



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



In the matter of: )  
)  
) ADP Case No. 22-02292  
)  
Applicant for Public Trust Position )

**Appearances**

For Government: Nicole A. Smith, Esq., Department Counsel  
For Applicant: *Pro se*

04/03/2024

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**Decision**

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HALE, Charles C., Administrative Judge:

Applicant refuted the personal conduct trustworthiness concerns, but she did not mitigate the financial considerations trustworthiness concerns. Eligibility for access to sensitive information is denied.

**Statement of the Case**

On February 6, 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 February 7, 2023, and requested a hearing before an administrative judge.

The case was assigned to an administrative judge on September 8, 2023. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on November 2, 2023, scheduling the hearing for November 30, 2023. The case was reassigned to me on November 15, 2023. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 2, consisting of Applicant’s security clearance application (SCA) and an

August 2022 credit report, and Applicant Exhibits (AE) A through R were admitted in evidence without objection. Applicant testified. I left the record open, and she timely submitted AE S through AE FF, which were admitted without objection. DOHA received the hearing transcript (Tr.) on December 11, 2023.

### **Findings of Fact**

Applicant is a 35-year-old employee of a defense contractor. She has been with her company as an hourly employee since August 2022. She served honorably in the U.S. Army for a brief period in 2011, when she was medically discharged. She is single and has no children. (GE 1; Tr. at 21, 50-51.) She attended college between 2009 and 2016 but did not obtain a degree. (GE 1; Tr. at 25.) During her time in school, she held various jobs in the service industry.

When Applicant received the SOR in February 2023, she stated she became aware what the specific debts were that the Government was concerned about. (Tr. at 30.) She admitted in her Answer to the following: 13 delinquent student loans totaling about \$56,000 (GE 2 at 2-6) SOR ¶¶ 1.a-1.m; a delinquent medical debt (SOR ¶ 1.n) totaling about \$1,181 that had been placed in collection, which she testified had been resolved and she provided a letter dated December 4, 2023, stating her payment obligations had been fulfilled. (GE 2 at 6; AE EE; Tr. at 33.); a delinquent wireless service account (SOR ¶ 1.o) for \$721 that had been placed in collection, which she testified had been resolved and she provided a letter dated December 1, 2023, stating her payment obligations had been fulfilled (GE 2 at 7; AE DD; Tr. at 33.); and a delinquent automobile insurance account (SOR ¶ 1.p) for \$226 that had been placed in collection, which she testified had been resolved and she provided an email dated March 31, 2023, stating her payment obligations had been fulfilled with her March 31, 2023 payment. (GE 2 at 7; AE N; Tr. at 36.) She denied a delinquent automobile loan for \$8,689 (SOR ¶ 1.q) and offered a letter from the creditor dated February 7, 2023, AE K, stating the debt had been paid in full on June 30, 2020. (GE 2 at 8.)

Applicant attributed her financial problems to the costs associated with changing jobs and moving frequently. (GE 1; Tr. at 29.) When she stopped attending school, she was aware her loans would come due in six months. (Tr. at 25.) She did not begin payments but stated she made an inquiry with the Department of Education (DoEd). She did not follow-up. (Tr. at 25-26.) Between 2015 and September of 2023 she did not have any communications with her loan providers until she submitted an application in October 2023 for the Fresh Start program. She acknowledged receiving notification letters over the years about the delinquent status of her student loans but never started making payments because she did not have sufficient income. (Tr. at 27.) She was accepted into the Fresh Start program in November 2023. (Tr. at 27; AE C; AE FF.) The first delinquent student loan was assigned to collection in August 2012 (SOR ¶ 1.f) and the last student loans to be assigned to collection were in May 2015 (SOR ¶¶ 1.g and 1.h). All of the student loans have a date of last activity (DLA) of December 2017. (GE 2.) She testified that she was aware of her student loans but only made an occasional inquiry over the years until she received the SOR. (Tr. at 25.) She testified she did not seek forbearance on her student loans and about 30 days before the hearing she submitted an application

to enroll her student loans in the Fresh Start program. (Tr. at 27, 28, 56-57; AE C; AE FF.)

I have taken administrative notice that in March 2020, as a result of the COVID-19 pandemic, the President directed the DoEd to provide the following temporary relief on DoEd-owned federal student loans: suspension of loan payments, stopped collections on defaulted loans, and a 0% interest rate. On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) provided for the above relief measures through September 30, 2020. See Federal Student Aid (FSA) website, ISCR Case No. 20-02787 at 3 n.1 (App. Bd. Mar. 2022) This student loan debt relief was extended several times by subsequent Executive Orders. See <https://studentaid.gov/announcements-events/covid-19>. Congress barred any further extensions and DoEd announced that student loan repayments would resume in October 2023. See <https://studentaid.gov/debt-relief-announcement>.

Applicant maintains a budget on her phone. She makes about \$3,000 from work and receives \$731 monthly for her Department of Veterans Affairs (VA) disability rating. She received her VA rating in early 2012. She has no money in savings or in a retirement account. She estimated she has about \$300 left over after paying her bills. (Tr. at 21-22, 52.) She submitted her bills template showing \$3,222 in bills and \$3,508 income. (AE CC.)

Applicant denied intentionally falsifying the SCA. She completed her SCA online. (Tr. at 41.) When she submitted her SCA, she answered “no” to all questions asking whether she had any financial delinquencies. She stated in her Answer and testimony she “accidentally” triggered the submission. She did not inform anyone immediately afterwards that she had not completed all of the SCA when she submitted it. (Tr. at 43, 62-63.) She testified when the investigator contacted her, she told him immediately of the issue, “As soon as he got on the phone, I let him know, sir, there was an error on my behalf as far as the application e-QIP.” (Tr. at 43.) She gave the investigator the information about her finances, and they went through them during the interview. (Tr. at 45.) She testified credibly that she made a prompt and good-faith effort to correct the omission by informing the investigator during her interview, which she had not seen prior to her testimony, and the Government did not offer her interview to rebut her testimony. (Tr. at 43-46, 62-64.)

Applicant offered two character letters attesting to her exceptional performance, attention to detail, and positive influence amongst other excellent personal qualities. (AE A; AE B.)

### **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.

## **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's federal student loans were assigned for collection starting in 2017. A security clearance represents an obligation to the Federal Government for the protection of national secrets. Accordingly, failure to honor other obligations to the Government has a direct bearing on an applicant's reliability, trustworthiness, and ability to protect classified information. See ISCR Case No. 14-03358 at 2 (App. Bd. Oct. 9, 2015). While Applicant's student loans may no longer be considered delinquent since March 2020 because of the COVID-19 deferment, that action does not excuse previously delinquent student loans such as these. See ISCR Case No. 20-01527 at 2 (App. Bd. June 7, 2021). The above listed conditions are made applicable to SOR ¶¶ 1.a-1.m, thereby shifting the burden to Applicant to provide evidence in mitigation. She has a history of financial problems with other miscellaneous delinquent debts, as well. All of her admitted debts were only recently addressed after years of inaction. The evidence is sufficient to raise the above disqualifying conditions.

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 attributed her financial problems to the costs of moving and changing jobs over the years. She acknowledged letting her student loans go because she did not have sufficient income to make payments. She stated that she lost contact with several creditors.

Applicant did not initiate her payment actions on her nonstudent loan debts (SOR ¶¶ 1.n, 1.o and 1.p) that she admitted until after the SOR was issued. She did not avail herself of the Fresh Start program until after the SOR was issued. Her actions that led to her student loan delinquencies and the insufficiency of the evidence that she acted responsibly under the circumstances are determinative. AG ¶ 20(a) is not established for SOR ¶¶ 1.a- 1.p. She submitted evidence explaining the automobile loan (SOR ¶ 1.q) had been paid off in 2020. AG ¶ 20(a) is established for SOR ¶ 1.q.

AG ¶¶ 20(b) and 20(d) are not established. Applicant enrolled in the Fresh Start program about 30 days before the hearing. After the SOR was issued, she initiated her

payment actions on her nonstudent loan debts that she admitted. Her student loans became delinquent in 2017, well before the Fresh Start program went into effect. She offered no evidence of any difficulty in working with her creditors. Her actions and statements regarding her handling of the debts alleged prior to the SOR show that she has not acted responsibly under the circumstances. “A person who begins to address concerns only after having been placed on notice that his or her access is in jeopardy may lack the willingness to follow rules and regulations when his or her personal interests are not at stake.” ADP Case No. 15-03696 (App. Bd. Apr. 5, 2019, citing ISCR Case No. 17-01256 at 5 (App. Bd. Aug. 3, 2018)).

I am unable to find that she acted responsibly under the circumstances or that she made a good-faith effort to pay her student loans or the other debts until the SOR was issued. Her financial issues are recent and ongoing. They continue to cast doubt on her current reliability, trustworthiness, and good judgment. Her recent actions are insufficient to mitigate the concerns about Applicant’s student loans and other debts. None of the other 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.

There is insufficient evidence that Applicant intentionally falsified the specific questions alleged in the SOR. AG ¶ 16(a) is not applicable. SOR ¶¶ 2.a and 2.b are 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 F and E in my whole-person analysis. I also considered Applicant's honorable military service and character letters.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a public trust position. This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future. With more effort towards establishment of a track record of paying or resolving her debts, she may well be able to demonstrate persuasive evidence of her eligibility for a public trust position with access to sensitive information. I conclude Applicant did not mitigate the financial considerations trustworthiness concerns.

### **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.p:	Against Applicant
Subparagraph 1.q	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a-2.b:	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.

Charles C. Hale  
Administrative Judge