September 2019. As of her December 2019 Questionnaire for National Security Positions (SF 86), she held only part-time employment since September 2019. Since October 2021, she has worked as a clinical operations consultant for her employer, a DOD contractor. She also worked part time for a food delivery service. She has never held access to sensitive information. (Answer 2; Tr. at 6-9, 24-36, 71-72, 90-91; GE 1-2; AE A)

The SOR alleges that Applicant has seven delinquent consumer debts totaling \$27,904 (SOR ¶¶ 1.a-1.b, 1.e-1.i), and three delinquent medical debts totaling \$373 (SOR ¶¶ 1.c-1.d, 1.j). It also alleges that she filed for Chapter 7 bankruptcy protection in June 2002 and March 2012, and her bankruptcy cases were discharged in November 2002 and June 2012, respectively (SOR ¶¶ 1.k-1.l). The SOR allegations are established by Applicant's admissions in Answer 1 and Answer 2, her 2019 SF 86, and her February 2020 and April 2020 background interviews. A credit report from August 2020 lists the debts in SOR ¶¶ 1.a through 1.f, as well as her 2012 Chapter 7 bankruptcy case discharge. Bankruptcy records reflect both of her Chapter 7 bankruptcy cases. (Answer 1-2; GE 1-8)

Applicant attributed her delinquent debt to raising three children as a single mother with significant periods of unemployment or underemployment. She raised her children in an area with a higher cost of living, instead of an inner city, so that they could live in a safe environment and receive a quality education. She stated that she filed Chapter 7 bankruptcy in 2002, at age 27, because she lacked financial literacy, and her mother advised her to do so to avoid wage garnishment and to wipe her slate clean. She feared the impact that wage garnishment would have on her ability to raise her children. Despite her 2002 Chapter 7 bankruptcy case discharge, she accumulated

debts after she lost her job in 2009. She enrolled in college to obtain a degree so that she could have job security, but her debts again accumulated. She stated she filed Chapter 7 bankruptcy again, in 2012, for the same reasons that she filed Chapter 7 bankruptcy in 2002. Her debts accumulated again beginning in 2015, when she became a caretaker for her mother at various periods until October 2018, when her mother passed away; when she moved within state in January 2017; and when she became unemployed again in February 2017. She stated that she began to take control of her finances in 2019, and she has learned that another bankruptcy would denote financial irresponsibility. (Answer 2; Tr. at 23-36, 62-70, 76-92; GE 1-2)

SOR ¶ 1.a is for a \$20,907 charged-off auto account, for a car Applicant purchased in 2016. She fell behind on her monthly car payments in 2018, when she was unemployed. During this time, she also began having to pay for significant car repairs, and then her car's engine failed. She could not afford to pay \$5,000 to replace her car's engine, so she purchased another car, a used minivan, for \$15,000. She could not make the car payments for the car whose engine failed, so she voluntarily surrendered it. She unsuccessfully attempted to reach a payment arrangement with the creditor, both before and after she voluntarily surrendered it. In Answer 2, she was in the process of finalizing a \$2,090 settlement for this debt. Documentation reflects that she made a \$2,094 payment in January 2022, and she settled this debt in March 2022. Her October 2022 credit bureau report also reflects that this debt is settled. (Answer 2; Tr. at 36-48, 83-87; GE 1, 3; AE A)

SOR ¶ 1.b is for a \$5,048 charged-off rent-to-buy furniture account. Applicant opened this account in approximately 2016 to purchase furniture for a friend, with the understanding that her friend would be responsible for the payments. She bore responsibility for the account after her friend backed out. She indicated during her background interview that she could not afford the high interest rate on this account. She stated in Answer 2 that she discussed with the creditor in approximately 2022 a settlement of \$1,872 for this debt, which she intended to begin saving towards once she tackled some of her other delinquent debts. This debt was still reported on her October 2022 credit bureau report. She intends to resolve this debt. (Answer 2; Tr. at 48-55, 82-83; GE 1-3; AE A)

SOR ¶¶ 1.c, 1.d, and 1.j are for three medical debts, for \$195, \$116, and \$62 respectively. Applicant believed her medical insurance covered her medical expenses, and she was unaware that these amounts were outstanding. She stated in Answer 2 that she contacted the creditor for SOR ¶ 1.c to resolve this debt. Documentation reflects that she made a payment of \$50 toward this debt in February 2020. She intended to set up a monthly payment arrangement of \$40 for six months to resolve the remaining balance. She stated in Answer 2 that she pulled a copy of her credit bureau report from each of the three major credit bureaus, but she could not locate the debt in SOR ¶ 1.d. She testified that she paid \$62 to resolve SOR ¶ 1.j. Documentation reflecting that she made a \$62 payment in February 2020 corroborates her claim. (Answer 2; Tr. at 55-57, 61, 94; GE 2-3)

SOR ¶ 1.e is for a \$547 credit card placed for collection. Applicant indicated during her background interview that she opened this credit card to build her credit, and she used this card for gas and emergencies. At her request, the creditor closed this account in October 2021, because she could no longer afford to pay it. She stated in her SF 86 that she reached out to the creditor to try to resolve this debt. She stated in Answer 2 that she made a payment of \$547 to resolve this debt. Her October 2022 credit bureau report reflects that this debt is “paid” with a zero balance. (Answer 2; Tr. at 57-60; GE 1-3; AE A)

SOR ¶ 1.f is for a \$250 department store credit card placed for collection. Applicant used the card to buy shoes for her children. She indicated during her background interview that the creditor charged her for two items from a catalog order that she did not receive. She accepted responsibility for the charges after unsuccessfully disputing them with the creditor. She stated in Answer 2 that she settled this debt for \$120 and she was awaiting a letter from the creditor stating such. Documentation reflects that she made a payment of \$120 to the creditor in March 2020. Her October 2022 credit bureau report also reflects that this debt has a zero balance. (Answer 2; Tr. at 60-61; GE 2-3; AE A)

SOR ¶ 1.g is for a \$749 payday loan placed for collection. Applicant indicated during her background interview that she obtained a loan to help her pay for rent, because she did not receive any financial assistance from her then-boyfriend, and then she could not afford to repay the loan. She settled this debt for \$560 in February 2020. Documentation reflects that the creditor notified her in November 2021 that she paid this loan. (Answer 2; Tr. at 61, 92-93; GE 2)

SOR ¶ 1.h is for a \$218 wireless cellular phone service account placed for collection. Applicant settled this debt with the collection agency for \$163 in February 2020. She stated in Answer 2 that the collection agency went out of business after settlement, and the original creditor came after her for the remaining \$65 balance. She intended to resolve this debt. (Answer 2; Tr. at 61, 93-94; GE 2)

SOR ¶ 1.i is for a \$185 credit card placed for collection. Applicant indicated during her background interview that she opened this credit card to build her credit, and she used this card for lunch and gas. She stated in Answer 2 that she settled this debt for \$148. Documentation reflects that she made a \$148 payment to the creditor in March 2020, and the creditor notified her in December 2021 that she paid her account. (Answer 2; Tr. at 61, 94; GE 1-2)

SOR ¶¶ 1.k and 1.l are for Applicant’s 2002 and 2012 Chapter 7 bankruptcy cases. She testified that she claimed approximately \$10,000 in liabilities, primarily related to her car, in her 2002 Chapter 7 bankruptcy. She testified that she was required to take a credit counseling class as part of her 2002 bankruptcy. Records from her 2012 Chapter 7 bankruptcy reflects that she claimed liabilities of approximately \$34,854, and she received credit counseling as part of that bankruptcy process in March 2012. She testified that the primary liability she claimed in her 2012 Chapter 7 bankruptcy case was also a car. (Answer 1-2; Tr. at 61-70; GE 2, 4-8)

Applicant's most recent copy of her budget reflects a monthly income of \$5,000, monthly expenses of \$4,797, and a monthly net remainder of approximately \$203. She has worked to improve her credit score. She stated that she does not plan to file bankruptcy or voluntarily surrender another car in the future; she plans to maintain control of her finances; and she does not plan to open any other accounts in her name for others. She does not have any other delinquent debts. (Answer 2; Tr. at 23-24, 70-76, 83-90, 95; GE 1-2; AE A)

Applicant provided letters of support from two friends, one of whom has known her for nearly 14 years and the other for over 4 years. Both attested to Applicant's trustworthiness, integrity, and judgment. She also provided letters of support from three individuals who recommended her, in August 2022, for a master's scholars program. Two individuals, both directors at a military medical facility where Applicant works, attested to her superior work ethic. A third individual, Applicant's college instructor and academic advisor, described Applicant's commitment to excellence. (AE A)

### **Policies**

The Under Secretary of Defense's Memorandum of November 19, 2004, treats ADP positions as sensitive positions, and it entitles applicants for ADP positions to the procedural protections in the Directive before any final unfavorable access 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. AG ¶ 2.b.

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 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 trustworthiness 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 was unable to pay her debts. The evidence is sufficient to raise AG ¶¶ 19(a) and 19(c) as disqualifying conditions.

Conditions that could mitigate the 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.

Conditions beyond Applicant's control, as previously discussed, contributed to her financial problems. Thus, the first prong of AG ¶ 20(b) applies. For the full application of AG ¶ 20(b), she must provide evidence that she acted responsibly under the circumstances. Before she received the SOR, she settled the debts in SOR ¶¶ 1.f, 1.g, 1.i, and 1.j, and she made a payment toward SOR ¶ 1.c. Although she filed for Chapter 7 bankruptcy twice, she did so in 2002 and 2012. She does not intend to file bankruptcy in the future, she has gained control of her finances, and she has learned financial responsibility. She received financial counseling in 2002 and 2012, and she developed a budget to track her income and expenses. She intends to continue to resolve her remaining delinquent debts in SOR ¶¶ 1.b, 1.c, and 1.h. I find that AG ¶¶ 20(a), 20(b), 20(c), and 20(d) apply.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a public trust position 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 public trust position 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 F in my whole-person analysis. Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility for access to sensitive information. I conclude Applicant 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:	FOR APPLICANT
Subparagraphs 1.a - 1.l:	For Applicant

## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant's eligibility for a public trust position. Eligibility for access to sensitive information is granted.

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Candace Le'i Garcia  
Administrative Judge