



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



In the matter of:

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Applicant for Public Trust Position

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ADP Case No. 23-01052

**Appearances**

For Government: Adrienne Driskill, Esq., Department Counsel  
For Applicant: *Pro se*

07/16/2024

**Decision**

WESLEY, ROGER C. Administrative Judge

Based upon a review of the case file, pleadings, exhibits, and testimony, Applicant did not mitigate financial consideration concerns. Eligibility to hold a public trust position is denied.

**Statement of the Case**

On June 12, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued a statement of reasons (SOR) to Applicant detailing reasons why under the financial considerations guideline the DCSA CAS could not make the preliminary affirmative determination of eligibility for a public trust position, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. The action was taken under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960); Department of Defense (DoD) Directive 5220.6 *Defense Industrial Personnel Security Clearance Review Program*, (January 2, 1992) (Directive); 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 responded to the SOR on July 17, 2023, and requested that her case be resolved on the written record without a hearing. Applicant received the FORM on October 31, 2023, and did not respond to the FORM. This case was assigned to me on February 6, 2024. The Government's case consisted of nine exhibits and were admitted without objection as Items 1-9. Applicant did not supplement the record.

### **Summary of Pleadings**

Under Guideline F, Applicant allegedly (a) accumulated 12 delinquent debts exceeding \$16,000 and (b) filed for Chapter 7 bankruptcy relief in January 2012, claiming approximately \$62,704 in outstanding liabilities, and received a bankruptcy discharge in May 2012. Allegedly, Applicant's delinquent debts have not been resolved and remain outstanding.

In Applicant's response to the SOR, she denied all but one of the alleged debts (SOR ¶ 1.i) and admitted her 2012 Chapter 7 bankruptcy discharge with explanations and clarifications. She claimed she is working with a debt-resolution firm to resolve most of her debt delinquencies and is currently making payments on her SOR ¶ 1.i debt.

### **Findings of Fact**

Applicant is a 52-year-old employee of a defense contractor who seeks a security clearance. Allegations covered in the SOR and admitted by Applicant are incorporated and adopted as relevant and material findings. Additional findings follow.

#### **Background**

Applicant married in June 2013 and divorced in November 2020. (Item 3) She has one child from this marriage. She earned a high school diploma in May 1989. She reported no military service. (Item 3) Since July 1995, she has been employed as a customer service representative for her current employer. (Item 3) Previously, she worked for other employers in various support positions. She reported brief unemployment in 2022. (Items 3-4) Applicant has never held a public trust position. (Item 3)

#### **Applicant's finances**

Struggling to cover her personal debts while providing financial support to multiple ill family members without health insurance, Applicant fell behind with her debts and filed for Chapter 7 bankruptcy relief in 2012. In her bankruptcy petition she scheduled secured claims \$5,678, unsecured priority claims of \$13,753, and unsecured non-priority claims of \$43,273. (Item 9) She received a bankruptcy discharge in May 2012. (Item 9)

Applicant continued to accumulate debt delinquencies following her bankruptcy discharge (Items 3-8) Between 2018 and 2022, she accumulated delinquent accounts exceeding \$16,000. (Items 6-8) Her reported delinquent debts are comprised of the

following: SOR ¶¶ 1.a (a delinquent auto loan of \$6,672); 1.b (a delinquent consumer debt of \$2,086); 1.c (a delinquent credit card debt of \$2,034); 1.d (a delinquent credit card debt of \$1,155); 1.e (a delinquent consumer account of \$1,39); 1.f (a delinquent consumer account of \$1,018); 1.g (a delinquent consumer debt of \$770); 1.h (a delinquent credit card debt of \$764); 1.i (a delinquent credit card debt of \$659); 1.j (a delinquent credit card debt of \$505); 1.k (a delinquent medical debt of \$326); and 1.l (a delinquent consumer debt of \$108).

Applicant attributed her Chapter 7 bankruptcy petition and ensuing debt delinquencies to financial problems associated with caring for multiple ill family members who did not have health insurance. (Item 4) When first interviewed by an investigator of the Office of Personnel Management (OPM), She told the investigator that she recognized some of the debts she was confronted with but did not recognize others. When interviewed by the OPM investigator a second time to discuss her efforts to reach out to her creditors, she told the investigator she retained a debt-resolution firm to dispute some of the accounts that did not belong to her. (Item 4)

To date, Applicant has not provided any evidence to corroborate her disputed claims. Nor has she provided any evidence addressing the listed SOR debts she acknowledges as her own with payments and payment plans. While she has repeatedly claimed she enrolled in a debt-resolution program, she has provided no documentary proof of any steps taken to validate her disputes with any of the SOR-listed creditors. Nor is there any documentary proof in the record of her claimed retainer of a debt-resolution firm, or whether she has made timely payments in accordance with any signed agreement.

### **Policies**

By virtue of the jurisprudential principles recognized by the U.S. Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988), “no one has a ‘right’ to a security clearance [public trust position].” As Commander in Chief, “the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. Eligibility for access to classified information [privacy information] may only be granted “upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. 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. An 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 AGs list guidelines to be considered by judges in the decision-making process covering DOHA cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information [privacy information]. These guidelines include conditions that could raise a security concern and may be disqualifying (disqualifying conditions), if any, and all of the conditions that could mitigate security concerns, if any. These guidelines must be considered before deciding whether or not a security clearance [eligibility to hold a public trust position] should be granted, continued, or denied. Although, the guidelines do not require judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision.

In addition to the relevant AGs, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in ¶ 2(a) of the AGs, which are intended to assist the judges in reaching a fair and impartial, commonsense decision based on a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk.

When evaluating an applicant's conduct, the relevant guidelines are to be considered together with the following ¶ 2(d) factors: (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 of the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Viewing the issues raised and evidence as a whole, the following individual guidelines are pertinent herein:

### **Financial Considerations**

*The Concern:* Failure or inability 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 or 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 acts or otherwise questionable acts to generate funds. . . . AG ¶ 18.

## **Burdens of Proof**

The Government reposes a high degree of trust and confidence in persons with access to classified information [and implicitly privacy information]. This relationship transcends normal duty hours and endures throughout off-duty hours.

Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information [and implicitly privacy information]. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information (and implicitly misuse of privacy information). Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. See also Exec. Or. 12968 (Aug. 2, 1995), § 3.1.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access privacy information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. 518, at 531 (1988). “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s trustworthiness suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his [or her] security clearance” and implicitly his or her trustworthiness eligibility. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations [and implicitly trustworthiness determinations] should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

## **Analysis**

Trustworthiness concerns are raised over Applicant’s accumulation of delinquent debts that raise trust, reliability, and judgment concerns about her current and future ability to manage her finances safely and responsibly. These concerns are addressed below.

### **Jurisdictional issues**

Holding a public trust position involves the exercise of important fiducial responsibilities, among which is the expectancy of consistent trust and candor in

protecting and guarding personally identifiable information (PII). DoD Manual 5200.02, which incorporated and canceled DoD Regulation 5200.2-R, covers both critical-sensitive and non-critical sensitive security positions for civilian personnel. See 5200.02, ¶ 4.1a(3)(c)

Definitions for critical-sensitive and non-critical sensitive positions provided in 5200.02, ¶ 4.1a(3)(c) contain descriptions similar to those used to define ADP I and II positions under DoD Regulation 5200.2-R. (32 C.F.R. § 154.13 and Part 154, App. J) ADP positions are broken down as follows in C.F.R. § 154.13 and Part 154, App. J): ADP I (critical-sensitive positions covering the direction, design, and planning of computer systems) and ADP II (non-critical-sensitive positions covering the design, operation, and maintenance of computer systems). Considered together, the ADP I and II positions covered in DoD Regulation 5200.2-R refine and explain the same critical-sensitive positions covered in DoD Manual 5200.02, ¶ 4.1a(3)(c) and are reconcilable as included positions in 5200.02.

So, while ADP trustworthiness positions are not expressly identified in DoD Manual 5200.02, they are implicitly covered as non-critical sensitive positions that require “access to automated systems that contain active duty, guard, or personally identifiable information or information pertaining to Service members that is otherwise protected from disclosure by DoD 5400.11-R . . .” DoD 5200.02, ¶ 4.1a(3)(c) See DoD Directive 5220.6, ¶¶ D5(d) and D8. By virtue of the implied retention of ADP definitions in DoD Manual 5200.02, ADP cases continue to be covered by the process afforded by DoD 5220.6.

## **Financial concerns**

Applicant’s accumulated delinquent debts warrant the application of two of the disqualifying conditions (DC) of the financial consideration guidelines. DC ¶¶ 19(a), inability to satisfy debts” and 19(c), “a history of not meeting financial obligations”; apply to Applicant’s situation.

Applicant’s admitted debt delinquencies require no independent proof to substantiate them. See Directive 5220.6 at E3.1.1.14; *McCormick on Evidence* § 262 (6<sup>th</sup> ed. 2006). Her admitted debt delinquencies are fully documented and create judgment issues over the management of her finances. See ISCR Case No. 03-01059 (App. Bd. Sept. 24, 2004).

Financial stability in a person cleared to protect privacy information is required precisely to inspire trust and confidence in the holder of a security clearance that entitles the person to access and protect privacy information. While the principal concern of a public trust position holder is the holder’s demonstrated difficulties is vulnerability to coercion and influence, judgment and trust concerns are implicit in cases involving delinquent debts.

Historically, the timing of addressing and resolving debt delinquencies are critical to an assessment of an applicant’s trustworthiness, reliability, and good judgment in

following rules and guidelines necessary for those seeking eligibility to hold a public trust position. See ISCR Case No. 14-06808 at 3 (App. Bd. Nov. 23, 2016); ISCR Case No. 14-a public trust position 01894 at 5 (App. Bd. Aug. 18, 2015); ISCR Case No. 14-00221 at 2-5 (App. Bd. June 29, 2016).

Without any documented evidence of Applicant's resolving her debt delinquencies with payoffs, payment plans, and reasonable disputes, or by good cause demonstrated for why she has not made more progress in resolving her debts, none of the potentially available mitigating conditions are available to Applicant. In the past, the Appeal Board has consistently imposed evidentiary burdens on applicants to provide documentation corroborating actions taken to resolve financial problems, whether the issues relate to back taxes or other debts and accounts. See ISCR Case No. 19-02593 at 4-5 (App. Bd. Oct. 18, 2021); ISCR Case No. 19-01599 at 3 (App. Bd. Jan. 20, 2020).

Mitigating condition ¶ 20(e) of the financial consideration guidelines cannot be met by a bare assertion of disputed debt. Documented proof is required to substantiate a reasonable basis of the dispute or actions taken to resolve the same. See ISCR Case No. 19-03757 at 3 (App. Bd. Aug. 18, 2021); ISCR Case No. 06058 at 5 (App. Bd. Sept. 2021).

Applicant's expressed commitments (both in her SOR response and PSI) to address her still outstanding accounts with promised payments, while encouraging, represent no more than promises to resolve her still outstanding debts and are not viable substitutes for a track record of paying debts in a timely manner and otherwise acting in a responsible way. See ISCR Case No. 17-04110 at 4 (App. Bd. Sept. 26, 2019)

### **Whole-person assessment**

Whole-person assessment of Applicant's trustworthiness eligibility requires consideration of whether her history of accumulated delinquent accounts is fully compatible with minimum standards for holding a public trust position. While Applicant is entitled to credit for her work in the defense health industry and for the devotion she has shown for her multiple ill family members, her efforts are not enough at this time to overcome her repeated failures or inability to address her debts in a timely way. Overall trustworthiness, reliability, and good judgment have not been established.

Based on a consideration of all of the facts and circumstances considered in this case, it is too soon to make safe predictions that Applicant will be able to undertake reasoned, good-faith efforts to mitigate the Government's financial concerns within the foreseeable future. More time is needed for her to establish the requisite levels of stability with her finances to establish her overall eligibility for holding a public trust position.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, supra, Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context

of the whole person. I conclude financial considerations public trust position concerns are not mitigated. Eligibility to hold a public trust position is denied.

### **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:

Guideline F (FINANCIAL CONSIDERATIONS): AGAINST APPLICANT

Subparagraphs 1.a-1.m:

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 controlled privacy information is denied.

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Roger C. Wesley  
Administrative Judge