



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



In the matter of:	)	
	)	
	)	ADP Case No. 22-01499
	)	
Applicant for Public Trust Position	)	

**Appearances**

For Government: Brittany C.M. White, Esq., Department Counsel  
For Applicant: *Pro se*

01/05/2024

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**Decision**

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COACHER, Robert E., Administrative Judge:

Applicant has not mitigated the financial considerations trustworthiness concerns. The personal conduct trustworthiness concerns were not established. Eligibility for access to sensitive information is denied.

**Statement of the Case**

On August 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 and Guideline E, personal conduct. 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 September 19, 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 10, 2023. This hearing was convened using video

teleconferencing capabilities. The Government offered exhibits (GE) 1 through 6, which were admitted into evidence without objection. The Government's discovery letter was marked as HE I. Applicant testified but she did not offer any exhibits at the hearing. The record remained open and Applicant timely submitted exhibits (AE) A through F, which were admitted without objection. The Government also submitted a post-hearing credit report (GE 7, same as AE F), which was admitted without objection. DOHA received the hearing transcript (Tr.) on October 19, 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 52-year-old employee of a federal contractor. She has worked for this employer for over 11 years. She is a high school graduate and has taken some college courses. She is single, never married, and has no children. She has held a position of trust since 2011. (Tr. at 6, 20, 28; GE 1)

The SOR alleged Applicant accumulated 10 delinquent debts totaling approximately \$64,000 (SOR ¶¶ 1.a-1.j). The delinquent debts included credit cards, a personal loan, a utility debt, and a medical debt. The debts are established by Applicant's admissions to a background investigator in May 2021; her answers to interrogatories in May 2022; credit reports from May 2021, February 2022, October 2022, and October 2023; and her admissions in her SOR answer. (GE 2-7; SOR answer)

The SOR also alleged that Applicant deliberately provided false information on her September May 2021 trustworthiness application (SF-86) concerning any delinquent debts she made in the preceding seven years.

### **Financial Considerations.**

Applicant testified that her financial difficulties began in about 2016 when her mother, who lived in a distant location from Applicant, was diagnosed with dementia. Her condition was so serious, the doctors stated she could not be left alone to care for herself. Applicant and her three siblings took on the responsibility to care for their mother. Applicant had to travel to her mother's location, close down her house, and move her to Applicant's location. In order to fund this, she took out a personal loan and used her credit cards. Applicant stated that this loan was also used to make payments on her mother's home so it would not face foreclosure by the bank. While some of her mother's medical expenses were covered by Medicare, she did not qualify for Medicaid, so Applicant and her three siblings had to fund the remainder of their mother's expenses. Applicant was the main financial contributor because she did not have a family to support like her siblings. Her mother's sole income came from Social Security and amounted to about \$180 per month. At first, her mother resided with Applicant, but because of her declining health, her doctor recommended that she be placed into a

nursing home so she could receive full-time medical care when needed. In 2017, Applicant's mother was placed into a nursing home in close proximity to where Applicant's brother lives. She remained there until she passed away in 2019. (Tr. 22-26)

In November 2022, Applicant entered into an agreement with a credit restoration service (CRS). The CRS agreed to assist Applicant dispute any inaccuracies appearing on her credit reports. Applicant paid an initial \$195 fee and monthly payments of \$119 for this service. The CRS does not settle or assist in the payment of any delinquent accounts. While she did an initial credit evaluation, she did not receive financial counseling from the CRS. She believes the service has helped raise her credit score. (Tr. 27-28, 43-45; AE B)

The status of the SOR debts is as follows:

**SOR ¶ 1.a-\$17,611.** This is a delinquent credit card. Applicant used this card for cash withdrawals and payments to fund her mother's move. It appears on her most recent credit report. She admitted not making any payments. This debt is unresolved. (Tr. 29-30; GE 7)

**SOR ¶¶ 1.b, 1.e, 1.f, 1.i-\$11,699; \$8,894; \$1,776; \$1,286.** These are delinquent credit cards. Applicant used these cards for cash withdrawals and payments to fund her mother's move. They appear on her most recent credit report. She has several accounts from this creditor on her credit report and she claims she has paid and closed the accounts with account numbers ending in 4332 and 9030. The account number endings for these debts are 2191, 1700, 6952, and 6057, respectively. These debts are unresolved. (Tr. 30; GE 3, 7; AE A)

**SOR ¶ 1.c-\$9,454.** This is a delinquent credit card. Applicant used this card for cash withdrawals and payments to fund her mother's move. It appears on her most recent credit report. She admitted not making any payments. This debt is unresolved. (Tr.31; GE 7)

**SOR ¶ 1.d-\$9,403.** This is a delinquent personal loan. Applicant used the funds from this loan to pay for her mother's move. She claims that she made payments toward this loan, but it eventually was charged off for nonpayment. It appears on her latest credit report. This debt is not resolved. (Tr. 32; GE 7)

**SOR ¶ 1.g-\$1,474.** This is a delinquent utility account. Applicant claims she paid this account but could not find records of the payment. This debt does not appear on her two latest credit reports and it was too recent to have aged off. This debt is resolved. (Tr. 33-34, GE 4, 5, 7; AE A)

**SOR ¶ 1.h-\$1,439.** This is a delinquent medical account. Applicant documented making a payment of \$741 towards a medical debt. This debt does not appear on her two latest credit reports and it was too recent to have aged off. This debt is resolved. (Tr. 34, GE 5, 7; AE A, C, E)

**SOR ¶ 1.i-\$1,199.** This is a delinquent credit card. It appears on her most recent credit report. She admitted not making any payments. This debt is unresolved. (Tr.35; GE 7)

Applicant testified that her finances are in a better state now than they have been for a while and she is not late on her current bills. She admitted securing a car loan in 2019 for her current partner's daughter. Applicant makes the \$500 monthly payments, but the daughter pays for her own insurance. The daughter attends college now. Applicant did this because her partner could not afford to do it. (Tr. 28, 37-38; GE 2, p. 10)

Applicant claims to use a budget. Her student loans are now out of the COVID-relief period and she will have to start making payments on them. Her student loan balance is approximately \$31,000. The personal financial statement she completed in May 2022, showed a net monthly remainder after expenses of \$281. This did not account for making any payments on her SOR debts or toward her student loans. (Tr. 41-42, 49-50; GE 2, p. 10, GE 7)

### **Personal Conduct.**

Applicant credibly testified that she did not intentionally provide false information on her SF 86 about her delinquent debts. She explained that the SF-86 was completed on a computer and it was prepopulated with information from her previous SF-86 form. She made the appropriate changes, but apparently the information was not saved in the SF86's final form. Department Counsel indicated she was satisfied with Applicant's explanation. (Tr. 36)

### **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; and
  
- (c) a history of not meeting financial obligations.

Applicant accumulated 10 delinquent debts totaling approximately \$64,000. With the exception of paying two debts, she failed to address the remaining debts. I find both disqualifying conditions are raised.

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 debts, Applicant has not documented payment towards any other SOR debts. While her family issues were circumstances beyond her control, she has not shown responsible action toward addressing her delinquent debts. This is evident by her decision to finance a car for her partner's daughter rather than to address her delinquent debts. Her hiring of the CRS does not help pay her debts. None of the above mitigating conditions fully apply.

### **Guideline E, Personal Conduct**

AG ¶ 15 expresses the personal conduct security concern:

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 or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying in this case. The following disqualifying condition is 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.

The Government failed to establish that Applicant deliberately falsified or provided misleading answers on her May 2021 SF-86. She credibly asserted that she entered the correct information on the prepopulated SF-86 form, but for some reason that information was not saved in the final document. Because no deliberate falsification was established, it is unnecessary to explore the applicability of any mitigating conditions.

### **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.f, 1.i-1.j:	Against Applicant
Subparagraphs: 1.g-1.h:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph: 1.a:	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