



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



In the matter of: )  
)  
) ADP Case No. 20-00285  
)  
Applicant for Public Trust Position )

**Appearances**

For Government: Andrew Henderson, Esq., Department Counsel  
For Applicant: *Pro se*

11/04/2020

---

**Decision**

---

DAM, Shari, Administrative Judge:

Applicant did not mitigate the trustworthiness concerns raised under Guideline F, Financial Considerations. He resolved two credit card debts, but not a large student loan. Eligibility to hold a sensitive position is denied.

**Statement of the Case**

On April 8, 2020, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (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 Adjudicative Guidelines (AG) effective within the DOD for SORs issued after June 8, 2017.

On June 16, 2020, Applicant responded to the SOR in writing and elected to have his case decided on the written record in lieu of a hearing (Answer). (Item 1) On July 16, 2020, Department Counsel prepared a File of Relevant Material (FORM), containing six Items, and mailed it to Applicant on July 21, 2020. Applicant received the FORM on August 24, 2020, and had 30 days from its receipt to file objections and submit additional information. Applicant did not submit any additional documents or file objections to the Government's evidence. Items 1 through 6 are admitted into evidence. I received the case file from the Defense Office of Hearings and Appeals (DOHA) on October 20, 2020.

### **Findings of Fact**

1) Applicant admitted all six allegations contained in the SOR with explanations. (Item 1)

Applicant is 31 years old and has been married to his wife since 2017. They have one child. He earned a bachelor's degree in 2015. He began working for a defense contractor in July 2018. Prior to this position, he worked in the private sector. (Item 2)

In February 2019, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP). (Item 2) After filing his e-QIP, Applicant was interviewed in March 2019 by a government investigator. During that background interview, Applicant was confronted about financial delinquencies listed on his February 2019 credit bureau report (CBR), including two credit card accounts and four student loans. He addressed all of the investigator's inquiries. He said he paid and closed the two credit card accounts, which he used in 2016 for a vacation in Mexico. (Item 3)

In his Answer, Applicant attributed his financial problems to a period of unemployment in 2018 and his wife's illness when she was pregnant between 2018 and 2019. He denied that his debts were the consequence of living beyond his financial means. He stated that he was working on resolving all financial problems. (Item 1)

Based on Applicant's admissions and credit bureau reports (CBR) from February 2019, December 2019, and July 2020, the SOR alleged: two charged-off credit card debts and four delinquent student loans. The debts became delinquent between 2016 and 2019 and totaled over \$62,000. (Items 4, 5, and 6)

In April 2020, Applicant paid the credit card debts alleged in SOR ¶ 1.e for \$4,343, and SOR ¶ 1.f for \$2,885. (Items 1, 4, and 6) In February 2020, he entered into a rehabilitation payment agreement with the Department of Education (DoE) to repay his student loans that totaled \$35,624 at that time, and included the those alleged in SOR ¶¶ 1.a, 1.b, 1.c, and 1.d. According to the payment plan, he agreed to rehabilitate his loans by making nine monthly payments of \$149.00, and thereafter to repay the loans in accordance with a revised payment agreement. In his Answer, Applicant stated that after he made those payments for nine months, the loans would be out of default status by September 2020. (Item 1).

According to the July 2020 CBR, Applicant's last payment on the student loans was in May 2020. (Item 6). After receiving the FORM in August 2020, he did not submit evidence documenting that he made additional payments on the loans.

Applicant did not submit a written budget, listing his monthly income and expenses or financial status. He did not present evidence that he has participated in credit or budgetary counseling.

### **Policies**

When evaluating an applicant's eligibility to hold a sensitive position, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's eligibility for a position of trust.

These 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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. According to Directive ¶ E3.1.15, "[t]he applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable [trustworthiness] decision."

A person applying for a position of trust seeks to enter 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 national security eligibility. 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.

## **Analysis**

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

The trustworthiness concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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.

AG ¶ 19 describes conditions that could raise trustworthiness concerns. Two may be disqualifying in this case:

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

Applicant admitted that he had delinquent debt, most of which he has been unable to resolve since 2016. The evidence raises the above trustworthiness concerns, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes four conditions in AG ¶ 20 that could potentially mitigate trustworthiness concerns arising from Applicant's admitted financial problems:

- (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's student loans have been outstanding and unresolved since 2016 and continue to cast doubt on his reliability. He paid two delinquent credit card debts. AG ¶ 20 (a) does not apply to his delinquent student loans.

Applicant attributed his current delinquent debts to a period of unemployment and his wife's medical problems between 2018 and 2019. Those were circumstances beyond his control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. He did not provide sufficient evidence to demonstrate that he attempted to responsibly manage his debts as they were accumulating. AG ¶ 20(b) applies partially.

Applicant did not provide evidence that he has participated in credit or financial counseling. He has not established a budget to show responsible financial management of his delinquent student loans and other financial commitments. The evidence is insufficient to conclude that there are clear indications that Applicant's delinquent student loans are under control. AG ¶ 20(c) does not apply.

Applicant presented evidence that he resolved two credit card debts. Although those two debts are now paid, the payments were made after he received the SOR in April 2020, and thus are less persuasive as good-faith efforts to resolve his debts. AG ¶ 20(d) applies minimally to those credit card debts.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility 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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility 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. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment. Applicant did not pay his charged-off credit cards until after receiving the SOR. Applicant started to address his student loans through a payment agreement two months before receiving the SOR, but he failed to comply with the terms of that agreement. Based on that evidence, and the lack of an established track record of responsible financial management, Applicant failed to meet his burden to mitigate the trustworthiness concerns raised under the guideline for financial considerations.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs: 1.a through 1.d:	Against Applicant
Subparagraphs: 1.e and 1.f:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a public trust position. National security eligibility for access to sensitive information is denied.

SHARI DAM  
Administrative Judge