



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



In the matter of: )  
 )  
----- ) ADP Case No. 19-02530  
 )  
Applicant for Public Trust Position )

**Appearances**

For Government: Brittany White, Esq., Department Counsel  
For Applicant: *Pro se*

06/24/2022

**Decision**

WESLEY, ROGER C. Administrative Judge

Based upon a review of the case file, pleadings, exhibits, and testimony, Applicant did not mitigate financial consideration concerns. Eligibility for holding a public trust position is denied.

**Statement of the Case**

On October 20, 2019, the Department of Defense (DoD) Consolidated Central Adjudications Facility (CAF) issued a statement of reasons (SOR) to Applicant detailing reasons why under the financial considerations guideline the DoD could not make the preliminary affirmative determination of eligibility for holding a public trust position and recommended referral to an administrative judge to determine whether eligibility to hold a public trust position should be granted, continued, denied, or revoked. The action was taken under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960); DoD Directive 5220.6 *Defense Industrial Personnel Security Clearance Review Program*, (January 2, 1992) (Directive); and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017.

Applicant responded to the SOR (undated), and requested a hearing. This case was assigned to me on January 14, 2022. A hearing was scheduled for February 25, 2022, via TEAMS teleconference, and was heard on the scheduled date. At the hearing, the Government's case consisted of 10 exhibits. (GEs 1-10) Applicant relied on one witness (himself) and five exhibits (AEs A-E). The transcript (Tr.) was received on March 8, 2022.

### **Procedural Issues**

Before the close of the hearing, Applicant requested the record be kept open to permit him the opportunity to supplement the record with additional post-hearing documentation. For good cause shown, Applicant was granted seven calendar days to supplement the record. Department Counsel was afforded two days to respond. Applicant did not supplement the record. (Tr. 56-57)

### **Summary of Pleadings**

Under Guideline F of the SOR, Applicant allegedly accumulated 20 delinquent debts exceeding \$27,000. Allegedly, these debts remain unresolved and outstanding.

In his response to the SOR, Applicant admitted most of the alleged debts with explanations and clarifications. He denied the debts covered by SOR ¶¶ 1.c, 1.g, and 1.i-1.t. For those debts he admitted, he claimed his inability to work out payment arrangements with three judgment creditors covered by SOR ¶¶ 1.a-1.b, and 1.d., as well as a duplicated debt covered by SOR ¶¶ 1.f. and 1.b. He further claimed that his bank account was hacked and his vehicle was repossessed (resulting in the closure of the vehicle account). Addressing SOR ¶¶ 1.g-1.t, he claimed to have no records of the records of the accounts being opened and in collection or delinquent status.

### **Findings of Fact**

Applicant is a 31-year-old civilian of a defense contractor who seeks eligibility to hold a public trust position. The admitted allegations are incorporated and adopted as relevant and material findings. Additional findings of fact follow.

### **Background**

Applicant married in May 2020 and has two children from this marriage. (GEs 1-2; Tr. 30) He earned a high school diploma and but reported attendance of college classes between August 2013 and June 2014, and between February 2015 and May 2016. (GE 1; Tr. 26) He reported no military service. (GE 1; Tr. 26)

Since 2020, Applicant has been employed by his current employer as an application support technician. (GE 1; Tr. 64, 68) Previously, he worked for other employers in various types of jobs. (GE 1) He reported brief periods of unemployment between 2009 and 2016. (GE 1)

## **Applicant's finances**

Between 2010 and 2016, Applicant accumulated a number of delinquent debts (20 in all), exceeding \$27,000. (GEs 2-6) He attributed the debt delinquencies to family deaths, recurrent unemployment, and employment transitions. (GEs 1-2; Tr. 22, 10)

In 2018, Applicant entered into a debt consolidation program that covered the debts alleged to be delinquent in the SOR. (Tr. 23, 28) For several months, he made regular monthly payments totaling less than \$700. (AEs A-D; Tr. 28-29) By 2019, Applicant was struggling with his finances again and ceased making payments under his debt consolidation plan. (Tr. 22) Since letting his debt consolidation plan lapse, he has made no documented payments on any of his SOR-listed debts. (GEs 2-6) While several of the alleged delinquent debts have since fallen off his credit reports, he has provided no documentation of his making any payments on these debts before their removal. (GEs 3-6 and AE E; Tr. 37-39, 44-62)

Applicant's cited efforts to reach settlement agreements with creditors covered by SOR ¶¶ 1.a (\$1,398), 1.b (\$1,190), 1.e (\$2,493), 1.f (\$2,289), and 1.i (\$112) were unsuccessful. (Tr. 24-25, 31, and 41-46) Each of these creditors wanted more money from Applicant than he could afford at the time. (Tr. 31, 44-46) Asked about the debts covered by SOR ¶¶ 1.g and 1.i-1.t, Applicant could either not recall any of these reported debts or he could not verify them as unpaid debts. (Tr. 46-61) However, each of these SOR-listed debts are revealed in his credit reports to be debts opened by him individually and subsequently charged off. (GEs 2-6; Tr. 32-37) Based on the advice given him by his credit consolidation firm, he never paid or otherwise resolved these covered these debts. (Tr. 35-37)

Two of the listed debts covered by the SOR (SOR ¶¶ 1.b and 1.f) involve the same creditor and a single default on a reported rental apartment in March 2015. (GEs 2-5) are reported duplicates of the same rental apartment debt. (Tr. 32-33, 41-42) The landlord creditor reportedly filed for monetary relief in March 2015 and obtained a favorable judgment September 2016 in the amount of \$1,190. (GE 3) Both debts cover the same listed creditor for rental services covering the same 2015-2016 time. (GE 3) Applicant characterized the two debts as duplicates and the credit reports corroborate his claims of duplication of these two debts. (GEs 2-3; Tr. 32-33, 41-42)

Only one of the listed SOR debts (a medical debt covered by SOR ¶ 1.o for \$796) has Applicant been able to satisfy with a documented payoff. (AE H) Applicant resolved this medical debt with a series of monthly payments between November 2016 and March 2022. (AEs F-H)

Several aged and small debts (mostly medical debts resulting from medical emergencies) listed in the SOR could either not be recalled by Applicant or were believed to have been resolved and no longer listed in his latest credit report (SOR ¶¶

1.m-1.t). (Tr. 46-61) He provided no documentary proof that these listed debts in his credit reports were either paid or otherwise favorably resolved.

Applicant nets approximately \$3,900 a month from his job. (Tr. 64-65) Before taking maternity leave, his wife earned \$2,030 a month. (Tr. 65) With his wife's expected additional income when she returns to her job (working mainly from home with her twins at her side), Applicant expects to net over \$6,000 a month. (Tr. 65) He has a current checking account balance of approximately \$1,300. (Tr. 65-66) And, he has a 401(k) retirement account funded by around \$100, but he has not made any contributions to the account in more than two years. (Tr. 67-68) He has no savings account and has not benefitted from any financial counseling services.

Applicant estimates a net monthly remainder of around \$500 after meeting his monthly expenses. (Tr. 64-65) Applicant's monthly expenses include a mortgage, car payment, utilities, student loan payments, and payments for general necessities. (Tr. 69-71) After allowing for all of his monthly expenses, he estimates a net monthly remainder of around \$500 on average. (Tr. 71)

## **Policies**

By virtue of the jurisprudential principles recognized by the U.S. Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance [or public trust position]." As Commander in Chief, "the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. Eligibility for access to classified information [or to hold a public trust position] may only be granted "upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility to hold a public trust position is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The AGs list guidelines to be considered by judges in the decision-making process covering DOHA cases. The guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information. These guidelines include conditions that could raise a trustworthiness concern and may be disqualifying (disqualifying conditions), if any, and all of the conditions that could mitigate trustworthiness concerns, if any.

These guidelines must be considered before deciding whether or not eligibility to hold a public trust position should be granted, continued, or denied. Although, the guidelines do not require judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision.

In addition to the relevant AGs, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in ¶ 2(a) of the AGs, which are intended to assist the judges in reaching a fair and impartial, commonsense decision based on a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable trust risk.

When evaluating an applicant's conduct, the relevant guidelines are to be considered together with the following ¶ 2(d) factors: (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 of the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Viewing the issues raised and evidence as a whole, the following individual guidelines are pertinent herein:

### **Financial Considerations**

*The Concern:* Failure or inability 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 or regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified or sensitive information [inclusive of protected privacy information] Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of other issues of personnel security [and trust] 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 acts or otherwise questionable acts to generate funds. . . . AG ¶ 18.

### **Burdens of Proof**

The Government reposes a high degree of trust and confidence in persons with access to protected security and privacy information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by

necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard protected privacy information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of protected privacy information. Clearance and trustworthiness decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. See also Exec. Or. 12968 (Aug. 2, 1995), § 3.1.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for holding a public trust position. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security (and trustworthiness) suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his [or her] security clearance [and or eligibility to hold a trustworthiness position].” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations (to include public trust eligibility) should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

### **Analysis**

Trustworthiness concerns are raised over Applicant’s accumulation of delinquent accounts between 2010 and 2016. Applicant’s delinquent accounts remain unresolved and outstanding except for the debt covered by SOR ¶ 1.f.

### **Jurisdictional issues**

Holding a public trust position involves the exercise of important fiducial responsibilities, among which is the expectancy of consistent trust and candor in protecting and guarding personally identifiable information (PII). DoD Manual 5200.02, which incorporated and canceled D sensitive national security positions for DoD civilian personnel. See 5200-.02, ¶ 4.1(3)(c)3.

Definitions for critical-sensitive and non-critical sensitive positions provided in 5200.02, ¶ 4.1a(3)(c) contain descriptions similar to those used to define ADP I and II positions under DoD Regulation 5200.2-R. (32 C.F.R. §154.13 and Part 154, App. J). ADP positions are broken down as follows in 32 C.F.R. § 154.13 and Part 154, App. J:

(ADP I (critical-sensitive positions covering the direction, design, and planning of computer systems) and ADP II (non-critical-sensitive positions covering the design, operation, and maintenance of computer systems). Considered together, the ADP I and II positions covered in DoD Regulation 5200.2-R refine and explain the same critical-sensitive and non-critical sensitive positions covered in DoD Manual 5200-02, ¶ 4.1a(3)(c) and are reconcilable as included provisions in 5200.02.

So, while ADP trustworthiness positions are not expressly identified in DoD Manual 5200.02, they are implicitly covered as non-critical sensitive positions that require access to automated systems that contain active duty, guard, or personally identifiable information or information pertaining to Service members that is otherwise protected from disclosure. By DoD 5400.11-R . . .” DoD 5200.02, ¶ 4.1a(3)(c). See DoD Directive 5220.6, ¶ 4.1.a(3)(c) See also DoD Directive 5220.6 ¶¶ D5(d) and D8. By virtue of the implied retention of ADP definitions in DoD 5200.02, ADP cases continue to be covered by the process afforded by DoD 5200.6

## **Financial concerns**

Credit reports reveal that Applicant’s reported delinquent debts (except for the duplicated debt covered by SOR ¶1.f and one payoff covered by SOR ¶1.o) remain unaddressed and unresolved. These debt delinquencies warrant the application of two of the disqualifying conditions (DC) of the financial consideration guidelines: DC ¶¶ 19(a), “inability to satisfy debts” and 19(c), “a history of not meeting financial obligation.” Each of these DCs apply to Applicant’s situation.

Applicant’s admitted individual debts require no independent proof to substantiate them. See Directive 5220.6 at E3.1.1.14; *McCormick on Evidence* § 262 (6<sup>th</sup> ed. 2006). His admitted debts are fully documented and create judgment issues as well over the management of his finances. See ISCR Case No. 03-01059 (App. Bd. Sept. 24, 2004).

Financial stability in a person cleared to protect sensitive privacy information is required precisely to inspire trust and confidence in the holder of a public trust position that entitles the person to access protected privacy information. While the principal concern of a public trust holder’s demonstrated difficulties is vulnerability to coercion and influence, judgment and trust concerns are implicit in cases involving delinquent debts.

Historically, the timing of addressing and resolving debt delinquencies are critical to an assessment of an applicant’s trustworthiness, reliability, and good judgment in following rules and guidelines necessary for those seeking eligibility to hold a public trust position. See ISCR Case No. 14-06808 at 3 (App. Bd. Nov. 23. 2016); ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 18, 2015).

Applicant’s cited family income limitations without his wife’s contributions, while understandable, are not enough no justify his failure to address his debt delinquencies

with even reduced payments and payment plans with the income sources available to him. More time is needed for Applicant to make the necessary adjustments in the management of his accounts to regain full control of his finances.

Considering all of the facts and circumstances developed in the record, only one of the mitigating conditions potentially available to Applicant applies to his situation: MC ¶20(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.” Applicant’s successful showing that the delinquent debt covered by SOR ¶ 1.f is a duplicate of the judgment debt covered by SOR ¶ 1.b warrants the mitigation credit that is covered by MC ¶ 20(e).

In evaluating Guideline F cases, the Appeal Board has stressed the importance of a “meaningful track record” that includes evidence of actual debt reduction through the voluntary payment of accrued debts. See ISCR Case No. 19-02593 at 4-5 (App. Bd. Oct. 18, 2021); ISCR Case No. 19-01599 at 3 (App. Bd. Jan. 20, 2020). Promises to address delinquent debts in the future when circumstances permit are no substitute for a proven track record of payments.

### **Whole-person assessment**

Whole-person assessment of Applicant’s public trust eligibility requires consideration of whether his finances are fully compatible with minimum standards for holding a public trust position. Taking into account Applicant’s credited defense contributions and cited failures to address his debts with the income resources available to him, insufficient evidence has been presented to enable him to safely maintain sufficient control of his finances to meet minimum standards for holding a public trust position.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude financial considerations public trust concerns are not mitigated. Eligibility for holding a public trust position is denied.

### **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:

Guideline F (FINANCIAL CONSIDERATIONS): AGAINST APPLICANT

Subparagraphs 1.a-1.e, 1.g-1.n, 1.p-1.t:	Against Applicant
Subparagraph 1.f and 1.o:	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 to hold a public trust position. Eligibility to hold a public trust position is denied.

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Roger C. Wesley  
Administrative Judge