



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



In the matter of: )  
)  
) ADP Case No. 20-02812  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Jeffrey Kent, Esq., Department Counsel  
For Applicant: *Pro se*

06/26/2023

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**Decision**

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RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the Guideline B, foreign influence, and Guideline J, criminal conduct trustworthiness concerns, but failed to mitigate the trustworthiness concerns under Guideline E, personal conduct and Guideline F, financial considerations. Eligibility for access to sensitive information is denied.

**Statement of the Case**

On October 22, 2021, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns under Guideline B, foreign influence, Guideline E, personal conduct, Guideline F, financial considerations, and Guideline J, criminal conduct. DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective on June 8, 2017 are applicable.

Applicant answered the SOR on January 18, 2022, and requested a hearing before an administrative judge. The case was assigned to me on February 1, 2023. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 3, 2023,

scheduling the hearing for April 19, 2023. I convened the hearing as scheduled. The Government offered exhibits (GE) 1 through 15, and they were admitted into evidence without objection. Applicant testified and offered Applicant Exhibits (AE) A through D, which were admitted into evidence without objection. Hearing Exhibit (HE) I is the Government's letter of discovery. HE II is a request for administrative notice. The record was held open until May 3, 2023, to allow Applicant to submit additional documents, which she did. They are marked as AE E and F and admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on May 1, 2023.

### **Procedural Matters**

The Government moved to amend SOR ¶ 3.b by deleting references to subparagraphs ¶¶ 3.c and 4.b from the allegation. The motion was granted.

### **Administrative Notice**

Department Counsel requested that I take administrative notice of certain facts about the Republic of Cuba (HE II). Without objection, I have taken administrative notice of the facts contained in the request. The facts are summarized in the written request and will not be repeated verbatim in this decision. Of particular note, Cuba is a one-party system in which the Communist Party is the only legal political party. Elections are neither free, fair, or competitive. Since 1962 there has been an economic embargo on trade between the United States and Cuba. In 1982, Cuba was designated as a state sponsor of terrorism because of its long history of providing advice, safe haven, communications, training, and financial support for guerrilla groups and individual terrorists. The designation was rescinded in 2015 and reinstated in 2021 due to the continued presence of members of foreign terrorist organizations in Cuba. It maintains close and collaborative ties with designated state sponsors of terror such as Iran and North Korea. It continues to harbor multiple fugitives who committed or supported acts of terror in the United States. There are ongoing human rights problems, including detaining U.S. citizens who are suspected of engaging in activities perceived to undermine state security, monitoring citizens' internet and retaliation against them for their speech, along with blocking government critics.

### **Findings of Fact**

Applicant admitted the allegations in the SOR ¶¶ 1.a, 1.b, and 3.a. She admitted SOR ¶¶ 2.a through 2.c, 3.a, 3.b, 4.a, 4.b, 4.d, 4.e and 4.f with explanations. She partially admitted and denied SOR ¶ 3.c and denied ¶ 4.c. Applicant's admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 39 years old. She is a high school graduate and has earned some college credits. She is twice married and divorced. She has four children, two from her

second marriage and two from a relationship.<sup>1</sup> She receives child support for all of the children. She has been employed by a federal contractor, her current employer, since 2018. (Tr. 26-30; GE 1)

Applicant's mother is a Polish citizen who lives in Cuba. She moved there in 1989 after marrying a Cuban national. They divorced and she remarried another Cuban national. They are no longer married, but her mother remained in Cuba. Applicant has daily contact with her through a cell phone application. She occasionally will send her money and medicine, but never more than \$1,000 annually. Her mother receives a pension from Germany where she lived and worked before moving to Cuba. When her mother moved in 1989, Applicant went with her. Applicant was 15 years old when she left Cuba. Applicant has no intention of living there again. Her mother worked for a short time in the clothing business but has not been employed for a long time. Her mother does not have any direct ties to the government of Cuba. Her mother visited her in the United States in approximately 2007, and she visited her mother in Cuba in 2019. (Tr. 30-31, 58-59-62, 65-69, 110)

Applicant's half-brother was born in Cuba and now lives in Germany. Their mother was able to get him a Polish passport due to her citizenship, which allowed him to move. Applicant did not know when he moved. He has a family and job in Germany as a train conductor. She does not know how long her half-brother has lived in Germany. She does not know if he is a Cuban citizen. Applicant communicates with him about once a month through the cell phone application. (Tr. 59,63-65, 67-68)

SOR ¶ 4.f alleges and Applicant admitted that she and her husband at the time filed Chapter 7 bankruptcy and had approximately \$45,000 of debts discharged in December 2008. (GE 13)

Applicant was arrested and charged with battery in 2008. She testified she could not recall the facts but believed she and a person she was in a relationship with at the time were both arrested because they had a fight. In August 2015, she was arrested and charged with felony burglary of an occupied dwelling and damage to property-criminal mischief over \$200 and under \$1,000. She broke a car side mirror when she was angry at her partner for cheating on her. She was required to pay restitution. In August 2016, Applicant was arrested and charged with felony aggravated assault-domestic violence, and two charges of battery-domestic violence. All of the charges for these incidents were dismissed/nolle prossed. Applicant admitted she was arrested and charged. She stated that she was required to pay restitution for damage she did to her boyfriend's vehicle. All of these cases stem from arguments and disagreements with her ex-husband or ex-boyfriend. She testified that her boyfriend told the police lies and none of the incidents happened the way he said they did. She is no longer with either of them, and she asserted that she has not been involved in any criminal activity since 2016. (Tr. 31-38, 70-80; GE 4, 5, 6, 7)

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<sup>1</sup> Applicant could not recall the dates of her first marriage and did not list it in her Electronic Questionnaires for Investigation Processing (e-QIP).

Applicant admitted that in about May 2008 she received a court-issued judgment of eviction for failure to pay rent (SOR ¶ 4.e). She explained in her SOR answer that she and her then husband and father to two of her children decided to divorce. She was not working at the time, and he was paying the bills. When he left, she remained in the apartment and looked for a job. She said she paid the delinquent rent in order to move into a new apartment. No documents were provided. (Tr. 43; Answer to SOR; GE 8)

SOR ¶¶ 4.c and 4.d are also court-issued judgments of eviction issued against Applicant for failure to pay rent in February 2017 (\$1,100) and January 2014 (\$1,100). She denied in her SOR answer the February 2017 eviction judgment. Applicant testified that she resolved both of these because she would have been unable to rent a new place or purchase a home if they were still due. She did not provide any documents. The evidence supports the eviction judgments. (Tr. 41-45; GE 9, 10)

SOR ¶ 3.c alleged that in 2018 while living in an apartment, Applicant allowed an unauthorized person, the father of her children, to live in her residence at different times, which was against the rules of her lease. She was accused of having loud and boisterous discussions outside of her apartment unit. Her landlord posted a written notice on her apartment that said her lease was not being renewed, and she was to vacate the premises by August 10, 2018. She did not vacate on that date and her landlord filed an eviction notice against her on August 15, 2018. (Tr. 53-54; GE 11)

In Applicant's answer to the SOR regarding the allegation, she said that she and her partner argued but it was never outside of the apartment. She said she went to the rental office to renew her lease, and she was told she was not permitted to renew it. She said she did not know why. She was aware her lease expired, and she was required to leave before then. She said she was in the process of purchasing a house and was staying in the apartment until the lease expired. She said she was unable to pay her rent before she moved out, but she was taking care of the debt. (Answer to SOR)

Applicant testified that the father of her children was not listed on the lease as required. She said because she was in the process of purchasing a home, she was saving her money to put a down payment on the house and was not paying her rent. She decided to not pay the rent and instead use the money to fix her credit and make a down payment. She figured the landlord could use her security deposit instead. She purchased the home in July 2019. She was issued an eviction notice in July 2019. She resolved the delinquent payments to the landlord in July 2022. At that time, she was in the process of selling her first home and purchasing a new one. She took out a loan of \$12,000 to pay some debts to improve her credit so she would qualify to purchase a new home. She then sold her first house and used the profits to repay the loan. She then repaid the eviction debt that she incurred in 2019. She provided a document to show that she resolved the 2019 eviction debt (SOR ¶ 4.b). The document she provided is from a debt collector. She testified she did not pay the debt when it was owed because she did not have the money. She testified that she took the loan to clear her negative credit history and resolve the financial issues that were raised by the government with regards to her public trust position. She contacted a company to help her resolve her debts after she received the

SOR. She did not receive any credit counseling. (Tr. 39-42, 45-47, 51-54, 98-108; GE 12; AE D)

The debt in SOR ¶ 4.a is for a repossessed vehicle Applicant purchased for her partner in 2016. It was repossessed the same year. Her partner was to make the payments. He did not. She testified that she settled the debt in September 2022 for \$1,604. She provided a document with proof of the amount paid and the debt is settled. She testified that when she received notice that her debts were a concern regarding obtaining a public trust clearance she acted to resolve the debt. (Tr. 41, 47-51; GE 14; AE A, E)

In January 2018, Applicant completed a Questionnaire for National Security Positions (SF 86). In response to Section 22-Police Record, which asked if in the past seven years she had been issued a summons, citation, or ticket to appear in court in a criminal proceeding; or had been arrested by any police officer, sheriff, marshal, or any other type of law enforcement official; or had she been charged, convicted or sentenced to any crime in any federal, state, local, military, or non-U.S. court. Applicant responded "No." (GE 1)

Under Section 26-Delinquency Involving Routine Accounts-it asked in the last seven years if Applicant was evicted for non-payment. She responded "No." This section was not alleged in the SOR and will not be considered for disqualifying purposes but may be considered in the application of mitigating conditions, in making a credibility determination, and in a whole-person analysis.

Section 28 – Non-criminal court actions asked Applicant if in the last seven years she had been a party to any public record civil court action not listed elsewhere in the form. She responded "No." (GE 1)

Applicant was interviewed by a government investigator on February 26, 2019. Applicant completed government interrogatories on December 3, 2020. The interrogatories included a copy of her subject interview with the government investigator from February 2019. Questions in the interrogatories asked if the subject interview accurately reflected the information she provided during the interview. She indicated "Yes." It asked her to identify each and every portion of the report that is not accurate and make corrections as necessary, so the report accurately reflected her interview. She did not make any corrections. The interrogatories also provided space to provide additional information regarding matters discussed during her interviews. She did not provide additional information. It also stated that subject to any corrections, additions, or deletions she may have made to the report, did the investigator's summary accurately reflect her interview. Applicant responded "Yes." The interrogatories finally asked subject if she agreed with and adopt the report as an accurate summary of her interviews. She responded "Yes." She then signed the statement indicating that the foregoing was true and correct and that she had read the enclosed report of her interviews and either found the report to be accurate or she amended it so it is now accurate. (GE 2)

After being questioned by Department Counsel at her hearing, Applicant testified that she did not agree with the government investigator's summary of her interview. She said she did not know how important it was to answer the questions correctly for her job at the time she completed the SF 86. Had she known how important her job would be she would have been more careful. (Tr. 89-91)

During Applicant's background interview with a government investigator, she was asked to confirm her answer in the Police Records section of the SF 86 where she did not disclose any of her arrests by the police. She confirmed her "no" response to the investigator. She was then confronted with her arrest from August 2016 (as noted above). She told the investigator that she omitted this arrest because she did not want her application denied, and she did not want to be denied employment due to it. Applicant was also confronted with the August 2015 arrest (as noted above). She gave the same response for why it was omitted because she did not want her application denied or employment denied because of it. (GE 2)

At her hearing, Applicant testified that she failed to disclose her prior arrests by the police in 2015 and 2016 because she misunderstood the questions, and she was confused. She said her command of the English language is not good. She said she was not convicted and did not go to jail. During her interview with the government investigator, she explained that after she was arrested, she spent two days in jail each time. She said someone sat beside her when she completed the application and was there to help explain what the questions meant if she needed help, but Applicant did not seek help for the questions involving whether she had been arrested. Applicant testified that she had concerns because she was not sure what to answer. She said she told the Facility Security Officer (FSO) after she had completed the application that she did not understand some questions and may have answered incorrectly about whether she had been arrested or convicted of an offense. Applicant said the FSO told her that it was okay and "it happens." (Tr. 94) She said she was not told to correct it. She said she is open about having been arrested. She also testified that she was concerned about getting the job. She said there was no one to help her and she was told she had to complete the application and interrogatories by herself. (Tr. 37-39, 81-84, 93-97)

Applicant was asked why she told the government investigator that the reason she omitted her prior arrests was because she was concerned that her application would be denied, and she would not get the job. She denied she made this statement to the investigator. She testified that if she did not answer the questions correctly it was because she did not understand the questions and did not understand how important it was for the job. She testified that she needed the job and was just filling out the application as was required. When asked why she failed to disclose under Section 28 her civil court actions for her evictions. She repeated that she did not recall answering "No" and she did not understand the question. (Tr. 85-89)

I did not find Applicant's testimony and explanations credible for why she failed to disclose the required information. I find she deliberately failed to disclose on her SF 86 her prior arrests and civil court actions.

Applicant testified that she has worked for five years without incident for her current employer. She has received awards for her performance. Applicant provided copies of the awards she has received from her employer during her tenure. She said she is financially stable. She is a single mother taking care of four children. She has worked to make a better life for her children. She said she did not know how important her job would be for her and if she had, she would have paid more attention to the application process. (AE F)

## **Policies**

When evaluating an applicant's national security eligibility, the administrative judge must consider the AG. 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(c), 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 avoided drawing 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. Directive ¶ E3.1.15 states 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 as to obtaining 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 that an applicant may deliberately or inadvertently fail to safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of sensitive information.

## Analysis

### Guideline B: Foreign Influence

The trustworthiness concern for foreign influence is set out in AG ¶ 6:

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

The guideline notes several conditions that could raise trustworthiness concerns under AG ¶ 7. The following are potentially applicable in this case:

- (a) contact, regardless of method, with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion; and
- (b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect classified or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology.

There is a significant threat of terrorism and ongoing human rights problems in Cuba. Applicant's contact with her mother living in Cuba creates a potential conflict of interest and a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion. The above disqualifying conditions have been raised by the evidence and apply to Applicant's mother.

Applicant has minimal contact with her half-brother. He lives in Germany, has a Polish passport, and has a family and a job there as a train conductor. Applicant communicates with him about once a month through a cell phone application. There is no evidence that he has any relationship with the government of Cuba. I find that Applicant's relationship with her half-brother does not rise to the level of creating a heightened risk or potential conflict of interest. The above disqualifying conditions do not apply.



Conditions that could mitigate foreign influence trustworthiness concerns are provided under AG ¶ 8. The following is potentially applicable:

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, or allegiance to the group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest; and

(c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk of foreign influence or exploitation.

I considered the totality of Applicant's ties to Cuba through her mother. Her contact is more than casual and infrequent as she speaks with her often and provides her financial support. The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, the country is known to conduct intelligence operations against the United States, or the foreign country is associated with a risk of terrorism. Cuba falls into this category, which raises the risk implications.

Applicant's mother worked for a short time in the clothing business but has not worked for a long time. She does not have any direct ties to the government of Cuba, but does rely on the government benefits. Applicant visited her mother in Cuba in 2019 and her mother visited her in the United States in approximately 2007.

Applicant's ties to the United States outweigh her ties to Cuba. She has lived in the United States for 24 years and does not intend to ever move back there. She has four children she is raising in the United States. Although, she has contact with her mother, I find her contacts in the United States outweigh the contact with her mother. I find it is unlikely that Applicant would be placed in a position of having to choose between the interest of her mother and that of the United States. I find there is no conflict of interest for Applicant because of her deep ties through her children and that she would be expected to resolve any issues in favor of the United States. The above mitigating conditions apply.

#### **Guideline J: Criminal Conduct**

The trustworthiness concerns for criminal conduct 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.

The guideline notes several conditions that could raise trustworthiness concerns. I have considered all of the disqualifying conditions under AG ¶ 31, and the following is potentially applicable:

- (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.

Applicant was charged with battery in 2008. In 2015, she was arrested and charged with felony burglary of an occupied dwelling and damage property-criminal mischief over \$200 and under \$1,000. In 2016, she was arrested and charged with felony aggravated assault-domestic violence, and two charges of battery-domestic violence. The above disqualifying conditions apply.

The guideline also includes conditions that could mitigate trustworthiness concerns arising from criminal conduct. The following mitigating conditions under AG ¶ 32 are potentially applicable:

- (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; 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.

It has been eight years since Applicant's last arrest. All of her charges were dismissed or nolle prossed. It appears the charges related to relationships she was in at the time, which is no longer the case. I find that so much time has elapsed since the criminal behavior occurred and it happened under unique circumstances that are unlikely to recur. Applicant has been steadily employed since 2018 and is providing for her children. The above mitigating conditions apply.

## **Guideline F: Financial Considerations**

The trustworthiness concern relating to the guideline 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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

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

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant had a delinquent debt from 2016 owed for a repossessed vehicle and several court-issued judgments for eviction for failure to pay her rent. In one instance, she testified that she stopped paying her rent so she could save that money to put a down payment on a house she intended to purchase. She also explained that when her husband moved out of their apartment she was not working and was unable to pay the rent. Applicant had her debts discharged in bankruptcy in 2008. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate trustworthiness concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 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.

Applicant resolved her 2016 debt on a repossessed vehicle after she became aware in 2022 that her finances would impact her ability to obtain a public trust clearance. She did the same regarding rent she owed when an eviction judgment was entered in 2019 and she resolved it in 2022. This does not constitute a good-faith effort to repay overdue creditors. AG ¶ 20(d) does not apply. An additional concern is that she chose not to pay her rent so she could use the money for a down payment on a house. Some of her financial problems were likely due to her husband or partner at the time failing to pay their share of the debts. However, Applicant did not always act responsibly. I have given her some credit under AG ¶ 20(b). There is no evidence Applicant has participated in financial counseling. AG ¶ 20(c) does not apply. Applicant's conduct is recent, and she has a significant history of receiving eviction judgments. I find AG ¶ 20(a) does not apply. Despite some minimal mitigating factors, it is insufficient to mitigate the concerns under this guideline.

### **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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

AG ¶ 16 describes conditions that could raise a trustworthiness concern and may be disqualifying. I find the following potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications,

award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities;

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, 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; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group.

Applicant deliberately failed to disclose on her SF 86 that she had been arrested in 2015 and 2016. She also deliberately failed to disclose her 2008, 2014 and 2018 eviction judgments and bankruptcy. I did not find her explanations credible regarding these matters. AG ¶ 16(a) applies.

SOR ¶ 3.c alleged that Applicant's boisterous discussions outside her apartment with an unauthorized male who was not on her lease, which led to the landlord posting an eviction notice, as conduct falling within the personal conduct disqualifying conditions. I find there is insufficient evidence with these facts to rise to the level of a personal conduct disqualifying condition. I find in her favor for this allegation.

The following mitigating conditions under AG ¶ 17 are potentially applicable to the disqualifying trustworthiness concerns based on the facts:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and

(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.

Applicant's deliberately failed to disclose on her SF 86 her criminal arrests and non-criminal court actions. She was offered an opportunity when she was interviewed by a government investigator to disclose the information and did not. She explained her failure to do so was because she thought it would impact her application and job. She later claimed she did not understand the question, which I found not credible. The public trust application process relies on those seeking a public trust position to be honest and forthcoming. Applicant failed to do so, which casts doubt on her reliability, trustworthiness, and good judgment. The above mitigating conditions do not 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 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 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 B, E, F, and J in my whole-person analysis.

Applicant met her burden of persuasion regarding Guidelines B, foreign influence and J, criminal conduct. She failed to meet her burden of persuasion under Guidelines E, personal conduct and F, financial considerations. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a public trust position. For these reasons, I conclude Applicant failed to mitigate the trustworthiness concerns raised.

## 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 B:	FOR APPLICANT
Subparagraphs 1.a-1.b:	For Applicant
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraphs 2.a-2.c:	For Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT

Subparagraphs 3.a-3.b:	Against Applicant
Subparagraph 3.c:	For Applicant
Paragraph 4, Guideline F:	AGAINST APPLICANT
Subparagraph 4.a-4.f	Against Applicant

### **Conclusion**

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

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Carol G. Ricciardello  
Administrative Judge