



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



In the matter of: )  
)  
) ADP Case No. 15-05703  
)  
Applicant for Public Trust Position )

**Appearances**

For Government: Aubrey DeAngelis, Esq., Department Counsel  
For Applicant: *Pro se*

October 18, 2017

**Decision**

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant failed to mitigate the alleged financial trustworthiness concerns. Based on a review of the pleadings and exhibits, national security eligibility for a position of trust is denied.

**Statement of the Case**

On September 27, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F, Financial Considerations. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); the Adjudicative Guidelines (AG) effective within the DOD for SORs issued after September 1, 2006; and the AG effective within the DOD for SORs issued after June 8, 2017.<sup>1</sup>

---

<sup>1</sup>I considered the previous AG, effective September 1, 2006, as well as the new AG, effective June 8, 2017. My decision would be the same under either set of guidelines.

On October 24, 2016, Applicant answered the SOR (Answer), and elected to have her case decided on the written record in lieu of a hearing. (Item 3.) A complete copy of the Government's File of Relevant Material (FORM), containing nine Items, was mailed to Applicant on December 19, 2016, and was received by her on December 27, 2016. The FORM notified Applicant that she had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. Applicant did not submit documents or objections to the Government's Items; hence, Items 1 through 9 are admitted into evidence. On October 1, 2017, the Defense Office of Hearings and Appeals (DOHA) assigned the case to me.

### **Findings of Fact**

Applicant provided explanations in her Answer to the SOR, but failed to explicitly admit or deny the allegations in ¶¶ 1.a through 1.i. As a result, her explanations will be deemed denials. (Item 3.)

Applicant is 52 years old and married. She has three children. She has worked for her employer since December 2000. (Item 4.) She explained in her Answer that after her brother passed away on an unstated date, she helped his children and her mother, which caused her financial hardship. (Item 3.) Based on credit bureau reports (CBR) dated March 14, 2015; April 27, 2016; and December 14, 2016, the SOR alleged nine debts that became delinquent between 2009 and 2016, and totaled \$66,821. (Item 4; Item 5; Item 6.) The status of each debt is as follows:

SOR ¶ 1.a alleged that Applicant was delinquent on judgment filed in 2013, in the amount of \$1,465. In her Answer, Applicant claimed, "this is paid 3 [years] ago. Can be verified by payroll." (Item 3.) However, her December 14, 2016 credit report reflected that this debt was unsatisfied. Applicant submitted nothing to support her averment that this debt is resolved. (Item 6 at 1; Item 7 at 1.)

SOR ¶ 1.b alleged that Applicant was delinquent on judgment entered in 2009, in the amount of \$934. In her Answer, Applicant stated "I have all [creditor's name] cards." She included a copy of her credit cards issued by that creditor. However, the fact that she has credit cards with this creditor does not establish she is in good standing on the judgment. Applicant failed to submit documentation that shows this debt is resolved. (Item 3; Item 6 at 2.)

SOR ¶ 1.c alleged that Applicant was delinquent on a collection account in the amount of \$260. This debt has been delinquent since 2014. Applicant claimed to have made payment arrangements with this creditor, but failed to submit documentation of that agreement or any payments remitted under that agreement. This debt is unresolved. (Item 3; Item 6 at 2; Item 7 at 2.)

SOR ¶ 1.d alleged that Applicant was delinquent on a charged-off account in the amount of \$411. Applicant claimed to have bank cards with this creditor in good standing.

She provided a copy of a credit card with this creditor. However, she failed to produce evidence that the specific debt alleged is resolved. This debt is identified as a charged-off account in Item 7. It has been delinquent since 2014. (Item 3; Item 7 at 6.) It is unresolved.

SOR ¶ 1.e alleged that Applicant was delinquent on a charged-off account in the amount of \$501. In her Answer, Applicant claimed to have contacted this creditor to resolve this debt. However, she failed to produce any documentation of a payment arrangements or proof of payment. It is unresolved. (Item 3; Item 7 at 7.)

SOR ¶ 1.f alleged that Applicant was delinquent on a charged-off account in the amount of \$526. In her Answer, she claimed, "This company cannot find any information under my name and SS." Applicant's March 2015 credit report listed this debt as delinquent since 2014. Her December 2016 credit report indicated that this debt was charged-off. It is unresolved. (Item 3; Item 5 at 8; Item 7 at 7.)

SOR ¶ 1.g alleged that Applicant was delinquent on a past-due second mortgage account in the amount of \$62,048, with a total balance of \$87,707 owing. Applicant stated, "This is my husband[s] decision and [he] is working on it." This debt was identified as 120 days delinquent on her March 2015 credit report. (Item 5 at 10.) This debt is unresolved.

SOR ¶ 1.h alleged that Applicant was delinquent on a collection account in the amount of \$105. This debt became delinquent in 2014 and was reported on Applicant's December 2016 credit report as an unpaid collection account. (Item 7 at 2.) Despite Applicant's undocumented claim that "this is paid off," it is unresolved. (Item 3.)

SOR ¶ 1.i alleged that Applicant was delinquent on a collection account in the amount of \$571. It was reported as delinquent in 2016. In her Answer, Applicant claimed to have contacted this creditor to resolve this debt. However, she failed to produce any documentation of a payment arrangements or proof of payment. It is unresolved. (Item 3; Item 7 at 5.)

Applicant did not submit evidence of credit or financial counseling. She did not provide a budget from which to conclude that she is financially able to make monthly payments on her delinquent debts, or meet her ongoing expenses to avoid new delinquencies.

### **Policies**

When evaluating an applicant's national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's eligibility for a position of trust.

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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 national security eligibility will be resolved in favor of the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. According to Directive ¶ E3.1.15, "[t]he applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable [trustworthiness] decision."

A person applying for a position of trust seeks to enter 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of sensitive information. Finally, as emphasized in Section 7 of EO 10865 provides: "[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *a/so* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

## **Analysis**

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

The trustworthiness concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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. 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 or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

AG ¶ 19 describes two conditions that could raise trustworthiness concerns and may be disqualifying in this case:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Beginning in 2009, Applicant accumulated delinquent debts that she has been unable to fully resolve. The evidence raises the above trustworthiness concerns, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes three conditions in AG ¶ 20 that could mitigate trustworthiness concerns arising from Applicant's financial problems:

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

Applicant claimed her delinquent debts were caused by events that were beyond her control and are unlikely to recur. Her brother unexpectedly passed away, and she incurred additional financial responsibilities caring for his children. However, her conduct with respect to her delinquent debts over the past seven years did not demonstrate reliability or good judgment. She failed to establish she has responsibly addressed any of her delinquent debt. AG ¶¶ 20(a) and 20(b) do not provide full mitigation.

Applicant did not establish that she initiated a good-faith effort to repay her overdue creditors. No mitigation is supported with respect to her nine debts under AG ¶ 20(d).

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility by considering the totality of the applicant's conduct and all relevant 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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant is 52 years old. She has worked for her employer for 16 years. In September 2016, the Government issued a SOR to her, alleging delinquent debts. She responded that she had contacted some of her creditors, but failed to provide documentation to show any of her debts were resolved. In December 2016, the Government's FORM specifically informed her that she failed to provide sufficient evidence to mitigate the allegations in the SOR, and gave her 30 days to submit additional information. She did not do that. At this time, Applicant has not established a track record of resolving delinquent debts and achieving financial solvency. Overall, the record evidence leaves me with doubt as to Applicant's judgment, reliability, eligibility, and suitability for a position of trust. She failed to meet her burden to mitigate the trustworthiness concerns raised under the guidelines for financial considerations.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:

AGAINST APPLICANT

Subparagraphs: 1.a through 1.i:

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. National security eligibility for access to sensitive information is denied.

Jennifer Goldstein  
Administrative Judge