



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



In the matter of:

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ADP No. 23-01146

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Applicant for Public trust Position)

Appearances

For Government: John Renahan, Esq., Department Counsel

For Applicant: Tanasha Dalton, Personal Representative

02/06/2025

Decision

WESLEY, ROGER C. Administrative Judge

Based upon a review of the case file, pleadings, and exhibits, Applicant did not mitigate financial considerations concerns. Eligibility for access to hold a public trust position is denied.

Statement of the Case

On June 13, 2023, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudications Services (CAS) issued a statement of reasons (SOR) to Applicant detailing reasons why under the financial guideline the DCSA CAS could not make the preliminary affirmative determination of eligibility to hold a public trust position, recommended referral to an administrative judge to determine whether eligibility to hold a public trust position should be granted, continued, denied, or revoked. The action was taken under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960); *Defense Industrial Personnel Security Clearance Review Program*, Department of Defense (DoD) Directive 5220.6 (January 2, 1992) (Directive); and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to*

Classified Information or Eligibility to Hold a Sensitive Position (AGs), effective June 8, 2017.

Applicant responded to the SOR (undated) and requested a hearing. The case was assigned to me on April 2, 2024. A hearing was scheduled for October 23, 2024, and heard on the scheduled date. At the hearing, the Government's case consisted of six exhibits (GEs 1-6). Applicant relied on one witness (herself) and two exhibits (AEs A-B). The transcript (Tr.) was received on October 31, 2024.

Procedural Issues

Before the close of the hearing, Applicant requested the record be kept open to permit her the opportunity to supplement the record with explanations of her non-SOR vehicle debt that is listed in her credit reports, as well as her arranged payment plans with creditors covered by SOR ¶¶ 1.a and 1.b. For good cause shown, Applicant was granted 30 days to supplement the record. (Tr. 67-68) Department Counsel was afforded 10 days to respond. Applicant did not supplement the record.

Summary of Pleadings

Under Guideline F, Applicant allegedly accumulated four delinquent debts exceeding \$19,000. Allegedly, these debts have not been resolved and remain outstanding.

In her responses to the SOR, Applicant admitted the allegations covered by Guideline F. She added no explanations or clarifications.

Findings of Fact

Applicant is a 25-year-old employee of a defense contractor who seeks a security clearance. The admitted allegations are incorporated and adopted as relevant and material findings. Additional findings follow.

Background

Applicant never married and has two children from previous relationships. (GEs 1-2; Tr. 19) She earned an associate's degree in May 2017. (GE 1; Tr. 24) She reported no military service.

Since August 2022, Applicant has worked for her current employer (a U.S. Army military hospital) as a security dispatcher (only part time since January 2023). (GEs 1-2; Tr. 18-19) Previously, she worked for other employers in various customer service and security officer-related jobs. (GEs 1; Tr. 20-22)

Applicant reported an involuntary termination in March 2021 attributable to a high-risk pregnancy that prevented her return to work. Applicant has never held a

security clearance or public trust position. (GE 1; Tr. 24) Her current duties require access to protected information. (Tr. 20)

Applicant's finances

Between 2017 and 2023, Applicant accumulated four SOR-listed debts exceeding \$19,000. (GEs 3-6; Tr. 29-50) Her debts are covered in the SOR as follows: 1.a (a delinquent credit card balance of \$3,827 on a listed individual account (co-signed by her brother) opened in 2017 and reported delinquent in 2019; 1.b (a \$2,160 delinquent credit card balance on an individual account opened in 2017 and reported delinquent in 2022; 1.c (a \$2,040 delinquent credit card balance on an individual account opened in 2019 and reported delinquent in 2021); and 1.d (an \$11,203 delinquent balance on a reported 2022 vehicle repossession of a car financed in June 2019). (GEs 2-6)

Applicant attributed her debt delinquencies to reduced employment hours with her current employer, necessitated by her high-risk pregnancy in March 2021 and ensuing daycare responsibilities as a single mother. (Tr. 19, 21-22) Because of her daycare responsibilities with her young son (who is afflicted with autism and sleep apnea problems), she could no longer work her assigned midnight shift as a security officer in her current employer's mental health ward. (Tr. 19, 23) Currently, residing with her are her two young children, her brother, and her young son's father. (GE 5; Tr.24)

While Applicant's credit reports do not reflect any payment activity on any of her SOR-listed delinquent debts, she provided documentary proof of her past payments on two of her delinquent accounts. Payment credits reflect a reduced balance of \$787.62 on her credit card account covered by SOR ¶ 1.c and a zero balance on a delinquent vehicle loan covered by SOR ¶ 1.d. (AE A; Tr.37-49) Her payoff of her SOR ¶ 1.d debt in October 2024 represented the last scheduled installment of a March 2023 post-repossession settlement she arranged with the seller of a car she co-purchased with her boyfriend in 2019. (GEs 2-4 and AE A; Tr. 48-50) Under the terms of the settlement, Applicant agreed to pay the creditor the reduced total sum of \$2,241, payable in three installments. (GE 5) Applicant credited her boyfriend with making the scheduled payments and completing the payoff conditions. (Tr. 50)

Addressing the remaining two delinquent accounts listed in the SOR, Applicant could not document any recent payments made on either of these accounts. (Tr. 30-31) Neither she nor her brother have been able to arrange a payment plan with SOR creditor 1.a to pay off the \$3,827 balance despite earnest attempts to do so. (Tr. 28-30) Applicant noted her last conversation with SOR creditor 1.a and her expressed hopes for the opportunity to make affordable monthly payments of \$200. (Tr. 29-30) Documentation of any follow-up payments on this debt was not provided, and the debt remains unresolved and outstanding. (GEs 3-5)

When inquired about the \$2,160 delinquent credit card balance covered by SOR ¶ 1.b in her personal subject interview (PSI), Applicant could not provide any recent

payment updates on this account. (Tr. 29-30) Her credit reports reflect no payment progress with respect to SOR creditor 1.b. (GEs 3-5; Tr. 31) The debt arose from Applicant's mother's use of the former's credit card. (Tr. 31-32) Asked whether she ever gave her mother permission to use the credit card, Applicant could not recall. (Tr. 33) Neither Applicant nor her brother have been able to work out a payment plan with SOR creditor 1.b. (GEs 3-5; Tr. 31-34) And, this debt remains unresolved and outstanding.

When asked in her PSI about a non-SOR repossession deficiency on a vehicle she purchased in December 2023 for \$16,402, Applicant was unable to provide any updates. (GE 6; Tr. 53-54) Following breakdowns to the vehicle, she had the vehicle towed to the seller's dealership facility for assessment and repairs. As of the date of the hearing, she had heard nothing back from the creditor on the status of the car and any amounts due. (Tr. 54-62) Afforded a post-hearing opportunity to provide updates on the state of the vehicle and the loan balance, she furnished no updates.

Applicant currently works several jobs to cover her monthly expenses and debts. (GE 2; Tr. 62) She estimated her gross monthly income from her combined jobs to approximate \$3,000, which is up slightly from her reported income in 2023. (GE 2; Tr. 62) After covering her monthly expenses, she estimated a monthly remainder of around \$400. (GE 2; Tr. 63) She has a vehicle she purchased in 2024, and with her combined income, she is able to make her monthly contributions of \$100 to her 401(k)-retirement account. (Tr. 64-66) Although she has not sought financial counseling, or debt consolidation, she assured that she has ceased using credit cards altogether and is committed to avoiding future credit card and other debt delinquencies. (Tr. 65-66) While she appears to be sincere in her assurances, she provided no corroboration and remains untested in her future commitments.

Policies

By virtue of the jurisprudential principles recognized by the U.S. Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988), “no one has a ‘right’ to a security clearance.” [or implicitly a public trust position]. As Commander in Chief, “the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. Eligibility for access to classified information [or public trust position] may only be granted “upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Holding a public trust position involves the exercise of important fiduciary responsibilities, among which is the expectancy of consistent trust and candor in protecting and guarding personally identifiable information (PII). DoD Manual 5200.02, which incorporated and canceled DoD Regulation 5200.2-R, covers both critical-sensitive and non-critical sensitive security positions for civilian personnel. See 5200.02, ¶ 4.1a(3)(c)

Definitions for critical-sensitive and non-critical sensitive positions provided in 5200.02, ¶ 4.1a(3)(c) contain descriptions similar to those used to define ADP I and II positions under DoD Regulation 5200.2-R. (32 C.F.R. § 154.13 and Part 154, App. J) ADP positions are broken down as follows in C.F.R. § 154.13 and Part 154, App. J): ADP I (critical-sensitive positions covering the direction, design, and planning of computer systems) and ADP II (non-critical-sensitive positions covering the design, operation, and maintenance of computer systems). Considered together, the ADP I and II positions covered in DoD Regulation 5200.2-R refine and explain the same critical-sensitive positions covered in DoD Manual 5200.02, ¶ 4.1a(3)(c) and are reconcilable as included positions in 5200.02.

So, while ADP trustworthiness positions are not expressly identified in DoD Manual 5200.02, they are implicitly covered as non-critical sensitive positions that require “access to automated systems that contain active duty, guard, or personally identifiable information or information pertaining to Service members that is otherwise protected from disclosure by DoD 5400.11-R . . .” DoD 5200.02, ¶ 4.1a(3)(c) See DoD Directive 5220.6, ¶¶ D5(d) and D8. By virtue of the implied retention of ADP definitions in DoD Manual 5200.02, ADP cases continue to be covered by the process afforded by DoD 5220.6.

Eligibility to hold a public trust position is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. The AGs list guidelines to be considered by judges in the decision-making process covering DOHA cases. These AG guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified and privacy information potentially accessed in public trust positions.

The AG guidelines include conditions that could raise a security or public trust concern and may be disqualifying (disqualifying conditions), if any, and all of the conditions that could mitigate security clearance eligibility and public trust concerns, if any. These guidelines must be considered before deciding whether or not eligibility to hold a security clearance or public trust position should be granted, continued, or denied.

Although, the guidelines do not require judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified and other sensitive information.

In addition to the relevant AGs, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in ¶ 2(a) of the AGs, which are intended to assist the judges in reaching a fair and impartial, commonsense decision based on a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period of

an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security or public trust risk. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

When evaluating an applicant's conduct, the relevant guidelines are to be considered together with the following ¶ 2(d) factors: (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 of the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Viewing the issues raised and evidence as a whole, the following individual guidelines are pertinent herein:

Financial Considerations

The Concern: 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 or 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 acts or otherwise questionable acts to generate funds. . . . AG ¶ 18.

Burdens of Proof

The Government reposes a high degree of trust and confidence in persons holding public trust positions, as well as those with access to classified information. 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 privacy or classified and information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of privacy and classified information. Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See Exec. Or. 10865 § 7. See also Exec. Or. 12968 (Aug. 2, 1995), § 3.1.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information, or to hold a public trust position. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security [public trust] suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

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 ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his [or her] security clearance” and eligibility (implicitly) to hold a public trust position. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations [and implicitly public trust position eligibility] should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Public trust concerns are raised over Applicant’s accumulation of four delinquent accounts exceeding \$19,000. While two of the SOR-listed accounts have either been resolved or are being resolved with payments, two of them (covered by SOR ¶¶ 1.a and 1.b) have not and remain outstanding without any follow up from Applicant.

Financial concerns

Applicant’s accumulated delinquent debts warrant the application of two of the disqualifying conditions (DC) of the financial consideration guidelines. DC ¶¶ 19(a), “inability to satisfy debts” and 19(c), “a history of not meeting financial obligations” apply to Applicant’s situation. Her admitted debt delinquencies require no independent proof to substantiate them. See Directive 5220.6 at E3.1.1.14; *McCormick on Evidence* § 262 (6th ed. 2006). Her admitted debt delinquencies are fully documented and raise judgment issues over the management of her finances. See ISCR Case No. 03-01059 (App. Bd. Sept. 24, 2004).

Financial stability in a person cleared to protect sensitive information is required precisely to inspire trust and confidence in the holder of a public trust position that entitles the person to access sensitive information. While the principal concern of the holder of a public trust position is the holder’s vulnerability to coercion and influence, judgment and trust concerns are implicit in cases involving delinquent debts.

Historically, the timing of addressing and resolving of Applicant's listed debt delinquencies (SORs ¶¶ 1.a-1.b) are critical to an assessment of an applicant's trustworthiness, reliability, and good judgment in following rules and guidelines necessary for those seeking eligibility to access classified information or implicitly to hold a position of trust with access to sensitive information. See ISCR Case No. 14-06808 at 3 (App. Bd. Nov. 23, 2016); ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 18, 2015); ISCR Case No. 14-00221 at 2-5 (App. Bd. June 29, 2016).

To her credit, Applicant is making progress on one of her accrued delinquent accounts (SOR ¶ 1.c) and has resolved a second debt with a payoff (SOR ¶ 1.d). Further, she promised to address her two remaining SOR-listed accounts when she is able to make contact with her creditors and work out repayment plans with them. And, she committed to updating the status of her reported non-SOR debt associated with her disabled vehicle when she was able to obtain updates from the seller. Applicant impressed as both sincere and credible with her commitments.

To be sure, Applicant's remaining two SOR-listed debts are relatively small (collectively under \$6,000) and are accompanied by both extenuating and mitigating circumstances. Mitigating conditions (MCs) 19(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 19(d), "the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts" partially apply to Applicant's situation.

More is required of Applicant, however, to meet the minimum requirements for eligibility to hold a public trust position. Applicants seeking a public trust position are evaluated under the same fiduciary standards, guidelines, and procedures as those who apply for security clearances. ADP Case No. 18-00679 at 3 (App. Bd. Oct. 17, 2019). For both public trust and security clearance applicants, promises to pay or otherwise resolve delinquent debts in the future are not a substitute for a track record of paying debts in a timely way and otherwise acting in a financially responsible manner. ISCR Case No. 17-04110 at 4 (App. Bd. Sep. 26, 2019). Applicant's promises and assurances, while welcomed, require more seasoning to satisfy public trust position eligibility criteria.

Whole-person assessment

From a whole-person perspective, Applicant has established enough independent probative evidence of her ability to satisfy and resolve her remaining delinquent accounts and manage her finances responsibly in the foreseeable future. Considering the record as a whole and granting due weight to Applicant's positive commitments to manage her finances responsibly in the future, there is sufficient probative evidence of sustainable extenuation and mitigation in the record to make

safe, predictable judgments about her ability to stabilize and control her finances responsibly in the foreseeable future.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person, I conclude financial considerations public trust concerns are not mitigated. Eligibility to hold a public trust position is denied.

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:

GUIDELINE F (FINANCIAL CONSIDERATIONS): AGAINST APPLICANT

| | |
|------------------------|-------------------|
| Subparagraphs 1.a-1.b: | Against Applicant |
| Subparagraphs 1.c-1.d: | For 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 to hold a public trust position. Eligibility to hold a public trust position is denied.

Roger C. Wesley
Administrative Judge