



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



In the matter of: )  
 )  
 ) ADP Case No. 18-00349  
 )  
Applicant for Public Trust Position )

**Appearances**

For Government: Chris Morin, Esq., Department Counsel  
For Applicant: *Pro se*

10/15/2018  
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**Decision**  
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GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant failed to mitigate the 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 February 16, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR), detailing trustworthiness concerns under Guideline F, Financial Considerations. The action was taken under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines (AG) effective within the DOD for SORs issued after June 8, 2017.

Applicant answered the SOR on May 24, 2018, and June 11, 2018. (Item 2.) She requested that her case be decided by an administrative judge on the written record without a hearing. (Item 2.) On June 14, 2018, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing six Items, was mailed to Applicant on June 15, 2018, and received by her on

July 12, 2018. The FORM notified Applicant that she had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 45 days of her receipt of the FORM. Applicant's reply was due on August 26, 2018. She did not file a response to the FORM. On October 11, 2018, the case was assigned to me. Items 1 through 6 are admitted into evidence, without objection.

### **Findings of Fact**

Applicant is 45 years old. She has worked for a government contractor since December 2012, and reported no periods of unemployment since August 2007.<sup>1</sup> In 2007 she received a technical diploma in her chosen field. She married her second husband in September 2009, and has five children. (Item 2; Item 3.)

The SOR alleged that Applicant was indebted to 31 creditors in the total approximate amount of \$20,500. On her March 2017 electronic Questionnaires for Investigative Processing (e-QIP) she disclosed that she was "looking for a reliable credit counselor." Applicant admitted all of the allegations in the SOR ¶¶ 1.a through 1.ee, with explanations. Applicant's admissions, statements, and credit reports from April 2017 and January 2018 substantiate the debts addressed in the SOR. (Item 2; Item 3; Item 5; Item 6.)

Of her 31 SOR listed debts, 24 of them were medical accounts placed for collections and ranged from \$51 copays to \$1,806 bills (SOR ¶¶ 1.d, 1.e, 1.g, and 1.k through 1.ee). They became delinquent between 2013 and 2017. During her July 2017 subject interview, Applicant explained that she had not been able to afford to pay her medical bills due to being a single mother. (Item 4; Item 5; Item 6.) In her Answer, she indicated that the debts identified in SOR ¶¶ 1.d, 1.e, 1.g, and 1.k through 1.ee had been removed from her credit report. However, she did not present evidence to show that she contacted any of these creditors, paid any of these debts, or that she had a legitimate basis to dispute any of them.

SOR ¶¶ 1.a through 1.c alleged that Applicant was indebted on charged-off accounts in the amount of \$3,144; \$470; and \$406, respectively. These debts have been delinquent since 2012. However, she failed to produce evidence of any payments or documentation of receiving financial counseling. In her Answer, Applicant claimed 1.c "will be paid when consultant states by July 2018," but provided nothing to support that claim. (Item 2; Item 5; Item 6.) These debts are unresolved.

SOR ¶ 1.f alleged that Applicant was indebted on a collection account in the amount of \$108. This debt became delinquent in 2012. In her Answer, Applicant claimed this debt was removed from her credit report. While this debt does not appear on the credit report she attached to her Answer, she did not present documentation that she

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<sup>1</sup> She was unemployed from January 2007 through August 2007, while attending school.

contacted this creditor, paid this debt, or that she had a legitimate basis to dispute it. (Item 2; Item 6.)

SOR ¶ 1.h alleged that Applicant was indebted on a judgment filed against her in the amount of \$1,027. In her Answer, Applicant claimed this debt was removed from her credit report. While this debt does not appear on the credit report she attached to her Answer, she did not present documentation that she contacted this creditor, paid this debt, or that she had a legitimate basis to dispute it. (Item 2; Item 5.)

SOR ¶ 1.i alleged that Applicant was indebted on a charged-off account in the amount of \$1,433. In her Answer, Applicant claimed this debt was removed from her credit report. While this debt does not appear on the credit report she attached to her Answer, she did not present documentation that she contacted this creditor, paid this debt, or that she had a legitimate basis to dispute it. (Item 2; Item 5.)

SOR ¶ 1.j alleged that Applicant was indebted on a charged-off account in the amount of \$57. This debt became delinquent in 2017. In her Answer, Applicant claimed this debt was in the “process of being removed” and “being p[ai]d.” However, she did not document any payments or to otherwise support her claim. (Item 2; Item 5.)

Applicant alluded to receiving help from a consultant in her Answer. However, she did not document any financial counseling or provide budget information from which to predict her future solvency. (Item 2.)

## **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.

## **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 2012, Applicant accumulated 31 delinquent debts that she has been unable to resolve. The evidence raises the above trustworthiness concerns, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate trustworthiness concerns arising from 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;
- (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; and
- (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.

There is insufficient evidence of mitigation under any of the above conditions. She has a long history of not meeting her financial obligations. While she attributed her debts to being a single mother, she has been married since 2009 and fully employed since September 2007. Her SOR-listed debts became delinquent while married. She did not produce evidence of any payments on her delinquent accounts or of receiving financial counseling. While the majority of her debts do not appear on the credit report she included with her Answer, she did not document legitimate disputes with her creditors. It is likely that Applicant will continue to experience financial difficulties. She failed to meet her burden to mitigate the Government's concerns under the financial considerations guideline.

### **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 a 45-year-old employee of a government contractor. At this time, she has not established a reliable 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 guideline 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.ee:	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