



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



In the matter of: )  
)  
) ADP Case No. 19-02194  
)  
Applicant for Public Trust Position )

**Appearances**

For Government: Benjamin Dorsey, Esq., Department Counsel  
For Applicant: Alan V. Edmunds, Esq.

05/05/2020

**Decision**

GARCIA, Candace Le'i, Administrative Judge:

Applicant mitigated the financial considerations trustworthiness concerns. Eligibility for access to sensitive information is granted.

**Statement of the Case**

On September 5, 2019, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing trustworthiness concerns under Guideline F (financial considerations). The action was taken under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by DOD on June 8, 2017.

Applicant responded to the SOR on October 22, 2019, and requested a hearing before an administrative judge. The case was assigned to me on January 6, 2020. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing (NOH) on February 4, 2020, scheduling the hearing for February 12, 2020. Applicant waived the

15-day hearing notice required by the Directive. I convened the hearing as scheduled. (Tr. at 5)

Government Exhibits (GE) 1, 2, and 3 and Applicant's Exhibits (AE) A through M were admitted in evidence without objection. At Applicant's request, I kept the record open until February 24, 2020, to allow him to submit additional evidence. By that date, Applicant submitted additional documentation, which I marked collectively as AE N and admitted in evidence without objection. DOHA received the hearing transcript (Tr.) on February 24, 2020.

### **Findings of Fact**

Applicant admitted SOR ¶ 1.a and denied SOR ¶ 1.b. He is 49 years old. He married in 1995 and divorced in 2004. He has one adult child. (Tr. at 14-16, 23-24; GE 1; AE H, L)

Applicant graduated from high school in 1988. He earned a bachelor's degree in 1992 and a master's degree in 2001. He served honorably in the U.S. military from 1994 to 2005. He worked for a DOD contractor from 2005 to 2013. As of the date of the hearing, he had worked for his current employer, another DOD contractor, since July 2019. He held a DOD security clearance from approximately 1994 to 2013. (Tr. at 6-7, 14-20, 38-39; GE 1; AE D, E, F, H)

Applicant attributed his delinquent debts to the following factors: he became a single parent after the death of his ex-spouse in 2006. He was unemployed from November 2013 to May 2015, after moving with his child in April 2014 to the state in which his parents resided. He sought to offer his child a change of environment during a difficult period as his son was entering high school. His annual salary prior to his 2013 unemployment was \$110,000. He was underemployed from May 2015 to May 2017 and earned approximately \$30,000 annually. He suffered from medical problems related to organ failure in mid-2017, and he was on doctor's orders not to work from late 2017 to the summer of 2019. He was again unemployed from May 2017 to July 2019. (Tr. at 14-20, 22-24, 28-33, 39-46, 52-55; GE 1; AE H)

The SOR alleges two delinquent consumer debts totaling \$86,419 (SOR ¶¶ 1.a-1.b). The debts are established by the 2016 and 2019 credit bureau reports. Applicant also disclosed and discussed his debts in his 2016 security clearance application (SCA). (GE 1-3)

SOR ¶ 1.a is for a \$73,299 charged-off home equity line of credit (HELOC). Applicant purchased a condominium in 2006. He obtained a first mortgage for \$300,000 and a \$75,000 HELOC, and his mortgage payments were \$2,200 monthly. From 2006 to 2015, he was current on his first mortgage and this HELOC. When he moved in 2014, he obtained renters for his home and supplemented the rental income he received with money from his retirement savings to make his mortgage payments from 2013 to 2015. He began to fall behind on his mortgage in 2015. He telephoned the creditor and unsuccessfully attempted to reach a payment agreement. He then unsuccessfully

attempted to short sell his condominium with his realtor's assistance from 2016 until it was foreclosed and auctioned in around February 2017. He was not contacted by anyone concerning a deficiency balance on his first mortgage. He settled the HELOC for \$10,694, and paid it in December 2019. (Tr. at 16, 20-23, 25-36, 42-51; GE 1, 3, 4; AE A, C, I, J, N)

SOR ¶ 1.b is for a \$13,120 charge off. He settled this debt for \$7,380 and paid it in May 2019, before he began working for his current employer. (Tr. at 20-23, 25-28, 36, 45, 51-52; GE 1; AE B, M)

Applicant does not have any other delinquent debts. His annual salary since July 2019 was \$70,000, of which he allotted 8% into a retirement savings account. He lives frugally. He rents a room for \$750 monthly and his car is paid. His monthly net remainder after expenses is approximately \$3,000 to \$5,000. He has filed and paid his taxes with the help of a tax advisor. He has not received financial counseling. He received several awards from the U.S. military, to include two Commendation Medals. Character references, to include two supervisors from 2005 to 2013 and his supervisor since July 2019, attested to his outstanding performance and strong work ethic. They stated that they were aware of Applicant's financial problems and attested to his judgment, reliability, and trustworthiness. (Tr. at 19-21, 23-28, 37-38, 45-46, 52; AE D, F, G, K)

### **Policies**

The Under Secretary of Defense's Memorandum of November 19, 2004, treats ADP positions as sensitive positions, and it entitles applicants for ADP positions to the procedural protections in the Directive before any final unfavorable access determination may be made. The standard set out in the adjudicative guidelines for assignment to sensitive duties is that the person's loyalty, reliability, and trustworthiness are such that assigning the person to sensitive duties is clearly consistent with the interests of national security. AG ¶ 2.b.

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. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard sensitive information.

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 overarching 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.

The protection of the national security is the paramount consideration. Under AG ¶ 2(b), “[a]ny doubt concerning personnel being considered for access to [sensitive] information will be resolved in favor of national security.” The Government must present substantial evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. 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 burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). An applicant has the ultimate burden of demonstrating that it is clearly consistent with national security to grant or continue eligibility for access to sensitive information.

## **Analysis**

### **Guideline F: Financial Considerations**

The trustworthiness concern 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 . . . .

The guideline notes several conditions that could raise trustworthiness concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability to satisfy debts; and
  
- (c) a history of not meeting financial obligations.

Applicant was unable to pay his debts. The evidence is sufficient to raise AG ¶¶ 19(a) and 19(c) as disqualifying conditions.

Conditions that could mitigate the financial considerations trustworthiness concerns are provided under AG ¶ 20. The following are potentially applicable:

- (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; and

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

Conditions beyond Applicant's control, as previously discussed, contributed to his financial problems. Thus, the first prong of AG ¶ 20(b) applies. For the full application of AG ¶ 20(b), he must provide evidence that he acted responsibly under his circumstances. He credibly testified that he attempted to resolve the HELOC in SOR ¶ 1.a when he began to fall behind on his mortgage in 2015. He also credibly testified that he resolved both of his delinquent debts in SOR ¶¶ 1.a and 1.b as soon as he recovered from his medical issues in 2019. He paid SOR ¶ 1.b before he began working for his current employer in July 2019. He does not have any other delinquent debts. I find that AG ¶¶ 20(a), 20(b), and 20(d) apply.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a public trust position by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a public trust position 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 Guideline F in my whole-person analysis. Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility for access to sensitive information. I conclude Applicant mitigated the financial considerations 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:	FOR APPLICANT
Subparagraphs 1.a – 1.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's eligibility for a public trust position. Eligibility for access to sensitive information is granted.

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Candace Le'i Garcia  
Administrative Judge