



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



In the matter of:)
)
 ---) ADP Case No. 18-00628
)
 Applicant for Public Trust Position)

Appearances

For Government: Bryan Olmos, Esquire, Department Counsel
For Applicant: Alan V. Edmunds, Esquire

01/09/2019

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant mitigated the trustworthiness concerns regarding financial considerations. Eligibility to occupy a public trust position is granted.

Statement of the Case

On July 20, 2017, Applicant applied for a public trust position and submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On March 12, 2018, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to him under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and Directive 4 of the Security Executive Agent (SEAD 4), *National Security Adjudicative Guidelines* (December 10, 2016) (AG), for all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position, effective June 8, 2017.

The SOR alleged trustworthiness concerns under Guideline F (Financial Considerations) and detailed reasons why the DOD CAF was unable to make an affirmative finding under the Directive that it is clearly consistent with the national interest to grant Applicant's eligibility for occupying a public trust position to support a contract with the DOD. The SOR recommended referral to an administrative judge to determine whether such eligibility should be granted, continued, denied, or revoked.

Applicant received the SOR on March 19, 2018. In a sworn statement, dated April 4, 2018, Applicant responded to the SOR allegations and elected to have his case decided on the written record in lieu of a hearing. On June 20, 2018, after retaining an attorney, Applicant changed his mind and requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed on June 28, 2018. The case was assigned to me on July 12, 2018. A Notice of Hearing was issued on July 12, 2018, scheduling the hearing for July 23, 2018. I convened the hearing as scheduled.

During the hearing, Government exhibits (GE) 1 through GE 5 and Applicant exhibits (AE) A through AE O were admitted into evidence without objection. Applicant testified. The transcript (Tr.) was received on August 1, 2018. I kept the record open to enable Applicant to supplement it. He took advantage of that opportunity and timely submitted several documents, which were marked and admitted as AE P through AE CC, without objection. The record closed on August 27, 2018.

Findings of Fact

In his Answer to the SOR,¹ Applicant admitted, with comments, nearly all of the factual allegations pertaining to financial considerations in the SOR (SOR ¶¶ 1.b. through 1.h., and 1.j.). Applicant's admissions and comments are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 59-year-old employee of a defense contractor. He has been serving as a network analyst with his current employer since May 2017. He completed his high school education through the General Educational Development (GED) Program in 1978, and he graduated from high school in 1983. At the time of the hearing, he was three credits shy of completing the requirements for an Associate's degree. He has never served in the U.S. military. He has never held a security clearance, but has been occupying a position of public trust since 2017. Applicant was married in 2009. He has four children, born in 1981, 1984, 1987, and 1989, as well as two stepchildren, born in 1994, and 1995.

¹ Although Applicant's Answer to the SOR was submitted on April 4, 2018, the DOD CAF noted that he had failed to respond to SOR ¶ 1.j. After being reminded by the DOD CAF that he had initially failed to address the allegation, on April 11, 2018, Applicant admitted the allegation by e-mail.

Financial Considerations²

With the exception of one reported delinquent account from 2011, there apparently was nothing unusual about Applicant's finances until 2016 when a series of factors started taking their cumulative toll on his ability to remain current on his various accounts. He had been unemployed or underemployed on several occasions before 2016: from May 2009 until September 2009; from December 2013 until February 2014; and from April 2015 until November 2015. It was Applicant's initial intention to earn an Associate's degree, and to do so, he accepted low paying and less demanding positions to increase his skills through on-the-job training. However, in April 2016, Applicant was terminated from his position because of unhappiness over his performance progression. He remained unemployed or underemployed until May 2017. During that most recent period, Applicant's savings were depleted, and accounts became delinquent. His residence went into a foreclosure status, a tax lien was filed, and various accounts were placed for collection. Some accounts were charged off. Another factor exacerbating Applicant's finances were his repeated relocations from state to state, either to follow his wife and her employment activities, or to accept temporary employment opportunities.³

Applicant sought guidance from several credit counselors;⁴ completed a credit counseling course;⁵ contacted various creditors in an effort to settle accounts or enter into reasonable repayment plans; engaged the professional services of both a credit consolidation company and a debt resolution company;⁶ and, starting in July 2017 – eight months before the SOR was issued – he started setting aside \$756 per month intended for repayments to creditors.⁷ In April 2018, he was scheduled to commence a financial counseling course with a nationally renowned financial expert.⁸

The SOR identified 12 purportedly delinquent accounts that had been placed for collection or charged off, including one tax lien and one house in a foreclosure status, as generally reflected by Applicant's August 2017 or January 2018 credit reports. Those debts total approximately \$71,303. The current status of those accounts is as follows:

² General source information pertaining to the financial issues discussed below can be found in the following exhibits: GE 1 (e-QIP, dated July 20, 2017); GE 2 (Personal Subject Interview, dated November 28, 2017); GE 4 (Combined Experian, TransUnion, and Equifax Credit Report, dated August 12, 2017); GE 5 (Equifax Credit Report, dated January 26, 2018); AE B (Extracts of Experian Credit Report, dated July 7, 2018); and Applicant's Answer to the SOR, dated April 4, 2018.

³ AE F (Statement, undated).

⁴ Applicant's Answer to the SOR, *supra* note 2, at 1.

⁵ AE A (Certificate of Counseling, dated July 8, 2018).

⁶ GE 3 (Debt Resolution Agreement, dated July 10, 2017).

⁷ GE 3, *supra* note 6, at 7.

⁸ Applicant's Answer to the SOR, *supra* note 2, at 1.

(SOR ¶ 1.a.): This is a conventional home mortgage with a high credit of \$100,000 and an unpaid balance of \$68,868, of which \$18,534 was past-due, which was placed for collection and entered into a foreclosure status.⁹ Because of a new job, Applicant's financial situation had to be recertified, but the process took more time than anticipated, and new loan modification documents had to be prepared. Applicant continued making monthly payments of \$428.86 for five months. The foreclosure action was terminated in May 2018, and as of June 1, 2018, the modified mortgage was established in the amount of \$67,375.85, with monthly payments of \$313.81, plus escrow, totaling \$537.90.¹⁰ The past-due amount has been added into the amount of the mortgage, and the mortgage is current. The account has been resolved.

(SOR ¶ 1.b.): This is a credit-card account with an unpaid balance of \$24,275, and a past-due balance of \$8,606, that was placed for collection and charged off.¹¹ Through his debt resolution company, Applicant reached out to the creditor and after approximately one year, negotiations went nowhere. In his e-QIP, he stated that the creditor had agreed to a settlement of \$12,678, and unspecified monthly payments would be made through his debt resolution company.¹² That assertion was not accurate, for the creditor refused to accept any reduced payments. In June 2018, working with another credit counseling organization, Applicant was referred to another lender, with whom the creditor frequently worked, and he was approved for a \$24,275 loan, to be repaid under a repayment plan under which he would make previously authorized \$566 monthly payments for 35 months, starting in August 2018.¹³ At some point by the end of 2018, it was anticipated that the original creditor would be paid in full by the new loan, and Applicant would merely be responsible for the continuing reduced monthly payments to the new lender.¹⁴ The account has been resolved.

(SOR ¶ 1.c.): This is a bank-issued credit-card account with an unpaid and past-due balance of \$10,091 that was placed for collection and charged off.¹⁵ Applicant reached out to the collection agent in June 2017 – nine months before the SOR was issued – and agreed to a repayment plan under which he agreed to make preauthorized bi-monthly \$64 payments, starting in June 2017. He made those payments, totaling \$1,088, until the account was transferred to a new collection agent in early 2018.¹⁶ A revised repayment plan was accepted by the new collection agent in mid-2018, under

⁹ GE 4, *supra* note 2, at 7; GE 5, *supra* note 2, at 1.

¹⁰ AE G (Loan Modification Documents, various dates).

¹¹ GE 4, *supra* note 2, at 8; GE 5, *supra* note 2, at 2.

¹² GE 1, *supra* note 2, at 43-44.

¹³ AE H (Loan Documents, dated July 20, 2018); AE H (Statement, undated); AE P (Debt Payment Plan, undated).

¹⁴ AE Q, *supra* note 13; AE Q (Account Activity Statement, dated August 21, 2018).

¹⁵ GE 4, *supra* note 2, at 8; GE 5, *supra* note 2, at 2.

¹⁶ AE I (Statement, undated); AE I (Payment History, undated).

which Applicant agreed to preauthorized automatic \$110 monthly payments until December 2018. At that point, the collection agent was anticipated to offer a discount of 30 percent for a 15-month payoff plan.¹⁷ The account is in the process of being resolved.

(SOR ¶¶ 1.d. and 1.e.): These are two bank-issued credit-card accounts with unpaid balances of \$5,948 and \$3,997 that were placed for collection and charged off.¹⁸ Applicant's debt resolution company and the collection agent agreed to repayment plans for both accounts, and commencing in April 2018, monthly payments have been made to the larger of the two accounts: \$162 for the first month, and \$146 each successive month; and to the smaller account: \$100 each month.¹⁹ Both accounts are in the process of being resolved.

(SOR ¶ 1.f.): This is a bank-issued charge account with an unpaid balance of \$3,230 that was placed for collection.²⁰ Applicant reached out to the collection agent in July 2018, a repayment plan was proposed under which he agreed to make monthly \$44 payments. While there is a schedule of future payments, Applicant only furnished documentation to confirm that the initial payment had been made.²¹ Applicant stated that it is his intention to continue making the monthly payments, and after other debts are paid off, he would increase these monthly payments.²² Nevertheless, the account is in the process of being resolved.

(SOR ¶ 1.g.): This is an unspecified type of account with an unpaid and past-due balance of \$1,615 that was placed for collection and charged off.²³ Applicant reached out to the debt purchaser and agreed to a repayment plan under which he authorized automatic monthly withdrawals from his account in the amount of \$50. He submitted documentation of several routine past monthly payments.²⁴ Applicant also contended that the collection agent had agreed to settle the account for \$795, he failed to submit any

¹⁷ AE I (Repayment Plan Documents, various dates); AE R (Repayment Plan Documents, various dates); Applicant's Answer to the SOR, *supra* note 2, at 2; AE P, *supra* note 13.

¹⁸ GE 4, *supra* note 2, at 8; GE 5, *supra* note 2, at 2; Answer to the SOR, *supra* note 3, at 2.

¹⁹ AE J (Repayment Plan Documents, various dates); AE T (Letter, dated August 16, 2018); AE S (Account Activity Statements, various dates); AE P, *supra* note 13.

²⁰ GE 5, *supra* note 2, at 2.

²¹ AE K (Letter, undated); AE V (Repayment Plan Documents, various dates); Answer to the SOR, *supra* note 3, at 2.

²² AE K, *supra* note 21, at 1. It should be noted that the Appeal Board has indicated that promises to pay off delinquent debts in the future are not a substitute for a track record of paying debts in a timely manner and otherwise acting in a financially responsible manner. ISCR Case No. 07-13041 at 4 (App. Bd. Sep. 19, 2008) (citing ISCR Case No. 99-0012 at 3 (App. Bd. Dec. 1, 1999)).

²³ GE 5, *supra* note 2, at 2.

²⁴ AE L (Repayment Plan Documents, various dates); AW W (Statement, undated).

documentation to support his contention. He expects the account to be paid in full by January 2019.²⁵ The account is in the process of being resolved.

(SOR ¶ 1.h.): This is an unspecified type of bank account with an unpaid balance of \$1,066 that was placed for collection.²⁶ Applicant and the collection agent agreed to a repayment plan under which, commencing in July 2018, monthly \$45 payments would be made. He submitted documentation reflecting only one such payment.²⁷ On August 16, 2018, the collection agent offered to settle the account for one lump-sum payment of \$465 to be made by August 28, 2018, but Applicant was apparently unable to make such a payment. Nevertheless, the account is in the process of being resolved.²⁸

(SOR ¶ 1.i.): This is a bank-issued charge account with an unpaid balance of \$1,015 that was placed for collection and sold to a debt purchaser.²⁹ Applicant's debt resolution company and the debt purchaser agreed to a \$601 settlement, followed by a repayment plan in September 2017 – six months before the SOR was issued – and in March 2018, a final payment was made under that plan. The current balance is zero.³⁰ The account has been resolved.

(SOR ¶ 1.j.): This is a state tax lien in the amount of \$1,205 that was filed in 2016, and placed for collection.³¹ Applicant claimed that he resided in the state for six months and after he moved, but he never received any notice of delinquent taxes. The unpaid tax of \$137 was increased because of fees. After several unsuccessful efforts to set up a repayment plan with the collection agent, an agreement was finally established in July 2018, under which Applicant agreed to make monthly \$100 payments.³² Applicant furnished documentation to confirm that a few payments had been made.³³ Because there was an issue regarding the accuracy of the amount owed the state because of a tax-preparer error, the state is reviewing the issue.³⁴ Nevertheless, the lien is in the process of being resolved.

²⁵ Answer to the SOR, *supra* note 3, at 2.

²⁶ GE 5, *supra* note 2, at 2.

²⁷ AE X (Repayment Plan Documents, various dates); AW J, *supra* note 19; AE P, *supra* note 13.

²⁸ AE X (Letter, dated August 16, 2018).

²⁹ GE 4, *supra* note 2, at 16; GE 5, *supra* note 2, at 2.

³⁰ AE J (Payment Transactions, undated); AE Y (Repayment Plan Documents, various dates); AE T, *supra* note 19); AE P, *supra* note 13; AE B (Account Details, undated).

³¹ GE 4, *supra* note 2, at 6; GE 5, *supra* note 2, at 5.

³² AE M (Repayment Plan Documents, undated); AE Z (Repayment Plan Documents, various dates); AE W (Certified Mail Receipt, dated July 25, 2018).

³³ AE Z, *supra* note 32.

(SOR ¶ 1.k.): This is a cellular telephone account with an unpaid balance of \$175 that was placed for collection.³⁵ Applicant contends that the original balance was \$120, and that he had been making unspecified payments for an unspecified period. He also claimed that the collection agent offered to settle the account for \$80 in two separate \$40 payments. Those payments were made on April 20, 2018 and May 18, 2018.³⁶ However, it appears that the collection agent representative was not legitimate, and a fraud investigation was opened. Applicant contended that he paid the creditor \$87, and that a letter would be furnished to him to indicate the account was paid in full.³⁷ Applicant did not submit documentation to support his contention that the payment was made. Nevertheless, the account is the process of being resolved.

(SOR ¶ 1.l.): This is a medical account with an unpaid balance of \$152 that was placed for collection.³⁸ Applicant contended that the account was listed in error for he actually paid for his medical services directly to the provider in 2011. The creditor confirmed the error.³⁹ The account has been resolved.

Other than the accounts alleged in the SOR, Applicant is not aware of any other delinquent accounts. During the hearing, Applicant submitted a Personal Financial Statement to reflect his monthly net income (\$5,300); monthly expenses (\$3,387), including those made to his debt resolution company, described above; and a monthly remainder (\$1,913) available for discretionary saving or spending.⁴⁰ One month after the hearing, he submitted an updated Personal Financial Statement to reflect his monthly net income (\$5,266), not including any income by his wife; monthly expenses (\$4,681), including those made to his debt resolution company, described above, and other payments made directly to his creditors; and a monthly remainder (\$585) available for discretionary saving or spending.⁴¹

³⁴ AE P, *supra* note 13.

³⁵ GE 4, *supra* note 2, at 16.

³⁶ AE N (Payment Transactions, undated).

³⁷ AE P, *supra* note 13.

³⁸ GE 4, *supra* note 2, at 16.

³⁹ AE O (Statement, undated); AE P, *supra* note 13; AE AA (Payment Transactions, dated August 20, 2018).

⁴⁰ AE F (Personal Financial Statement, undated).

⁴¹ AE CC (Personal Financial Statement, undated).

Character References

One former colleague, who has known Applicant for ten years, described him as a hard-working, well-respected mentor, and a person of integrity who is very intelligent, professional, and pivotal in building trust relationships.⁴²

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no one has a ‘right’ to a [position of public trust].”⁴³ 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. DOD contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination may be made.⁴⁴

Positions formerly designated as ADP I or ADP II are classified as noncritical-sensitive positions and include those personnel “[w]ith access to automated systems that contain military active duty, guard, or reservists’ personally identifiable information or information pertaining to Service members that is otherwise protected from disclosure by [the DOD Privacy Program] where such access has the potential to cause serious damage to the national security.”⁴⁵

When evaluating an applicant’s suitability for a public trust position, the administrative judge must consider the guidelines in SEAD 4. In addition to brief introductory explanations for each guideline, the guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant’s eligibility for a public trust position.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging 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 common sense decision. The entire process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” The administrative judge must consider all

⁴² AE F (Character Reference, undated).

⁴³ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

⁴⁴ It should be noted that a memorandum from the Deputy Under Secretary of Defense for Counterintelligence and Security, Adjudication of Trustworthiness Cases, dated November 19, 2004, covers the handling of trustworthiness cases under the Directive. The memorandum directed the Defense Office of Hearings and Appeals (DOHA) to continue to utilize the Directive in ADP contractor cases for trustworthiness determinations.

⁴⁵ DOD Manual 5200.02, *Procedures for the DOD Personnel Security Program (PSP)* (April 3, 2017) (Manual), ¶ 4.1.a. (3)(c).

available, reliable information about the person, past and present, favorable and unfavorable, in making a meaningful decision.

In the decision-making process, facts must be established by “substantial evidence.”⁴⁶ The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government’s case. The burden of disproving a mitigating condition never shifts to the Government.⁴⁷

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 as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those 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 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. Furthermore, security clearance determinations, and by inference, public trust determinations, should err, if they must, on the side of denials.⁴⁸ 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.

Analysis

Guideline F, Financial Considerations

The trustworthiness concern relating to the guideline for Financial Considerations 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. Financial distress can also be

⁴⁶ “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “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).

⁴⁷ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

⁴⁸ *Egan*, 484 U.S. at 531.

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.

The guideline notes several conditions that could raise trustworthiness concerns under AG ¶ 19:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (c) a history of not meeting financial obligations; and
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

Applicant failed to maintain several accounts in a current status and a number of them became delinquent. Accounts were placed for collection or charged off, a house went into a foreclosure status, and a state tax lien was filed. Those debts total approximately \$71,303. AG ¶¶ 19(a), 19(c), and 19(f) have been established. AG ¶ 19(b) has not been established because there is no evidence that Applicant had the ability to pay his debts but was unwilling to do so.

The guideline also includes examples of conditions that could mitigate trustworthiness concerns arising from financial difficulties under AG ¶ 20:

- (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;⁴⁹
- (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;

⁴⁹ A debt that became delinquent several years ago is still considered recent because "an applicant's ongoing, unpaid debts evidence a continuing course of conduct and, therefore, can be viewed as recent for purposes of the Guideline F mitigating conditions." ISCR Case No. 15-06532 at 3 (App. Bd. Feb. 16, 2017) (citing ISCR Case No. 15-01690 at 2 (App. Bd. Sept. 13, 2016)).

(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;⁵⁰

(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; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

AG ¶¶ 20(a), 20(b), 20(c), 20(d), and 20(e) all fully or partially apply. Applicant's financial difficulties periodically arose because he was generally unemployed or underemployed from May 2009 until May 2017 – situations that were largely beyond his control. Applicant's savings were eventually depleted, and accounts became delinquent. Another factor exacerbating Applicant's finances were his repeated relocations from state to state, either to follow his wife and her employment activities, or to accept temporary employment opportunities. Applicant acted responsibly by seeking information from his creditors or collection agents,⁵¹ and by obtaining financial counseling and credit resolution guidance and assistance. Either he or his credit resolution company reached out to the various creditors, collection attorneys, and collection agents, and discussed settlement possibilities and repayment arrangements. Applicant entered into repayment

⁵⁰ The Appeal Board has previously explained what constitutes a good-faith effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the "good-faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term "good-faith." However, the Board has indicated that the concept of good-faith "requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation." Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy [or statute of limitations]) in order to claim the benefit of [the "good-faith" mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

⁵¹ "Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current.

arrangements with some creditors, agreed to settlements with some creditors, and paid off or otherwise resolved some SOR debts. He made arrangements with the state tax authority, and he is in compliance with those arrangements. As his debts were reduced, Applicant continued making his monthly payments with the intention of increasing those payments as the opportunity to do so presented itself. Applicant offered substantial evidence to indicate that his financial situation is now under better control. Applicant's actions under the circumstances no longer cast doubt on his current reliability, trustworthiness, and good judgment.⁵²

Trustworthiness decisions are aimed at evaluating an applicant's judgment, reliability, and trustworthiness. They are not a debt-collection procedure. The guidelines do not require an applicant to establish resolution of every debt or issue alleged in the SOR. An applicant needs only to establish a plan to resolve financial problems and take significant actions to implement the plan. There is no requirement that an applicant immediately resolve issues or make payments on all delinquent debts simultaneously, nor is there a requirement that the debts or issues alleged in an SOR be resolved first. Rather, a reasonable plan and concomitant conduct may provide for the payment of such debts, or resolution of such issues, one at a time. Mere promises to pay debts in the future, without further confirmed action, are insufficient. In this instance, however, Applicant's promises transitioned into positive action, and he now has a history of fulfilling his promises.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a position of public trust 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 SEAD 4, App. A, ¶ 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.

Under SEAD 4, App. A, ¶ 2(c), the ultimate determination of whether to grant eligibility for a position of public trust must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Moreover, I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.⁵³

⁵² See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

⁵³ See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); See also ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

There is some evidence against mitigating Applicant's conduct. Applicant failed to maintain several accounts in a current status and a number of them became delinquent. Accounts totaling approximately \$71,303 were placed for collection or charged off, a house went into a foreclosure status, and a state tax lien was filed. While Applicant obtained financial guidance and addressed some debts before the SOR was issued, it appears that a significant portion of his actions in actually paying his debts did not commence until after he was motivated to do so upon receipt of the SOR.

The mitigating evidence under the whole-person concept is more substantial. Applicant is a 59-year-old employee of a defense contractor. He has been serving as a network analyst processor – a position of public trust – with his current employer since May 2017. He has been described as a hard-working, well-respected mentor, and a person of integrity who is very intelligent, professional, and pivotal in building trust relationships. Rather than simply ignoring his creditors, Applicant reached out to them, either directly or through his credit resolution company, and discussed settlement or repayment possibilities. He entered into repayment agreements with some creditors; paid off, or otherwise resolved, other accounts; or is in the process of resolving all of his remaining debts. His house is no longer in a foreclosure status. With \$5,266 in monthly net income, not including any income by his wife; \$4,681 in monthly expenses, including those made to his debt resolution company, and other payments made directly to his creditors; and \$585 as a monthly remainder available for discretionary saving or spending, Applicant's finances appear to be good, and it is anticipated that they will improve once his repayment plans are successfully completed and more debts are paid.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:⁵⁴

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts. However, an applicant is not required, as a matter of law, to establish that he [or she] has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he [or she] has ". . . established a plan to resolve his [or her] financial problems and taken significant actions to implement that plan." The Judge can reasonably consider the entirety of an applicant's financial situation and his [or her] actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) ("Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.") There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first

⁵⁴ ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

Applicant has demonstrated a good track record of debt reduction and elimination efforts, resolving, or in the process of resolving, all of his debts. Overall, the evidence leaves me without questions and doubts as to Applicant's eligibility and suitability for a position of public trust. For all of these reasons, I conclude Applicant has successfully mitigated the trustworthiness concerns arising from his financial considerations. See SEAD 4, App. A, ¶¶ 2(d)(1) through AG 2(d)(9).

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: FOR APPLICANT

Subparagraphs 1.a. through 1.l.: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a position of public trust to support a contract with the DOD. Eligibility is granted.

ROBERT ROBINSON GALES
Administrative Judge