



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



In the matter of: )  
)  
) ADP Case No. 23-01957  
)  
Applicant for Public Trust Position )

**Appearances**

For Government: Aubrey M. De Angelis, Esq., Department Counsel  
For Applicant: *Pro Se*

07/29/2024

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**Decision**

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KATAUSKAS, Philip J., Administrative Judge

Applicant contests the Defense Department's intent to deny her eligibility for a public trust position. Applicant did not present evidence sufficient to explain, extenuate, or mitigate the trustworthiness concern stemming from her problematic financial history. Accordingly, this case is decided against Applicant.

**Statement of the Case**

Applicant completed and submitted a Questionnaire for National Security Positions (Security Clearance Application (SCA)) on August 17, 2022. On December 20, 2023, after reviewing the application and the information gathered during a background investigation, the Department of Defense Consolidated Adjudications Facility sent Applicant a statement of reasons (SOR), detailing trustworthiness concerns under Guideline F for financial considerations. This action was taken under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive). In addition, Security Executive Agent Directive (SEAD) 4, *National Security Adjudication Guidelines (AG)*, effective within the Defense Department on June 8, 2017, apply here.

Applicant answered the SOR on December 26, 2023, and requested a decision by an administrative judge from the Defense Office of Hearings and Appeals (DOHA) based on the administrative (written) record, in lieu of a hearing. She also filed an Answer on

March 5, 2024, admitting the SOR allegations and an Answer on February 4, 2024, that included Applicant's Exhibits (AE) A through G. (collectively the "Answer").

On about March 27, 2024, the Government submitted a file of relevant and material information (FORM), which included nine items of evidence (Items). The FORM was sent to Applicant on the same date, who received it on April 19, 2024. She was afforded an opportunity to note objections and to submit material in refutation, extenuation, or mitigation, and was given 30 days from receipt of the FORM to do so. Applicant did not respond to the FORM. Items 1 and 3 (the SOR and Answer, respectively) are the pleadings in this case. Items 4 through 9 and AE A through G are admitted into evidence without objection. Item 2 consists of clerical documents having no probative value. The case was assigned to me on July 17, 2024.

### **Findings of Fact**

Applicant is 44 years old. She is not married but reports the father of her three adult children as her "long time significant other" of 25 years. She has attended a college for court reporters since July 2017. She worked full-time as a senior administrative assistant for a school district from November 2008 to July 2022. Since January 2000, she and her cohabitant have owned an investment company. Since August 2022, she has been employed by a defense contractor. (Items 4 and 6.) The SOR debts went into collection between December 2015 and June 2016. (Item 7.)

Under Guideline F, the SOR alleged two delinquent consumer debts (\$29,712 and \$39,165) totaling \$68,877. (Item 1.) She admitted both debts. (Item 3.) She explained those debts in her personal subject interview (PSI).

Applicant began with the largest debt (SOR ¶ 1.b (\$40,165)), a loan for a high-end vehicle. There was a time when Applicant and her cohabitant were considering ending their relationship (date not recalled). She decided to return the vehicle to the dealership and re-evaluate her current financial situation. She returned the vehicle and was told it would be auctioned off with the auction value being applied to her loan. She would be notified of any remaining balance. She was never notified of any remaining balance and assumed her balance was cleared. She first learned of this balance during the PSI. She intended to contact the creditor to learn the status of the loan. She was given five business days to update the status of this account. (Item 6.)

On SOR ¶ 1.b, Applicant's Answer documented three \$500 payments between September 2023 and December 2023. (Item 3.) Her interrogatory responses documented a \$500 payment on March 31, 2023. Also included in her responses was a monthly payment plan of \$500 spanning December 31, 2022, through October 31, 2023. Only the above March 31, 2023 payment is documented. There is no document showing that the plan was fulfilled. (Item 5 at 10-11.) This debt is past due in the amount of \$34,165. (Item 9.) It has not been resolved.

Applicant explained that the smaller debt (SOR ¶ 1.a (\$29,712)) was incurred under similar circumstances. She had purchased a recreational vehicle (RV) but knowingly returned it and made attempts to close this vehicle loan as well. She was hoping to drive

a more affordable vehicle. She first learned of this balance during the PSI. She needed to contact the creditor to learn the status of this account. She was given five business days to update the status of this account. (Item 6.) Applicant's Answer documented four payments of \$150 each between December 16, 2023, and January 26, 2024. (Item 3.)

The credit history of SOR ¶ 1.a begins with the original RV creditor placing it for collection in June 2016 CHARGED OFF for \$29,712 **Account 17903**. (Item 7 (8/22).) The debt is then transferred to the current (SOR) creditor for \$29,712 **Account 17903**. (Item 8 (3/23).) In the March 2024 credit report, the same creditor reports this **Account 17903** as \$29,712 past due but **not** in collection. In that credit report, however, the same creditor opened a new line of credit for Applicant for an "Auto" for \$62,769 and reported it "PAYS AS AGREED" with zero past due. The **Account is 17903**, and the new term is 72 months. The original term was 120 months. (Item 9.) The credit history of this debt deserves further discussion in the Analysis below.

Applicant's three credit reports from August 2022 to March 2024 reported on a total of 159 accounts. Putting aside the two SOR accounts (and two accounts under \$400), one hundred and fifty-five (155) accounts were reported PAYS AS AGREED. (Items 7-9.) She did not complete her personal financial statement. She did not disclose her cohabitant's finances. (Item 5 at 9.)

### **Policies**

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(c), 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.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to [sensitive] information will be resolved in favor of national security."

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**

Under Guideline F for financial considerations, the suitability of an applicant may be questioned or put into doubt when that applicant has a history of excessive indebtedness or financial problems or difficulties. AG ¶¶ 18, 19, and 20 (setting forth the concern and the disqualifying and mitigating conditions) are relevant.

The overall concern is as follows:

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. The concern is broader than the possibility that a person might knowingly compromise classified or sensitive information to obtain money or something else of value. It encompasses concerns about a person's self-control, judgment, and other important qualities. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified or sensitive information. AG ¶ 18.

**SOR ¶ 1.a.** At the outset, SOR ¶ 1.a warrants a careful discussion. A close reading of the credit history suggests that this debt may not be in default. The original creditor placed the account for collection in June 2016 as charged off for \$29,712 under Account 17903. (8/2022 credit report.) By March 2023, that account was transferred to the current (SOR) creditor for \$29,712 under Account 17903. By March 2024, the same creditor reported this Account 17903 as \$29,712 past due **but not** in collection. In that credit report, the same creditor opened a new line of credit for Applicant for an "Auto" for \$62,769 and reported it "PAYS AS AGREED." The Account is 17903.

The account number has not changed since June 2016 when it was placed for collection by the original creditor. In fact, the same account number is used for the new March 2024 loan (\$62,769). Although the current creditor carries the old loan (\$29,712) as "past due," it has not been placed for collection; that is, it has not been liquidated. It appears that the current creditor just added \$33,017 to the old \$29,712 past due and made a new loan to Applicant for \$62,769. It also shortened the term. If she makes timely payments, the current creditor can carry a performing loan (\$62,769) that includes the principal (\$29,712) of the old nonperforming loan. Given her credit history, the current creditor's odds of her making timely payments look pretty good. I find that this debt is not in default and has been refinanced by the current creditor. I find in favor of Applicant on SOR ¶ 1.a.

**SOR ¶ 1.b.** In analyzing the facts of this case pertaining to SOR ¶ 1.b, I considered the following disqualifying and mitigating conditions or factors:

### **Potentially Disqualifying Factors**

AG ¶ 19(a) inability to satisfy debts;

AG ¶ 19(b) unwillingness to satisfy debts regardless of ability to do so; and

AG ¶ 19(c) a history of not meeting financial obligations.

### **Potentially Mitigating Factors**

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

The evidence supports a conclusion that Applicant has had problematic financial conditions sufficient to raise a trustworthiness concern under Guideline F. She appears to have been unable to satisfy one of her major debts and has a history of not meeting that financial obligation. Therefore, AG ¶¶ 19(a) and (c) apply. The record does not allow me to conclude that AG ¶ 19(b) applies. The next inquiry is whether any of the mitigating conditions apply.

The debt that raised trustworthiness concerns was delinquent when the SOR was issued in December 2023 and remained in arrears when the FORM was filed. That debt went into collection in 2015. Although there is only one debt, it is substantial and continuing. Therefore, AG ¶ 20(a) does not apply.

Applicant's financial problems began when she and her cohabitant of 25 years began considering ending their relationship. As a result, she made a financial decision that did not work in her favor. Thus, her financial problem was not the result of conditions largely beyond her control. It was caused by her own decision. Therefore, AG ¶ 20(b) does not apply.

Applicant did initiate what seemed to be good-faith efforts to repay overdue creditors. In fact, she made several payments to her SOR creditors. She even had a payment schedule in place for SOR ¶ 1.b. She did not, however, follow through with those efforts. Therefore, AG ¶ 20(d) does not apply.

None of the potentially mitigating conditions apply. Therefore, I find against Applicant on SOR ¶ 1.b.

### **Conclusion**

The record creates doubt about Applicant's trustworthiness, good judgment, and ability to protect sensitive information. In reaching this conclusion, I weighed the evidence as a whole and considered if the favorable evidence outweighed the unfavorable evidence or *vice versa*. I also considered the "whole-person" concept. AG ¶¶ 2(a) and (d)(1)-(9) (explaining the "whole-person" concept and factors).

Accordingly, I conclude that Applicant did not meet her ultimate burden of persuasion to show that it is clearly consistent with the interest of national security to grant her eligibility for access to sensitive information.

### **Formal Findings**

The formal findings on the SOR allegations are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Against Applicant

### **Conclusion**

In light of the record as a whole, it is not clearly consistent with the interests of national security to grant Applicant eligibility for access to sensitive information.

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Philip J. Katauskas  
Administrative Judge