



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



In the matter of:)	
)	
)	ADP Case No. 22-01831
)	
Applicant for Public Trust Position)	

Appearances

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

01/22/2024

Decision

DORSEY, Benjamin R., Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. Eligibility for access to sensitive information is denied.

Statement of the Case

On September 29, 2022, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). Applicant provided an undated response to the SOR (Answer). She requested a hearing before an administrative judge. The case was assigned to me on May 3, 2023.

After Applicant requested two continuances that I granted for good cause without objection, and after delays because of her lack of responsiveness to my attempts to contact her, the hearing was convened as rescheduled on December 7, 2023. At the hearing, I admitted Government Exhibits (GE) 1 through 4 without objection. Applicant testified at the hearing but did not present any documentary evidence. I left the record open until December 14, 2023, to allow Applicant to submit post-hearing documentation. She did not submit any post-hearing documents and the record closed

on December 14, 2023. I received a transcript (Tr.) of the hearing on December 14, 2023.

Findings of Fact

Applicant is a 56-year-old employee of a government contractor for whom she has worked since March 2022. She married in 2004 and divorced in 2005. She remarried in 2021 but has been separated since October 2023. She has two adult daughters. She earned a high school diploma in 1985. She took some college courses but did not earn a college degree. (Tr. 19-21, 35-36, 44-45; GE 1)

In the SOR, the Government alleged Applicant's five delinquent debts totaling approximately \$34,000 (SOR ¶¶ 1.a through 1.e). These delinquencies consist of the following: an auto loan (SOR ¶ 1.a); a personal loan (SOR ¶ 1.b); and credit cards (SOR ¶¶ 1.c through 1.e). She admitted the SOR allegations with no additional comment. Her admissions are adopted as findings of fact. The SOR allegations are established through her admissions and the Government's credit reports. (Answer; GE 2-4)

The delinquent auto loan in the amount of \$19,428 listed in SOR ¶ 1.a has not been resolved. Applicant fell behind on this account in May 2021 when she was involved in a car accident that totaled the vehicle that secured the account. Her auto insurance did not cover the full amount of the loss. After her July 2022 interview with a DOD investigator, she claimed that she contacted the creditor to make payment arrangements but could not come to an agreement on an amount. Despite not coming to an agreement with the creditor, she claims that since about August 2022, she has been consistently making monthly payments on this account in the amount of \$25 to \$50. (Tr. 21-26, 47-50, 56; Answer; GE 2-4)

The delinquent personal loan in the amount of \$5,422 listed in SOR ¶ 1.b has not been resolved. Applicant opened this account to borrow money to assist her daughter financially. She fell behind on the account in March 2020 after making about five timely payments. She claimed that she attempted to make a payment arrangement with the creditor after her July 2022 security interview, but the creditor refused to work with her. The December 2022 credit report reflects a last payment date of January 2020. (Tr. 26-28, 50-53; Answer; GE 2-4)

The delinquent credit cards in the amounts of \$3,306 and \$3,267 listed in SOR ¶¶ 1.c and 1.d, respectively, have not been resolved. The December 2022 Government credit report reflects a last payment date of early spring 2020 on both accounts. Applicant claimed that she fell behind on these accounts in 2013 or 2014 because she could not afford the payments, and the creditors would not work with her. She claimed that after her July 2022 security interview, she has been making monthly payments of about \$10 to \$20 per month on these accounts, but also acknowledged that she has missed some of these monthly payments on the account in SOR ¶ 1.c. (Tr. 28-29, 31, 53-58; Answer; GE 2-4)

The delinquent credit card in the amount of \$3,191 listed in SOR ¶ 1.e has not been resolved. Applicant became delinquent on this account in about 2015 or 2016.

She claimed that since her July 2022 security interview, she has been making monthly payments of about \$10 on this account. She claimed that about two-weeks prior to the hearing, she applied for an additional credit card secured by a \$250 payment to use to make payments on the debt listed in SOR ¶ 1.e. She had not yet received the credit card, so she did not make any additional payments on this SOR debt. She claimed that she opened this new credit card to help pay off the debt in SOR ¶ 1.e and to raise her credit score. (Tr. 31-34, 58-60; Answer; GE 2-4)

After her July 2022 security interview, Applicant claimed that she contacted a debt consolidation company and made three \$110 monthly payments to it. However, she claimed the debt consolidation company was not responsive and was not providing results, so she stopped working with them after those three payments. (Tr. 29-31)

Applicant provided no documentation to corroborate her payments or her efforts to resolve her debts. She claimed that she provided some documentary evidence of debt resolution via e-mail to the DOD investigator who conducted her July 2022 security interview, but she did not provide those documents in this proceeding, and they are not part of the record. She claimed that she is now able to pay her financial obligations, but she made the same claim during her July 2022 security interview. (Tr. 17-18, 23-24, 27-28; Answer; GE 1-5)

In addition to the aforementioned causes, Applicant claimed her delinquencies were caused by unemployment, underemployment, a fire that destroyed her home in March 2021, and marriage problems. After the fire, her home was rebuilt, and she moved back into it in July 2021. In November 2023, she stopped working because of a medical condition and is no longer being paid. She believed that she may begin working again in January 2024. She claimed that she has short-term disability insurance that will pay her 60 percent of her salary, but she has yet to receive any disability payments. (Tr. 31-37, 42-45; Answer; GE 4)

Applicant earned about \$3,685 per month in take-home pay from March 2022 until November 2023. She has earned about \$67,500, annually. In August 2023, she sold her home and bought a recreational vehicle (RV) to serve as her residence. She has about \$8,000 in savings left over from the sale of her home, but she has not used that money to resolve her SOR debts because she is worried that she will lose her job if she is not awarded access to sensitive information. She also wants to save money while she is out of work for her medical condition. She claimed that her estranged husband spent some of her savings before she was able to transfer the funds from their joint checking account to an account to which he has no access. She asserted she will have between \$2,000 and \$2,500 per month in surplus once she returns to work following the aforementioned medical procedure. Beginning in March 2024, she claimed she will have about \$7,000 in a retirement account. (Tr. 35-47; GE 4)

Policies

This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive

5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), which became effective on June 8, 2017.

When evaluating an applicant's suitability for a public trust position, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be 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, administrative judges apply the guidelines 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."

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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain 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 the applicant may deliberately or inadvertently fail to safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of sensitive information.

Section 7 of EO 10865 provides that adverse decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

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

As evidenced by her longstanding financial delinquencies, Applicant has a history of being unable to pay her debts. The above listed conditions are established, thereby shifting the burden to Applicant to provide evidence in mitigation.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

It is reasonable to expect Applicant to present documentation about the resolution of specific debts, but she has not. See, e.g., ISCR Case No. 15-03363 at 2 (App. Bd. Oct. 16, 2016). As she has not provided this documentation, she has not provided sufficient evidence that she has resolved or is resolving her SOR debts. Applicant's financial delinquencies are ongoing. I cannot find that they are unlikely to recur. AG ¶ 20(a) does not apply.

Applicant's delinquencies were arguably caused by circumstances largely beyond her control. However, for AG ¶ 20(b) to apply, she must also show that she acted responsibly under the circumstances. She has not done so because she has not provided sufficient evidence of her resolution efforts. AG ¶ 20(b) does not apply. The lack of sufficient evidence of the resolution of her SOR debts also means that AG ¶ 20(d) does not apply.

Even without considering the lack of documentary corroboration, two of Applicant's SOR debts have been delinquent for at least eight years. Moreover, any payments she claimed to have made were after she was put on notice that her position of public trust was in jeopardy. An applicant who begins to resolve security concerns only after having been placed on notice that his or her access to sensitive information is in jeopardy may lack the judgment and willingness to follow rules and regulations when his or her personal interests are not threatened. See, e.g., ISCR Case No. 17-04110 at 3 (App. Bd. Sep. 26, 2019). Finally, any payments she did make on her SOR debts were *de minimis* and were insignificant in relation to the overall balances. She has not provided sufficient evidence of financial stability.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a public trust position by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

- (1) The nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

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 have incorporated my comments under Guideline F in my whole-person analysis.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for access to sensitive information. I conclude Applicant did not mitigate the financial considerations security 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:

