



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



In the matter of:)	
)	
)	ADP Case No. 23-00515
)	
Applicant for Public Trust Position)	

Appearances

For Government: John Lynch, Esq., Department Counsel
For Applicant: *Pro se*

02/21/2024

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant did not mitigate the financial considerations trustworthiness concerns. Personal conduct trustworthiness concerns were not established. Eligibility for access to sensitive information is denied.

Statement of the Case

On March 23, 2023, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing trustworthiness concerns under Guidelines E (personal conduct) and F (financial considerations). Applicant responded to the SOR on April 25, 2023, and requested a decision based on the written record in lieu of a hearing.

The Government’s written case was submitted on October 23, 2023. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the trustworthiness concerns. Applicant received the FORM on November 9, 2023. She did not respond. The Government exhibits included in the FORM are admitted in evidence without objection.

Findings of Fact

Applicant is in her mid-forties. She is being sponsored by a defense contractor, but it is unclear if she is a prospective or a current employee. She attended college for a period without earning a degree. She has been married for more than 20 years. She has three children in their twenties. (GE 3)

Applicant had a stroke in about 2018. She was out of work for several years. She was unable to pay all her bills, and a number of debts became delinquent. (Items 3, 9)

The SOR alleges 14 delinquent debts totaling about \$42,300. The debts are listed on a December 2021 credit report, a January 2023 credit report, or both credit reports. (Items 4, 5)

SOR ¶ 1.a alleges \$12,408 owed on a defaulted auto loan, as reflected on credit reports from December 2021 and January 2023. It is unclear if the vehicle was repossessed. When she was interviewed for her background investigation in December 2021, Applicant stated that she would contact the creditor in January 2022 to arrange a payment plan to satisfy the debt within two years. There is no evidence of any payments on the account. Applicant admitted owing this debt in her response to the SOR with the added comment, “but acc[ount] is closed.” (Items 2, 4, 5, 7, 9)

Applicant admitted owing the \$8,388 defaulted state student loan alleged in SOR ¶ 1.b. The debt is listed on the December 2021 and January 2023 credit reports. There is no evidence of any payments on the loan. (Items 2, 4, 5, 7, 9)

Applicant denied owing the medical debts alleged in SOR ¶¶ 1.c (\$2,680), 1.i (\$338), and 1.j (\$166). The SOR ¶ 1.c debt is listed on both credit reports in evidence. The SOR ¶¶ 1.i and 1.j debts are listed on the January 2023 credit report. Applicant admitted owing the \$1,405 medical debt alleged in SOR ¶ 1.d. (Items 2, 4, 5, 7, 9)

Applicant denied in her SOR response that she owed the \$1,171 delinquent consumer debt alleged in SOR ¶ 1.e, stating that it was “not on [her] credit.” Applicant agreed she owed this debt when she was interviewed for her background investigation in December 2021. She stated that she would contact the creditor in January 2022 to arrange a payment plan to satisfy the debt by August 2022. There is no evidence of any payments. The debt is listed on the December 2021 and January 2023 credit reports with the comment: “Account information disputed by consumer.” (Items 2, 4, 5, 7, 9)

Applicant admitted owing the delinquent consumer debts alleged in SOR ¶¶ 1.f (\$1,016) and 1.n (\$695). There is no evidence of any payments on the debts. (Items 2, 4, 5, 7, 9)

Applicant has consistently denied owing the debts alleged in SOR ¶¶ 1.g (\$688) and 1.l (\$2,121). The SOR ¶ 1.g debt is listed on both credit reports with the comment: “Account information disputed by consumer.” The SOR ¶ 1.l debt is listed on the

December 2021 credit report with the comment: "Account information disputed by consumer." It is not listed on the January 2023 credit report. (Items 2, 4, 5, 7, 9)

SOR ¶ 1.h alleges a \$673 delinquent debt. Applicant denied owing the debt, stating that it was "not on [her] credit." The December 2021 credit report lists the debt with the comment: "Account information disputed by consumer." The January 2023 credit report lists the account with the comment: "Dispute resolved reported by grantor." Applicant agreed she owed this debt when she was interviewed for her background investigation in December 2021. She stated that she would contact the creditor in January 2022 to arrange a payment plan. There is no evidence of any payments on the debt. (Items 2, 4, 5, 7, 9)

SOR ¶ 1.k alleges a \$9,907 charged-off auto loan. The debt is listed on the December 2021 credit report with a balance of \$9,907 and four narratives: "1 - Current acct – was 60 days past due 3 times; 2 – Account charged to profit and loss; 3 – Charged off account; [and] 4 – Consumer dispute following resolution." The debt was addressed with Applicant during her background interview as a paid debt. She agreed she had the debt but could not recall when it was paid. She denied in her SOR response that she owed the debt, stating that it was "not on [her] credit." The debt is not listed on the January 2023 credit report. (Items 2, 4, 5, 7, 9)

Applicant settled the \$707 delinquent debt alleged in SOR ¶ 1.m for \$353. She paid the settlement amount on or before February 8, 2023. (Items 2, 4, 5, 7, 9)

Applicant submitted a Questionnaire for National Security Positions (SF 86) in November 2021. She answered "No" to all the financial questions under Section 26, which included the following:

In the last seven (7) years, [have] you defaulted on any type of loan? (Include financial obligations for which you were the sole debtor, as well as those for which you were a cosigner or guarantor)

In the last seven (7) years, [have] you had bills or debts turned over to a collection agency? (Include financial obligations for which you were the sole debtor, as well as those for which you were a cosigner or guarantor)

In the last seven (7) years, [have] you had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed? (Include financial obligations for which you were the sole debtor, as well as those for which you were a cosigner or guarantor)

In the last seven (7) years, [have you] been over 120 days delinquent on any debt not previously entered? (Include financial obligations for which you were the sole debtor, as well as those for which you were a cosigner or guarantor)

[Are you] currently over 120 days delinquent on any debt? (Include financial obligations for which you were the sole debtor, as well as those for which you were a cosigner or guarantor)¹

Applicant answered “No” to all the financial questions when she was interviewed for her background investigation in December 2021. She discussed her finances and delinquent debts when she was confronted with specific debts. She told the investigator that she did not report her debts on the SF 86 because she overlooked the financial section. (Item 7)

Policies

This case is adjudicated under 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 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.

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 to obtain 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 safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of sensitive information.

¹ The SOR did not allege that Applicant falsified the first and last two questions.

Analysis

Guideline F, Financial Considerations

The trustworthiness 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 trustworthiness 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.

Applicant has a history of financial problems, including multiple delinquent debts. AG ¶¶ 19(a) and 19(c) are applicable.

Conditions that could mitigate the financial considerations trustworthiness 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;
- (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;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant had a stroke in about 2018. She was out of work for several years. She was unable to pay all her bills, and a number of debts became delinquent. Those conditions were beyond her control. In order to find AG ¶ 20(b) applicable, Applicant must prove that she acted responsibly under the circumstances.

Applicant admitted owing some debts, and she denied owing others. All the debts are listed on a December 2021 credit report, a January 2023 credit report, or both credit reports. Nonetheless, because of what she has been through, I am giving Applicant the benefit of the doubt, and I am finding the medical debts (SOR ¶¶ 1.c, 1.d, 1.i, and 1.j) to be mitigated. I am also finding the disputed debts alleged in SOR ¶¶ 1.g, 1.k, and 1.l mitigated. Applicant settled the \$707 delinquent debt alleged in SOR ¶ 1.m for \$353. That debt is mitigated.

Applicant has not provided sufficient mitigation for any of the other debts. She denied owing the debts alleged in SOR ¶¶ 1.e and 1.h, stating that the debts were “not on [her] credit.” However, she agreed that she owed both debts when she was interviewed for her background investigation in December 2021. She stated that she would contact the creditors to arrange payment plans. There is no evidence of any payments toward either debt, and both debts are listed on the December 2021 and January 2023 credit reports.

When the mitigated debts are eliminated, Applicant still owes more than \$24,000 for six delinquent debts, with only a payment of \$353 made or before February 8, 2023. That one payment is insufficient for a determination that Applicant acted responsibly under the circumstances or that she made a good-faith effort to pay her debts. I am unable to find that her financial problems will be resolved within a reasonable period. Her financial issues are recent and ongoing. They continue to cast doubt on her current reliability, trustworthiness, and good judgment. None of the above mitigating conditions are applicable.

Guideline E, Personal Conduct

The trustworthiness concern for personal conduct is set out in AG ¶ 15, as follows:

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 clearance investigative or adjudicative processes.

AG ¶ 16 describes conditions that could raise a trustworthiness concern and may be disqualifying. 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.

SOR ¶ 2.b alleges that Applicant falsified the SF 86 when she failed to report her delinquent debts under the following specific questions:

In the past seven (7) years, [have] you had bills or debts turned over to a collection agency? and

In the past seven (7) years, [have] you had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed? (Include financial obligations for which you were the sole debtor, as well as those for which you were a cosigner or guarantor).

It is unclear why those specific questions were alleged when there were other questions that were more appropriate. For a finding of an intentional falsification under the first question, the Government must prove by substantial evidence that Applicant had one or more debts that were turned over to a collection agency; that she knew that she had a debt that was turned over to a collection agency; and that she intentionally failed to report that she had a debt that was turned over to a collection agency.

To find an intentional falsification under the second question, the Government must prove by substantial evidence that Applicant had one or more accounts that were suspended, charged off, or cancelled for failing to pay as agreed; that she knew that she had such an account; and that she intentionally failed to report that she had such an account.

Applicant knew she had delinquent debts when she submitted the SF 86. However, the Government did not prove that when Applicant submitted the SF 86, she knew that she had a debt that was turned over to a collection agency or that she knew that she had an account that was suspended, charged off, or cancelled for failing to pay as agreed.

There is insufficient evidence to establish that Applicant intentionally falsified the two specific questions alleged in SOR ¶ 2.a. AG ¶ 16(a) is not applicable to those questions. SOR ¶ 2.a is concluded for Applicant.

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 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.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a public trust position. I conclude Applicant did not mitigate the financial considerations trustworthiness concerns. Personal conduct trustworthiness concerns were not established.

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.b:	Against Applicant
Subparagraphs 1.c-1.d:	For Applicant
Subparagraphs 1.e-1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	Against Applicant
Subparagraphs 1.i-1.m:	For Applicant
Subparagraph 1.n:	Against Applicant
Paragraph 2, Guideline E:	For Applicant
Subparagraph 2.a:	For Applicant

Conclusion

It is not clearly consistent with national security to grant Applicant eligibility for a public trust position. Eligibility for access to sensitive information is denied.

Edward W. Loughran
Administrative Judge