



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



In the matter of: )  
 )  
 ) ADP Case No. 16-01998  
 )  
Applicant for Public Trust Position )

**Appearances**

For Government: Bryan Olmos, Esq., Department Counsel  
For Applicant: *Pro se*

10/26/2017

**Decision**

CERVI, Gregg A., Administrative Judge

This case involves trustworthiness concerns raised under Guideline F (Financial Considerations). Eligibility for access to sensitive information is denied.<sup>1</sup>

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on May 15, 2015. On August 17, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent her a Statement of Reasons (SOR) detailing trustworthiness concerns under Guideline F.<sup>2</sup>

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<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 DOD CAF acted under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.

Applicant answered the SOR 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 October 12, 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 security concerns. Applicant received the FORM on December 8, 2016. No additional evidence was submitted in response to the FORM. The Government's exhibits included in the FORM (Items 1 to 6) are admitted into evidence. The case was assigned to me on October 1, 2017.

### **Findings of Fact**

Applicant is a 50-year-old licensed practical nurse (LPN) sponsored for a public trust determination by a defense contractor. She has worked for several employers as an LPN since 2001. From 2012 to 2014, she was unemployed because of a sudden illness. She received her nurses' training in 2007. She was married in 1987 and divorced in 2005, and has two children.

The SOR alleges 13 delinquent debts, including three judgment's filed in 2013. Her delinquent debts total about \$14,700. Applicant admitted the allegations in her answer to the SOR.

Applicant noted in her answer to the SOR, that she is a single mother who lost a job she held for 13 years after being diagnosed in 2012 with neurosarcoidosis, a chronic disease of the central nervous system. She returned to work in 2014, and has been trying to rebuild her credit while taking care of her family. She did not provide evidence of attempts to resolve her debts, financial counseling, or her current financial status.

### **Law and Policies**

The Director of National Intelligence (DNI) issued revised adjudicative guidelines (AG) in a Security Executive Agent Directive, effective on June 8, 2017.<sup>3</sup> The revised AG apply to this case.

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(a), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept."

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<sup>3</sup> I decided this case using the AG implemented by DOD on June 8, 2017. However, I also considered this case under the previous version of the AG implemented on September 1, 2006, and my conclusions are the same using either set of AG.

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.

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 as to obtaining 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 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.

## **Analysis**

### **Financial Considerations**

The 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. . . .

The relevant disqualifying conditions under AG ¶ 19 include:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant's admissions and the documentary evidence supporting the SOR allegations are sufficient to establish the disqualifying conditions.

The following mitigating condition under AG ¶ 20 is potentially relevant:

(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;

Applicant suffered a two-year period of unemployment due to a sudden illness, and a loss of household income. Applicant's personal circumstances were conditions beyond her control. However, she did not show responsible actions to address her debts since returning to work in 2014. AG ¶ 20(b) is partially applicable. There is no evidence that Applicant received financial counseling or that her current financial status is sound. The delinquent debts remain unresolved. Applicant's financial problems are not under control.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's trustworthiness eligibility 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 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 my whole-person analysis.

Applicant's delinquencies remain an ongoing concern. Although she suffered a prolonged period of unemployment until 2014, she failed to provide documentary evidence of actions taken to address her debts, and her current financial status. Applicant did not mitigate the financial considerations trustworthiness concerns. Accordingly, I conclude she has not carried her burden of showing that it is clearly consistent with the national security interests of the United States to grant her eligibility to hold a sensitive 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.m:	Against Applicant

### **Conclusion**

I conclude that it is not clearly consistent with the national security interests of the United States to grant Applicant access to sensitive information. Eligibility for a public trust position is denied.

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Gregg A. Cervi  
Administrative Judge