



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



In the matter of: )  
)  
) ADP Case No. 19-02230  
)  
Applicant for Public Trust Position )

**Appearances**

For Government: Rhett Petcher, Esq., Department Counsel  
For Applicant: *Pro se*

03/31/2020

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**Decision**

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BENSON, Pamela C., Administrative Judge:

Applicant has mitigated the trustworthiness concerns under Guideline F (Financial Considerations). His statement of reasons (SOR) lists nine delinquent debts. He paid one debt, and the other eight debts are in payment plans for the past year. He has made sufficient progress in resolving his delinquent debt. Eligibility for access to a public trust position is granted.

**Statement of the Case**

On November 5, 2018, Applicant submitted a security clearance application (SCA). On October 21, 2019, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant an SOR, detailing trustworthiness concerns under Guideline F (Financial Considerations). The action was taken under Executive Order (EO) 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 *National Security Adjudicative Guidelines* (AG) effective within the DoD on June 8, 2017.

On November 14, 2019, Applicant responded to the SOR, and he requested a hearing before an administrative judge. On February 4, 2020, the case was assigned to me, and the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for February 25, 2020.

During the hearing, Department Counsel offered Government Exhibits (GE) 1 through 6 into evidence, which I admitted without objection. Applicant testified, and requested that I review the documents he submitted with his SOR response. At the request of Applicant, I held the record open until March 17, 2020 to submit additional documentation. DOHA received the hearing transcript (Tr.) on March 5, 2020. On March 17, 2020, Applicant provided three documents, which I labeled as Applicant Exhibits (AE) A through C, and I admitted all three documents into evidence without objection. The record was closed on March 17, 2020.

### **Findings of Fact**

Having thoroughly considered the evidence in the record, including Applicant's admissions, I make the following findings of fact:

Applicant is 33 years old. He is unmarried and does not have any children. Applicant is employed by a medical service company. He was hired in June 2018 as a unit coordinator. Prior to this employment, he had been unemployed from November 2017 until June 2018. He received unemployment benefits during a portion of his unemployment period. Applicant attended three years of college and stopped attending in 2015 due to family reasons. At the time he withdrew, he was majoring in physiology, and his grade point average was 3.62. Applicant's current monthly take-home pay is approximately \$2,000. His employer requires him to be issued a trustworthiness determination in order to continue his employment. (Tr. 14-18, 22-23; GE 1)

In 2012, Applicant began to experience financial difficulties following his hospitalization for a blood clot. From 2013 to November 2017, he was underemployed, working less than 20 hours a week, by a national appliance store for minimal pay. He testified that, until recently, he was not educated about financial matters. The first time he looked at a credit report occurred during his January 2019 background interview. Once he realized the amount of his debt, he immediately contacted all of his creditors to begin resolving his debts. He hopes one day he will be able to purchase a house, and he cannot have lingering past-due debt if he is to achieve this goal. He values his employment, and he is grateful for earning a decent income for the first time in his life. (Tr. 19-21, 37-38)

SOR ¶¶ 1.a-f allege six delinquent Department of Education student loans placed for collection in the amount of \$34,190. Applicant admitted all of the student loans in his SOR response. After he withdrew from college due to family reasons, his student loans became due immediately, which he could not afford to pay. He testified that he did pay on his student loans for a short period of time while working part-time, but he had to stop after he was unable to afford the payments. Applicant stated that he started paying

his student loans again after his January 2019 background interview. He is paying \$5 a month to rehabilitate his student loans. He has maintained regular payments for approximately one year. At the hearing, Applicant did not have any documentation to verify his claim. Post-hearing documentation showed he has consistently made monthly payments from February 2019 to January 2020. (Tr. 25-32, AE A)

SOR ¶¶ 1.g and 1.h are duplicate accounts for an unpaid cell phone service account in the amount of about \$763. Applicant provided documentation with his SOR response showing that he settled this account in November 2019 after he paid less than the full balance. This debt is resolved. (Tr. 32; SOR response attachment)

SOR ¶¶ 1.i and 1.j allege two unpaid medical accounts totaling \$1,502. Applicant testified that these accounts are related to his hospital stay in 2012. He stated that he had been paying on these medical accounts after he completed his background interview in January 2019, and he made regular monthly payments for approximately one year. At the hearing, Applicant did not have any documentation to verify his claim. Post-hearing documentation showed from February 2019 to January 2020, Applicant consistently made payments, totaling approximately \$65, on his two delinquent medical accounts. (Tr. 34-36; AE A)

On March 17, 2020, Applicant submitted a bank account snapshot showing regular payments for his student loans and medical accounts from February 2019 through January 2020. He submitted a current employee performance appraisal which showed he was highly ranked as an “Outstanding Contributor” for his employer. He also sent his monthly budget which showed that he had not accumulated any new debt. After paying all of his monthly expenses, Applicant is able to deposit approximately \$130 a month into his savings account. (AE A, AE B, AE C)

### **Policies**

A memorandum from the Under Secretary of Defense dated November 19, 2004, treats public trust positions as sensitive positions, and it entitles applicants to the procedural protections in the Directive before any final unfavorable 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.

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.

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.<sup>1</sup> Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts.<sup>2</sup> An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government.<sup>3</sup> 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**

### **Financial Considerations**

AG ¶ 18 articulates the trustworthiness concern for financial problems:

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 SOR alleged Applicant's nine delinquent debts (SOR ¶¶ 1.g. and 1.h. are duplicates), totaling approximately \$36,500. The Government produced substantial evidence to raise the disqualifying conditions in AG ¶ 19(a) (an inability to satisfy debts) and AG ¶ 19(c) (a history of not meeting financial obligations). Further inquiry about the applicability of mitigating conditions is required.

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<sup>1</sup> Directive ¶ E3.1.14.

<sup>2</sup> Directive ¶ E3.1.15.

<sup>3</sup> See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

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;

(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; and

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

Applicant bears the burdens of production and persuasion in mitigation. His debts became delinquent between 2012 and 2018, while he was underemployed or unemployed, which are circumstances beyond his control. Beginning in January 2019, Applicant contacted all of his creditors and consistently made payments to resolve his delinquent accounts. Despite circumstances beyond his control, he acted responsibly to address and resolve his financial delinquencies. AG 20(a), 20(b), and 20(d) apply, and 20(c) partially applies. Applicant mitigated the financial considerations trustworthiness concerns.

### **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(c), the ultimate determination of whether to grant eligibility for a trustworthiness determination 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.

Applicant took positive action to resolve his financial delinquencies well before the SOR was issued, and his financial issues are currently under control. I find that future delinquencies are unlikely to recur. After evaluating all the evidence in the context of the whole person, I conclude Applicant has 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.j:	For Applicant

### **Conclusion**

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

Pamela C. Benson  
Administrative Judge