



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



In the matter of:	)	
	)	
	)	ISCR Case No. 22-01837
	)	
Applicant for a Public Trust Position	)	

**Appearances**

For Government: Tovah Minster, Esq., Department Counsel  
For Applicant: *Pro se*

03/21/2024

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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 February 22, 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 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.

In an undated answer to the SOR, Applicant requested a hearing before an administrative judge. The case was assigned to me on January 9, 2024. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January 18, 2024, scheduling the hearing for February 6, 2023. I convened the hearing as scheduled. The Government offered exhibits (GE) 1 through 3. Applicant testified and offered Applicant Exhibits (AE) A through O. All exhibits were admitted into evidence without objection. The

record was held open until February 20, 2024, to allow Applicant to submit additional documents, which she did. Her post-hearing documents were marked AE P through S and admitted in evidence without objection. DOHA received the hearing transcript (Tr.) on February 16, 2024.

### **Findings of Fact**

Applicant admitted the SOR allegations in ¶¶ 1.a through 1.k. She denied SOR ¶¶ 1.l through 1.n. 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 52 years old. She never married and has two grown children, ages 24 and 30. She has worked for her present employer for about a year. Before then, she was employed by a government agency for about four years. She estimated her annual salary for 2023 was about \$34,000 and with an increase in her pay she anticipated earning \$38,000 in 2024. (Tr. 20, 25, 62-63; GE 1)

Applicant completed an associate degree in 2007. She used student loans to fund her degree. She testified that she was going to college on and off from 2009 to 2012, full-time and part-time during different periods and continued to fund her studies through student loans. She did not take any college course after 2012. She testified that she has never made a payment towards her student loans. (SOR ¶¶ 1.a, \$65,088 and 1.b, \$33,531) The day before her hearing, she enrolled in college to complete her bachelor's degree. Applicant stated that she needs to do an internship to complete her degree. She is waiting to find out if her employer will fund some of the expenses and if she is eligible for financial assistance from the college and her employer. (Tr. 21-22, 27-35)

Applicant testified that her student loans were in a default status until sometime in 2022. She received a notice from her student loan creditor asking her to contact them about getting her loans out of default. She contacted them and agreed to pay \$7 a month for 52 months. She made two payments, and the creditor returned the payments because her loan was transferred to a new creditor. She contacted the new creditor and inquired about a loan forgiveness program. She was advised that to qualify for this program her loans would have to be brought out of default. She was told she needed to first apply to the Federal Fresh Start Program administered through the Federal Student Loan Program. Once she completed that program and her loans were no longer in a default status, she could attempt to inquire about her eligibility for a federal forgiveness program. Applicant applied to the Fresh Start Program for federal loans on January 31, 2024. She is waiting for her application to be accepted. Her student loans were in default prior to the pandemic and then were in forbearance from March 2020 to October 2023 under the CARES Act due to the COVID pandemic. Applicant testified that once her student loans are accepted in the Fresh Start Program and she completes that program, she hopes to start a repayment plan. She stated she could afford to pay \$150 a month because she is now in a better financial position. (Tr. 35-65; GE 1, 2, 3; AE A)

The debt in SOR ¶ 1.c (\$712) is for a loan Applicant received through a computer application that would allow her to build her credit. She failed to make the required payments. She disclosed the debt on her April 2022 Questionnaire for National Security Positions (SF 86) and said she was trying to pay it off. During her June 2022 interview by a government investigator, she said she was going to contact the creditor by the fall of 2022 to obtain the status of the debt, but she could not predict when it would be paid in full. She testified that she contacted the creditor and they agreed to settle the debt. She attempted to make a payment of \$35.62 the last week of January 2024, but it was not properly submitted. Post-hearing, she contacted the creditor, and her account was reopened, and she said she made the payment. She anticipated making another payment in March 2024. She was waiting to receive the settlement agreement. (Tr. 65-67; GE 1, 2, 3; AE B, Q, S)

Applicant explained that the debt in SOR ¶ 1.d (\$465) has been delinquent for two years. She said the balance owed is \$790. She contacted the creditor and reached a settlement agreement to pay \$474, which must be paid in full by March 1, 2024. She said she sent a payment of \$25 to the creditor. She anticipates paying the settlement amount when she receives her refund from her federal income tax return. She anticipates filing her return soon. She is waiting for a tax document to complete it. Post-hearing, she provided a statement saying that her payment was sent to the wrong account. She contacted the correct creditor and was going to send a payment of \$75 on payday. (Tr. 74-78; AE D, Q)

During her background interview, Applicant told the government investigator that she received a letter from the creditor in SOR ¶ 1.e in June 2022. She was going to contact the creditor and make payment arrangements but could not predict when the debt would be resolved. Applicant testified that she had not taken any action on the delinquent account in SOR ¶ 1.e (\$465) until she contacted the creditor a week before her hearing. She testified she defaulted on the account in 2022. She accepted a settlement offer to make a \$100 payment the week of her hearing and then another payment in February 2024, and a final payment in March 2024. At the time of her hearing, she had not made a payment, but anticipated making one. No proof was provided that she made the initial payment. (Tr. 78-79; GE 3; AE D)

Applicant testified that the delinquent account in SOR ¶ 1.f (\$288) was paid when her state withheld her tax refund and applied it to the debt. She did not provide documents to substantiate the debt is resolved. (Tr. 80-82; AE E)

The debts in SOR ¶¶ 1.g through 1.k are medical debts. Her insurance company paid the debts. These debts are resolved. The debt in SOR ¶ 1.l (\$1,445) was paid in September 2022. The debt in SOR ¶ 1.m was paid in 2022. (Tr. 83-86; AE F, G, H, R)

The debt in SOR ¶ 1.n (\$7,477) is for a repossessed vehicle. Applicant purchased it in 2019 but gave it to her daughter to drive. Although the loan was in Applicant's name, her daughter was to make the car payments. Her daughter got behind in payments and did not tell Applicant. The car was repossessed in May 2023. Applicant reached out to

the creditor but was unable to pay the amount they offered. Sometime later in 2023, the car was sold, and Applicant received a letter advising her she was required to pay the deficiency balance. She contacted the creditor two weeks before her hearing and agreed on a settlement amount of \$2,245 to be paid in installments of \$100 a month until the balance is satisfied. The first payment was due three weeks from the date of hearing. (Tr. 86-93; AE I)

The SOR debts are supported by Applicant's admissions, disclosures, testimony, and a May 2022 credit report. (GE 1, 2, 3)

Applicant accepted full responsibility for her delinquent debts. She attributed them to "hardship." She had some medical issues in 2022 and other periods of time that she had to take off work. If she had paid sick leave then she used it, but sometimes she did not and had to take sick leave without pay. Her daughter also had an injury. Applicant had to take off work and take her to doctor's appointments. Her daughter was living in another state attending college. She stated she is now in a better financial position to pay her bills. She intends to pay her delinquent debts. She anticipates receiving a \$3,000 federal income tax refund and using it to make some of the payments noted above. (Tr. 71-74, 94-96)

Applicant took a one-day financial management class in late 2023, which required her to prepare a budget and review how she spends money. It also showed her how to save money. She also participated in a follow-up overview of her finances after the initial class. Applicant is also participating in a class that helps educate her about finances and budgeting. The class meets twice a month and she has attended for several months. She contributes to a retirement plan through her employer but took a withdrawal from it in October 2023 and paid the penalty tax. She used the money to pay her property taxes. She also took a loan from it in April 2023 that will be repaid by April 2024. She does not have a saving account and has a minimal amount in her checking account. Her daughter lives with her and pays some of the household expenses such as for food, household supplies, and the water bill. Applicant intends to return to college in the summer and believes she is back on track financially and will be able to pay her debts. (Tr. 98-108)

Applicant provided character letters that describe her as an exemplary employee with a great work ethic. She is viewed as dedicated, dependable, professional and a person of integrity. She is passionate about helping others and has had a profound impact on many lives. (AE J, K, L, M, P)

## **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 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 defaulted student loans, 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 has delinquent student loans that she failed to make any payments on for ten years before they were placed in forbearance due to the pandemic. She recently made some inquiries about getting them out of default status and has applied for a Fresh Start Program. She attributes her financial problems to hardship, which is interpreted to mean that her medical issues caused her to sometimes receive a reduced income. This was beyond her control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. She did not. She ignored her student loans and

only began to address them when the creditor contacted her about getting them out of a default status.

Applicant began contacting some of creditors in the SOR shortly before her hearing. She made one payment on the debt in SOR ¶ 1.c; she made an agreement to pay a settlement amount for the debt SOR ¶ 1.d by March 1, 2024; she agreed to make three future payments on the debt in SOR ¶ 1.e; and to make \$100 payments on the repossessed vehicle debt in SOR ¶ 1.n until the balance is satisfied. Her debts are recent and ongoing. Her actions to resolve these debts occurred almost a year after receiving the SOR. I cannot find she acted responsibly or that future financial issues are unlikely to recur. Her conduct casts doubt on her reliability, trustworthiness, and good judgment. AG ¶¶ 20(a) and 20(b) have minimal application.

Applicant resolved the medical debts in SOR ¶¶ 1.g through 1.k through her insurance. She also resolved the debts in SOR ¶¶ 1.l and 1.m. AG ¶ 20(d) applies to these debts.

Applicant is participating in financial counseling, and it appears she wants to learn more about financial management. She is given some credit under AG ¶ 20(c), but it is insufficient at this time to mitigate her history of financial irresponsibility. She promises to pay her debts but has a poor financial track record of making regular payments on her delinquent debts and addressing them responsibly. There are not clear indications at this time that her finances are under control. AG ¶ 20(c) has some application, but it is insufficient to mitigate the financial security concerns.

### **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 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 F:	FOR APPLICANT
Subparagraphs 1.a-1.f:	Against Applicant
Subparagraphs 1.g-1.m:	For Applicant
Subparagraph 1.n:	Against 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.

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Carol G. Ricciardello  
Administrative Judge