



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



In the matter of:	)	
	)	
	)	ADP Case No. 22-00918
	)	
Applicant for Public Trust Position	)	

**Appearances**

For Government: Cynthia Ruckno, Esq., Department Counsel  
For Applicant: *Pro se*

12/20/2023

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

COACHER, Robert E., Administrative Judge:

Applicant has not mitigated the financial considerations trustworthiness concerns. Eligibility for access to sensitive information is denied.

**Statement of the Case**

On July 22, 2022, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns under Guideline F, financial considerations. DCSA CAS acted under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines effective June 8, 2017 (AG).

Applicant answered the SOR on August 3, 2022, and requested a hearing. The case was assigned to me on August 23, 2023. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 29, 2023, and the hearing was held as scheduled on October 3, 2023. This hearing was convened using video teleconferencing capabilities. The Government offered exhibits (GE) 1 through 5, which were admitted into evidence without objection. The Government’s exhibit list was

marked as a hearing exhibit (HE) I, and its discovery letter was marked as HE II. Applicant testified but she did not offer any exhibits at the hearing. The record remained open and Applicant timely submitted exhibits (AE) A through C, which were admitted without objection. DOHA received the hearing transcript (Tr.) on October 13, 2023.

### **Findings of Fact**

Applicant admitted all the SOR allegations, with explanations. Her admissions are incorporated as findings of fact. After a review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is a 36-year-old employee of a federal contractor. She has worked for this employer for over two years. She experienced periods of unemployment from December 2020 to June 2021; from February 2018 to April 2018; and from July 2013 to December 2013. She holds a bachelor's degree and has taken some courses toward a master's. She is single, never married, and has no children. This is her first application for a position of trust. (Tr. at 6, 37; 40-41; GE 1)

The SOR alleged Applicant accumulated 11 delinquent debts totaling approximately \$38,000 (SOR ¶¶ 1.a-1.j). The delinquent debts included two student loans, two car-repossession deficiencies, three medical debts, and four credit card or consumer debts. The debts are established by Applicant's admissions to a background investigator in August 2021; credit reports from June 2021, January 2022, and September 2023; and her admissions in her SOR answer. (GE 2-5; SOR answer)

Applicant testified that she was financially illiterate growing up. Even when she entered college and began taking out student loans, she remained financially unsophisticated. Consequently, she agreed to cosign a car loan for her mother and took out credit cards without realizing the impact these actions would have on her overall financial wellbeing. She has dealt with family issues including the death of her father and her brother's shooting. She indicated that with the exception of two medical debts (SOR ¶¶ 1.i-1.j), she has not made any payments on the rest of the SOR debts. (Tr. 19, 44)

Concerning her student loans, Applicant gave conflicting information about whether they were forgiven. During her background interview with an investigator in August 2021, which she authenticated in July 2022, she admitted having multiple federal student loans for which she failed to make any payments. She admitted these loans became delinquent, but she could not recall when that was. She claimed that she applied for a loan forgiveness program, qualified for the program, and the student loans were then forgiven. She did not provide any documentation to corroborate this action. (GE 2) The SOR student-loan debt appears on her June 2021 credit report with the following information:

Date Reported: 06/21; Date Assigned: 09/06; Activity Date: 06/21;  
Balance Date: 06/21; Narrative 1: Acct 120 days past due; Narrative 4:  
Charged-off Acct. (GE 3)

Applicant's September 2023 credit report shows 16 federal student-loan accounts with a payment status of "Pays account as agreed." None of these account numbers match the account number for the student loan alleged in SOR ¶ 1.a. Applicant also admitted that she has never made student loan payments. It appears Applicant's current student-loan payment status may be the result of President Biden's action pausing the collection of student loans due to COVID-19, thus creating a deferment period on student-loan payments. (Tr. 23, 27, 44; GE 2-5)

Applicant testified that she planned to work with a credit repair agent or company to deal with her delinquent debts. She has looked into doing so, but as of the hearing, she had not contacted any person or group yet. She also will look into loan forgiveness concerning her student loans. Once she completes making her car payments of \$450 monthly (no payoff date stated), she will use those funds to pay her delinquent debts. She provided a copy of her monthly budget that shows she has a monthly remainder of approximately \$700 after paying all bills. She documented making payments for the two medical debts listed at SOR ¶¶ 1.i-1.j. Those two debts are resolved. She has not received financial counseling or otherwise enhanced her knowledge of financial issues. (Tr. 23, 31, 35-37, 42, 44-45; AE A-C)

### **Policies**

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 the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial and commonsense decision. According to AG ¶ 2(a), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have 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. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion as to obtaining a favorable trustworthiness decision.

A person who seeks access to sensitive information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This

relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to sensitive information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or 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 F, Financial Considerations**

AG ¶ 18 expresses the trustworthiness concern for financial considerations:

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 trustworthiness concern insofar as it may result from criminal activity, including espionage.

The guideline notes several conditions that could raise trustworthiness concerns. I have considered all of them under AG ¶ 19 and the following potentially apply:

- (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 accumulated 11 delinquent debts totaling approximately \$38,000. With the exception of paying two small medical debts, she failed to address the remaining debts. I find all disqualifying conditions are raised.

Although President Biden extended a pause on the collection of student loans due to COVID-19, thus creating a deferment period on student-loan payments (<https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/20/pausing-student-loan-payments/>), that action does not excuse previously delinquent student loans. (See ISCR Case No. 20-01527 at 2 (App. Bd. June 7, 2021))

The guideline also includes conditions that could mitigate trustworthiness concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following 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 debts are recent, multiple, and cast doubt on her reliability, trustworthiness, and good judgment. Except for two small medical debts, Applicant has not documented payment towards any other SOR debts. While periods of unemployment and her family issues were circumstances beyond her control, she has not shown responsible action toward addressing her delinquent debts. She failed to make any student loan payments or address her other debts. None of the above mitigating conditions fully apply.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for access to sensitive information 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 access to sensitive information must be an overall commonsense assessment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

I considered Applicant's personal circumstances. However, she has not established a meaningful track record of financial responsibility, which causes me to question her ability to resolve her debts.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for access to sensitive information. For all these reasons, I conclude Applicant has not 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:	AGAINST APPLICANT
Subparagraphs: 1.a – 1.h, 1.k:	Against Applicant
Subparagraphs: 1.i – 1.j:	For Applicant

### **Conclusion**

In light of all of the circumstances, it is not clearly consistent with national security to grant Applicant eligibility for access to sensitive information. Eligibility for access to sensitive information is denied.

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Robert E. Coacher  
Administrative Judge