



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



In the matter of:	)	
	)	
	)	ADP Case No. 23-00498
	)	
Applicant for Public Trust Position	)	

**Appearances**

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

09/30/2024

**Decision**

PRICE, Eric C., Administrative Judge:

Applicant mitigated the financial considerations security concerns. Eligibility for assignment to a position of public trust is granted.

**Statement of the Case**

On April 4, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) (formerly Department of Defense Consolidated Adjudications Facility) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations). The DCSA CAS acted under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4 (SEAD 4), *National Security Adjudicative Guidelines* (December 10, 2016), for all adjudicative decisions on or after June 8, 2017.

Applicant responded to the SOR (Answer) on April 24, 2023, and requested a hearing before an administrative judge. The case was assigned to me on January 23, 2024. On April 11, 2024, the Defense Office of Hearings and Appeals (DOHA) issued a

notice scheduling the hearing via video teleconference for May 2, 2024. I convened the hearing as scheduled.

Department Counsel offered Government Exhibits (GE) 1 through 4. Applicant testified and offered Applicant's Exhibits (AE) A through C. The record was held open until May 24, 2024, to permit Applicant to submit additional documents. She timely submitted AE D through I. GE 1 through GE 4, and AE A through AE I were admitted in evidence, without objection. DOHA received the hearing transcript (Tr.) on May 13, 2024.

### **Findings of Fact**

The SOR alleges 18 delinquent debts totaling about \$33,000. In her Answer to the SOR, Applicant admitted all the allegations with explanations. Her admissions are incorporated into my findings of fact.

Applicant is a 59-year-old claims processor employed by a federal contractor since October 2022. She worked in various administrative positions for five employers from October 2008 to October 2022, except when unemployed from August to October 2016. She earned an associate degree in 1991 and some additional credit hours. She has not been married and has no children. (GE 1; Tr. 46-51)

Applicant attributes her financial problems to home repair costs, unemployment in 2016, underemployment from 2016 to September 2022, unexpected medical and insurance expenses, and a medical issue which limits her employability. In 2014 she purchased a home in State A and used credit cards to pay for needed repairs and to purchase appliances. After the warehouse where she had worked from October 2008 to August 2016 closed, she could no longer afford to pay her mortgage resulting in foreclosure. In October 2016, she moved to State B to look for work and to be closer to family. The only job she could find paid about \$10 an hour, which was about \$8 less per hour than her previous job. She left after several months for a better paying position and has changed jobs several times since for better pay or benefits. She is committed to resolving her delinquent debt when she has the resources to do so. (Answer; GE 1, GE 4; Tr. 15-16, 24-33, 46-51, 81-82; AE H)

The evidence concerning the specific SOR allegations is summarized below.

**SOR ¶ 1.a: credit card in collection for \$12,679.** Applicant admitted the allegation, disclosed this delinquent account in her 2022 SCA and discussed it during a background interview. (Answer; GE 1 at 51, GE 3 at 5) A January 2023 credit report shows this account with last activity in February 2017, a balance of \$12,679, and "Profit and Loss Write off." (GE 2 at 2) She used this card to fix her home and was first delinquent after being laid off in August 2016. She received an IRS Form 1099-C dated December 31, 2023, showing the debt had been cancelled and that the debt plus \$1,614 in interest were to be treated as income. She revised her federal income tax return and was waiting to hear from the IRS if a payment plan was needed. (GE 3 at 5; Tr. 25-35, 51-61; AE D at 1, AE E at 1) This debt has been cancelled.

**SOR ¶¶ 1.b-1.e: credit cards in collection for \$2,810, \$2,479, \$2,381, and \$1,823.** Applicant admitted these allegations and disclosed these debts in her April 2022 SCA and background interview. (Answer; GE 1 at 41-45, GE 3 at 5-6) Credit reports from January 2023 and April 2024 show the account alleged in SOR ¶ 1.b as in collection or charged off for \$2,810, and a January 2023 credit report shows the accounts alleged in SOR ¶¶ 1.c-1.e in collection for the amounts alleged. (GE 2 at 2-3, GE 4 at 6) She used these credit cards to pay for home repairs, had not received collection notices, made no efforts to resolve these debts, had hoped to work out payment plans when she could afford to make payments or to obtain a debt consolidation loan, and expected at least one of the debts to be cancelled. (Tr. 25-36, 53-56; GE 3 at 6) An April 2024 credit report does not list the debts alleged in SOR ¶¶ 1.c-1.e. (GE 4) These debts are unresolved.

**SOR ¶ 1.f: auto loan in collection for \$4,069.** Applicant admitted the allegation and disclosed this debt in her April 2022 SCA and background interview. (Answer; GE 1 at 44-45, GE 3 at 5-6) Credit reports from January 2023 and April 2024 show this auto loan account was opened or assigned for collection in March 2022, and with balances of \$4,069 and \$0.00, respectively. (GE 2 at 2, GE 4 at 6) Applicant testified the loan was for a 2017 vehicle she voluntarily returned in about July 2020 because she could no longer afford the payments. She discussed a settlement with the creditor in 2020 but could not afford the requested payment and in April 2024 the creditor offered to settle the account. (Tr. 37-38, 57-58; AE E at 4-5) She submitted a settlement offer dated April 30, 2024, with an annotation indicating the debt was resolved on May 7, 2024. (AE E at 4-5) This debt is resolved.

**SOR ¶ 1.g: credit account in collection for \$1,623.** Applicant admitted the allegation and disclosed this debt in her April 2022 SCA and background interview. (Answer; GE 1 at 49-50, GE 3 at 6) Credit reports from January 2023 and April 2024 show this account as opened or assigned for collection in August 2021, and with balances of \$1,623 and \$0.00, respectively. (GE 2 at 3, GE 4 at 4) She testified the creditor offered to settle the debt in April 2024. (Tr. 38, 58-60) She submitted a settlement offer dated April 29, 2024, with an annotation indicating the account was settled with a payment of \$324 on May 10, 2024. (AE E at 6-7) This debt is resolved.

**SOR ¶ 1.h: credit account in collection for \$551.** Applicant admitted the allegation and disclosed this debt in her April 2022 SCA and background interview. (Answer; GE 1 at 48-49, GE 3 at 6) A January 2023 credit report shows this account as opened or assigned for collection in July 2021, and with a balance of \$551. (GE 2 at 3) Applicant testified she had not resolved the debt or negotiated with the creditor prior to the hearing. (Tr. 38-39, 60-61) After the hearing, she agreed to resolve this debt, and the account balance was \$0.00, as of May 8, 2024. (AE E at 2-3) This debt is resolved.

**SOR ¶¶ 1.i-1.o: medical accounts in collection for \$991, \$153, \$135, \$106, \$79, \$76, and \$65.** Applicant admitted the allegations. (Answer) She disclosed delinquent medical accounts in her 2022 SCA and background interview for orthopedic care in 2019 and an unexpected surgery in December 2020, and stated she had requested the bills be submitted to her secondary insurer but had not received a response. (GE 1 at 47-48, 50,

GE 3 at 5) A January 2023 credit report shows these medical accounts as assigned for collection in August 2020 and January 2021. (GE 2 at 3-5) Applicant said she had not received any correspondence regarding these accounts, believed her insurance did not cover them, and had not communicated with the creditors. She focused on raising her credit score to improve her chances of obtaining a debt consolidation loan with a reasonable interest rate, had raised her credit score to about 600, and would try to get a debt consolidation loan. (Answer; Tr. 39, 61-62; GE 3 at 6) These debts are unresolved.

**SOR ¶¶ 1.p-1.r: owed delinquent federal income taxes of \$1,411, \$231, and \$1,396 for Tax Year (TY) 2016, TY 2017, and TY 2020.** Applicant admitted she owed the delinquent federal income taxes. (Answer) She disclosed she filed for extensions to file her TY 2016 and TY 2017 federal income tax returns but forgot to file them. She filed the returns in April 2022, and failed to pay overdue taxes prior to submitting her April 2022 SCA. (GE 1 at 38-40, GE 3 at 4, 17, 19) In response to Government interrogatories, she disclosed she owed overdue federal taxes in the amounts later alleged in the SOR and provided her tax account transcripts. (GE 3 at 4, 10-11, 17-27) She entered an installment agreement with the IRS in March 2023, submitted evidence of regular payments on overdue federal income taxes from March 2021 to April 2024, and that her outstanding balance was \$2,380 as of May 11, 2024. (Answer; Tr. 31-44; GE 3 at 17-20, 24-25; AE F, D at 3) These debts are being resolved.

Applicant's financial situation has improved. Since October 2022, her pay has increased from \$13 an hour to more than \$17 an hour. She reported net monthly income of about \$1,800 with a remainder of about \$100 after expenses. An April 2024 credit report shows she is current on all debts except for the account alleged in SOR ¶ 1.b, and an old account not alleged in the SOR in collection for \$2,450. (GE 4 at 1, 6, GE 3 at 6) She has about \$50 in the bank and about \$3,000 in a retirement account. She sought and received credit counseling in 2023. (Tr. 31-42, 66-76, 80-81; AE G-I)

Applicant submitted letters of recommendation from two co-workers that comment favorably on her professionalism, work-ethic, commitment, trustworthiness, reliability, judgment, and loyalty. She received a favorable overall evaluation for 2023 and her 2024 performance evaluation was in progress and very favorable. (AE A-C)

### **Policies**

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. SEAD 4, ¶ E.4. 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. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard sensitive information.

When evaluating an applicant's suitability for a public trust position, the administrative judge must consider the disqualifying and mitigating conditions 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. 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), any doubt will be resolved in favor of national security. The Government must present substantial evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. 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 burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). An applicant has the ultimate burden of demonstrating that it is clearly consistent with national security to grant or continue eligibility for assignment to a public trust position.

## **Analysis**

### **Guideline F: Financial Considerations**

The trustworthiness concern under this guideline 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. . . .

This concern is broader than the possibility that a person might knowingly compromise classified or sensitive information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified or sensitive information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified or sensitive information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

The record evidence, including credit reports and Applicant's statements, establish three disqualifying conditions under this guideline: AG ¶ 19(a) ("inability to satisfy debts"), AG ¶ 19(c) ("a history of not meeting financial obligations"), and AG ¶ 19(f) ("failure to . . . pay annual Federal . . . income tax as required"). The following mitigating conditions under AG ¶ 20 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;

(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;

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue; 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.

AG ¶¶ 20(a) through 20(d) and 20(g) are established. Applicant's financial problems primarily started in August 2016 when the warehouse where she had worked for almost eight years closed. She could no longer afford to pay her mortgage or other bills. Her unemployment from August to October 2016, underemployment from October 2016 to September 2022, unanticipated medical and insurance expenses, and limited employability due to medical issues were largely beyond her control. She prioritized paying current financial obligations with her limited resources and paid delinquent debts when she could. She obtained financial counseling, has resolved, is resolving, or has had cancelled seven debts totaling \$21,961 (SOR ¶¶ 1.a, 1.f-1.h, 1.p-1.r) She has made regular payments on her overdue federal income taxes since March 2021, entered an installment agreement with the IRS in March 2023, and has made required payments. Although her remaining debt totaling about \$11,000 has not been resolved she plans to address it as her finances permit.

The adjudicative guidelines do not require that an applicant make payments on all delinquent debts simultaneously, pay debts alleged in the SOR first, or resolve every debt alleged in the SOR. Although Applicant's financial records and finances are not perfect, she has "acted responsibly given her limited resources." ADP Case No. 22-00180 at 3 (App. Bd. April 22, 2024) (citations omitted) She has made substantial progress in

resolving her debts, understands the importance of continued financial responsibility, and the behavior that resulted in her financial problems is unlikely to recur. Her financial problems do not cast doubt on her current reliability, trustworthiness, or good judgment.

AG ¶¶ 20(e) does not apply because Applicant has not provided sufficient evidence to dispute the legitimacy of past-due medical bills or to substantiate her claim that they may have been covered by her secondary insurance (SOR ¶¶ 1.i-1.o)

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance 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.

I have incorporated my comments under Guideline F in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). I considered the entire record, including that Applicant's financial problems were caused, in part, by circumstances beyond her control. I considered her work history, limited financial resources, debt resolution efforts, character evidence, and her understanding of the importance of financially responsible behavior. I found her testimony to be credible and consistent with her past disclosures.

After weighing the disqualifying and mitigating conditions under Guideline F and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the trustworthiness concerns based on financial considerations. Accordingly, I conclude she has carried her burden of showing that it is clearly consistent with national security to grant her eligibility for a public trust position.

### **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.r:	For Applicant

## **Conclusion**

I conclude that it is clearly consistent with the interests of national security to grant Applicant eligibility for a public trust position. Eligibility for a public trust position is granted.

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Eric C. Price  
Administrative Judge