



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



In the matter of:)	
)	
)	ADP Case No. 22-00180
)	
Applicant for Public Trust Position)	

Appearances

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

02/23/2024

Decision

HYAMS, Ross D., Administrative Judge:

Applicant provided sufficient information to mitigate the financial considerations trustworthiness concerns. Eligibility for access to sensitive information is granted.

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on June 6, 2021. On March 10, 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 April 14, 2022, and requested a hearing before an administrative judge. On June 9, 2022, an amendment was made to the SOR adding one allegation, and Applicant provided an answer on July 6, 2022. The case was assigned to me on February 2, 2023.

The hearing convened as scheduled on September 13, 2023. Department Counsel submitted Government’s Exhibits (GE) 1-6, which were admitted in evidence without objection. Applicant submitted Applicant’s Exhibits (AE) A-D, which were admitted in evidence. Department counsel objected to AE B because it was an incomplete record. I overruled his objection because Applicant provided the complete record in AE D. 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 E-J and admitted in evidence without objection.

Findings of Fact

In her Answer, Applicant admitted SOR allegations ¶¶ 1.c-1.h, 1.k, 1.l, and denied allegations ¶¶ 1.a, 1.b, 1.i and 1.j. 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 47 years old. She married in 1995 and divorced her first husband in 2001. She remarried in 2004 and divorced her second husband in 2016. She has three children; one who is adopted and is a minor. She served in the U.S Navy from 2004-2016 and received an honorable discharge. She has been working for a defense contractor since 2018 as an aircraft mechanic. (Tr. 18-21; GE 1, 3)

Applicant's financial problems started in 2012. Her children were living with her ex-husband, and she found out that they were being physically abused by him and his wife. She was an E-4 in the Navy, on a tight budget, and had to hire an attorney to obtain custody. The Navy did not provide her with legal representation. She took out several loans to pay her attorney and repaid them through allotments from her military paycheck. (Tr. 22-28; AE G, H)

Applicant incurred other expenses after getting custody of her children. She had to rent a larger home and had new household expenses. After repaying the initial loans she took for legal fees, she took new loans (¶¶ 1.e and 1.g) to help her cover new household expenses. She repaid these loans by allotment from her military paycheck, until she left the Navy in 2016. She was unemployed from about April 2016-January 2018 and was unable to make payments on these loans. (Tr. 22-35)

Since 2018, Applicant has had five surgeries which have resulted in about \$15,000 of out-of-pocket expenses, and had reduced disability pay for about a year, lowering her income by 40%. In about 2018, she had to hire another attorney to adopt her granddaughter, who was being neglected. She spent about \$20,000 on these legal expenses, which she paid from her monthly income. (Tr. 22-35)

Despite these unexpected expenses, Applicant has tried to make payments to creditors and resolve smaller debts, while planning to address the larger debts when her financial circumstances stabilized. She has been unable to make payments or arrangements at times of reduced income, such as while on disability after surgery. She has been able to pay her regular monthly expenses despite the strains on her finances. She lives with and supports her adult daughter, minor granddaughter, and her minor adopted daughter. (Tr. 22-35)

When starting her job in 2018, Applicant made about \$72,000 yearly. She now makes about \$93,000 yearly. She follows a budget, and it shows that she is able to maintain her monthly expenses and make debt payments, including at least four of the debts alleged. She has about \$3,000 left over monthly. She stated that she does not owe any money to the government for taxes, but she did not timely file her 2022 state income taxes, which was not alleged in the SOR. She provided two character letters stating that

she is a reliable and trustworthy person, a knowledgeable and skilled employee, and fit to hold a position of trust. (Tr. 22-35; 58-65; AE D, F, I, J)

The SOR alleges 12 delinquent debts totaling about \$52,000. The status of the debts are as follows:

SOR ¶ 1.a is a medical debt placed for collection for \$304. Applicant stated that she did not know the origin of the debt. She made a \$50 payment and was scheduled to start a monthly payment plan on October 1, 2023. (Tr. 38; GE 5, 6)

SOR ¶ 1.b is a medical debt placed for collection for \$2,496. Applicant stated that she did not know the origin of the debt. She contacted the creditor after receiving the SOR and arranged to make monthly payments starting on September 21, 2023. (Tr. 46-47; AE D; GE 4, 5, 6)

SOR ¶ 1.c is a loan account placed for collection for \$4,187. Applicant stated that this debt originated from her expenses for her custody battle for her children, and it became delinquent when she was unemployed after leaving the Navy. She stated her financial circumstances have not allowed her to resolve or arrange a payment plan yet for this debt. (Tr. 47-49; GE 4, 5, 6)

SOR ¶ 1.d is an insurance account placed for collection for \$241. Applicant paid this account in May 2022. (Tr. 49-50; AE A, C, E; GE 6)

SOR ¶ 1.e is a loan account that has been charged off for \$18,545. Applicant stated that this debt originated from her custody battle for her children, and it became delinquent when she was unemployed after leaving the Navy. She claimed the original debt was much smaller, and the current amount is largely late fees. She contacted the creditor after receiving the SOR. She had set up a payment plan for \$50 monthly but was unable to continue after going on short term disability after surgery. She has budgeted to make \$100 monthly payments on this debt. (Tr. 42-44, 50-53; AE B; GE 4, 5, 6)

SOR ¶ 1.f is an auto loan account placed for collection for \$13,279. Applicant stated that this debt was for a voluntary repossession of a car that she was unable to afford while unemployed after leaving the military. She contacted the creditor after receiving the SOR and had set up a payment plan for \$50 monthly but was unable to continue making payments after going on short term disability after surgery. She provided documentation showing a recent arrangement to make ten payments of \$665. (Tr. 42-44, 53-56; AE E; GE 4, 5, 6)

SOR ¶ 1.g is a past-due loan account for \$1,999. Applicant stated that she contacted the creditor after receiving the SOR and has made some \$125 monthly payments but was unable to continue making payments after going on short term disability after surgery. (Tr. 42-46; GE 3, 4, 5, 6)

SOR ¶ 1.h is a loan account placed for collection for \$8,243. Applicant stated that she has not contacted the creditor because she was unable to locate it. (Tr. 57-58; GE 1, 3, 4)

SOR ¶ 1.i is a medical debt placed for collection for \$2,067. Applicant contacted the creditor and was told the account was beyond the statute of limitations for debt collections, but she arranged \$100 monthly voluntary payments starting October 1, 2023. (Tr. 58; GE 4, 5)

SOR ¶ 1.j is a medical account placed for collection for \$321. Applicant stated that she did not know the origin of the debt. She made a \$50 payment and was scheduled to start a monthly payment plan on October 1, 2023. (Tr. 38)

SOR ¶ 1.k is a cellular phone account placed for collection for \$224. Applicant paid this debt on July 29, 2023. (Tr.; AE B; GE 4, 5)

SOR ¶ 1.l alleges that in 2016 Applicant took cash advances from her government credit card for personal use while serving in the Navy. She stated that in 2016, while on terminal leave from the Navy, her teenage son's child was born. Her son was unable to provide support for the baby. She used her government travel credit card to pay her electric bill and a few other emergency personal expenses, until she received her paycheck. Taking out funds for these types of expenses was not permitted on government travel cards. She stated that she oversaw her unit's travel credit card program and knew that other service members in her unit had taken out funds for these kinds of expenses. She stated that as long as the credit card payments were made on time, it was not a disciplinary issue. She paid her bill on time but was counseled by her commander while on terminal leave. She asserted that she understood that she made a mistake and was remorseful for this misuse. (Tr. 35-38; GE 4)

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

Applicant's financial problems result from circumstances beyond her control, including two different legal battles to obtain custody of her two biological children, and later her granddaughter. Her financial difficulties also resulted from unemployment after leaving the military, reduced pay while on disability, and out-of-pocket expenses after five surgeries between 2018-2023. SOR ¶¶ 1.d and 1.k are resolved. She has contacted creditors to make payment arrangements for SOR ¶¶ 1.a, 1.b, 1.e, 1.f, 1.g, 1.i, and 1.j. While not all of Applicant's debts are resolved, she has acted responsibly under the circumstances and has a plan to address her financial delinquencies. She has taken substantial steps to repay her debts, even though at times her ability to do so was interrupted by medical expenses and reduced income due to disability.

The alleged misuse of her government credit occurred seven years ago, was a one-time circumstance, and is unlikely to recur. She admitted her mistake, explained the exigent circumstances about why she misused it, and expressed remorse. This incident does not cast doubt on her current reliability, trustworthiness, and good judgment.

Applicant incurred significant financial injury to ensure the safety and wellbeing of her two children and obtain custody. Six years later she did the same for her granddaughter by adopting her. She continues to support three persons (her adopted granddaughter, her adult daughter, and granddaughter) in her home, and maintains her regular everyday finances and household. Looking at these circumstances, she has not been financially irresponsible, rather her behavior has been reliable, trustworthy and she has exhibited good judgment. AG ¶¶ 20(a), 20(b), and 20(d) 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 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 military service and character letters. I have incorporated my comments under Guideline F in my whole-person analysis.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility for a public trust position. She mitigated the trustworthiness concerns under Guideline F, financial considerations. Eligibility for access to sensitive information is granted.

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.l:	For Applicant

Conclusion

It is clearly consistent with the national interest to grant Applicant eligibility for a public trust position. Eligibility for access to sensitive information is granted.

Ross D. Hyams
Administrative Judge