



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



In the matter of:	)	
	)	
	)	ADP Case No. 22-01507
	)	
Applicant for Public Trust Position	)	

**Appearances**

For Government: Brian Farrell, Esq., Department Counsel  
For Applicant: *Pro se*

11/09/2023

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**Decision**

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RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the trustworthiness concerns under Guideline F, financial considerations. Eligibility for access to sensitive information is denied.

**Statement of the Case**

On June 5, 2023, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns under Guideline F, financial considerations. The action was taken 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) effective on June 8, 2017.

Applicant answered the SOR on June 21, 2023, and elected to have her case decided on the written the record in lieu of a hearing. Department Counsel submitted the Government’s file of relevant material (FORM), and Applicant received it on August 17, 2023. She was afforded an opportunity to file objections and submit material in refutation,

extenuation, or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 2 through 6. (Item 1 is the SOR) Applicant did not provide a response to the FORM. There were no objections to any of the evidence, and Items 2 through 6 are admitted in evidence. The case was assigned to me on January 10, 2024.

### **Findings of Fact**

Applicant admitted all the allegations in the SOR. Her 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 29 years old. She earned a bachelor's degree in 2019. She is not married and has no children. She works for a federal contractor, but it is unknown when she started employment. It appears she also works part time at a restaurant. She did not disclose any periods of unemployment in her September 2022 security clearance application (SCA). (Item 3)

The SOR alleges 19 delinquent debts totaling approximately \$33,195, owed for a repossessed vehicle and various consumer and medical accounts. The debts are supported by Applicant's admissions, disclosures in her SCA and interrogatories, and a credit report from November 2022. (Items 2, 3, 4, 5)

In response to interrogatories from April 2023, Applicant acknowledged all the SOR debts. She indicated that she made payment arrangements for the debt in SOR ¶ 1.b (\$3,461). She did not provide any supporting documents of the arrangement she made or proof of any payments. (Item 4)

In response to interrogatory questions that asked Applicant to explain the circumstances that caused her accounts to become delinquent, she stated that she did not know the importance of financial stability. Her income has been an issue because she never had a job that gave her financial stability. Her new job has allowed her to save and start consolidating her debts. She said she started working with creditors to pay off her bills and her end goal is to have paid everything by 2025. She further stated that she paid one debt (it was not alleged in the SOR). She said now that she is more financially stable, she can comfortably pay her current debts and expenses. Her goal is to save enough so every two to three months she can pay off a debt. (Item 4)

Applicant did not provide any documentary evidence that she has contacted her creditors, made payment arrangements and is working with her creditors, or made payments towards any of the SOR debts.

### **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.

Section 7 of EO 10865 provides that 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 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's has numerous delinquent debts. None of the SOR debts alleged are paid or being resolved. 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 attributed her delinquent debts to underemployment and not understanding the importance of financial stability. Her underemployment was beyond her control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly. Applicant has not provided evidence of any actions she has taken to resolve and pay any of her delinquent debts. Some of her debts are less than \$60 and \$120. AG ¶ 20(b) partially applies. There is no evidence Applicant received financial counseling or of clear indications the problem is being resolved or under control. There is no evidence that she has made a good-faith effort to repay overdue creditors or otherwise resolve debts. Her debts remain unresolved and unpaid. None of the mitigating conditions 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 Guideline F in my whole-person analysis.

Applicant failed to meet her burden of persuasion under Guidelines 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 F:

AGAINST APPLICANT

Subparagraphs 1.a-1.s:                      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