



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



In the matter of:)
)
) ADP Case No. 22-01469
)
Applicant for Public Trust Position)

Appearances

For Government: Jeff A. Nagel, Esq., Department Counsel
For Applicant: *Pro se*

03/13/2023

Decision

DAM, Shari, Administrative Judge:

Applicant failed to mitigate the trustworthiness concerns raised under the financial considerations guideline. Based upon a review of the pleadings and exhibits, eligibility for a public trust position is denied.

Statement of the Case

On September 1, 2022, the Department of Defense Consolidated Adjudications Facility (DoD) issued a Statement of Reasons (SOR), detailing trustworthiness concerns under Guideline F (Financial Considerations). This action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), which became effective within the DoD on June 8, 2017.

On September 21, 2022, Applicant answered the SOR in writing and elected to have her case decided on the written record in lieu of a hearing (Answer). (Item 1)

Department Counsel submitted the Government's written case on November 1, 2022. A complete copy of the File of Relevant Material (FORM), containing six Items, was mailed to Applicant and she received it on December 20, 2022. The FORM notified her that she had an opportunity to file objections and submit additional information in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. Applicant submitted Responses to the FORM on December 20 and December 23, 2022. I received the case file on February 13, 2023. I marked her responses as Exhibit (Ex.) A (2 pages) and Ex. B (45 pages). Items 1 through 6, Ex. A, and Ex. B are admitted into evidence without objection.

Findings of Fact

Applicant admitted 14 of the 16 allegations in the SOR and offered explanations. Her admissions are incorporated into the findings of fact. (Item 1) After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 37 years old and has been married since 2013. She and her husband have two children. She earned a bachelor's degree in 2010. She is currently enrolled in an on-line university. (Item 2) In March 2022, she started a position with her current employer, a defense contractor, and she submitted her first security clearance application (SCA). (Item 2)

In her SCA, Applicant reported short intervals of unemployment since 2014, including up to the time she started her current position. She disclosed financial difficulties that resulted from low paying positions, medical expenses for her two children, and times when her husband was the sole provider for the family because she chose to stay home with their children. She stated that a couple years prior to obtaining her current position, she started working with Law Firm M to help her address her student loan debts. She was unable to continue because she became unemployed and did not have sufficient money to make payments. She did not submit any evidence indicating that she made any payments on her student loans while previously working with Law Firm M. (Item 2 at 48)

Based on Applicant's admissions and credit bureau reports (CBR) from June 2022, November 2021, and September 2020, the SOR alleged 16 delinquent debts, which totaled about \$143,817. They included eight charged-off student loans, which totaled about \$136,317. There are six medical debts and two consumer debts, which total about \$7,500. The loans and debts became delinquent between 2015 and 2021. (Items 3, 4, and 5) The status of these allegations is as follows:

SOR ¶¶ 1.a through 1.h: Applicant took out these student loans between 2005 and 2008. They are being reported as charged off in Applicant's credit reports. The last activity date for the loans is noted as 2015. With her September 2022 Answer, she included a copy of a contract she signed in September 2022, with Law Firm M to address her student loans. The contract required her to begin monthly payments on October 25, 2022. The

initial payment was \$750, and all subsequent payments were to be \$1,380. (Item 1) In her Response to the FORM, she included a new contract with Law Firm K, dated November 22, 2022. Her monthly payments were to start on November 25, 2022, and continue thereafter. The amounts were the same as listed in her September 2022 contract. According to the payment plan, her student loan balance was \$136,322. (Ex. B) The student loans remain unresolved.

In March 2020, as a result of the COVID-19 pandemic, the Department of Education (ED) placed all federal student loans in forbearance and has since extended the student loan payment pause through June 2023. The pause includes the following relief measures for eligible loans: a suspension of loan payments; a 0% interest rate; and stopped collection on defaulted loans. (See Federal Student Aid: <https://studentaid.gov/announcements-events/covid-19>.) Applicant did not establish she was unable to arrange a payment plan and make some payments for several years before March 2020.

SOR ¶ 1.i alleged an \$800 debt owed to a collection agency for a credit card debt. Applicant made a payment arrangement with the creditor to pay \$9.00 a month for 85 months. She made one payment in September 2022. (Item 1) This debt is unresolved.

SOR ¶¶ 1.j, 1.k, 1.l, 1.n and 1.p alleged medical debts owed to a credit services company that were incurred in 2020. The amounts owed are \$2,860, \$1,268, \$1,009, \$583, and \$162. Applicant submitted letters from the credit services company stating that debts were returned to the underlying medical system and cancelled in November and December 2022. (Ex. A and Ex. B) These debts are resolved.

SOR ¶ 1.m alleged a \$634 debt owed to a credit card company. This debt was paid in May 2021. (Item 1) It is resolved.

SOR ¶ 1.o alleged a \$222 debt owed to a creditor for medical services. Applicant paid it in December 2021. (Item 1) It is resolved.

Applicant submitted two monthly budgets she established with Law Firm M. One was drafted in September 2022 and the second one was drafted in November 2022. Her September 2022 budget reported her net monthly income as \$8,518 and included rental income. It listed numerous expenses that totaled \$5,661, leaving \$2,857 remaining at the end of the month. Some of those expenses were a mortgage payment, a car payment, various insurance payments, transportation costs, a \$150 payment to the IRS, payments on four credit cards, and a \$1,400 payment on her student loans per her contract with the Law Firm M. (Item 1)

Applicant's November 2022 budget reported her net monthly income as \$2,735 and did not list any rental income. Her expenses totaled \$979. They included gasoline, internet, groceries, and a few other items mentioned in her September 2022 budget, but not all of the expenses included in the September 2022 budget. It did not list payments

on credit cards, a car loan, any payment to the IRS, more than one utility, and no insurance payments or medical expenses. Instead of a \$1,794 mortgage payment, this budget listed a \$500 rental payment. Her \$1,400 student loan payment was not included in this budget. The monthly remainder was \$1,756. (Ex. B at 13) Applicant did not provide an explanation for the large discrepancies between the two budgets.

Applicant acknowledged that she has made financial mistakes by ignoring her financial responsibilities, which resulted in her debts becoming delinquent. She said she takes responsibility for them. (Item 2 at 58)

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 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 F: Financial Considerations

The trustworthiness concerns relating to the guideline for financial considerations are 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 Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant's financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant's self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant's security eligibility.

AG ¶ 19 describes conditions that could raise trustworthiness concerns. The following are potentially applicable:

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

Applicant accumulated over \$136,000 in delinquent student loans that she took out between 2005 and 2008, which were charged off in 2015. She also accumulated about \$7,500 in consumer and medical debts that became delinquent between 2018 and 2020. She did not begin to address some of her debts until 2021. The evidence raises the above trustworthiness concerns, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

AG ¶ 20 sets out conditions that could potentially mitigate the trustworthiness concerns arising under this guideline. Four potentially apply:

(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.

Applicant's large student loan debt has been outstanding since 2015, with little or no evidence of steps taken to resolve it. In 2021, she resolved two credit card debts and one medical debt, and in November and December 2022 her other five medical debts were resolved. There is no evidence to establish mitigation under AG ¶ 20(a) for her student loans and they continue to cast doubt about her judgment. There is evidence to establish mitigation for the credit cards and medical debts. AG ¶ 20(a) applies to them.

Applicant attributed her delinquent debts to periods of unemployment and underemployment. Some of these circumstances were beyond her control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. She did not provide evidence to demonstrate that she attempted to responsibly manage her debts as they were accumulating or contacting her creditors. AG ¶ 20(b) partially applies.

In September 2022, Applicant again hired Law Firm M to help resolve her student loans. She apparently was financially unable to begin payments on that contract, which was to start on October 25, 2022, and so she signed another contract with Law Firm M in November 2022, which was to begin on November 25, 2022. The substance of the two contracts was the same, except for the starting date. There is no mention in either contract that Applicant was required to participate in credit or financial counseling, and there is no proof that she did so outside of that contract. To-date, there is no evidence that she has made any payment into the November 2022 payment plan, although she had an opportunity to submit additional evidence after receiving the FORM in December 2022 and having had until mid-January 2023 to submit some.

Applicant's student loans are not under control or coming under control. There is insufficient evidence to establish mitigation under AG ¶ 20(c) or AG ¶ 20(d) as to those debts. Applicant submitted evidence that she resolved five medical debts and three consumer debts, thereby establishing that those are under control. AG ¶ 20(c) applies to them.

Applicant stated that she earned about \$125,000 in 2022. Her September 2022 budget corroborates that income and listed common ongoing expenses such as a mortgage payment, utilities, credit card payments, etc. However, her November 2022 budget projected an entirely different financial picture in terms of the amount of her income and number of expenses. She provided no explanation for the large discrepancies between the two budgets, which created questions about her veracity and financial reliability that are the underpinnings of AG ¶ 18.

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.

According to AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a position of 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 facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Based on the evidence, including the large discrepancies in two budgets that Applicant submitted that are two months apart, and the lack of an established track record of responsible financial management, Applicant failed to meet her burden to mitigate the trustworthiness concerns raised under the guideline for financial considerations. Continuation of her financial issues is likely, and the potential for coercion or duress remains undiminished.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs: 1.a through 1.h:	Against Applicant
Subparagraphs: 1.i through 1.p:	For Applicant

Considering all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant eligibility for a public trust position. Eligibility for access to sensitive information is denied.

SHARI DAM
Administrative Judge