



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



In the matter of: )  
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----- ) ADP Case No. 20-03282  
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Applicant for Public Trust Position )

**Appearances**

For Government: Nicole A. Smith, Esq., Department Counsel  
For Applicant: *Pro se*  
07/11/2022

**Decision**

KATAUSKAS, Philip J., Administrative Judge:

Applicant contests the Defense Department’s intent to deny him eligibility for a public trust position. Applicant did not present evidence sufficient to explain, extenuate, or mitigate the trustworthiness concern stemming from his problematic financial history. Accordingly, this case is decided against Applicant.

**Statement of the Case**

Applicant completed and submitted a Questionnaire for National Security Positions (SF 86 format) on July 19, 2019. On August 18, 2021, after reviewing the application and the information gathered during a background investigation, the Department of Defense Consolidated Adjudications Facility sent Applicant a statement of reasons (SOR), detailing trustworthiness concerns under Guideline F for financial considerations. This action was taken under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive). In addition, Security Executive Agent Directive (SEAD) 4, *National Security Adjudication Guidelines* (AG), effective within the Defense Department on June 8, 2017, apply here. Applicant answered the SOR (Answer) on November 23, 2021, and requested a decision based on the written record without a hearing.

The Government submitted a file of relevant and material information (FORM) on December 23, 2021, which included seven items of evidence (Items). The FORM was sent to Applicant on January 24, 2022, who received it on January 26, 2022. Applicant did not respond to the FORM. Items 1 and 2 (SOR and Answer) are the pleadings in this case. Items 3 through 7 are admitted into evidence without objection. The case was assigned to me on April 27, 2022.

### **Findings of Fact**

Applicant is 52 years old. He was married in November 1990 and divorced in May 2008. Applicant has two adult children. He served on active duty in the U.S. Army from November 1988 until his honorable discharge in May 2000. Applicant studied nursing from September 2006 until April 2008 and became a licensed practical nurse (LPN) in June 2008. Applicant seeks eligibility to occupy a position of public trust, because his employer and sponsor provides services to the Department of Defense, and his job would involve access to sensitive but unclassified information. Applicant has been employed by his sponsor since September 2019. (Items 3 and 4.)

Under Guideline F, the SOR alleged 10 delinquent debts (totaling \$14,402) and one Chapter 7 bankruptcy filing in October 2013 that was discharged in January 2014. (Item 1.) Applicant admitted those allegations. He also admitted that he filed another Chapter 7 in November 2021. (Item 2.) The recent bankruptcy is not alleged in the SOR. (Item 1.)

When Applicant divorced in 2008, he lost the income of his spouse. Applicant tried to pay all of his bills, but he fell behind. Applicant also had to pay \$200 per month child support for his then minor children. That led to his first bankruptcy, in 2013. Applicant lost his job in about 2018 and had a period of unemployment (dates not specified). The jobs t Applicant could find paid less than he needed. Due to Covid pandemic health concerns, job opportunities became more limited. Because of a service-related injury, Applicant could not take some jobs that required him to stand for long periods of time. He hopes to qualify for some disability benefits. Applicant is unsure when that might happen. There is no evidence that Applicant made any payments, established any payment plans, or contacted his creditors. (Items 2 and 4.)

### **Policies**

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 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.”

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 to obtain 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 safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of sensitive information.

## **Discussion**

### **Guideline F – Financial Considerations**

Under Guideline F for financial considerations, the suitability of an applicant may be questioned or put into doubt when that applicant has a history of excessive indebtedness or financial problems or difficulties. AG ¶¶ 18, 19, and 20 (setting forth the concern and the disqualifying and mitigating conditions).

The overall concern is stated 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.

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

In analyzing the facts of this case, I considered the following disqualifying and mitigating conditions or factors:

## **Potentially Disqualifying Factors**

AG ¶ 19(a) inability to satisfy debts; and

AG ¶ 19(c) a history of not meeting financial obligations;

## **Potentially Mitigating Factors**

AG ¶ 20(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; and

AG ¶ 20(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.

The evidence supports a conclusion that Applicant has had problematic financial conditions that raise a trustworthiness concern under Guideline F. He appears to have been unable to satisfy his debts, and he has a history of not meeting his financial obligations. Therefore, AG ¶¶ 19(a), and (c) apply. The next inquiry is whether any of the mitigating conditions apply.

The debts that raised trustworthiness concerns were delinquent when the SOR was issued in August 2021 and remained in arrears when the FORM was filed. Those debts were neither infrequent, nor did they occur long ago. Therefore, AG ¶ 20(a) does not apply.

Applicant enumerated a host of reasons that caused his dire financial straits. His divorce, child support, unemployment, under-employment, and Covid-caused limits on job opportunities are "conditions . . . largely beyond" Applicant's control. The inquiry under AG ¶ 20(b), however, does not end there. Applicant must also offer proof of how he responded responsibly to the adverse circumstances he confronted about his debts. He has not done so here. Serial Chapter 7 bankruptcy filings are not responsible conduct when trying to resolve delinquent debts. Accordingly, AG ¶ 20(b) does not apply.

## **Conclusion**

The record creates doubt about Applicant's trustworthiness, good judgment, and ability to protect sensitive information. In reaching this conclusion, I weighed the evidence as a whole and considered if the favorable evidence outweighed the unfavorable

evidence or *vice versa*. I also considered the “whole-person” concept. AG ¶¶ 2(a) and (d)(1)-(9) (explaining the “whole-person” concept and factors).

Accordingly, I conclude that Applicant has not met his ultimate burden of persuasion to show that it is clearly consistent with the interest of national security to grant him eligibility for access to sensitive information.

**Formal Findings**

The formal findings on the SOR allegations are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a – 1.k:	Against Applicant

In light of the record as a whole, it is not clearly consistent with the interests of national security to grant Applicant eligibility to hold a public trust position.

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Philip J. Katauskas  
Administrative Judge