



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



In the matter of: )  
)  
) ADP Case No. 19-03094  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Brittany White, Esq., Department Counsel  
For Applicant: Jeff Billett, Esq.

08/19/2021

**Decision**

RICCIARDELLO, Carol G., Administrative Judge:

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

**Statement of the Case**

On November 22, 2019, the Defense Counterintelligence and Security Agency (DCSA) 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 on June 8, 2017.

Applicant answered the SOR on December 31, 2019, and requested a hearing before an administrative judge. The case was assigned to me on February 24, 2020. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 5, 2020, scheduling the hearing for April 8, 2020. The hearing was canceled due to the

COVID-19 pandemic. On May 28, 2021, a notice of hearing was issued scheduling the hearing via the Defense Collaboration Services (DCS) system. I convened the hearing as scheduled on July 6, 2021. The Government offered exhibits (GE) 1 through 4. Applicant objected to the admission of GE 2. The objection was sustained. GE 1, 3, and 4 were admitted into evidence. Applicant testified and offered Applicant Exhibits (AE) A through AA. There were no objections and the exhibits were admitted into evidence. DOHA received the hearing transcript on July 16, 2021.

### **Findings of Fact**

Applicant admitted the allegations in the SOR ¶¶ 1.a, 1.b, 1.d and 1.e. He denied the allegation in SOR ¶ 1.c. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 49 years old. He earned a bachelor's degree in 1997 and a master's degree in 2011. He is married and has three children, ages 23, 22 and 17. He enlisted in the Marines in 1992 and was accepted into a commissioning program and commissioned in 1997, serving as a helicopter pilot. He served in combat and has an 80% Veteran's disability rating. He retired from the Marine Corps in 2014 and has worked for his present employer, a federal contractor, since 2016. (Tr. 18-25, 124; GE 1, AE Y, Z)

Applicant had three rental properties (A, B, C). All had been his primary residence at one point. He acquired them while on active duty and retained them as rentals after he transferred duty stations. At the time, keeping the properties made sense because he would not have made any money selling them. He was able to financially handle the properties. (Tr. 25-31; AE D, E, F)

Applicant began "flipping" houses in 2005 and successfully sold them and made a profit three or four times. He used a real estate advisor to assist him in estimating how much it would cost to repair the house and then resell for property. He also used professionals to do the repair work. He formed an LLC company in 2018. (Tr. 26-29, 34-37, 104-105)

Applicant testified that he regularly obtained cash advances from credit cards to purchase properties and fund repairs. He used the credit cards alleged in SOR ¶¶ 1.b and 1.d for these purposes. Other expenses were purchased with these cards also. He also used a loan from his 401K pension plan. (Tr. 34-38)

In approximately 2017, Applicant realized he was overextended. He had purchased a property for a steep discount and anticipated selling it for a profit. He testified that he now realizes the situation he created was foolish. The real estate market was sluggish and insurance companies were adding new requirements due to hurricanes in the area. He was unable to sell his property at a profit and ended up selling at a loss. (Tr. 29-31, 34-43; AE C, D, E, F, T)

The same year, the tenants in property B failed to pay two months' rent and vacated after causing significant damage and stealing an air conditioning unit. Applicant filed a police report. Numerous repairs were required on the property. Applicant used credit cards to pay for them. The debt alleged in SOR ¶ 1.a was used to pay for the repairs. Some of the debt in SOR ¶ 1.b was also used. (Tr. 31-34; AE O)

Applicant realized he needed financial help and was overwhelmed and intimidated to try and resolve the problems by himself. He decided not to file bankruptcy. He found a debt assistance company (DAC) to help him. DAC's services included reaching out to creditors on accounts that Applicant had registered with the service, negotiating an agreement, and making agreed-upon payments on Applicant's behalf. Applicant was to pay \$1,382 a month into DAC's account. He was advised that his accounts had to be in default to negotiate with the creditor and was advised to stop paying the accounts. Applicant started working with DAC in October 2017 and signed up for their services in November 2017. One of his accounts did not qualify for this service. Applicant made payments from January 2018 until April 2019 (\$19,215). He was regularly in contact with DAC to ensure each account was properly logged in and were being accepted. (Tr. 43-50, 105; AE G, H)

Applicant testified that he was unaware that his accounts were not being negotiated for payment through DAC until he was served with a lawsuit by the creditor in SOR ¶ 1.a in the later part of 2018. DAC hired an attorney on Applicant's behalf for the lawsuit. Tr. 50-51; AE J

Applicant testified that he lost faith in DAC when he was sued by the creditor in SOR ¶ 1.a and was sued again by the creditor in SOR ¶ 1.d. It is the same creditor, but different accounts. The law firm that DAC had hired to defend the lawsuit in SOR ¶ 1.a advised Applicant that they were no longer taking cases from DAC. Applicant demanded answers from DAC. They were uncooperative and according to Applicant did not act as they had represented they would. It was Applicant who worked with the law firm to obtain a settlement for the debt in SOR ¶ 1.a. and not DAC. Applicant demanded DAC reimburse the amount he had paid them. Applicant contacted his state's attorney general's office and was referred to the state's department of consumer affairs where he filed a complaint. DAC denied responsibility. Applicant researched and found lawsuits against DAC. One attorney representing a client in a similar lawsuit in another state indicated he did not believe DAC was solvent, so it was not worth filing suit against them. Applicant stopped making payments in April 2019, and sent DAC a termination letter in June 2019, accusing them of fraud and disputing DAC's excuses and explanations. No payments were made by DAC to any of Applicant's creditors. Applicant testified that DAC could not show that it had negotiated any settlements. He was not reimbursed any money. (Tr. 51-60, 101-103; AE H, I, J, R)

Applicant researched potential financial specialists to help him resolve his debts. He contacted four clients of Mr. M, who is a business consultant specializing in credit card debt modification and credit repair. All references provided favorable endorsements.

Applicant signed an agreement with Mr. M to negotiate settlements for his debts in SOR ¶¶ 1.b, 1.d, and 1.e. (Tr. 60-63; AE M)

In December 2019, Applicant was able to negotiate a settlement for the debt in SOR ¶ 1.a. Applicant paid the settlement and the debt was satisfied. (Tr. 63-64, 96-97; AE J, K, L)

Mr. M negotiated a settlement for debt in SOR ¶ 1.b in July 2020. Applicant will pay \$17,500 over 50 months with payments of \$281, plus a balloon payment in September 2024 of \$3,447. He has automatic payments made from his account. He provided documents to show the agreement and his consistent monthly payments from July 2020 through May 2021. (Tr. 64-66, 98; AE P, Q, R)

Applicant disputed the account in SOR ¶ 1.c as alleged because he did not have an account with that number. He indicated in his SOR answer that he had two accounts with the creditor and one closely resembles the one alleged. In approximately August 2019, he took action to resolve the accounts before receiving the SOR. He testified that the accounts were paid and closed after he refinanced them. He provided documents to reflect this action. He also provided a copy of the new loan. This debt is resolved. (Tr. 67-73, 99; AE A, B).

Mr. M has contacted the law firms that are handling the debts in SOR ¶¶ 1.d and 1.e. Mr. M stated in his affidavit that he has in good faith aggressively attempted to enter into settlement agreements with both creditors, however communication during the pandemic has been difficult. He left voicemails and return calls often would take 30 days. He stated that the pandemic has caused delays in negotiating settlements on behalf of Applicant and all of his other clients. He was recently advised that the law firms are too busy filing new lawsuits, and they do not have the staff to return phone calls, and that communications are being implemented to negotiate accounts through email. Mr. M stated he is personally handling the negotiations with both creditors. He continues to act to negotiate a resolution of these debts on Applicant's behalf. (Tr. 75-78; AE M, Q)

Applicant testified that he tried to get a home equity loan to help resolve his debts, but because of his financial situation he was unable to secure one. He does not have any other delinquent debts. Prior to 2017, his finances were in good order. He has participated in financial counseling and has learned about budgeting and debt management. He has a written monthly budget. He has an emergency fund, so if something unexpected happens, his financial situation is not made worse. In October 2019, he communicated with his employer's facility security officer advising him of the financial issues he was having. Applicant is no longer in the real estate business. He does not intend to "flip" houses in the future. He and his family are living within their means. (Tr. 78-93; AE N, S, U, V, W).

Applicant testified that as a retired combat Marine, he knows the importance of trust and maintaining a security clearance. He recognizes his financial mistakes and he

has earnestly attempted to pay his creditors. He intends to continue his efforts to resolve his remaining financial issues. (Tr. 93-95)

Applicant provided character letters. In them, he is described as honest, reliable, trustworthy, forthright, and ethical. He abides by procedures and regulations and is a person of sound judgment who can be trusted. (AE AA)

### **Policies**

When evaluating an applicant's national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to sensitive information.

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 the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), 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. Directive ¶ E3.1.15 states 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 security 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.

Section 7 of 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.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **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.

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

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

Applicant has delinquent credit card debts that began accumulating in 2017. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate trustworthiness concerns arising from financial difficulties. The following mitigating conditions under AG § 20 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 experienced financial problems when he could not sell his rental properties for a profit due to the downturn in the housing market and when a tenant failed to pay rent and caused damage to his property. These factors were beyond his control. His use of credit cards to finance his real estate transactions and pay for repairs were within his control. For the full application of AG ¶ 20(b), Applicant must show he acted responsibly under the circumstances. When Applicant realized he was in financial trouble, he sought assistance with DAC to help him manage and pay his debts. Unfortunately, that did not happen, and he was essentially swindled out of approximately \$19,000. He filed a complaint with his state's consumer protection agency. He confronted DAC and demanded to be reimbursed, to no avail. Despite this setback, Applicant worked with an attorney to settle and pay one of the credit card debts. He researched and contracted with a reputable business consultant, Mr. M, to negotiate payment plans for his other debts. He is in a payment plan to resolve one of the other credit cards. Mr. M stated that he is actively working to negotiate payment plans for the other credit card. The process has been slowed considerably due to the pandemic. Applicant provided sufficient evidence to conclude that the debt in SOR ¶1.c was refinanced and is not delinquent. The evidence supports that Applicant acted responsibly under the circumstances. AG ¶ 20(b) applies.

Applicant's debts are recent and ongoing because not all of his debts are resolved. AG ¶ 20(a) does not apply. Applicant is in a payment plan for one debt, and Mr. M is acting on his behalf to negotiate payment plans for his remaining debts. Applicant participated in financial counseling, he has a budget, an emergency fund, and a plan for resolving his remaining debts. There are clear indications his financial problems are being resolved and are under control. AG ¶ 20(c) applies. Applicant has made good-faith efforts to resolve his debts with his overdue creditors. AG ¶ 20(d) applies.

### **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 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 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. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

Applicant is 49 years old and a retired Marine. His financial problems are attributed to a downturn in the real estate market and tenants who failed to pay rent. He openly admitted that there is a level of risk involved in this business and using credit cards was unwise. Despite his due diligence, he became overextended. Applicant did not walk away from his financial responsibilities. Rather he sought assistance through DAC to help him manage his debts. Unfortunately, he paid more than \$19,000 to this company and none of his debts were resolved. Despite this setback, he responsibly sought assistance with a reputable professional consultant. Applicant's financial history is not perfect, but there is considerable evidence that when he experienced financial difficulties, he did the responsible thing. Of particular note is that Applicant was addressing these matters before his public trust eligibility was raised, and he notified his employer that he was having financial problems. The public trust eligibility process is not meant to determine if a person is capable of making good business decisions. It is meant to determine when things go wrong, did you do the right thing. I believe Applicant did. I am confident that he will adhere to his payment plans and resolve his remaining debts. Applicant has met his burden of persuasion. The record evidence leaves me with no questions or doubts as to Applicant's eligibility and suitability for a public trust position. For these reasons, I conclude Applicant mitigated the trustworthiness concerns arising 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: FOR APPLICANT

Subparagraphs 1.a-1.e: For Applicant



## **Conclusion**

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

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Carol G. Ricciardello  
Administrative Judge