



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



In the matter of:)
)
) ADP Case No. 19-03071
)
Applicant for Public Trust Position)

Appearances

For Government: Brian Farrell, Esq., Department Counsel
For Applicant: Michael A. Fischer, Esq.

06/0/2020

Decision

Harvey, Mark, Administrative Judge:

Applicant made an effort to consolidate and start payments to address his delinquent student loan debts from March 2020 to May 2020; however, he waited too long to take these actions. More of a track record of payments and more complete information about his student loans is necessary to mitigate Guideline F (financial considerations) trustworthiness concerns relating to his history of delinquent student loans. Eligibility for access to sensitive information is denied.

Statement of the Case

On August 25, 2016, Applicant completed and signed a Questionnaire for National Security Positions or security clearance application (SCA). (Government Exhibit (GE) 1) On November 13, 2019, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a statement of reasons (SOR) to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992; and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017. (Hearing Exhibit (HE) 2)

The SOR detailed reasons why the DOD CAF did not find under the Directive that it is clearly consistent with the interests of national security to grant or continue eligibility for a public trust position for Applicant. (HE 2) Specifically, the SOR set forth trustworthiness concerns arising under Guideline F.

On December 17, 2019, Applicant responded to the SOR and requested a hearing. (HE 3) On February 19, 2020, Department Counsel was ready to proceed. On February 21, 2020, the case was assigned to me. On February 27, 2020, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for March 16, 2020. (HE 1) Applicant's hearing was held as scheduled.

During the hearing, Department Counsel offered five exhibits; Applicant offered six exhibits; and all proffered exhibits were admitted into evidence without objection. (Tr. 16-21; GE 1-5; Applicant Exhibit (AE) A-AE F) On March 19, 2020, DOHA received a copy of the transcript of the hearing. Applicant requested and received a delay until April 17, 2020, to submit additional evidence. (Tr. 67) Applicant hired counsel after his hearing, and I extended the deadline to submit additional documentation to May 26, 2020. (HE 4; HE 5) On May 21, 2020, Applicant provided 15 exhibits (AE G-AE U) and a statement from Applicant (AE V). On May 26, 2020, Applicant's employer provided a letter describing his performance at work. (AE W) All documents were admitted without objection. (AE G-AE W)

Some details were excluded to protect Applicant's right to privacy. Specific information is available in the cited exhibits and transcript. ISCR and ADP decisions and the Directive are available at <https://ogc.osd.mil/doha/isp.html>.

Findings of Fact

Applicant's SOR response admitted all of the SOR allegations. Applicant also provided extenuating and mitigating information. Applicant's admissions are accepted as findings of fact. After a complete and thorough review of the evidence of record, I make the following additional findings of fact.

Applicant is a 42-year-old information technology specialist employed by the same defense contractor since February 2016. (Tr. 6-7, 38; AE V at 1) He has not been unemployed during the previous five years. (Tr. 8) He has never served in the military. (Tr. 7) He has never married, and he does not have any children. (Tr. 7)

In 1995, Applicant graduated from high school. (Tr. 6) In 2000, he received two bachelor's degrees, one in music education and one in music performance. (Tr. 8, 22-23; AE T; AE V at 4) In 2002, he received a master's degree in music. (Tr. 8, 27-28; AE T; AE V at 4) In 2011, he received a doctorate degree in musical arts (DMA). (Tr. 8; AE T; AE V at 4)

Financial Considerations

Applicant's SOR alleges 23 student loan debts totaling \$435,830 that were placed for collection in the following amounts: 1.a (\$70,373); 1.b (\$62,616); 1.c (\$58,320); 1.d (\$56,786); 1.e (\$38,207); 1.f (\$15,394); 1.g (\$14,985); 1.h (\$10,198); 1.i (\$10,198); 1.j (\$8,808); 1.k (\$7,198); 1.l (\$5,482); 1.m (\$5,165); 1.n (\$4,580); 1.o (\$4,356); 1.p (\$4,057); 1.q (\$3,267); 1.r (\$2,999); 1.t (\$12,379); 1.u (\$12,379); 1.v (\$2,617); 1.w (\$20,156); and 1.x (\$5,310). The creditor for the first 18 SOR debts is the Department of Education (DOE), and the creditor for the last five SOR debts is a bank. Applicant said he owed more than \$435,000 to his student loan creditors. (AE V at 1)

SOR ¶ 1.s alleges a telecommunications debt placed for collection for \$111. Applicant believes the telecommunications bill was erroneous. (AE F) Applicant's most recent credit report of record was dated February 14, 2020, and it does not include the telecommunications debt. (GE 4)

After receiving his DMA degree in 2011, Applicant had difficulty finding employment in music that paid enough for him to address his student loans. (Tr. 33-34) He did not maintain contact with his creditors because he could not afford payments. (Tr. 34-35) Between 2011 and 2016, he may have submitted one or more requests for hardship deferments. (Tr. 40-41) He may have contacted some of his student loan creditors around 2016. (Tr. 39) He had difficulty assessing and reconciling the various payment options. (Tr. 39-40) Around 2017, he entered a rehabilitation program for five of his student loans. (Tr. 36; AE B) He claimed he did not realize his rehabilitation program did not include all of his student loans. (Tr. 37) He said he was confused because he was working with multiple websites and creditors. (Tr. 37) Some of his pay at some point was being garnished to pay his student loans. (Tr. 38)

On October 29, 2018, an Office of Personnel Management (OPM) investigator interviewed Applicant about his delinquent student loans. (GE 5) Applicant estimated his student loan debts totaled \$442,000. (GE 5) Prior to October 2018, he had been paying his creditors about \$20 each month for nine months. (GE 5) He said he planned to consolidate his loans and then arrange a payment plan. (GE 5)

In his December 27, 2019 SOR response, Applicant said, "The [student] loans are in the process of consolidation and establish[ment] of repayment plan through Navient, the recommended option at the time I completed repayment forms on the federal government student loans website." (HE 3) He did not provide a copy of the documentation showing his application for consolidation or to establish a repayment plan.

At his hearing, Applicant provided a student loan account summary for five student loans being collected by ECMC showing payments for the period from October 12, 2017, to November 20, 2018. He said the five student loans were not included in the student loans listed on the SOR, and ECMC is not a creditor on his SOR. (Tr. 59) This summary was printed on March 13, 2020. (AE B) When the five accounts were created on October 12, 2017, the principal totaled \$41,872 for the five student loans in the following amounts: \$2,074; \$4,208; \$9,809; \$9,809; and \$15,972. (AE B at 5) He made \$5 monthly payments

from February to October 2018. (AE B) In February 2018, his employer made two \$268 payments. (AE B at 4) In November 2018, the “Lender/School” made “Rehabilitation/Repurchase Payment[s] totaling \$49,572 as follows: \$18,909; \$4,982; \$2,455; \$11,613; and \$11,613. (AE B at 1) Applicant did not provide documentation showing the current status of the five student loan debts. He did not know what happened to them. (Tr. 59) The summary does not show any payments after November 20, 2018. (AE B)

From January 21, 2018, to November 20, 2019, Applicant paid \$536 per month to address the student loans held by DOE’s Default Resolution Group; however, the payments were not applied “to guaranty agencies or to the Department prior to when the debt entered default.” (AE G; AE H; AE V at 1-2) From November 20, 2019, to March 11, 2020, he paid \$592 per month to DOE. (AE G; AE I; AE V at 1-2) All of his payments were applied to fees and interest, and none of his payments were applied to the principal owed. (AE G) The student loan payments were temporarily stopped in April 2020, due to the Corona virus. (AE J; AE V at 1-2)

On March 9, 2020, and May 15, 2020, Applicant paid Navient \$305. (AE C; AE M) He said his first payment to Navient was on March 9, 2020. (Tr. 61) He said he believed the \$305 payment applied to the five ECMC loans totaling \$49,572. (Tr. 60; AE B) He provided an April 2020 statement indicating the \$305 payment applied to two consolidated student loans totaling \$52,810. (AE M) No payment was due in April 2020 due to the impact of the Corona virus. (AE M)

Applicant said he was making “two simultaneous payments with Navient and then [to] Immediate Credit Recovery” (ICR). (Tr. 41) He was making \$592 payments every month through garnishment of his salary. (Tr. 41-42; AE A) His pay statement for March 6, 2020, showed that his employer paid \$1,479 out of his salary to address his student loans in the year to date. (AE A) He was unsure about how long the garnishment was in effect. (Tr. 57) He believed that after five more payments to ICR, he would complete the ICR program and rehabilitate his loans. (Tr. 42) Applicant did not provide documentation showing which student loans were included in the Navient or the ICR programs that were being paid through a garnishment.

Applicant said he always wanted to pay his student loans; however, he lacked sufficient income to do so. (Tr. 42) Applicant sets aside about \$300 monthly for his parents in case they have an emergency. (Tr. 45-46) He also has some medical bills totaling about \$1,500. (Tr. 46, 52-53) He has a savings account with more than \$10,000 but less than \$100,000 on deposit. (Tr. 48-49) He clarified that he might have between \$40,000 and \$50,000 in his savings account. (Tr. 48-49)

On March 13, 2020, Applicant signed a Federal Loan Rehabilitation form which includes a budget to enable a student loan creditor to set a payment level that he could afford. (AE E) The loan rehabilitation program involves making nine9 payments over 10 months, and the monthly payment amount is as low as \$5. (AE E at 1; See Department of Education, Federal Student Aid Website Links: Home; Manage Loans; Delinquency and Default; Getting Out of Default, located at <https://studentaid.gov/manage->

[loans/default/get-out](#) (HE 7) Applicant's March 13, 2020 Loan Rehabilitation form indicated his current monthly income is \$5,221. (AE E at 1) His monthly expenses total \$4,013, and his four largest monthly expenses are food (\$1,800), student loans (\$896), housing (\$550), and utilities (\$400). (AE E at 1) There is no item on the form for amounts withheld for Social Security, Medicare, and federal and state taxes, which total \$1,278, in his pay statement. (AE A (pay statement))

After his hearing, Applicant submitted his March 30, 2020 Loan Rehabilitation form, which indicated his current monthly income is \$3,085. (AE K) He said his monthly expenses total \$2,537, and his four largest monthly expenses are food (\$500), private student loans (\$305), housing (\$550), and utilities (\$600). (AE K) According to Applicant's pay statement for March 15, 2020 to March 28, 2020, his gross pay for two weeks was \$2,611 or \$5,222 per month. (AE J). He did not explain the income discrepancy between the March 13 and March 30, 2020 Loan Rehabilitation forms; however, I conclude that the March 30, 2020 the student loan form reflects correctly reflects net pay information and not gross pay information.

Applicant's Loan Rehabilitation form states, "If I rehabilitate a loan and default on the same loan again in the future, I may not rehabilitate that loan a second time." (AE K, at 1 ¶ 12; AE K at 3 § 4 ¶ 6) Other than the five ECMC loans totaling \$49,572 discussed previously, he did not specify any particular student loans that were previously rehabilitated.

Applicant is in the process of applying for an income-driven student loan payment program. A brief explanation of that program follows:

Under a loan rehabilitation agreement, your loan holder will determine a reasonable monthly payment amount that is equal to 15 percent of your annual discretionary income, divided by 12. Discretionary income is the amount of your adjusted gross income (from your most recent federal income tax return) that exceeds 150 percent of the poverty guideline amount for your state and family size. You must provide documentation of your income to your loan holder. (HE 7)

It is possible to obtain a lower monthly payment than that described in the quoted formula, which is known as an alternative monthly payment. (HE 7) The alternative monthly payment is based on submitting a budget and not on the information on a tax return. (AE E; HE 7)

On March 25, 2020, Applicant signed a loan rehabilitation agreement which specified "I understand that I must make at least 9 monthly payments of \$128.00 beginning March 25, 2020, with each payment due on the 25th of each month thereafter." (AE K) In March 2020, an Education Department representative informed Applicant "that all collection activity has been suspended for at least 60 days and [he was] not required to make payments due to the pandemic." (AE V at 2) His first \$128 payment was made on May 11, 2020. (AE L; AE V at 2) He believed that after he completes the loan

rehabilitation period, he will be able to consolidate his federal student loans through Navient and make the required monthly payments of about \$337. (AE V at 2)

Applicant attended credit counseling in May 2020. (AE N; AE O; AE V at 2-3) He completed a budget. (AE O) He also completed training courses in several areas including information technology, cyber security, and protection of personal and medical privacy. (AE S)

Applicant timely filed his federal income tax returns for the last four years. (AE P; AE V at 2) His adjusted gross income on his Internal Revenue Service (IRS) tax transcripts for tax years 2016, 2017, and 2018 was as follows: 2016-\$51,576; 2017-\$54,667; and 2018-\$56,428. (AE P) For each of those three years, he received a substantial tax refund when he filed his tax returns. (AE P)

Applicant promised to maintain his financial responsibility in the future. He said:

I will always pay my debts to maintain financial stability. I will never put myself in a financial situation where my Security Clearance will be in question or be placed at risk, and if I fail to adhere to this statement, I consent to automatic revocation of my Security Clearance. (AE Q; AE V at 3)

Character Evidence

Applicant received an excellent employee performance evaluation for 2019 indicating he is a “Highly Valued” employee. (AE D; AE W) He is intelligent and professional. (AE D) He has made important contributions to his employer. (AE D; AE R) Character references described him as extremely dedicated, very reliable, totally focused, always trustworthy, always prompt, well prepared, diligent, responsible, dependable, versatile, intelligent, insightful, highly productive, articulate, and professional. (AE U) He volunteered to help others in his community. (*Id.*) Applicant’s employer lauded his diligence and professionalism and emphasized his performance evaluations and promotion from System Engineer to Senior System Engineer on October 27, 2019. (AE W)

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 [public trust position].” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). The Government’s authority to restrict access to classified information applies similarly in the protection of sensitive, unclassified information. As Commander in Chief, the President has the authority to control access to information bearing on national security or other sensitive information and to determine whether an individual is sufficiently trustworthy to have access to such information. *See Id.* at 527.

The standard that must be met for assignment to sensitive duties is that, based on all available information, 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. DOD contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination may be made.

When evaluating an applicant's suitability for a public trust position, an 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. An 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.

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 the applicant may deliberately or inadvertently fail to protect or 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.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant which may disqualify the applicant from being eligible for access to sensitive information. See *Egan*, 484 U.S. at 531. "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). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's suitability for a public trust position. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her [access to sensitive information]." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). "[S]ecurity clearance [or trustworthiness] determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

The protection of the national security and sensitive records is of paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to [sensitive] information will be resolved in favor of national security." Section 7 of Executive Order (EO) 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

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. . . . An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

The Appeal Board explained the scope and rationale for the financial considerations trustworthiness concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) as follows:

This concern is broader than the possibility that an applicant might knowingly compromise [sensitive] information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant's financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant's self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant's [eligibility for a public trust position].

AG ¶ 19 includes disqualifying conditions that could raise a trustworthiness concern and may be disqualifying in this case: "(b) unwillingness to satisfy debts regardless of the ability to do so"; and "(c) a history of not meeting financial obligations." Applicant's history of not paying his student loan debts when due establishes AG ¶¶ 19(b) and 19(c).

AG ¶ 20 lists financial considerations mitigating conditions which may be applicable in this case:

(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;

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

(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.

In ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013), the DOHA Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's [eligibility for a public trust position], there is a strong presumption against the grant or maintenance of [eligibility for a public trust position]. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising [trustworthiness] concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in [public trust position] decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to [sensitive] information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

Applicant presented some important mitigating information. He disputed his responsibility for the debt in SOR ¶ 1.s, and that debt did not appear on his most recent credit report. He is credited with mitigating the debt in SOR ¶ 1.s.

In the last 30 months, Applicant made some progress addressing his student loan debt. From October 12, 2017, to November 20, 2018, he made nine \$5 payments in a loan rehabilitation program to address five ECMC student loans, which totaled \$49,572 in November 2018. Those five ECMC loans may have been consolidated into two Navient loans, which totaled \$52,810 in April 2020. He made two \$305 payments to Navient in 2020. These two Navient consolidated debts may not have been included in the SOR.

The DOE garnished Applicant's pay from October 2017 to present, and the garnishment amounts ranged from \$536 to \$592 per month. Applicant did not indicate which student loans were being addressed by the garnishment. In May 2020, Applicant made a \$128 payment into a federal student loan rehabilitation program. Applicant did not indicate which student loans were being addressed by this student loan rehabilitation program. It is unclear whether Applicant previously participated in a federal loan rehabilitation program for some of his federal student loans, and if he did participate in

such a program, those loans would not be included in the current federal loan rehabilitation program.

Applicant indicated his finances were harmed through underemployment and low income; however, he did not establish that he was unable to make greater progress addressing his student loans after he became employed in 2016 by his current employer. “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. 03-13096 at 4 (App. Bd. Nov. 29, 2005); ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999)). A component is whether he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current. Applicant did not establish that he maintained contact with his creditors over the years. Applicant does not receive full mitigating credit under AG 20(b) because he did not provide enough information about his finances to establish that he acted responsibly under the circumstances.

Applicant received ample warning through his OPM interview in 2018 and the SOR in 2019 of the trustworthiness issue pertaining to the delinquent student loans and his finances. His October 29, 2018 OPM summary of interview indicated he planned to consolidate his loans and then arrange a payment plan. In response to the SOR, he articulated the same plan. As of the date of his hearing, he had not consolidated his student loans or made sufficient progress addressing them. After his hearing, he signed a loan rehabilitation agreement, and he made a single \$128 payment. He did not provide any information about which student loans were in the loan rehabilitation program. As of May 21, 2020, his student loans are not consolidated and in a single payment plan.

The timing of the resolution of Applicant’s debts is a pertinent consideration. The Appeal Board has observed, “Applicants who begin to resolve their debts only after having been placed on notice that their clearances or trustworthiness designations are in jeopardy may be disinclined to follow rules and regulations when their personal interests are not at stake.” ADP Case No. 17-00263 at 3 (App. Bd. Dec. 19, 2018) (citing ISCR Case No. 16-03122 at 3-4 (App. Bd. Aug. 17, 2018)).

Most of Applicant’s payments to address his student loans were through a wage garnishment. Payment of a debt “though garnishment rather than a voluntary effort diminishes its mitigating force.” *Compare* ISCR Case No. 08-06058 at 4 (App. Bd. Aug. 26, 2010) *with* ISCR Case No. 04-07360 at 2-3 (App. Bd. Sept. 26, 2006) (payment of two of four debts through garnishment did not bar mitigation of financial considerations concerns). *See also* ISCR Case No. 09-05700 at 4 (App. Bd. Feb. 24, 2011) (garnished payments towards delinquent tax debts is not mitigating information in light of other factors); ISCR Case No. 08-06058 at 6 (App. Bd. Sep. 21, 2009) (remanding the case to the administrative judge and stating when addressing an IRS garnishment, “On its face, satisfaction of a debt through the involuntary establishment of a creditor’s garnishment is not the same as, or similar to, a good-faith initiation of repayment by the debtor.”).

“[I]t is reasonable for a Judge to expect applicants to present documentation about the resolution of specific debts.” ISCR Case No. 16-02912 at 3 (App. Bd. Apr. 6, 2018) (citing ISCR Case No. 15-03363 at 2 (App. Bd. Oct. 19, 2016)). “This implies something that independently substantiates the resolution of debts.” ISCR Case No. 17-03462 at 5 n.7 (App. Bd. Dec. 18, 2018) (noting absence of IRS tax transcripts and citing ISCR Case No. 15-03363 at 2 (App. Bd. Oct. 19, 2016)). Failure to provide requested financial information “without explaining why it was that such a document was not available” may undermine a determination that Applicant met his burden of persuasion. See ISCR Case No. 16-02322 at 4 (App. Bd. Mar. 14, 2018) (reversing grant of security clearance in part due to failure of Applicant to provide an IRS tax transcript). Applicant has a responsibility to provide reasonably available requested financial information, and failure to provide that information reduces mitigation.

In sum, there is insufficient evidence about the status of Applicant’s student loans. He did not present clear evidence of the number and amounts of his student loans. He did not establish which student loans were in the current loan rehabilitation program. A single \$128 payment into a loan rehabilitation program, two \$305 payments to Navient, and garnishment of his pay for unspecified student loans does not establish a track record of voluntary loan payments to address the student loans listed on his SOR. Applicant did not prove he was unable to make greater progress sooner resolving his student loan debts. He did not adequately explain why he did not apply some of the money from his savings account to bring his student loans to current status. There are not clear indications his financial problems are under control. Applicant failed to establish mitigation of financial considerations concerns.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an Applicant’s eligibility for access to sensitive information 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), “[t]he ultimate determination” of whether to grant access to a public trust position and access to sensitive information “must be an overall commonsense judgment based upon careful consideration of the guidelines” and the whole-person concept. My comments under Guideline F are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline but some warrant additional comment.

Applicant is a 42-year-old information technology specialist employed by a defense contractor since February 2016. In 2000, he received two bachelor's degrees, one in music education and one in music performance. In 2002, he received a master's degree in music. In 2011, he received a DMA. Applicant received an excellent employee performance evaluation for 2019 indicating he is a "Highly Valued" employee. He is intelligent and professional. He has made important contributions to his employer. Character references described him as extremely dedicated, very reliable, totally focused, always trustworthy, always prompt, well prepared, diligent, responsible, dependable, versatile, intelligent, insightful, highly productive, articulate, and professional. He volunteered to help others in his community. Applicant's employer lauded his diligence and professionalism and emphasized his performance evaluations and promotion from System Engineer to Senior System Engineer on October 27, 2019.

Applicant did not make sufficient progress resolving his student loan debts. He currently owes more than \$435,000 to his student loan creditors, and he did not establish that he made any payments to address some of those debts for several years after he received his DMA degree in 2011. He did not prove he maintained contact with his creditors. He did not provide a comprehensive and detailed list of the amounts of his student loans and the current status of each student loan. He did not establish he was unable to make greater progress sooner bringing his student loans to current status. He failed to establish a track record of sufficient duration of student loan payments. His actions under the Appeal Board jurisprudence are too little, too late to fully mitigate financial considerations trustworthiness concerns. Applicant's failure to "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 his reliability, trustworthiness, and ability to protect classified or sensitive information." AG ¶ 18. More documented financial progress must be made before he has mitigated trustworthiness concerns.

It is well settled that once a concern arises regarding an applicant's eligibility for a public trust position, there is a strong presumption against the grant or renewal of access to sensitive information. *See Dorfmont*, 913 F. 2d at 1401. Unmitigated financial considerations concerns lead me to conclude that grant of a public trust position to Applicant is not warranted at this time. This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a public trust position in the future. With more effort towards documented resolution of his student loans, and a track record of behavior consistent with his obligations, he may well be able to demonstrate persuasive evidence of his worthiness for a public trust position.

I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. Applicant failed to mitigate the trustworthiness concerns under Guideline F (financial considerations).

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 through 1.r:	Against Applicant
Subparagraph 1.s:	For Applicant
Subparagraphs 1.t through 1.x:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant or continue Applicant's eligibility for a public trust position. Eligibility for a public trust position is denied.

Mark Harvey
Administrative Judge