



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



In the matter of: )  
)  
) ADP Case No. 22-01916  
)  
Applicant for Public Trust Position )

**Appearances**

For Government: Cassie Ford, Esq., Department Counsel  
For Applicant: *Pro se*

06/11/2024

**Decision**

BENSON, Pamela C., Administrative Judge:

Applicant provided insufficient evidence that she acted responsibly or otherwise resolved her debts that became delinquent in 2018. She has not filed any income tax returns since 2020, and she has not set up a payment plan with a state or federal tax authority to pay back taxes. Financial considerations trustworthiness concerns are not mitigated. Eligibility for access to sensitive information is denied.

**Statement of the Case**

On September 29, 2022, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudication Services (CAS) issued a statement of reasons (SOR) to Applicant under DOD Directive 5220.6, Defense Industrial Personnel Security Clearance Review Program (Directive), January 2, 1992; and Security Executive Agent Directive 4, establishing in Appendix A the National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position (AGs), effective June 8, 2017.

Applicant provided an undated response to the SOR, and she requested a hearing. On December 13, 2023, the case was assigned to me. On February 12, 2024, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for February 27, 2024. The hearing was continued after Applicant was unable to

access her camera on her work laptop. On March 14, 2024, DOHA issued a second notice of hearing, setting the hearing for April 3, 2024. Applicant's hearing was held as scheduled.

During the hearing, Department Counsel offered four exhibits; Applicant did not offer any exhibits; there were no objections; and all Government exhibits were admitted into evidence. I held the record open until April 17, 2024, in the event either party wanted to supplement the record with additional documentation. Applicant provided a financial statement after her hearing that I marked as Applicant Exhibit (AE) A and admitted without objection. On April 10, 2024, DOHA received the hearing transcript. The record closed on April 18, 2024.

### **Findings of Fact**

In Applicant's SOR response, she admitted her failure to file federal and state income tax returns for tax years 2020 and 2021 (SOR ¶¶ 1.a and 1.b), and she admitted 39 delinquent debts totaling approximately \$19,554. (SOR ¶¶ 1.c through 1.oo) Her admissions are accepted as findings of fact.

Applicant is 47 years old. She was first married from September 1995 to May 2004. She married a second time in December 2014. She has no children, but during the hearing she stated that her sister and her two children were temporarily residing with her and her husband. Since March 2022, she has worked for a federal contractor as a customer service representative. Her employment requires that she be granted trustworthiness eligibility for her public trust position. (GE 1; Tr. 15-19)

### **Financial Considerations**

The SOR alleges that Applicant failed to file her 2020 and 2021 federal income tax returns (SOR ¶ 1.a), and she failed to file her State X income tax returns for the same years (SOR ¶ 1.b). At the hearing, Applicant admitted that she has not filed any of her federal or State X income tax returns since 2020 because the tax software requires that she list her income that was reported the previous tax year. She was unable to obtain her income from 2019, and this in turn caused a domino effect which has prevented her from preparing any federal or state income tax returns since tax year 2020. She has tried calling the Internal Revenue Service to discuss her problem, but she has been placed on hold for hours at a time without connecting with a tax representative. She is aware that she owes \$900 for tax year 2020, but she is unable to pay this amount currently. She hopes to resolve her unfiled tax returns and pay any outstanding taxes at some point in the future. (Tr. 10, 20-24; GE 1)

Applicant attributes her financial problems after she lost her position as a certified nursing assistant in September 2018, a position she has worked for the past 35 years. She suffered a serious back injury in September 2018 and stated that her employer forced her to quit her job. Afterwards, she looked for employment as a customer service representative because she needed to sit to be able to work. Since then, she and her husband had sporadic employments followed by periods of unemployment, until her

current employment in March 2022. She referred to her husband as a “job hopper.” The accumulation of medical debt is related to her recurring medical issues beginning in 2020, for which she cannot afford to pay. This past year she was unable to sit for any length of time and discovered she had kidney stones. She was required to have surgery and was placed on short-term disability. At the end of November 2023, she returned to work and has been fully engaged with saving her house from going into foreclosure. She is now playing a game of “catch-up” with her outstanding creditors. Applicant intends to deal with her tax issues next, and once that is finished, she will start resolving her delinquent debts. (Tr. 10, 24-25, 27)

The record establishes the status of Applicant’s accounts as follows:

Applicant has 12 accounts with a collection agency, totaling approximately \$9,240. Applicant admitted these debts and stated that most of these delinquent accounts were for unpaid medical services. She has not contacted the creditors to arrange a payment plan, settlement, or otherwise taken action to resolve these debts. These delinquent accounts remain outstanding. (SOR ¶¶ 1.c, 1.d, 1.f, 1.g, 1.h, 1.k, 1.l, 1.y, 1.z, 1.ee, 1.hh, and 1.ll; Tr. 31-32; GE 2 and 3)

Applicant has 17 accounts with a second collection agency, totaling approximately \$4,939. She admitted these debts and stated that most of these delinquent accounts were for unpaid medical services. She has not contacted the creditors to arrange a payment plan, settlement, or otherwise taken action to resolve these debts. These delinquent accounts remain outstanding. (SOR ¶¶ 1.e, 1.i, 1.j, 1.n, 1.p, 1.q, 1.t, 1.u, 1.v, 1.w, 1.x, 1.aa, 1.bb, 1.cc, 1.dd, 1.ii, and 1.jj.; Tr. 31-33; GE 2 and 3)

Applicant has three accounts with a third collection agency, totaling \$618. The status of these accounts is as stated above, and they remain outstanding. (SOR ¶¶ 1.o, 1.s, and 1.ff; Tr. 31-33; GE 2 and 3)

Applicant has three accounts with a fourth collection agency, totaling \$270. These accounts remain outstanding. (SOR ¶¶ 1.gg, 1.kk, and 1.mm; Tr. 31-33; GE 2 and 3)

Applicant is indebted to a fifth collection agency in the amount of \$334, for a delinquent account. This debt remains outstanding. (SOR ¶ 1.m.) (Tr. 31-33; GE 2 and 3)

Applicant is indebted to a sixth collection agency in the amount of \$259, for a delinquent account. This debt remains outstanding. (SOR ¶ 1.r; 7Tr. 31-32, 34; GE 2 and 3)

SOR ¶ 1.nn alleges that Applicant is indebted to a seventh collection agency, for a delinquent account in the amount of \$61. This account remains outstanding. (Tr. 31-32, 34)

SOR ¶ 1.oo alleges that Applicant is indebted for a delinquent mortgage account in the amount of \$3,833. She stated that she once was \$50,000 behind in her mortgage

payments, but she has recently brought her mortgage account to a current status. She agreed to provide documentation while the record was held open, but she did not submit any supporting documents concerning her mortgage. (Tr. 34-35; GE 2 and 3)

During the hearing Applicant testified that her monthly net income is about \$2,400, and her husband's monthly net income was about \$2,000. She stated that her husband recently started a new job and she was uncertain about the amount of his new monthly income. She agreed to complete a Personal Financial Statement (PFS) and return it while the record was held open. On April 17, 2024, Applicant submitted a PFS that showed her monthly net income was \$1,351, but she did not provide an explanation why it was over \$1,000 less than what she reported during the hearing. She also noted on the PFS her spouse's monthly net income was \$0 ("lost job again.") Her listed monthly expenses totaled \$2,330, and she was left with a negative \$979 remainder at the end of the month. She listed a negative \$2,069, but she had included her mortgage payment of \$1,090 twice in the PFS. (Tr. 36-37; AE A)

### **Policies**

A memorandum from the Under Secretary of Defense dated November 19, 2004, treats public trust positions as sensitive positions, and it entitles applicants to the procedural protections in the Directive before any final unfavorable determination may be made. The standard set out in the adjudicative guidelines for assignment to sensitive duties is that the person's loyalty, reliability, and trustworthiness are such that assigning the person to sensitive duties is clearly consistent with the interests of national security.

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.

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 an evaluation of the whole person. The administrative judge's overarching adjudicative goal is a fair, impartial and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The protection of the national security is the paramount consideration. Under AG ¶ 2(b), "[a]ny doubt concerning personnel being considered for access to [sensitive] information will be resolved in favor of national security." The Government must present substantial evidence to establish controverted facts alleged in the SOR. Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. An applicant has the ultimate burden of demonstrating that it is clearly consistent with national security to grant or continue eligibility for access to sensitive information.

## Analysis

### Financial Considerations

AG ¶ 18 articulates the trustworthiness concern for financial problems:

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. . . . An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

Conditions that may raise financial considerations trustworthiness concerns are provided under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

The record establishes the disqualifying conditions in AG ¶¶ 19(a), 19(c), and 19(f), requiring additional inquiry about the possible applicability of mitigating conditions.

The following financial considerations mitigating conditions under AG ¶ 20 are potentially applicable in this case:

- (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 attributed her financial delinquencies to her and her husband's periods of unemployment, and her history of medical issues. All of these circumstances created a financial hardship, and they were beyond her control. Notwithstanding these events that impacted her finances, Applicant must demonstrate that she acted responsibly under the circumstances.

Applicant has experienced financial problems since 2018. She has not made any payments or initiated communication with any of her delinquent creditors. She has not filed any income tax returns since 2020, and she has not set up a payment plan with a state or federal tax authority to pay back taxes. She has not demonstrated that she acted responsibly to address her financial delinquencies. There are clear indications that her debts are not being resolved and that her finances are not under control. Under all the circumstances, Applicant failed to establish that financial considerations trustworthiness concerns are mitigated.

### **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), "[t]he 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. My comments under Guideline F are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline but some warrant additional comment.

A person who seeks access to sensitive information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Applicant did not provide any evidence of payments, payment plans, or other actions to resolve the 39 delinquent debts alleged in the SOR. She has been unable to resolve her unfiled and unpaid taxes since tax year 2020. Her actions show a lack of financial responsibility and good judgment and raise unmitigated questions about her reliability, trustworthiness, and ability to protect sensitive information.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of true reform and rehabilitation necessary to be eligible for a position of trust. The determination of an individual's eligibility and suitability for a trustworthiness position is not a once in a lifetime occurrence, but is based on applying the factors, both disqualifying and mitigating, to the evidence presented. Under her current circumstances, a position of trust is not warranted. In the future, she may well demonstrate persuasive evidence of her trustworthiness.

I have carefully applied the law, as set forth in the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude that financial consideration concerns are not mitigated.

### **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 through 1.oo:	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 or continue Applicant's eligibility for a public trust position. Eligibility for access to sensitive information is denied.

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Pamela C. Benson  
Administrative Judge