



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



In the matter of:	)	
	)	
	)	ADP Case No. 21-02638
	)	
Applicant for Public Trust Position	)	

**Appearances**

For Government: Rhett Petcher, Esq., Department Counsel  
For Applicant: *Pro se*

08/02/2023

**Decision**

HYAMS, Ross D., Administrative Judge:

Applicant did not provide sufficient information to mitigate the financial considerations trustworthiness concerns arising from her delinquent debts. Eligibility for access to sensitive information is denied.

**Statement of the Case**

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on October 28, 2020. On February 18, 2022, the Department of Defense (DoD) issued a Statement of Reasons (SOR) to Applicant detailing trustworthiness concerns under Guideline F, financial considerations. Applicant submitted an answer to the SOR on March 16, 2022, and requested a hearing before an administrative judge. The case was assigned to me on February 2, 2023.

The hearing convened as scheduled on June 7, 2023. Department Counsel submitted Government’s Exhibits (GE) 1-8, which were admitted in evidence without objection. Applicant submitted Applicant’s Exhibits (AE) A-K, which were admitted in evidence, without objection. After the hearing, I held the record open for two weeks to provide Applicant with the opportunity to submit additional documentary evidence. She timely submitted documents that I marked as AE L-P and admitted in evidence, without objection.

## Findings of Fact

In her Answer, Applicant admitted SOR allegations ¶¶ 1.a-1.d, and denied allegations ¶¶ 1.e-1.j, with short explanations. Her admissions are incorporated into the findings of fact. Based on my review of the pleadings, evidence submitted, and testimony, I make the following additional findings of fact:

Applicant is 48 years old. She married in 1995, and divorced her first husband in 2006. She remarried in 2007, and divorced her second husband in 2012. She remarried in 2017, and divorced her third husband in 2022. She has four children; one is still a minor. She earned an associate degree in 2005, a bachelor's degree in 2012, a master's degree in 2014, and a doctorate in 2016. She has worked for her current employer, as a pediatric nurse case manager, since early 2021. (Tr. 23-26, 80; GE 1)

Applicant claimed that her financial problems largely resulted from her third marriage. She stated that at the end of the marriage there was "financial abuse". She reported meeting her third husband in about 2013. They moved in together in 2015, and married in 2017. She claimed that after they married, he started having a drinking problem. She stated that in about 2019, when her paycheck was deposited into their joint account, he would not let her have unfettered access to the funds in that account. She claimed that he would ensure that his bills and priorities were paid, but did not do the same for her obligations. She reported that this went on until about early 2021, when she moved out and changed her paycheck deposit information. She stated that she did not change her paycheck deposit information earlier because she feared that he would get confrontational and possibly physical with her. (Tr. 26-51)

Applicant reported that she was out of work on three occasions in 2020. She had surgery in March 2020, and October 2020, and was on sick leave for three weeks and four weeks, respectively. She was sick with COVID-19 in June 2020, and was out of work for six weeks. She reported that she was covered by her sick-leave balance and short-term disability, which provided 60% of her pay, for all but three weeks, during each of these absences from work. (Tr. 26-51)

The SOR alleges 10 delinquent debts totaling about \$250,000, most of which is unpaid student loans. The status of the debts are as follows:

SOR ¶ 1.a are student loans in collection for \$235,587. After Applicant obtained her doctorate degree in 2016, her loan repayment was due to start in 2017. She claimed that in 2017, she set up a repayment plan, but only made a couple of payments before she stopped making them. She has made no student loan payments since that time. She reported that her payments had been deferred under the COVID-19 national deferment until June 30, 2023. She testified that she had no plan for repayment after the deferment ended. Post-hearing, she submitted an undated document showing that she explored repayment options online. The sample plan that she provided showed her paying \$32 monthly for all her loans. She did not provide sufficient documentation showing that she was eligible for this plan, or that she entered into any repayment plan. She did not provide

documentation showing a record of any payments toward her student loans. (Tr. 29-30, 51-60; GE 2, 6, 7, 8; AE A, N)

SOR ¶ 1.b is an unpaid judgment from 2017 for \$6,225. This debt resulted from a voluntary vehicle repossession. Applicant provided documentation showing that the judgement was satisfied in May 2023. However, she claimed that she resolved this debt earlier, and that she had contacted the creditor to establish a payment plan of an amount between \$150-\$300 monthly, but she did not provide sufficient documentation to corroborate her claim. (Tr. 30-31, 60-64; Answer; GE 2, 3, 6, 7; AE B, M)

SOR ¶ 1.c is an unpaid judgment from May 2021 for \$2,783. This debt originated from a delinquent credit-card. Applicant provided documentation showing that she made payment arrangements with the creditor in November 2022. She claimed that she made some \$79 monthly payments. However, she did not provide sufficient documentation showing that she made any payments towards this judgment. (Tr. 31-32, 64-68; Answer; GE 2, 4, 6, 7; AE C)

SOR ¶ 1.d is an unpaid judgment from October 2021 for \$1,672. This debt originated from another delinquent credit-card. Applicant claimed that she set up payment arrangements with the creditor in November 2022, and made some \$55 monthly payments. However, she did not provide sufficient documentation showing that she made any payments towards this judgment. She emailed the creditor on May 31, 2023, asking for information on the status of the account. (Tr. 31-32, 64-68; Answer; GE 2, 5, 6, 7; AE D)

SOR ¶¶ 1.e, 1.h, and 1.i are debts in collection totaling \$1,685. Applicant claimed that she did not recognize any of these alleged debts. These debts appear on her 2020 and 2021 credit reports. On May 31, 2023, she sent the creditors an email requesting verification of the debts in SOR ¶¶ 1.e and 1.h. She reported that she unsuccessfully attempted to contact the creditor for SOR ¶ 1.i. SOR ¶¶ 1.h and 1.i. alleged debts with the same creditor. She did not provide any documentation showing that she was not responsible for these debts, she disputed these debts, or she resolved any of these debts. (Tr. 32-33, 68-70; GE 2, 6, 7; AE E, H, I)

SOR ¶¶ 1.f, 1.g, and 1.j are charged-off debts totaling \$2,162. Applicant claimed that she did not recognize any of these alleged debts. These debts appear on her 2020 and 2021 credit reports. On May 31, 2023, she sent the creditors an email requesting verification of the debts in SOR ¶¶ 1.f and 1.i. She reported that she unsuccessfully attempted to contact the creditor for the SOR ¶ 1.g because the call wait time was in excess of an hour. She did not provide any documentation showing that she was not responsible for these debts, she disputed these debts, or she resolved any of these debts. (Tr. 32-33, 68-70; GE 2, 6, 7; AE F, G, I)

Applicant reported that she makes about \$88,000 annually. Her current monthly budget shows that she has a monthly net remainder of about \$622. The repayment of her student loans was not factored into this budget. She testified that her monthly net remainder is spent on unspecified expenses. She submitted one professional character

reference. She submitted information showing that she was applying for a second job to provide her with additional income. She submitted documentation from an attorney showing that she was considering filing a Chapter 7 Bankruptcy. (Tr. 37, 71-78; AE K, L, O, P)

## **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 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 a public trust position.

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 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.

## 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.

This concern is broader than the possibility that an individual might knowingly compromise sensitive information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting sensitive information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding sensitive information. ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

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.

The SOR allegations are established by the credit reports and Applicant's admissions. AG ¶¶ 19(a) and 19(c) apply.

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;

(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 has failed to show that she took any substantive action on her student loans after they became due in 2017. She failed to adequately explain how she was going to start resolving these loans once the COVID payment pause is lifted. The \$32 monthly sample repayment plan she submitted would take 613 years to address only the principal on these loans. This is not a good-faith attempt to resolve this debt. She did not resolve SOR ¶ 1.b until right before the hearing, and she did not take action to verify the debts she claimed not to recognize until about a week before the hearing. These late actions are not mitigating. She failed to provide sufficient evidence showing that she has made payments on her other debts. I cannot find that she has made good-faith efforts to resolve her finances.

AG ¶ 20(a) does not apply. Applicant failed to provide sufficient documentation showing that any of the debts (other than SOR ¶ 1.b) are resolved, or that any became delinquent under such circumstances that are unlikely to recur. Her failure to pay her delinquent debts is both long-term and recent. Although she has recently paid one of the SOR debts, the rest are ongoing and unresolved. Her delinquent debts continue to cast doubt on her current reliability, trustworthiness, and good judgment.

AG ¶ 20(b) does not apply. While the end of Applicant's third marriage and her reduced salary during her sick leave in 2020 impacted her ability to repay her debts, she did not provide sufficient evidence showing that her debts became delinquent largely due to circumstances beyond her control or that she acted responsibly under the circumstances. The judgments in SOR ¶¶ 1.b-1.d occurred outside the timeframe of the financial abuse and the periods of reduced salary. She did not provide sufficient evidence showing that she has acted responsibly in regard to her finances since at least 2017.

AG ¶ 20(d) does not apply. Applicant only resolved one of the alleged debts, and she only did so within a month prior to the hearing. She did not provide sufficient evidence showing that she had made a good-faith effort to resolve her other debts or that she had a track record of payments.

AG ¶ 20(e) does not apply. Applicant did not provide sufficient evidence establishing a reasonable basis to dispute the legitimacy of any of the SOR debts.

### **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 considered her character letter. 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 for a public trust position. She did not provide sufficient evidence to mitigate the trustworthiness concerns under Guideline F, financial considerations. Eligibility for access to sensitive information is denied. This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for eligibility for a public trust position in the future.

### **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.j:	Against Applicant

### **Conclusion**

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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Ross D. Hyams  
Administrative Judge