



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



In the matter of: )  
)  
)  
) ADP Case No. 19-00152  
)  
Applicant for Public Trust Position )

**Appearances**

For Government: Moira Modzelewski, Esq., Department Counsel  
For Applicant: *Pro se*

12/10/2019

\_\_\_\_\_

**Decision**

\_\_\_\_\_

MURPHY, Braden M., Administrative Judge:

Applicant rebutted the trustworthiness concerns about his personal conduct under Guideline E. He did not provide sufficient information to mitigate the trustworthiness concerns under Guideline F, financial considerations. Applicant’s eligibility for access to sensitive information is denied.

**Statement of the Case**

Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) on February 5, 2018. On March 5, 2019, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing trustworthiness concerns under the financial considerations and personal conduct guidelines. DOD took the action under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (AG), effective June 8, 2017.

Applicant answered the SOR on March 13, 2019, and requested a hearing before an administrative judge of the Defense Office of Hearings and Appeals (DOHA). The case was assigned to me on September 22, 2017. DOHA issued a notice of hearing on July 19, 2019, scheduling the hearing for September 11, 2019. The hearing convened as scheduled. Government Exhibits (GE) 1, 3, 4, and 5 were admitted into evidence without objection. GE 2, an unauthenticated summary of Applicant's background interview, was not admitted. Applicant testified and offered Applicant's Exhibits (AE) A through C, which were marked and admitted without objection. On September 23, 2019, Applicant submitted additional materials. I marked them as AE D through AE H and admitted them without objection. The record closed on September 23, 2019. DOHA received the hearing transcript (Tr.) on September 30, 2019.

### **Findings of Fact**

Under Guideline F, Applicant admitted SOR ¶¶ 1.c-1.j, 1.l-1.n, and 1.p; he denied SOR ¶¶ 1.b, 1.k, 1.o, 1.q, and 1.r; and he partially admitted and partially denied SOR ¶ 1.a. I construe his answer to the falsification allegation under Guideline E (SOR ¶ 2.a) as a denial. His admissions are incorporated into the findings of fact. After a thorough and careful review of the record evidence, I make the following findings of fact.

Applicant is 31 years old. He has been married for about 18 months. He has four children between ages 9 and 14, and a stepchild. He graduated from high school in 2007. He worked for a defense contractor at a naval shipyard from 2008 to July 2017, when he resigned after getting into a physical altercation with a co-worker. He testified that the altercation began after the co-worker called Applicant a racial epithet during a dispute. Applicant resigned instead of being fired so he could maintain a right to be rehired in the future. (GE 1, Tr. 20, 31-34)

Applicant was unemployed until he began working for his current employer in September 2017. He seeks eligibility for a position of public trust so he can work on certain projects. He often travels to various sites around the country for his job. (GE 1; Tr. 32-33, 64-65)

Applicant has lived in State 1 his whole life. The shipyard where he worked from 2008 to 2017 is located in State 2, within commuting distance. In 2013 and 2014, he kept an apartment in State 2, though he did not formally move there. (Tr. 38-40)

The financial allegations in the SOR concern certain unfiled state and Federal income tax returns, some delinquent state and Federal income tax debt, and other debts to private creditors. He disclosed child support debt and past-due state income taxes on his SCA. (GE 1)

SOR ¶¶ 1.b (\$3,137), 1.c (\$2,381), and 1.d (\$1,890) concern State 1 tax liens issued against Applicant in 2014 and 2015. Applicant denied SOR ¶ 1.b, stating the debt had been paid; he admitted SOR ¶¶ 1.c and 1.d. He testified that all of these tax debts were resolved through garnishment of his wages. He provided documentation of

garnishment orders from State 1, for \$4,232 (AE B - AE D) and \$6,220 (AE E). He testified that these garnishment orders resolved past-due state income tax debt from tax years 2011-2014. (Tr. 40-44, 49) A current pay stub does not show any current garnishments. (AE H)

Applicant testified that his tax issues occurred because he had state income taxes taken out by State 2 when he was working there, even though he was living in State 1. He believes he is owed money from State 2 due to tax overpayments or a tax credit, and that those tax payments should have been directed to State 1. He had an accountant or tax preparer, but he said she did not file returns with State 1 for several years (2011-2015). (Tr. 44-47) Applicant did not believe that he could have fixed the problem through his employer's payroll office by telling them to withhold State 1 taxes (because he lived there) even though his work location was in State 2. (Tr. 47-49) He provided an "unclaimed property form" from the State 2 Treasurer's office, which came with a \$2,600 check he received from State 2. He said it was reimbursing him for State 2 taxes that were improperly collected. (Tr. 85-89; AE A)

The SOR also alleges that Applicant has unfiled State 1 income tax returns for tax years 2011 and 2016 (SOR ¶ 1.a) and an unfiled federal income tax return for 2016 as well (SOR ¶ 1.e). Applicant testified that his 2016 state and federal returns remain unfiled but that all earlier years (2011-2015) had been "filed." He then clarified that he had signed returns provided to him by his tax preparer, but the returns had not in fact been "filed" with State 1. He believes, however, that his tax preparer filed returns with State 2, though erroneously. Applicant provided no documentation that any of these income tax returns either Federal or for State 1, have been filed, even belatedly. He said he contacted the IRS about his 2016 return, and claimed to have gotten a filing extension to September 2019. (Tr. 49-54)

Applicant also acknowledged owing about \$8,000 in past-due Federal income taxes. (SOR ¶ 1.f) He said he was told by the IRS that he had to file all his past-due returns before he could set up a payment plan. This debt is unresolved.

The remaining accounts in the SOR all concern past-due debts to private creditors. They include: \$12,586, in collection (SOR ¶ 1.g); \$11,541, charged off (SOR ¶ 1.h); charged-off credit union account, for \$1,194 (SOR ¶ 1.i); charged-off account to a furniture store, for \$934 (SOR ¶ 1.j); \$317, in collection; (SOR ¶ 1.k); \$6,656 balance due on a repossessed auto (SOR ¶ 1.l); \$1,228 past-due, \$2,674 total balance on a credit union account (SOR ¶ 1.m); two accounts placed in collection by a satellite or cable TV providers (SOR ¶ 1.n, for \$525, and SOR ¶ 1.o, for \$423); and a \$192 debt in collection to a power company. (SOR ¶ 1.p) These debts are reflected on Applicant's March 2018 credit report. None of these debts, as alleged, have been paid or otherwise resolved. (GE 3; Tr. 56-63)

Applicant acknowledged that he incurred many of his debts when he was younger and did not know any better. He also fell behind on his expenses during the short period he was unemployed between jobs. (July to September 2017) (Tr. 35-36)

Applicant contacted the credit union related to SOR debts ¶¶ 1.i and 1.m, but has not set up a payment plan. (Tr. 57) The debt at SOR ¶ 1.k is for a vehicle. Applicant fell behind on payments and returned the car. He denied the debt on that basis. He has made no further payments. (Tr. 57-58)

As to SOR ¶ 1.l, Applicant was unable to make payments when the monthly fee increased, so he returned the car. He was not aware that he owed a deficiency balance until he saw the debt on his credit report. The debt is unresolved. (Tr. 58-59) Applicant has not made any arrangements to pay, dispute, or resolve the debts at SOR ¶¶ 1.n, 1.o, or 1.p. (Tr. 61)

Applicant did not recognize the two past-due medical debts alleged. (SOR ¶ 1.q, for \$97, and SOR ¶ 1.r, for \$61) While SOR ¶ 1.r names the collection agency involved, neither debt identifies the medical creditor allegedly involved. (Tr. 62-63)

Applicant earns about \$21 an hour, about \$840 a week, not including overtime. (AE H) His pay is sometimes sporadic, and he has little to no savings. He has some money in his company 401k account. (Tr. 64-66) His wife works for a local community college and is also a student there. (Tr. 68)

Applicant pays \$694 in monthly child support for his two older children (\$438 and \$256). His younger two children live with him. (Tr. 66-67) He and his wife own two luxury cars, both used. They pay \$595 and \$494 a month on each. They bought one of those cars in April 2019, for about \$25,000. He said that the garnishments for his tax debts impacted his income, and, thus, his ability to pay his other debts. (Tr. 68-69)

Applicant attested that he intends to pay his debts. He has not pursued credit counseling. He has not altered his spending to get his debts under better control. (Tr. 70) If he is given an opportunity to travel to work locations that offer better pay, he will be in a better position to address his debts. (Tr. 78)

### **Guideline E**

Under Guideline E, the Government alleges that, when Applicant prepared and submitted his February 2018 E-QIP application, he deliberately failed to disclose two prior arrests, in March 2010 and July 2011, both for carrying a pistol without a permit, in answer to a question about his police record: "Have you EVER been charged with an offense involving firearms or explosives." (SOR ¶ 2.a) (GE 1) Applicant acknowledged an omission by stating "I agree" but said he misunderstood the question. (Answer)

Applicant testified that he was only arrested on one occasion. He was arrested and charged with eluding the police and carrying a pistol without a permit. He believes it was in 2011. He acknowledged being stopped by the police. He had a weapon, but it was in his car. He did not have the permit on him. When the police stopped his car, he got out and ran. Applicant said he went to court and pleaded guilty to both counts. He received a year of probation. (Tr. 25, 70-73, 80-81)

Applicant's FBI criminal record and his criminal record in State 1, both part of the Government's case, suggest that he was arrested in March 2010 for eluding the police and for carrying a pistol without a permit; and that he was also arrested, on the same two charges, in July 2011. (GE 4, GE 5) However, police records Applicant submitted post-hearing support his testimony that he was arrested only once on a gun charge (and for eluding police), in March 2010. (AE F, AE G)

Applicant stated his wife prepared his e-QIP for him because he has reading problems. He has never been formally diagnosed with a reading or learning disability, but he said he had problems in school. He said he and his wife went through the e-QIP questions together and she consulted him during the process. He said he told her about the pistol charge and she did not "put that on there" because she forgot. He acknowledged responsibility for reporting information on the e-QIP. He denied any intent to falsify or to deliberately deceive the Government in failing to disclose any gun charges on his e-QIP. (Tr. 20-23, 74-79)

Under questioning, Applicant also acknowledged that the handwritten answers to each allegation in the SOR were written by his wife. He said she read him the SOR and wrote down his answer to each allegation. He said that it is his handwriting on the notarized page of his SOR response that contains his signature, address and request for a hearing. (Tr. 76-78)

As to the criminal charges themselves, Applicant said he was "young and wild back then" and "being stupid." He has matured and is a family man. He enjoys spending time with his children. (Tr. 89-90)

### **Policies**

It is well established that no one has a right to a security clearance, or, as here, to a determination of public trust. As the Supreme Court noted in *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security [and trustworthiness] determinations should err, if they must, on the side of denials."

The adjudicative 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." 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, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and 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 that an 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.

## **Analysis**

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

AG ¶ 15 expresses the security concern for personal conduct:

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. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. . .

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(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 national security eligibility or trustworthiness, or award fiduciary responsibilities.

I find that AG ¶ 16(a) is not established. First, I conclude, based on Applicant's testimony and the documentary evidence, that Applicant was arrested on one occasion, related to a gun charge, not twice, as alleged. The arrest seems to have occurred in March 2010 (when he was also charged with eluding the police). Second, and more importantly, whenever the offense occurred, I do not believe Applicant deliberately failed to disclose it on his e-QIP. He listed two large delinquent debts in disclosing details about his financial record, so he knew he was required to disclose derogatory information. Applicant also credibly testified that he has problems reading, and that his wife assisted him in answering both the SOR and the e-QIP. While it is not entirely clear

why Applicant's one gun charge was not disclosed on the form, I do not believe the omission was deliberate. AG ¶ 16(a) does not apply, and SOR ¶ 2.a is found for Applicant.

## **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 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.

This concern is broader than the possibility that an individual might knowingly compromise sensitive information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting sensitive information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding sensitive classified information. ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012)

AG ¶ 19 provides conditions that could raise financial trustworthiness concerns. The following are potentially applicable:

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

Applicant has a history of delinquent debts and tax problems. He incurred several delinquent debts when he was younger, and his expenses have outpaced his income for several years. AG ¶¶ 19(a) and (c) apply.

Two debts are not established. The small medical debts at SOR ¶¶ 1.q and 1.r, which Applicant denied and said he does not recognize, are not sufficiently identified so that Applicant can attempt to resolve them. As medical debts, they are also likely attributable to a reasonable circumstance. I resolve them for Applicant.

Applicant lives in State 1 but often worked in State 2 in recent years. This led to a misunderstanding about his state tax filing requirements and state tax payment requirements. State 1 issued several garnishment orders against him to collect the unpaid state taxes. He failed to file his 2011 State 1 income tax return, and his 2016 State 1 and federal income tax returns. Applicant also has about \$8,000 in past-due federal income taxes from tax year 2016. AG ¶ 19(f) also applies.

The financial considerations guideline also includes potentially applicable mitigating conditions, 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;

(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;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; 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.

Applicant has a long history of financial delinquencies and tax problems. His debts were perhaps increased due to his brief period of unemployment, but he has also had financial problems since well before then. Most of his debts are ongoing and unresolved, both debts to private creditors and federal income tax debt. The state tax debts appear resolved, but only because State 1 garnished his wages. Applicant has yet to address his debts or to curtail his spending in any meaningful way. He has not contacted his creditors to attempt to resolve his debts, nor has he begun to put together a plan, let alone a reasonable plan, for dealing with them. His taxes are unresolved, both state and federal, and he has at least one year (2016) of unfiled tax returns, probably more. No mitigating conditions apply. His financial issues remain a trustworthiness concern.



## Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a trustworthiness determination 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.

Under AG ¶ 2(a), the ultimate determination of whether to grant eligibility for a determination of public trust 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 the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines F and E in my whole-person analysis.

I observed Applicant's demeanor during the hearing. I found him to be a credible witness. Applicant rebutted the personal conduct allegations about disclosure of his criminal history from many years ago. However, his finances remain unstable. He needs to establish more of a track record of financial stability and responsibility before he can be considered a suitable candidate for access to sensitive information. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for access to sensitive information. For all these reasons, I conclude that Applicant did not mitigate the financial trustworthiness 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 F:	AGAINST APPLICANT
Subparagraphs 1.a-1.p:	Against Applicant
Subparagraphs 1.q-1.r:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

## **Conclusion**

In light of all of the circumstances presented, it is not clearly consistent with the national security interests of the United States to grant Applicant's eligibility for access to sensitive information. Eligibility for access to sensitive information is denied.

---

Braden M. Murphy  
Administrative Judge