



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



In the matter of: )  
)  
) ADP Case No. 23-01100  
)  
Applicant for Public Trust Position )

**Appearances**

For Government: John B. Renehan, Esq., Department Counsel  
For Applicant: *Pro se*

08/22/2024

**Decision**

BENSON, Pamela C., Administrative Judge:

Applicant provided insufficient evidence that she acted responsibly for debts that became delinquent between 2020 and 2022. She has not set up a new payment plan with a federal tax authority to pay back taxes, and there is insufficient evidence to show that she has taken steps to contact her creditors or otherwise resolve her delinquent accounts. Financial considerations trustworthiness concerns are not mitigated. Eligibility for access to sensitive information is denied.

**Statement of the Case**

On October 24, 2023, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudication Services (CAS) issued a statement of reasons (SOR), citing trustworthiness concerns under Guideline F (financial considerations), 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.

In March 2024, Applicant provided a response to the SOR, and she requested a hearing. She did not provide any supporting documentation with her SOR response. On

May 8, 2024, the case was assigned to me. On May 21, 2024, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for June 6, 2024. The hearing was continued after Applicant was unable to access her camera on her work laptop. On June 10, 2024, DOHA issued a second notice of hearing, setting the hearing for July 2, 2024. Applicant's hearing was held as scheduled.

During the hearing, Department Counsel offered seven 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 July 16, 2024, in the event either party wanted to supplement the record with additional documentation. On July 16, 2024, Applicant sent an email stating that a creditor would need a couple of weeks to obtain her records from archives, and I granted her request for additional time. The record remained open until August 1, 2024. On August 2, 2024, Applicant submitted an email stating that she had tendered her resignation on July 29, 2024, and August 23, 2024, would be her last day of employment with the federal contractor. Her supervisor provided an email verifying Applicant's resignation. Applicant did not submit any documents. A court transcript was received on June 13, 2024, for the June 6, 2024 hearing that was continued, and a second transcript (Tr.) was received on July 10, 2024, for the July 6, 2024 hearing.

### **Findings of Fact**

In Applicant's SOR response, she admitted SOR ¶¶ 1.a, 1.d, and 1.f, and she denied the remaining ten delinquent debts. (SOR ¶¶ 1.b, 1.c, 1.e, and 1.g through 1.m.) Her admissions are accepted as findings of fact. The credit reports in the record also support the 13 financial allegations in the SOR totaling approximately \$21,000. (GE 5, 6, and 7; SOR response)

Applicant is 63 years old. She was previously married and divorced three times. She currently lives alone and has three adult children. From 2014 until October 2021, she was employed as a ride-share driver. She was also employed as an insurance agent from March 2021 to March 2022. Since March 2022, she has worked for a federal contractor as an inbound call representative. She was also simultaneously employed as a travel agent until December 2022 when she voluntarily resigned her position, which accounted for 40% of her income. In June 2024, she resumed her occupation as a ride-share driver. Her employment with a federal contractor requires that she be granted trustworthiness eligibility for a public trust position. (GE 1; Tr. 23-33)

### **Financial Considerations**

Applicant attributed her delinquent debts due to her illness, multiple surgeries, and other health issues that occurred in approximately the 2020-to-2022 time period. This resulted in her inability to work for a period of time and caused her to accrue significant medical bills. (GE 2)

SOR ¶ 1.a alleges that Applicant is indebted to the federal government for delinquent 2020 taxes in the amount of \$1,200. She admitted this allegation in her SOR response and listed "payment plan in place." During the hearing, she admitted that she

has not been paying her 2020 tax debt after making one or two payments, and she needed to call the Internal Revenue Service (IRS) to set-up and extend her payment plan. She also admitted that she owes delinquent federal taxes for tax years 2021, 2022, and 2023, after she filed her tax returns. She is aware that she owes delinquent federal taxes, but at this time she is unable to make payments. (Tr. 34-37; GE 1; SOR response)

SOR ¶¶ 1.b through 1.e, and 1.h through 1.i allege that Applicant is indebted for nine delinquent medical accounts totaling \$12,202. She could not recall during the hearing if she previously paid some of the medical accounts but stated that she would contact these creditors while the record was held open to determine the current status of the medical bills. Applicant did not provide any supporting documentation while the record was held open, and these delinquent medical debts are not resolved. (Tr. 38-48, 52-54; SOR response)

SOR ¶ 1.f alleges that Applicant is indebted to a collection agency for a delinquent bank credit card account in the amount of \$500. Applicant admitted this debt in her SOR response, and she stated that she has no plan in place to pay this account. This delinquent debt remains unresolved. (Tr. 49-50; SOR response)

SOR ¶ 1.g alleges that Applicant is indebted to a credit union for a closed checking account with a deficit balance of \$675. She testified that the credit union has asked her to appear for a handwriting analysis. She has been unable to complete this request since the credit union is located in another state. She plans to visit the credit union in September 2024. Applicant did not provide supporting documentation and this delinquent debt remains unresolved. (Tr. 50-52; SOR response)

SOR ¶ 1.m alleges that Applicant is indebted to a creditor for a delinquent car loan in the amount of \$6,290. She stated the car was purchased in about 2018, and the vehicle was deemed to be a "lemon" due to multiple transmission problems. The creditor told her to return the car, and she would be held harmless for the balance of the car loan. However, during her May 2022 background interview, Applicant provided a different background story about the car being totaled after her friend driving the car was involved in an accident. During the hearing Applicant was unsure which car was attributed to this SOR allegation since she had purchased three cars from this creditor. She would research the matter and provide documentation while the record was held open. Applicant did not provide supporting documentation, and this delinquent debt remains unresolved. (Tr. 54-61; GE 2; SOR response)

Applicant testified at the hearing that her current financial situation is not improving. She recently took out a hardship loan from her retirement account, and her current paychecks are reduced until the hardship loan is repaid. She essentially lives paycheck to paycheck, and she considers her present financial standing as "bad." She does believe at some point in the future her financial situation will improve. (Tr. 61-62, 64)

## **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;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

After the Government presents evidence raising a trustworthiness concern under Guideline F, the burden then shifts to the applicant to establish mitigation. Directive ¶ E3.1.15.

Applicant attributed her financial delinquencies to her illness, multiple surgeries, and other health issues that occurred in approximately the 2020-to-2022 time period. This resulted in her inability to work for a period of time and caused her to accrue significant bills. All of these circumstances were beyond her control. Notwithstanding these events

that impacted her finances, Applicant must demonstrate that she acted responsibly under the circumstances.

None of the mitigating conditions apply. Applicant has experienced financial problems since 2020. Since March 2022, she has been employed full-time with a federal contractor. There is no evidence that she has made any payments or initiated communication with any of her delinquent creditors to establish payment plans. She had a payment plan established with the IRS for her delinquent 2020 federal taxes, but she has not made consistent payments in accordance with her payment plan. There is no current payment plan established. She testified that her current financial standing is not good, as she lives from paycheck to paycheck. She has not demonstrated that she acted responsibly to address her financial delinquencies. There are not clear indications that her finances are under control. Under all the circumstances, Applicant has not met her burden of presenting evidence of extenuation or mitigation to overcome the financial considerations trustworthiness concerns.

### **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 13 delinquent debts alleged in the SOR. She has been unable to resolve her unpaid 2020 federal taxes. 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 trustworthiness 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.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 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