



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



In the matter of: )  
 )  
 ) ADP Case No. 15-06036  
 )  
Applicant for Public Trust Position )

**Appearances**

For Government: Alison O'Connell, Esq., Department Counsel  
For Applicant: *Pro se*

05/19/2017

**Decision**

CERVI, Gregg A., Administrative Judge:

This case involves trustworthiness concerns raised under Guideline F. Financial considerations trustworthiness concerns are not mitigated. Eligibility for a public trust position is denied.

**Statement of the Case**

Applicant completed a Questionnaire for National Security Positions (SF 86) on March 20, 2015.<sup>1</sup> On March 25, 2016, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing trustworthiness concerns under Guideline F (Financial Considerations).<sup>2</sup>

---

<sup>1</sup> Applicant is requesting a trustworthiness determination for access to sensitive information, also known as a "public trust" determination, to occupy an automated data processing (ADP) position.

<sup>2</sup> The Department of Defense acted under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); DOD Regulation 5200.2-R, *Personnel Security Program* (January 1987), as amended (Regulation); and the adjudicative guidelines (AG) implemented by DOD on September 1, 2006.

Applicant responded to the SOR on May 3, 2016, and elected to have the case decided on the written record in lieu of a hearing. The Government's written brief with supporting documents, known as the File of Relevant Material (FORM), was submitted by Department Counsel on June 20, 2016.

A complete copy of the FORM was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the concerns. Applicant received the FORM on June 24, 2016. She did not submit a response to the FORM, nor did she assert any objections to the Government's evidence. The case was assigned to me on May 8, 2017. The Government's exhibits included in the FORM (Items 1 to 8) are admitted into evidence.

### **Findings of Fact**

The SOR alleges 12 delinquent debts totaling approximately \$21,000. Applicant admitted the financial allegations in her Answer to the SOR with an explanation. The most significant debt is a consumer credit account delinquency of over \$16,000. The last activity on the account was in 2009, and it is currently listed in a collection status.<sup>3</sup>

Applicant is 52 years old and employed by a defense contractor since November 2012. She is a licensed practical nurse (LPN). She has been married since 1992 and has four children and two stepchildren. She was unemployed from July 2011 to November 2012. Applicant was interviewed by an Office of Personnel Management (OPM) investigator in April 2015. She discussed her delinquent financial accounts with the investigator, noting that she was largely unaware of the details of the debts and that her financial problems began about January 2012 when insurance deductibles for her husband's medical treatment could not be covered by her household income. Her insurance lapsed in March 2013, and she was unable to pay medical bills.

Applicant and her husband also own a home in another state that they lease out, but in December 2012, the tenants stopped paying rent. She noted that in January 2014, a property management company began collecting the rent on her behalf. In late 2015, she requested a realtor to list the home for sale, but as of May 2016, she had not received responses to her phone calls or inquiries, and the status of the sale is unknown. She indicated that her financial difficulties arose substantially from her husband and grandson's hospitalizations, although details of those events are not included in the record. She moved to a lower-cost home in May 2016 to substantially decrease her monthly expenses, but her current financial status is unknown. Applicant has not shown payments, payment plans or other action to resolve delinquent debts, nor is there evidence of financial counseling or debt reduction efforts.

---

<sup>3</sup> Item 7 at p. 6.

## **Policies**

Positions designated as ADP I and ADP II are classified as “sensitive positions.” Regulation ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3. The standard that must be met 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.” Regulation ¶ C6.1.1.1. DOD contractor personnel are entitled to the procedural protections in the Directive before any final unfavorable access determination may be made. Regulation ¶ C8.2.1.

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 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. 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 access to sensitive information.

## **Analysis**

### **Guideline F, Financial Considerations**

The concern for financial considerations is set out in AG ¶ 18:

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 and regulations, all of which can raise questions about an individual’s reliability, trustworthiness and ability to

protect [sensitive] information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise concerns under AG ¶ 19. The following are potentially applicable in this case:

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

Applicant has long-standing delinquent debts that she is unable or unwilling to resolve. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate the financial considerations concerns are provided under AG ¶ 20. The following 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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Although many of Applicant's debts likely become delinquent due to financial difficulties arising out of her unemployment and her husband's medical treatment, she has not shown that she acted responsibly under the circumstances. The largest debt was from 2009, which predates the medical issues, period of unemployment, and rental-home losses described by Applicant. There is no evidence that she received financial counseling, attempted to negotiate payment plans, or that she otherwise made efforts to address them. There is insufficient evidence that her financial problems are being resolved or are under control.

Based on the record presented, I find that the SOR debts have not been sufficiently addressed to warrant application of mitigating conditions. Applicant's precarious financial condition leaves me with questions and concerns about her overall ability and willingness to face her financial responsibilities and creates doubts about her current reliability, trustworthiness, and good judgment.

## **Whole-Person Concept**

Under AG ¶ 2(c), the 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. In applying the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a public trust position by considering the totality of the applicant's conduct and all relevant circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(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 considered all of the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my findings of fact and comments under Guideline F in this whole-person analysis. The evidence shows that Applicant is facing financial difficulties and that her husband's healthcare costs may have contributed. However, there was no documentary evidence presented to ascertain her complete financial picture and her likelihood of resolving financial obligations in the future.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a position of public trust. Accordingly, I conclude Applicant has not 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:	Against Applicant
Subparagraphs 1.a - 1.l:	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 security to grant Applicant eligibility for a public trust position. Eligibility for a public trust position is denied.

---

Gregg A. Cervi  
Administrative Judge