



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



In the matter of: )  
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Applicant for Public Trust Position )

ADP Case No. 18-02740

**Appearances**

For Government: Aubrey M. DeAngelis, Esquire, Department Counsel  
For Applicant: *Pro se*  
08/01/2019

**Decision**

MARSHALL, Jr., Arthur E., Administrative Judge:

**Statement of the Case**

The Applicant seeks eligibility to occupy an automated data processing (ADP) position designated ADP-I/II/III. On May 24, 2017, Applicant applied for a public trust position and submitted an electronic questionnaire for investigations processing (e-QIP). On December 14, 2018, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to him, under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 1992), as amended and modified (Directive); and Directive 4 of the Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016) (AG), for all covered individuals who require initial or continued eligibility to hold a sensitive position, effective June 8, 2017.

The SOR alleged trustworthiness concerns under Guideline J (Criminal Conduct) and Guideline E (Personal Conduct). It also 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 to Applicant eligibility for occupying a public trust position to support a contract with the DOD. The SOR recommended the matter be referred to an administrative judge to determine whether the eligibility should be granted, continued, denied, or revoked.

On May 2, 2019, the Government issued a File of Relevant Material (FORM) with seven attachments (“Items”). Applicant did not respond to the FORM. The case was assigned to me on July 9, 2019. Based on my review of the record as a whole, I find Applicant mitigated criminal conduct and personal conduct trustworthiness concerns.

### **Findings of Fact**

Applicant is a 34-year-old male. He earned a master’s degree in 2010. He has worked for the same employer for nearly eight years, most recently as a senior escalation lead. Applicant married in 2012. When interviewed in July 2018, he noted that he intended to divorce his wife after the birth of their third child, which they were then expecting. (FORM, Item 5 at 2-4).

In May 2017, Applicant first applied for a public trust position and submitted an electronic questionnaire for investigations processing. In July 2018, he disclosed to investigators that he had been issued a summons to appear in court in January 2017 after his wife accused him of domestic violence assault. His wife ultimately recanted her complaint, and the domestic assault charge was dropped to a littering violation that required him to pay a \$400 fine.

In September 2017, Applicant and his wife engaged in a fight over the legitimacy of their children. The then-pregnant wife alleged that Applicant threw a laundry basket at her during their exchange. When he tried to leave during the fight, Applicant’s wife’s behavior turned sexual as she ripped open his shirt, forced her hands into his pants, and caused him to fall into pictures on the wall. (Item 7 at 10) He struggled to extricate himself from the increasingly sexualized situation before his groin was inadvertently struck. In trying to avoid contact with, or harm to, his pregnant wife and escape the encounter, he hit his head on his way to his car. He then drove to the police station and filed a report. He was given an escort back to his home to collect his clothing. He filed for a legal separation the following day. After two weeks, however, the two reconciled in an attempt to save the marriage. The police never determined who was the primary aggressor in the underlying incident.

In May 2018, the police arrived at Applicant’s home on response to a call concerning a complaint of domestic assault involving a knife. This occurred after Applicant and his wife fought as she attempted to pack her van with a load of their children’s clothing, threatening to leave Applicant. Applicant, in turn, blocked her way out of the door. She pulled a knife on Applicant, which he tried to grab from her. Ultimately, she was unarmed and fled the scene. Applicant contacted the police. The primary aggressor in the matter was never determined by the police.

Applicant later noted that he had filed five or six police reports against his wife over the years due to domestic violence incidents. He also disclosed that he had separated from his wife and planned to file for divorce. The records reflect that one town’s police records contain at least three domestic violence complaints between the spouses that led to police reports in the past two-and-a-half years: from January 17, 2017, September 8,

2017, and May 13, 2018. (FORM, Item 7) The records show that both spouses at varying times were bruised or injured in relation to their conflicts, with the majority of photographic evidence pertaining to Applicant. (see, e.g., FORM, Item 7 at 11, 13, and 20)

In May 2017, Applicant completed the e-QIP noted above. Applicant answered “no” in response to Section 22 – Police Record:

In the past seven (7) years have you been issued a summons, citation, or ticket to appear in court in a criminal proceeding against you? In the past seven (7) years have you been arrested by any police officer, sheriff, marshal, or any other type of law enforcement official? In the past seven (7) years have you been charged, convicted, or sentenced of a crime in any court? In the past seven (7) years have you been or are you currently on probation or parole? Are you currently on trial or awaiting a trial on criminal charges?

By answering this section in the negative, Applicant failed to disclose the January 2017 charge for domestic violence assault.

While Applicant admits the criminal allegations concerning his marital discord, he denied deliberately falsifying or attempting to mislead in answering “no” to Section 22 in 2017. At the time, he had asked his attorney whether he had to disclose the 2017 incident on his 2017 e-QIP. “He informed [Applicant] that his situation was lowered to a littering charge which I paid. This was the extent of the conversation, and [Applicant] thought that going forward, that was all [he] would need to disclose.” (SOR Response) Applicant apologizes for his inaction, stresses that he had no intention to deceive or falsify, and firmly believed the matter was settled and the summons voided.

### **Policies**

In this matter, The Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines* (AG), effective June 8, 2017, is controlling. The DOD considers ADP positions to be “sensitive positions.” For a person to be eligible for sensitive duties, the person’s loyalty, reliability, and trustworthiness must be such that assigning the person to a sensitive position is clearly consistent with the national security interests of the United States. AG ¶ 2.c. Applicants for ADP positions are entitled to the procedural protections in the Directive before any final unfavorable access determination is made. (Under Secretary of Defense’s Memorandum for the Director, Defense Office of Hearings and Appeals, dated November 19, 2004)

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 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.

A public trust position decision resolves whether it is clearly consistent with the interests of national security to grant or continue an applicant's access to sensitive information. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national security interest of the United States to grant or continue his or her access to sensitive information.

Persons with access to sensitive information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national security as their own. The "clearly consistent with the interests of national security" standard requires that "any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." AG ¶ 2(b). An eligibility for a public trust position decision is not a determination of the loyalty of the applicant concerned. It is merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing access to sensitive information.

## **Analysis**

### **Guideline J – Criminal Conduct**

The concern raised by criminal conduct is set out in AG ¶ 30:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

Applicant admitted that he was involved in the three cited incidents of marital discord, for which he was once charged with domestic violence assault. Such facts give rise to disqualifying conditions:

AG ¶ 31(a): a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness; and

AG ¶ 31(b): evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.

The concerns raised under this guideline have been mitigated by the following applicable factor:

AG ¶ 32(a): so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

The domestic disputes at issue arose because of the volatility that had developed in the marriage of Applicant and his wife. For one incident, Applicant was initially charged with domestic violence assault based on Applicant's wife's accusations, but she ultimately recanted her claim and the charge was dropped. In the other two incidents at issue, it was Applicant who reported the incident to the police and Applicant was not charged. Injury inflicted on him is documented, not merely anecdotal, as is the fact he disarmed his wife in one fight. Applicant has chosen to pursue divorce over marital counseling, thus assuring a more immediate solution to their tensions. In the interim, separation should significantly reduce the chances of similar conduct being repeated. AG ¶ 32(a) applies.

### **Guideline E, Personal Conduct**

The concern for personal conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified or sensitive information.

AG ¶ 16 describes conditions that could raise a concern and may be disqualifying. Here, Applicant admits he was involved in the three domestic disputes noted in the SOR as occurring in January 2017, September 2017, and May 2018. He acknowledged that he did not detail the January 2017 incident in his May 2017 e-QIP. If this failure to disclose was purposeful, there is sufficient cause to raise disqualifying conditions:

AG ¶ 16(a) deliberate omission, concealment or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities, and

AG ¶ 16(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes: (1) engaging in activities which, if known, could affect the person's persona, professional, or community standing. . . .

This guideline provides seven potential mitigating conditions under AG ¶ 17. One is potentially applicable under these facts:

AG ¶ 17(c): the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

Here, Applicant was involved in the three marital altercations previously discussed. The results of those incidents are noted above. In addition, he failed to disclose the first of these incidents on his 2017 e-QIP. The facts do not show, however, that this failure to disclose was the result of bad faith, an intentional falsity, or an attempt to obfuscate. The allegations concerning the e-QIP do not raise a disqualifying condition. Therefore, taking all the issues raised under this guideline, any established concerns (i.e., those involving the domestic disputes) are mitigated under AG ¶ 17(c).

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the adjudicative process factors listed in the AG. Under AG ¶ 2(a), the need to utilize a "whole-person" evaluation is set forth. I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I incorporated my comments under the guideline at issue in my whole-person analysis.

Applicant is a 34-year-old senior escalation lead. He has earned a master's degree and maintained steady employment for the past eight years. Married in 2012, Applicant has three children. Troubles with his marriage helped lead to the security concerns raised in this case.

Between 2017 and 2018, Applicant was in three domestic disputes with his spouse. He was charged with domestic violence assault for the first incident, but his wife recanted her complaint and the assault charge was dropped. In the other two incidents, it was Applicant who was injured, diffused the situation, and contacted the police. Realizing this pattern could not continue, he separated. He will divorce his wife after she delivers the baby with whom she was pregnant at the time his last statements were taken.

In 2018, Applicant completed an e-QIP in which he failed to disclose his charge for domestic violence assault. In doing so, he did not seek to falsify facts or obfuscate. Rather, he was advised that the matter had been reduced to a littering charge, so he concluded that he had no need to report the incident. There is nothing indicating falsity in his explanation. Taken together, I find that Applicant mitigated both criminal conduct and personal conduct concerns.

### **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 J:	FOR APPLICANT
Subparagraphs 1.a-1.c:	For Applicant
Paragraph 1, Guideline E:	FOR APPLICANT
Subparagraphs 2.a-2.b:	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 access to sensitive information is granted.

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Arthur E. Marshall, Jr.  
Administrative Judge