



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



|                                     |   |                       |
|-------------------------------------|---|-----------------------|
| In the matter of:                   | ) |                       |
|                                     | ) |                       |
|                                     | ) | ADP Case No. 20-03599 |
|                                     | ) |                       |
| Applicant for Public Trust Position | ) |                       |

**Appearances**

For Government: Raashid S. Williams, Esq., Department Counsel  
For Applicant: *Pro se*

03/31/2022

**Decision**

BENSON, Pamela C., Administrative Judge:

Applicant has failed to mitigate the trustworthiness concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). He has not made any payments or demonstrated any efforts to resolve his delinquent debts despite having the financial means to do so. He made inconsistent statements that damaged his credibility. Eligibility for access to a public trust position is denied.

**Statement of the Case**

On July 28, 2019, Applicant submitted a security clearance application (SCA). On January 28, 2021, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant an SOR, detailing trustworthiness concerns under Guidelines F and E. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *National Security Adjudicative Guidelines* (AG) effective within the DoD on June 8, 2017.

On March 10, 2021, Applicant responded to the SOR, and he requested a hearing before an administrative judge. He denied the majority of the SOR allegations, ¶¶ 1.a-1.c, 2.a, and 2.b., and he admitted ¶¶ 1.d, and 1.e. Processing of the case was delayed due to the COVID-19 pandemic. On June 11, 2021, the case was assigned to me. The Defense Office of Hearings and Appeals (DOHA) issued the hearing notice on February 17, 2022, setting the hearing for March 1, 2022. The hearing proceeded as scheduled using the Microsoft Teams video-teleconferencing system.

Department Counsel submitted five documents, which I admitted into evidence as Government Exhibits (GE) 1 through 5, without objection. Applicant did not submit any documentation, and I held the record open until March 15, 2022, in the event either party wanted to supplement the record with additional documentation. No additional documentation was submitted. DOHA received the hearing transcript (Tr.) on March 6, 2022, and the record closed on March 16, 2022.

### **Findings of Fact**

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

Applicant is 27 years old and currently married. He has a son, age six, out of wedlock. He pays child support for his son, which is taken directly from his paycheck. He enlisted in the U.S. Marine Corps in September 2012, and he received an honorable discharge from active duty in September 2016. He is a member of the Marine Corps Inactive Reserve to the present time. Since July 2019, Applicant is employed as a "CHUB"<sup>1</sup> unpack operator in a chemical handling building for a federal contractor. His net monthly salary is approximately \$4,200. His employer requires him to be eligible for a position of trust to perform specific employment duties. (Tr. 15-16, 41-42; GE 1)

Applicant stated that he suffered financial problems when he was laid off from employment in 2017. His spouse lost her school employment position due to the pandemic. In January 2022, he tested positive for COVID. He was sick and unable to work for approximately one month. He used 40 hours of his vacation and 16 hours of sick leave while he was out from work. At that time, he and his spouse had about \$10,000 in their savings account, which they depleted while he was unable to receive a paycheck for the remainder of the month. They also experienced other unexpected family emergencies. At the hearing, he said it was his personal priority to save \$10,000 again in his savings account before he will address paying off other debts. (Tr. 36-37, 43-47; GE 2)

The SOR alleged under Guideline F five delinquent debts which totaled approximately \$31,116. The credit reports in the record corroborate the delinquent accounts. The current status of these debts is as follows: (GE 3, GE 4, GE 5)

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<sup>1</sup> Applicant was uncertain what the acronym "CHUB" stood for when asked during his hearing. Tr. 15.

SOR ¶ 1.a alleges a \$3,922 VA Debt Management account that has been referred for collection. Applicant denied this debt in his SOR response. During the hearing, he testified that he discovered two months ago after placing a phone call to the creditor, that this account was for his unpaid medical bills. He mistakenly believed that once he was discharged from the military, he would be covered by TRICARE medical insurance indefinitely. He later learned that he only carried medical insurance for approximately six months after his 2016 discharge, but he continued to receive medical treatment from the VA for one or two years thereafter. He admitted that he was responsible for this debt. He has never made any payments on this account. He intends to set-up a payment plan in the near future. This debt is unresolved. (Tr. 16-20, 37-38; SOR response)

SOR ¶¶ 1.b and 1.c allege two VA Debt Management accounts totaling \$982 that have been referred for collection. Applicant denied these debts in his SOR response, but during the hearing, he admitted responsibility for these accounts. He also reiterated that he had not made any payments on these accounts for unpaid medical services. He intends to set-up payment plans in the near future. These debts remain unresolved. (Tr. 20, 37-38; SOR response)

SOR ¶ 1.d alleges a \$26,014 charged-off account with Wells Fargo. Applicant admitted this debt in his SOR response, and at the hearing he stated that this account was fully resolved. In 2016, he purchased a Jeep and financed it through Wells Fargo. Since he voluntarily returned the vehicle in 2018, he no longer owed any deficiency balance on this account. Applicant claimed that he had called the creditor a year ago and was informed that he did not owe any deficiency balance. Department Counsel asked him if he could provide documentation that substantiated his claim, and Applicant agreed to provide documentation post-hearing. Applicant did not provide any supporting documentation by March 15, 2022, and this debt is unresolved. (Tr. 20-23, 38-42; SOR response)

SOR ¶ 1.e alleges a \$198 T-Mobile account referred for collection. Applicant admitted this debt and testified at the hearing that he had not made any payments on this account, but he intended to pay the account in full with his upcoming paycheck. Department Counsel requested Applicant provide documentation that the account was paid in full during the two-week period the record was held open. Applicant did not provide any supporting documentation by March 15, 2022, and this debt is unresolved. (Tr. 23-24; SOR response)

Applicant admitted that after paying all of his monthly expenses on a monthly net income of about \$4,200, he had about \$1,000 left over at the end of the month. He stated that he uses some of that money to make an extra payment on his vehicle loan by doubling his current car payment of \$300 to \$600. He has doubled his car payment on six or seven occasions in 2021 in an effort to raise his credit rating. When questioned by Department Counsel for an explanation as to why he did not use any of the \$1,000 monthly remainder to pay his delinquent accounts, Applicant stated that he just never considered these debts when he is paying his bills. (Tr. 23-24, 28-37)

Applicant has not received any financial counseling. He is current on all of his income tax return filings. Beginning in about 2018, his tax refunds for the following three years were intercepted to pay back child support. He stated that this year he should get a tax refund of about \$6,800, which he intends to use to pay his delinquent debts and place any remainder into his savings account. When questioned about the previous tax year, he admitted that he received a 2020 tax refund in 2021 for about the same amount. The SOR was issued in January 2021, and he admitted that he did not apply any of his 2020 tax refund to make payments on any of his outstanding debts. (Tr. 29-37, 42-49)

## **Personal Conduct**

The SOR alleged that Applicant falsified his July 2019 SCA when he failed to disclose adverse financial information, such as whether he had defaulted on any loans, had any repossessions, or had any accounts past-due or referred for collection within the last seven years. (¶ 2.a) At the hearing Applicant testified that when he filled out the SCA he was not aware that he was delinquent with the VA for unpaid medical services or past due with his T-Mobile account. He did admit, however, that he was aware that his Jeep had been repossessed in 2018 for non-payment. He knew he had financial issues after he was laid-off from work in 2017, which was stressful, and he dealt with that stress by ignoring his financial obligations. He stated, "...I'm not going to look and see if I do have any debts." (Tr. 25-28, 38-41, 47-48; SOR response; GE 1)

The second SOR allegation under Guideline E alleged that during Applicant's background interview on August 19, 2019, he falsified material facts after he denied that he had any delinquent accounts or repossessions when questioned by the investigator. (¶ 2.b) Applicant was then confronted with information about his repossessed vehicle and the outstanding balance on his loan. Applicant then explained to the investigator that he had been delinquent on the car loan for approximately one year and that the Jeep was eventually repossessed in 2018. He contacted the creditor in July 2019 to set-up a monthly payment plan of \$220 to pay the outstanding deficiency balance of \$17,775. He had made two monthly installments; one payment last month and his second payment the same month of his interview. Applicant also discussed his other delinquent accounts which were attributed to his 2017 lay-off from employment. His 2019 statement to the investigator acknowledging a deficiency balance on his repossessed Jeep is inconsistent with his testimony during the hearing. (Tr. 25-28, 38-41, 46-47; SOR response; GE 1, GE 2)

## **Policies**

A memorandum from the Under Secretary of Defense dated November 19, 2004, treats public trust positions as sensitive positions, and it entitles applicants to the procedural protections in the Directive before any final unfavorable determination may be made. The standard set out in the adjudicative guidelines for assignment to sensitive

duties is that the person's loyalty, reliability, and trustworthiness are such that assigning the person to sensitive duties is clearly consistent with the interests of national security.

A person who seeks access to sensitive information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours.

When evaluating an applicant's suitability for a public trust position, the administrative judge must consider the disqualifying and mitigating conditions in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. The administrative judge's overarching adjudicative goal is a fair, impartial and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The protection of the national security is the paramount consideration. Under AG ¶ 2(b), "[a]ny doubt concerning personnel being considered for access to [sensitive] information will be resolved in favor of national security." The Government must present substantial evidence to establish controverted facts alleged in the SOR.<sup>2</sup> Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts.<sup>3</sup> An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government.<sup>4</sup> An applicant has the ultimate burden of demonstrating that it is clearly consistent with national security to grant or continue eligibility for access to sensitive information.

## Analysis

### Guideline F: Financial Considerations

AG ¶ 18 articulates the trustworthiness concern for financial problems:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental

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<sup>2</sup> Directive ¶ E3.1.14.

<sup>3</sup> Directive ¶ E3.1.15.

<sup>4</sup> See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

The guideline notes several conditions that could raise trustworthiness concerns under AG ¶ 19. The SOR alleged Applicant's five delinquent debts totaled approximately \$31,116. The Government produced substantial evidence to raise the disqualifying conditions in AG ¶ 19(a) (an inability to satisfy debts) and AG ¶ 19(c) (a history of not meeting financial obligations). Further inquiry about the applicability of mitigating conditions is required.

Conditions that could mitigate the financial considerations trustworthiness concerns are provided under AG ¶ 20. The following are potentially applicable:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce, or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Clearance decisions are aimed at evaluating an applicant's judgment, reliability, and trustworthiness. They are not a debt-collection procedure. The guidelines do not require an applicant to establish resolution of every debt or issue alleged in the SOR. An applicant needs only to establish a plan to resolve financial problems and take significant actions to implement the plan. There is no requirement that an applicant immediately resolve issues or make payments on all delinquent debts simultaneously, nor is there a requirement that the debts or issues alleged in an SOR be resolved first. Rather, a reasonable plan and concomitant conduct may provide for the payment of such debts, or resolution of such issues, one at a time.

None of the mitigating conditions apply. Applicant failed to establish a clear plan to resolve his financial issues and he has not taken any significant actions to implement a repayment plan. He made promises to pay delinquent debts in the future, for example,

with his next paycheck, or with the proceeds of his 2021 tax refund, however, there is no evidence in the record that he has made good on those promises. He received the SOR in January 2021, and even though he received a tax refund of nearly \$7,000 in 2021, he did not apply any of that money to pay or satisfy his delinquent debts.

Applicant admitted he has about \$1,000 left over at the end of each month after paying his monthly expenses, but he has not made any effort to set-up payment plans with creditors, or resolve any of his delinquent accounts. He failed to meet his burden of satisfactorily explaining why he was unable to make greater progress resolving his delinquent debts. He did not establish that he acted responsibly under the circumstances, and his financial obligations alleged in the SOR remain unpaid and unresolved. His delinquent finances continue to cast doubt on his current reliability, trustworthiness, and good judgment. Financial considerations security concerns are not mitigated at this time.

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

AG ¶ 15 expresses the trustworthiness concern for personal conduct:

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 provide truthful and candid answers during national security investigative or adjudicative processes. ...

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following is potentially applicable under the established facts in this case:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

The SOR alleges Applicant deliberately falsified relevant and material information on his July 2019 SCA, and during his background interview in August 2019. The above disqualifying condition applies.

The guideline also includes conditions that could mitigate security concerns arising from personal conduct. The following mitigating conditions under AG ¶ 17 are potentially applicable:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(c) the offense is so minor or so much time has passed, or the behavior is so infrequent, or 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

(d) the individual 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.

Applicant did not disclose on the July 2019 SCA that he had delinquent accounts, defaulted loans, or that he had a car repossessed in 2018. At the hearing, Applicant stated that he had not been aware of the delinquent accounts, but he was aware that his car had been repossessed due to non-payment. During his August 2019 background interview, he was asked by the investigator if he had any delinquent accounts, defaulted loans, or if he ever had anything repossessed within the last seven years. Applicant denied all of these inquiries. When he was confronted with adverse information taken from his credit report, Applicant provided detailed explanations about several delinquent accounts, and how he fell behind on his bills after he was laid-off by his employer in 2017. He admitted that he had just set-up a monthly payment plan for his vehicle that was repossessed in 2018 with a deficiency balance of \$17,775. He told the investigator that he made his first payment the month he had completed the SCA, and a second payment the same month as his background interview.

At the hearing, Applicant provided inconsistent testimony about his repossessed Jeep. He stated that since he voluntarily returned the vehicle, he no longer owed any deficiency balance. When asked how he came to this conclusion, Applicant stated that he had called the creditor a year ago, and they told him he did not owe any money. Applicant was given the opportunity to supplement the record with supporting documentation. He did not provide any documents while the record was held open for two weeks. In light of the omissions on his SCA and his inconsistent statements during the security clearance investigation and hearing, I find that Applicant is not a credible witness. Overall, Applicant's failure to be honest and candid casts doubt on his reliability, trustworthiness, and overall good judgment. Personal conduct security concerns are not mitigated.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a trustworthiness determination by considering the totality of the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable



participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a trustworthiness determination must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines F and E in my whole-person analysis.

Applicant failed to take responsible action to resolve his financial delinquencies after it was brought to his attention in August 2019 during his background interview, and in January 2021, when the SOR was issued. He did not establish that he acted responsibly under the circumstances, and his financial obligations remain unpaid and unresolved. Applicant's failure to be honest and candid about his financial issues casts doubt on his reliability, trustworthiness, and overall good judgment. After evaluating all the evidence in the context of the whole person, I conclude Applicant has failed to mitigate the financial considerations and personal conduct trustworthiness concerns.

### **Formal Findings**

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

|                             |                   |
|-----------------------------|-------------------|
| Paragraph 1, Guideline F:   | AGAINST APPLICANT |
| Subparagraphs 1.a-1.e:      | Against Applicant |
| Paragraph 2, Guideline E:   | AGAINST APPLICANT |
| Subparagraphs 2.a, and 2.b: | Against Applicant |

### **Conclusion**

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

Pamela C. Benson  
Administrative Judge