



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



In the matter of: )  
)  
) ADP Case No. 19-00993  
)  
Applicant for Public Trust Position )

**Appearances**

For Government: Alison Marie, Esq., Department Counsel  
For Applicant: *Pro se*  
03/22/2022

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**Decision**

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HEINTZELMAN, Caroline E., Administrative Judge:

Applicant failed to mitigate trustworthiness concerns raised by his debts and personal conduct. Eligibility for a public trust position is denied.

**History of the Case**

Applicant submitted an electronic questionnaire for investigations processing (e-QIP) on October 17, 2016. On October 4, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging trustworthiness concerns under Guideline F, financial considerations and Guideline E, personal conduct. DOD CAF acted under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016), for all adjudicative decisions on or after June 8, 2017.

Applicant answered the SOR on October 22, 2019, and requested a hearing before an administrative judge (Answer). The case was assigned to me on March 17, 2021. I contacted Applicant on May 19, 2021, and conducted connectivity tests using the Defense Collaborative System (DCS) video teleconference system (VTC) on May 20<sup>th</sup> and 24<sup>th</sup>. After coordinating with Applicant, on June 14, 2021, the Defense Office of Hearings and

Appeals (DOHA) notified Applicant that the hearing was scheduled for June 24, 2021. I convened the hearing as scheduled via VTC on DCS. Applicant waived the 15-day hearing notice requirement. (Tr. 8-9)

I marked the May 24, 2021 case management order as Hearing Exhibit (HE) I; Department Counsel's December 5, 2019 discovery letter as HE II; and Department Counsel's exhibit list as HE III. Government Exhibits (GE) 1 through 10, and Applicant Exhibits (AE) A and B were admitted without objection, and Applicant testified. I received the transcript (Tr.) on July 2, 2021. The record was held open until July 23, 2021, to allow Applicant to submit additional documentation, and he timely submitted AE C through L, which were admitted without objection, and the record closed.

### **SOR Amendment**

At the hearing, the Government made a motion to amend SOR ¶ 2.c by modifying the date of the alleged arrest to conform with the record evidence. Applicant did not object, and I granted the Government's motion. (Tr. at 70-71)

The SOR was amended to modify the existing allegation under paragraph 2, as follows:

c. You were arrested in about January 2003, in [State A,] and charged with Bail Jumping-Misdemeanor.

### **Findings of Fact**

Applicant is 44, and has never been married. He has a 23-year-old son and a 21-year-old daughter. He received a Bachelor of Science degree in computer science in 2009. He has worked for his current employer since October 2018 as an information technology analyst. One week before the hearing, he started working part-time at an outlet retail store. This is his first application for a position of trust. (GE 1; GE 2; Tr.13-17, 64)

### **Financial Considerations**

The SOR alleges that Applicant has 15 delinquent debts, totaling \$26,582.07. Additionally, Applicant is indebted to the IRS and his state for an unalleged amount for tax years 2014 and 2015. In his response to the SOR, he admitted all of the guideline F allegations and claimed he was either paying each debt or working with a debt consolidator. The debts alleged in the SOR were confirmed by Applicant's credit bureau reports (CBR) and his response to DOHA interrogatories. (SOR; Answer; See Chart)

<b>SOR ¶</b>	<b>Amount</b>	<b>Type</b>	<b>Answer</b>	<b>Status</b>	<b>Proof</b>
<b>1.a</b>	\$19,468	Student Loan	Making Payments, since May 2019	<u>Judgment entered against him,</u> garnishment, Bal: \$9,611.43	GE 2 at 13; GE 4 at 1; GE 5 at 2; GE 6 at 16-19; AE A at 2; AE C; AE D; Tr. 28-35
<b>1.b</b>	\$1,107	Consumer	Working with Debt Consolidator	Unpaid	GE 3 at 16; GE 4 at 2; GE 5 at 2; AE A at 21; AE B at 23-24
<b>1.c</b>	\$1,102	Cash Loan	Working with Debt Consolidator	Unpaid	GE 4 at 3; GE 5 at 2; AE A at 21
<b>1.d</b>	\$1,035	Medical	Working with Debt Consolidator	Unpaid	GE 4 at 3; GE 5 at 2; AE A at 21; AE B at 8-9
<b>1.e</b>	\$448	Cell Phone	Working with Debt Consolidator	Unpaid	GE 4 at 3; GE 5 at 2
<b>1.f</b>	\$353	Credit Card	Working with Debt Consolidator	Unpaid	GE 2 at 14; GE 4 at 3; GE 5 at 11; AE A at 19; AE B at 60-61
<b>1.g</b>	\$187	Gas Bill	Working with Debt Consolidator	Unpaid	GE 3 at 17; GE 4 at 3; GE 5 at 2; AE A at 20; Tr. at 40
<b>1.h</b>	\$74	Medical	Working with Debt Consolidator	Unpaid	GE 4 at 3; GE 5 at 2; AE A at 21
<b>1.i</b>	\$1,072	Medical	Making Payments, Since August 2019	<u>Judgment entered against him,</u> garnishment, Bal: \$543.67	GE 6 at 10-15; AE C; Tr. at 41-44
<b>1.j</b>	\$839	Charged off Credit Card	Working with Debt Consolidator	Unpaid	GE 2 at 13; GE 3 at 4; GE 5 at 11; AE B at 71
<b>1.k</b>	\$405	Red Light Camera	Working with Debt Consolidator	Unpaid	GE 2 at 14; GE 3 at 17; GE 5 at 11
<b>1.l</b>	\$240	State Fines for Offenses	Making Payments	Unpaid, see facts section, debt was originally \$2,300	GE 2 at 15; GE 3 at 17; Tr. at 44-48; AE E-G

<b>1.m</b>	\$107	Cable	Working with Debt Consolidator	Unpaid	GE 2 at 15; GE 3 at 17
<b>1.n</b>	\$76		Working with Debt Consolidator	Unpaid	GE 2 at 15; GE 3 at 17
<b>1.o</b>	\$69	Medical	Working with Debt Consolidator	Unpaid	GE 2 at 15; GE 3 at 18
<b>1.p</b>	IRS Taxes 2014 & 2015	Taxes	Payment Agreement established October 2019	No Documented Status from Applicant	GE 2 at 12; AE C; Tr. 36, 49-56
<b>1.q</b>	State Taxes 2014 & 2015	Taxes	Payment Agreement established in 2018	2014: paid; 2015: paid in full in June 2019	GE 2 at 12; AE C; AE E; Tr. at 36, 47-50, 54-56; AE E-G

Applicant attributes his financial delinquencies to a number of factors: a period of unemployment between June 2016 and October 2016; a period in which he lacked health insurance; a period when he did have insurance, but he had a high deductible; a relationship that ended in 2018, and left him with some of the residual joint utility bills; and the COVID-19 pandemic. (GE 2 at 4; Tr. 20, 28, 37-40, 63-64)

In June 13, 2018, Applicant's work hours were reduced because of a lack of work, and his position was eventually terminated. He received unemployment benefits, but his child support payments were automatically deducted from his checks, which left him with very little to pay his bills. In January 2019, a judgment was entered against Applicant for the almost \$20,000 student loan debt alleged in SOR ¶ 1.a. Since May 2019, his wages have been garnished \$400 monthly. He provided documentation to reflect that as of June 2021, the balance of the account alleged in SOR ¶ 1.a was \$9,611.43. (See Chart; Tr. 28-35)

In his Answer to the SOR, Applicant indicated he was working with a debt consolidator to resolve many of the debts alleged in the SOR. However, he admitted at the hearing that he never made payments to the debt consolidation company, nor has he made payments toward the underlying debts. (See Chart; Tr. 36, 57)

Applicant did not disclose any tax issues in his 2016 SCA. During his October 2018 interview with a Government investigator (adopted in July 2019), Applicant disclosed that he was audited in 2017 for either his 2014 or 2015 state and federal income tax returns, and both the state and the IRS were garnishing his paychecks \$75. In his Answer to the SOR, he claimed he was making payments to both his state's department of revenue and the IRS. He averred he established payment agreements with the IRS in October 2019 and with his state in November 2019. He did not provide supporting documentation to corroborate his claims. (Answer; GE 1 at 31; GE 2 at 12)

At the hearing, Applicant testified that his tax year (TY) 2014 and 2015 state and federal income tax issues arose as result of him purposely not including unemployment benefits he had received when he filed his returns. He did this because he needed the money he anticipated he would receive from his returns to pay his bills. He knew that he owed money to the IRS and his state, but he manipulated the information in his tax filings to reduce his income and to maximize his refunds. Applicant claimed that he timely filed both his TY 2014 and 2015 state and federal income tax returns. He also claimed that he established a payment agreement with the IRS in January 21, 2020, that he has been paying \$150 per paycheck and that he owed no back taxes to the IRS for TY 2014 and 2015. He provided no documentation to support his claims. (Tr. 36, 48-52)

In his post-hearing submissions, Applicant provided copies of pay stubs from Company B. These stubs reflect garnishments, in various and inconsistent amounts, between July 2019 and June 2021. The garnishments did not occur every month, and the stubs do not reflect the creditors that were garnishing his wages. One of the documents provided by Applicant clearly shows that some of the garnishments reflected in the pay stubs were for the debt alleged in SOR ¶ 1.i, and the outstanding balance on July 13, 2021 was \$543.67. (See Chart; AE C; AE I-K; Tr. 36-44)

Applicant testified that his paychecks were garnished to pay his outstanding state taxes and the \$240 debt alleged SOR ¶ 1.i. This debt was related to some of the fines and related criminal activity alleged in the SOR. According to Applicant, he believes the documentation that he provided after the hearing demonstrates that he has no outstanding financial obligations to his state; and that this debt should be resolved in his favor. I disagree. It is unclear from the documentation that the debt alleged in SOR ¶ 1.i has been paid and resolved. This documentation does demonstrate that in the past, Applicant was behind on his child support payments, and his state tax refund from 2016 was seized and applied to this obligation. Applicant's 2014 state income taxes were filed and resolved in a timely manner, and his refund was applied to a debt owed to another undisclosed state agency. His 2015 state income tax return was filed and paid in full as of June 4, 2019. It was not filed and paid in a timely manner, but it is resolved. (AE C, AE E-H; Tr. 44-48)

In his post-hearing submissions, Applicant claimed he submitted documentation regarding his federal income taxes. However, the documentation that he provided is for his state income taxes. Additionally, he labeled documents as "IRS Documents 1" and "IRS Documents 2," which I marked as AE E and AE F, respectively. These documents are duplicates of each other. (AE C; AE E-H)

Applicant has been using Quicken software to monitor his finances. He testified that he is current on all of his bills, and his federal student loans are deferred due to the Coronavirus Aid, Relief, and Economic Security (CARES) Act. Applicant filed for Chapter 7 bankruptcy protection in 2010, and his debts totaling \$70,000 to \$80,000 were discharged in 2012. His financial issues were the result of medical debt, credit cards, and payday loans – living outside of his financial means. His bankruptcy and several other incidents in the personal conduct section, infra, are not alleged in the SOR, and they will

not be considered as disqualifying conduct. However, conduct not alleged in the SOR in this decision will be considered in the application of mitigating conditions, for assessment of Applicant's credibility, and in the whole-person analysis. (GE 1 at 30; GE 2 at 12-13; Tr. 20, 58-59)

### Personal Conduct

The SOR alleged Applicant committed multiple criminal and traffic-related offenses between 1997 and 2017. (See Chart)

<b>SOR ¶</b>	<b>Offense/Arrest</b>	<b>Answer to SOR</b>	<b>Disposition</b>	<b>Proof</b>
<b>2.a</b>	1997- OTH from Navy	Admit	OTH Discharge	GE 2 at 5, 9; GE 7 at 1; Tr. at 66-69
<b>2.b</b>	1999- Bail Jumping	Admit		GE 7 at 1-2; GE 8 at 3, 24-25; Tr. at 100
<b>Unalleged</b>	1998 or 1999 - Theft of \$1,000 to \$1,200	Admitted at Hearing		Tr. at 94-95
<b>Unalleged</b>	Nov 2001-Bail Jumping			GE 8 at 3
<b>2.c</b>	Jan 2003- Resisting or Obstructing an Officer	Admit	Guilty	GE 6 at 99-103; GE 7 at 2; GE 8 at 3; Tr. at 90-91
<b>2.d</b>	Feb 2003- Criminal Damage to Property	Admit	No Pros	GE 2 at 9; GE 7 at 2; GE 8 at 3, 19-23; Tr. at 85-90
<b>2.e</b>	July 2003- Battery (Domestic Abuse-Repeater); Disorderly Conduct (Domestic Abuse)	Admit	Ch. 1 Dismissed; Ch. 2 Guilty	GE 6 at 104-109; GE 7 at 3; GE 8 at 13-14; Tr. at 85-90, 92
<b>2.f</b>	Nov 2003- Ch. 1 Battery, Domestic Abuse (Repeater); Ch. 2 Criminal Damage to Property, Ch. 3 Disorderly Conduct; Ch. 4 Possession of THC; Ch. 5 Possession of Drug Paraphernalia	Admit	Ch. 1 Guilty; Ch. 2 Dismissed; Ch. 3 Dismissed; Ch. 4 Guilty; Ch. 5 Dismissed	GE 1 at 26; GE 2 at 8; GE 6 at 110-118; GE 7 at 3
<b>Unalleged</b>	Dec 2004- Disorderly Conduct (Domestic Abuse)		Guilty	GE 6 at 118-124; GE 7 at 3; Tr. at 88-89, 115

<b>Unalleged</b>	Jan 2005- Theft	Denied at Hearing		GE 7 at 7; Tr. at 93-94
<b>2.g</b>	Apr 2005- Failure to Pay	Admit		GE 7 at 4; Tr. at 70, 95
<b>2.h</b>	July 2005- Theft- False Representation greater than or equal to \$2500	Admit	Guilty	GE 6 at 125-130; Tr. at 96-97
<b>Unalleged</b>	Sep 2006-Gas Drive Off; Fraud of Innkeeper; Operating While License Revoked		Guilty Operating While Revoked	GE 10; Tr. at 96-97
<b>Unalleged</b>	Oct 2006- Gas Drive Off; Operating While License Revoked		Guilty Operating While Revoked	GE 10; Tr. at 96-97
<b>2.i</b>	Sep 2007- Vehicle Operator Flee/Elude Officer & Probation Violation	Deny	Ch. 1 (felony) Dismissed; Ch. 2 Guilty	GE 2 at 8; GE 6 at 85-88; GE 7 at 5; GE 9
<b>2.j</b>	Aug 2016- Violation of Domestic Abuse Injunction	Admit	Guilty	GE 1 at 25, 28; GE 2 at 6-7, 9-10; GE 6 at 131-132; GE 7 at 5; Tr. at 77-85, 103-107
<b>2.k</b>	Arrested 17 times between Aug 2000 and Mar 2017 for Operating While License Revoked or Suspended/However, SOR says 10 arrests	Admit		GE 2 at 10; GE 6 at 20-84, 89-98, 92-98; GE 7 at 4, 6-7; GE 8 at 1-3; GE 9; GE 10
<b>2.k</b>	8/13/2000		Guilty	GE 7 at 2
<b>2.k</b>	1/14/2003		Guilty	GE 6 at 21
<b>2.k</b>	2/3/2003		Guilty	GE 6 at 30
<b>2.k</b>	2/12/2003		Guilty	GE 6 at 34
<b>2.k</b>	4/26/2004		Guilty	GE 6 at 38
<b>2.k</b>	9/3/2004		Guilty	GE 6 at 43
<b>2.k</b>	2/6/2005		Guilty	GE 6 at 47
<b>2.k</b>	9/22/2005		Guilty	GE 6 at 51
<b>2.k</b>	9/15/2006		Guilty	GE 6 at 63
<b>2.k</b>	10/1/2006		Guilty	GE 6 at 57
<b>2.k</b>	1/08/2007		Guilty	GE 6 at 69

<b>2.k</b>	4/19/2007		Guilty	GE 6 at 75; GE 9 at 2
<b>2.k</b>	6/26/2007		Guilty	GE 6 at 78
<b>2.k</b>	5/25/2016		Guilty	GE 6 at 89
<b>2.k</b>	7/5/2016		Guilty	GE 6 at 92
<b>2.k</b>	9/30/2016		Guilty	GE 6 at 95
<b>2.k</b>	6/14/2019		Dismissed	GE 6 at 97
<b>2.k</b>	2020	Admitted at Hearing		Tr. at 98-99

Before he graduated from high school, Applicant enlisted in the U.S. Navy's delayed entry program in May 1996. While he was in the Navy, he struggled with following rules and had issues with authority. Additionally, his father's stroke from a year earlier weighed heavily on him. Due to these issues, Applicant did not handle the stress and demands of the military and chose to leave the Navy without authorization in August 1996. He was apprehended in September 1997, charged with unauthorized absence (UA), and administratively discharged from the Navy with an Other than Honorable (OTH) discharge in October 1997, as alleged in SOR ¶ 2.a. There is no evidence he was tried by court-martial for being absent without leave. (See Chart; Tr. at 66-70)

In 1998 or 1999, Applicant was arrested for fraudulently using and charging \$1,000 to \$1,200 to his son's mother's credit card. This incident was not alleged in the SOR and will not be considered as disqualifying conduct. However, he testified that he never paid the associated fine for this incident, and there was an outstanding warrant for his arrest, which resulted in the arrest alleged in SOR ¶ 2.g, for failure to pay. (Tr. 94-95)

Between February 2003 and December 2004, Applicant was arrested multiple times for incidents related to domestic abuse, as alleged in SOR ¶¶ 2.d and 2.e. These incidents involved the mother of his daughter. According to Applicant they have a good relationship at this time. The December 2004 domestic abuse incident was not alleged in the SOR and will not be considered as disqualifying conduct. (Tr. at 72, 85-90)

Applicant was arrested three times for filling his car up with gasoline at gas stations and driving away without paying. These arrests occurred in two states between approximately 2005 and 2006. He admitted at the hearing that he engaged in this criminal behavior a total of seven or eight times, but was only caught the three times he was arrested. Only one of these incidents was alleged in SOR ¶ 2.i, the remaining two arrests and the other incidents will not be considered as disqualifying conduct. (Tr. at 96-97)

Between 2007 and 2013, Applicant sporadically saw counselors as a result of his then partner demanding that he seek help and modify his behavior if he was going to remain in their relationship. As a result, he had fewer issues with law enforcement during this period. They broke up in the summer of 2013 or 2014. (Tr. 75-77)

In 2014, Applicant started dating Jane Doe. She was abused as a child and in previous relationships. They fought during their relationship, but the police were never



involved until he moved out of their shared residence. In July 2016, when he returned to remove his belongings from their home, they argued, and they both called the police. As a result of this incident, a four-year restraining order was issued against Applicant. At the hearing, he claimed he unknowingly violated the restraining order by returning to their apartment complex to check on a vehicle that he left there. (Tr. 77-84)

Following the 2016 arrest alleged in SOR ¶ 2.j for violation of a restraining order, Applicant was court-ordered to attend over 50 weekly counseling sessions. He was tested and subsequently diagnosed with Asperger's syndrome. Applicant's counseling has helped him understand his anger issues. Since he completed the mandatory program in approximately September 2018, Applicant has attended 20 voluntary sessions. As of the date of the hearing, he most recently attended counseling in May 2021. He currently meditates daily to help himself mentally and talks to a good friend. The restraining order expired in November 2020. (Tr. 71-76, 83-85, 104-106)

The SOR alleges that Applicant was arrested or ticketed ten times for operating a vehicle while his license was revoked or suspended between August 2000 and March 2017. The documentary evidence indicates Applicant was actually arrested approximately seventeen times between August 2000 and June 2019. At the hearing, Applicant admitted that the last time he was arrested or ticked for driving under a suspended or revoked license or with no insurance was in 2020. Additionally, there were periods in 2020 that he operated a vehicle without a valid driver's license and without car insurance. He lost his driver's license due to receiving too many speeding tickets. (See Chart; Tr. 98-100)

Applicant testified that his numerous tickets for operating without a valid driver's license were the result of him being the sole wage earner in his family, and his need to get to work. At his hearing, Applicant claimed that he had had paid all of the state fees associated with his various tickets and crimes, his driver's license was in good standing, and his vehicle was fully insured. (Tr. 19-20, 98)

In his 2016 SCA, Applicant did not disclose any marijuana use during the previous seven years. In his October 2018 interview with the Government investigator, he admitted to using marijuana in 2012 or 2014. At the hearing, he testified that his "firm belief is marijuana is not necessarily a drug and should be taken off the Schedule I with the DEA so [he does not] think of that as a drug per se." When questioned, he admitted to using it in 2017 or 2018, after he completed his SCA, but before his interview with the investigator. Applicant's failure to disclose his drug use in his SCA and during his interview were not alleged in the SOR. Additionally, his drug use was not alleged in the SOR. His failure to disclose his marijuana use on his SCA and during his interview will not be considered as disqualifying conduct. (GE 1 at 28-29; GE 2 at 10-11; Tr. at 80; 102-104)

The documentary evidence indicates Applicant had outstanding warrants almost continuously between 1999 and 2009. These warrants were often related to his criminal conduct alleged in the SOR. However, his failure to resolve his court issues related to his traffic tickets for operating a vehicle without a valid or suspended license also led to

multiple warrants. Additionally, he failed to pay his fines, and his checks were returned for non-sufficient funds, resulting in multiple judgments against him related to his offenses. (GE 6; GE 9)

Applicant loves his current job and wants to continue working there. He has had no reprimands other than attendance issues when he first starting working there due to court-related obligations. He believes he is highly regarded at his position by his supervisor. (Tr.at 118-119)

### **Policies**

This case is adjudicated 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), which became effective on June 8, 2017.

Positions designated as ADP I/II/III are classified as “sensitive positions.” (See Regulation ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3.) “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.” (See Regulation ¶ C6.1.1.1.) The Deputy Under Secretary of Defense (Counterintelligence and Security) Memorandum, dated November 19, 2004, indicates trustworthiness adjudications will apply to cases forwarded to DOHA by the Defense Security Service and Office of Personnel Management. Department of Defense contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination may be made. (See Regulation ¶ C8.2.1.)

When evaluating an Applicant’s suitability for a public trust position, the administrative judge must consider the disqualifying and mitigating conditions in the Administrative Guidelines (AG) ¶ 2 (a). 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 access to [sensitive] information will be resolved in favor of 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. Under Directive ¶ E3.1.15, the Applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The Applicant has the ultimate burden of persuasion as to obtaining a favorable trustworthiness 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 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 concern under Guideline F (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 . . . .

This concern is broader than the possibility that a person might knowingly compromise classified or sensitive information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified or sensitive information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified or sensitive information.

The record evidence of Applicant's delinquent debts establishes the following disqualifying condition under AG ¶ 19:

(c) a history of not meeting financial obligations.

AG ¶ 20 describes conditions that could mitigate security concerns. The following

are potentially 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;

(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; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant's financial issues are the result of periods of unemployment, underemployment, not having health insurance, relationship problems, mental-health issues, and the COVID-19 pandemic. However, he has not initiated sufficient actions to resolve his existing delinquent debts. Many of the conditions that contributed to Applicant's financial problems were beyond his control, but he has not demonstrated that he acted responsibly to address his delinquent debts. Additionally, it is clear from the totality of the evidence that many of Applicant's financial issues were related to his underlying behavioral problems. His court costs, tickets, fines, and fees were and have been significant over the years. He did not establish his inability to change and modify his behavior.

Applicant has worked for his current employer for over three years, but he has failed to voluntarily address many of the debts alleged in the SOR. Although he has no new delinquent consumer debts, Applicant's financial issues continue to be an ongoing concern. The documentation that he provided demonstrates that the debts that are being resolved are only being paid because his creditors sought judgments and are actively

garnishing his paychecks. Therefore, he does not receive complete credit for mitigation under AG ¶ 20(d).

Applicant's history of financial problems extends back to at least 2010, when he filed for Chapter 7 bankruptcy, and debts totaling \$70,000 to \$80,000 were discharged. Although he had counseling as part of the bankruptcy process, he accrued new debts after his bankruptcy. Finally, he did not provide documentation demonstrating that he has filed and paid his 2014 and 2015 federal income taxes. Mitigation under AG ¶¶ 20(a), 20(b), 20(c), 20(d), 20(e), and 20(g) was not established.

### **Guideline E: Personal Conduct**

The concern under this guideline is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and

(b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

For almost 20 years, Applicant engaged in conduct that was, at times, criminal in nature, and demonstrated questionable judgment, untrustworthiness, unreliability, and an unwillingness to comply with rules and regulations. Based upon Applicant's behavior between 1997 and 2017, the following disqualifying condition (DC) under this AG ¶ 16 is applicable:

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes: (1) engaging in activities which, if known, could affect the person's personal, professional, or community standing.

Many of the alleged incidents were traffic-related and may not be crimes, others are likely misdemeanors, and a few could be felonies. Having considered all of the factors set forth in AG ¶ 17 that could mitigate the concern under this guideline, I find the following relevant:

AG ¶ 17(c): the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

AG ¶ 17(d): the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

Some of Applicant's incidents were relatively minor traffic violations, but when his behavior is considered as a whole, his criminal and traffic incidents are not insignificant, they establish a pattern of a person who fails to follow rules and regulations. As previously stated, numerous arrests and traffic tickets were not alleged in the SOR, and were not considered in determining if the disqualifying condition applied; however, these incidents were a factor in determining if the mitigating conditions are applicable.

In this case, Applicant was arrested or ticketed over 33 times between October 1997 and 2020. He admitted to stealing gasoline from gas stations an additional four or five times without receiving tickets or being arrested. Additionally, he continued to drive his vehicle without a valid driver's license and without insurance after the SOR was issued in October 2019, and received a ticket as recently as 2020. He was arrested multiple times for domestic violence and had an active restraining order until as recently as November 2020, less than two years ago. Given his lengthy history of misconduct, the frequency of Applicant's arrests and tickets, and the recency of his last ticket, he has not demonstrated that it is unlikely that this type of behavior will recur.

Applicant also failed to be forthright on his 2016 SCA and during his 2018 interview with a Government investigator regarding his use of marijuana. He admitted at the hearing that he used marijuana after he completed his SCA and before his interview. This behavior, his lack of candor and his drug abuse, was not alleged in the SOR; however, it does contribute to Applicant's history of criminal activity and ongoing inability to follow rules and regulations and behave in a responsible and trustworthy manner.

Applicant attended counseling sporadically between 2007 and 2013; consistently between 2007 and 2008; and approximately 20 times between 2008 and May 2021. He is to be commended for voluntarily attending counseling after his court-ordered treatment was satisfied in 2008; however, he failed to demonstrate that the underlying behavior or personal conduct is unlikely to recur.

I have doubts about Applicant's reliability, trustworthiness, judgment, and his willingness or ability to comply with rules and regulations. Thus, I cannot conclude that he has mitigated the Guideline E concerns. AG ¶¶ 17(c) and 17(d) do not 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 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.

Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a public trust position. His twenty plus years of engaging in criminal and irresponsible behavior, his use of illegal drugs, his failure to be forthright regarding his drug use, and his failure to resolve his financial obligations without garnishments, cause me to question his eligibility and suitability for a position of trust. For all these reasons, I conclude Applicant did not mitigate the trustworthiness concerns arising from his delinquent debts and personal conduct.

### **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 (Financial Considerations): **AGAINST APPLICANT**

Subparagraph 1.a:	For Applicant
Subparagraphs 1.b – 1.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraphs 1.j – 1.p:	Against Applicant
Subparagraph 1.q:	For Applicant

