



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



In the matter of:)	
)	
)	ADP Case No. 22-01685
)	
Applicant for a Public Trust Position)	

Appearances

For Government: Andrea Corrales, Esq., Department Counsel
For Applicant: *Pro se*

12/20/2023

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant 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 September 16, 2022, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns under Guideline F, financial considerations and Guideline E, personal conduct. 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) effective on June 8, 2017.

Applicant answered the SOR on November 28, 2022, and requested a hearing before an administrative judge. The case was assigned to me on September 15, 2023. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on September 28, 2023, scheduling the hearing for October 17, 2023. I convened the hearing

as scheduled. The Government offered exhibits (GE) 1 through 5, and they were admitted into evidence without objection. Applicant testified and offered Applicant Exhibits (AE) A through H, which were admitted into evidence without objection. The record was held open until October 31, 2023, to allow Applicant to submit additional documents, which she did. She requested an extension to provide other documents, which was granted until November 15, 2023, and extended to November 20, 2023. Her documents were marked AE I through P and admitted in evidence without objection. DOHA received the hearing transcript (Tr.) on October 31, 2023.

Findings of Fact

Applicant admitted the allegations in SOR ¶¶ 1.a, 1.b and 1.d through 1.i. She denied SOR ¶¶ 1.c, 1.j, and 1.k. Her answer to SOR ¶ 2.a was ambiguous and will be considered a denial. 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 55 years old. She earned some college credits but not a degree. She was married twice before her present marriage in 2020. She has an adult child. She has been employed by her present employer since September 2021. She explained that in her present job she works for four to six weeks and then is off for two to three months. She has been on Social Security disability since 2007 and works part-time. She is participating in a re-entry work program to determine when she can return to 100% employment. She has worked intermittently since 2007 and her part-time jobs subsidize her disability payments. On her November 2021 Questionnaire for National Security Position (SF 85) she disclosed she was unemployed from 2016 to 2021. Her husband has medical issues and had heart attacks in 2017 and 2018. In lieu of paying rent, he is the property manager for the farm property where they live. He helps with the animals and does maintenance around the farm. He has no outside employment. (Tr. 16-23, 30-31; GE 1)

Applicant attributes her financial issues to her husband's medical problems, her mother's failing health, and her limited income. She also stated that the pandemic impacted her because she was unable to find part-time work, and she had to care for her mother because she did not have home health care. (Tr. 35-36)

The SOR allegations are corroborated by Applicant's admissions and credit reports from December 2021, July 2022, and January 2023. (GE 1-5)

In response to questions about her finances on her November 2021 SF 85, Applicant answered "no" that she did not have bills or debts turned over to a collection agency. It also asked if in the past seven years she had an account or credit card suspended, charged off, or canceled for failing to pay as agreed, which she also responded "no." (GE 1)

When Applicant was interviewed by the government investigator in December 2021, she did not disclose her delinquent debts until she was confronted with them by the investigator. She acknowledged the debt in SOR ¶ 1.a (\$6,305) was for a vehicle that she purchased in May 2019 and in January 2020 was repossessed when she returned it to the dealer. She attributed being unable to pay for it due to the pandemic. She told the investigator that she would contact the creditor to arrange monthly payments and resolve the debt within a year. She testified that she moved in with her mother when her mother needed help. She returned the car because she knew she would not be able to make the payments. She testified that the cost of her medical bills increased, and she was unable to make the car payments. She has not resolved the debt because it is her largest, and she intends to pay it after she pays her other debts. She said she also had some medical expenses she had to pay. This debt is unresolved. (Tr. 24, 45-47; GE 5)

Applicant initially testified that the reason she failed to disclose she had delinquent debts was because she was confused and nervous and she had recently moved. She said she had not received inquiries from creditors about her debts but knew her credit was bad. She said she realized she should have responded to the SF 85 inquiries differently. When questioned further, she admitted that she was aware that she had a number of debts that were delinquent and was aware her vehicle had been voluntarily repossessed. She said she did not intentionally lie about her debts. When asked why she failed to disclose them, she stated, "because I was afraid I wouldn't get the job." She further stated that her medical issues have an impact on her memory. I find Applicant was aware she had delinquent debts and was aware of her duty to truthfully disclose her delinquencies and deliberately failed to do so. (Tr. 23, 63-68; GE 1, 5)

Applicant acknowledged the credit card debt in SOR ¶ 1.b (\$3,600), which became delinquent in approximately November 2019. She told the investigator she was unable to pay it due to insufficient income but intended to satisfy it with monthly payments within five years. She testified the creditor reached out to her to settle the debt for \$1,800. She said she contacted the creditor in August 2023. She is attempting to settle the debt for a lump-sum amount. In her post-hearing submission, she provided a document with the settlement offer. She wrote on the document that she intended to accept the offer and settle the debt by the end of 2023. This debt is not resolved. (Tr. 48-50; GE 2, 3, 4, 5; AE J, N)

Applicant testified that she paid the collection account in SOR ¶ 1.c (\$2,773) for a delinquent credit card. The record was held open for her to provide documents to substantiate her payments. She provided documents to show that she received a letter from the creditor in June 2022 indicating it had filed a lawsuit against her. She provided receipts from July, August, and September 2022 showing she paid the amount owed. She did not provide evidence that the creditor accepted her payments and is no longer pursuing legal action, but based on her payments, it appears the debt is resolved. (Tr. 37, 40, 44-45; AE J, K)

Applicant testified that she paid the collection account in SOR ¶ 1.h (\$1,614) for a delinquent credit card. She said the debt date back to 2019. The record was held open

for her to provide documents to substantiate her payments. She provided a document from the creditor from August 2022 offering her a settlement agreement. She paid the settlement amount in December 2022. Although there is no confirmation letter indicating the debt is resolved, based on the documents it appears it is resolved. (Tr. 37, 40-45; AE I, J, K, L)

Applicant resolved the collection accounts in SOR ¶¶ 1.d (\$2,524-settled for \$631) and 1.e (\$2,499-settled for \$606) in August 2022 and are reflected as paid on her January 2023 credit report and other documents provided. (Tr. 36-37; GE 4; AE J, O, P)

The credit card debts in SOR ¶¶ 1.f (\$1,901) and 1.g (\$1,807) are owed to the same creditor. Regarding the debt in SOR ¶ 1.g, Applicant told the investigator she would contact the creditor in January 2022 and arrange monthly payments to satisfy the debts in one year. She testified that she made a partial payment on the debt in SOR ¶ 1.f and would provide documents to substantiate her actions. The record was held open for her to provide documents to substantiate her payments. She provided a document showing that in early October 2023 she made a \$1,000 payment and in late October she made a payment of \$901 to resolve the balance owed on the debt. SOR ¶ 1.f is resolved. SOR 1.g is not resolved. (GE 2, 3, 4, 5; AE I, M)

The debts in SOR ¶¶ 1.i (\$75) and 1.k (\$35) are unpaid medical debts. Applicant told the investigator that she forgot to pay the debt in SOR ¶ 1.k and she did not know who the creditor was. She intended to pay this bill. She told the investigator that she intended to satisfy the debt in SOR ¶ 1.i with a lump-sum payment within six months. She admitted she has been irresponsible in paying her bills. At her hearing, she testified that she did not know who the creditor was for the debt in SOR ¶ 1.i, and she took no action to find out who it might be. The accounts remain unpaid. (Tr. 54-55, 57; GE 2, 3, 4, 5)

The debt in SOR ¶ 1.j (\$49) is an unpaid cable bill. She told the government investigator that she forgot to pay the remaining cable bill when she vacated her residence. She intended to satisfy the debt within two weeks. She testified that when she vacated her residence, she thought the cable was turned off. She has not contacted the creditor to dispute the debt and has not paid the bill. (Tr. 56; GE 2, 3, 4, 5)

Applicant testified that with her limited income, she is doing the best she can. She incurred student loan debt in 2003 and due to her disability, she was told she did not have to repay the loans. However, in 2015, when for a period she worked full time, the loans were reinstated. She has not made any payments since 2015. The loans were delinquent prior to the pandemic and are currently in a deferred status. She owes approximately \$6,625. (Tr. 58, 62-63)

Applicant testified that she and her husband have about \$1,100 in their bank accounts. They do not have retirement accounts or investments. They do not provide financial support for anyone. After paying their monthly expenses there is minimal expendable income. Applicant said it was because she was paying her delinquent debts,

she has less money. She does not keep a written budget and has not had financial counseling. She has five credit cards that she is making payments on and the total balance owed is about \$800. (Tr. 24, 29-31, 34-35, 59-60)

Applicant provided character letters. In them, she is described as honest, dependable, dedicated, trusted, loyal, responsible, hardworking, supportive, positive, professional, and an asset to her work. She is considered a person with exceptional character and integrity. (AE A-F)

Any derogatory information that was not alleged 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.

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 sensitive information is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility [or eligibility for a public trust position] 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 public trust 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 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; and
- (c) a history of not meeting financial obligations.

Applicant has numerous delinquent debts and a history of financial problems. There is sufficient evidence to apply 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 receives Social Security disability and works to supplement her income. Her husband does not work but they live rent-free because he manages the farm where they are provided a house. She attributes her financial problems to being underemployed, unemployed during the pandemic, and caring for her elderly mother. She is unable to pay all of her debts.

After completing her SF 85 and her interview with a government investigator, Applicant began addressing some of her delinquent debts and was able to settle several of them. She still has others that are not resolved, including a debt for a car she purchased and then returned to the dealer (SOR ¶ 1.a \$6,305). Her debts are ongoing and recent, and there is insufficient evidence that future financial problems are unlikely to recur. AG ¶ 20(a) does not apply.

The conditions that resulted in Applicant's debts were beyond her control. For the full application of AG ¶ 20(b), she must have acted responsibly under the circumstances. She was employed in 2021. After her interview with the government investigator, she began to address some of her debts. AG ¶ 20(b) has some application but does not completely apply.

There is no evidence that Applicant participated in financial counseling and there are not clear indications that Applicant's finances are under control. She still has her largest debt to resolve and has not paid some of her smaller ones. AG ¶ 20(c) does not apply. AG ¶ 20(d) has some application in that some debts are paid, but I do not consider her actions to be made in good faith as the collectors were contacting her and offering settlements and one had filed a lawsuit. Applicant presented some mitigation, but her financial situation remains unstable, and the evidence 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.

I find Applicant deliberately falsified her SF 85 when she answered “no” to questions about whether in the past seven years had she had any property repossessed, or if she had been over 120 days delinquent on any debts or if she was currently over 120 days delinquent on any debt. However, these facts were not alleged in the SOR, and there is insufficient evidence to conclude that she was aware that her debts were turned over to a collection agency or that she was aware if her accounts or credit cards were suspended, charged off, or canceled for failing to pay as agreed. I find for Applicant under this guideline.

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 E and F in my whole-person analysis.

Applicant failed to meet her burden of persuasion under Guideline F, financial considerations. She does not have a reliable financial track record at this time. 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:	AGAINST APPLICANT
Subparagraphs 1.a-1.b:	Against Applicant
Subparagraphs 1.c-1.f:	For Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraphs 1.i-1k:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Conclusion

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

Carol G. Ricciardello
Administrative Judge