



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



In the matter of: )  
)  
) ADP Case No. 20-02075  
)  
Applicant for Public Trust Position )

**Appearances**

For Government: Brian Farrell, Esquire, Department Counsel  
For Applicant: *Pro se*

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**Decision**

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LYNCH, Noreen A., Administrative Judge:

Applicant failed to mitigate the trustworthiness concerns regarding financial considerations and foreign influence guidelines. Eligibility for a public trust position to support a contract with the DOD is denied.

**Statement of the Case**

On October 10, 2019, Applicant applied for a public trust position and submitted an Electronic Questionnaire for Investigations Processing (SF 86). On October 13, 2021, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to him under Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and Directive 4 of the Security Executive Agent (SEAD 4), *National Security Adjudicative Guidelines* (December 10, 2016) (AG), effective June 8, 2017.

The SOR alleged trustworthiness concerns under Guideline F (Financial Considerations) and Guideline B (Foreign Influence) and detailed reasons why the DCSA

adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue Applicant's eligibility for occupying a public trust position to support a contract with the DOD. The SOR recommended referral to an administrative judge to determine whether such eligibility should be granted, continued, denied, or revoked.

On November 13, 2021, Applicant responded to the SOR and elected to have his case decided on the written record in lieu of a hearing. (Item 2) A complete copy of the Government's file of relevant material (FORM) was mailed to Applicant by the Defense Office of Hearings and Appeals (DOHA) on February 9, 2022, and he was afforded an opportunity after receipt of the FORM (Items 1-6) to file objections and submit material in refutation, extenuation, or mitigation. In addition to the FORM, Applicant was furnished a copy of the Directive as well as the Adjudicative Guidelines applicable to his case. Applicant received the FORM on March 9, 2022. His response was due on April 8, 2022. Applicant responded to the FORM in a timely manner. (Item 7) The case was assigned to me on July 11, 2022.

### **Findings of Fact**

The SOR alleged under foreign influence that Applicant's wife is a citizen of Tunisia, his mother-in-law and father-in-law are citizens and residents of Tunisia; his sister-in-law is a citizen and resident of Tunisia; his brother-in-law is a citizen of Tunisia and resident of Kuwait; and Applicant provided about \$500 a month to his mother-in-law who is a citizen and resident of Tunisia. (SOR ¶¶1.a through 1.e.) Applicant admitted SOR allegations ¶¶1.a through 1.d with explanations, but he denied 1.e. (Item 2)

In his response to the SOR, Applicant denied, with brief comments, the SOR allegations pertaining to financial considerations (SOR ¶¶ 2.a. through 2.n.) as well as SOR ¶ 1.e. The SOR alleges 11 delinquent financial accounts totaling approximately \$53,382, garnishment of wages in 2019, and indebtedness to the federal and state tax agencies for delinquent taxes. Applicant's admissions and comments are incorporated herein. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following findings of fact:

### **Background**

Applicant is a 41-year-old employee of a defense contractor. He has been serving as an aircraft mechanic with his current employer since February 15, 2022. He was previously employed by other employers as a contractor since 2015. Applicant is divorced, but he remarried in October 2019. He has two children from his first marriage, and a third child born in 2020 with his current wife. Applicant served on active duty in the United States Marine Corps (USMC) from 1997 to 2004, in the Air National Guard from 2004 to 2005, and returned to active duty in the USMC from 2005 to 2014. He retired from service in 2014. He received his undergraduate degree in April 2022. He was granted a security clearance in 2007. (Item 3)

## Financial Considerations

General source information pertaining to the financial accounts discussed below can be found in the following exhibits: Item 2 (Answer to the SOR, dated November 13, 2021); Item 3 (SF 86, dated October 10, 2019); Item 4 (Equifax Credit Report, dated December 1, 2021; Item 5 (Credit Report, dated January 7, 2020).

In his SF 86, Applicant acknowledged having several financial issues. He reported federal and state tax debt of \$8,000, a vehicle repossession and a 2019, \$600 bi-weekly wage garnishment. (Item 3)

In February and March 2020, Applicant was interviewed by an investigator with the U.S. Office of Personnel Management. During that interview, he verified the financial issues he had previously reported in his SF 86, but stated that the federal and state tax returns were filed and that he owes about \$11,000 for both. At one point, he stated that no wages were garnished. He either disputed the other accounts or stated that the accounts had been removed from his credit report. Applicant was confronted with the alleged accounts on the SOR by the investigator. (Item 6)

A review of Applicant's credit reports from 2020 – 2021 indicates that there are several delinquent accounts. In his Answer to the SOR, he denied delinquent accounts. He offered no documentation, such as repayment agreements, statements from creditors, receipts, or cancelled checks, to reflect any resolution efforts even though he has been employed since 2015.

The SOR alleged 11 still-delinquent accounts totaling approximately \$53,982, as set forth below:

SOR ¶ 2.a. is an automobile loan with an unpaid balance of \$46,790 that was placed for collection and charged off. (Item 5 at 1) Applicant denied the allegation, and stated that he is looking into possible fraud on this account by his ex-wife. (Item 6) The account has not been resolved.

SOR ¶ 2.b. is a medical account in the amount of \$1,961. Applicant denied this account and stated that his family never incurred any medical expenses. (Item 2) The account has not been resolved.

SOR ¶ 2.c. is a military collection account with an unpaid balance of \$1,635 that was placed for collection and charged off. Initially, Applicant did not recall the account and then stated that he paid the account in full in 2014. (Item 6) The account has not been resolved.

SOR ¶ 2.d. is a collection account in the amount of \$931. Applicant disagrees with this account although he remembers living in the apartment complex. He stated that he

would investigate the account and pay by December 2021. The account has not been resolved.

SOR ¶ 2.e is a cable account in collection for \$550. Applicant stated that he was unaware of the account and claimed that he has never received a collection notice. He also explained that his ex-wife has the cable equipment and perhaps did not return it. The account is unresolved.

SOR ¶ 2.f is a collection account in the amount of \$484 for a wireless account. Applicant denied this account and stated that he was unaware of it. He stated that he would investigate the account and provide information within five days. He did not submit any information.

SOR ¶ 2. g is another medical account in collection in the amount of \$322. He is unaware of the account and stated he would provide information within five days. He did not submit any information. The account is still unresolved.

SOR ¶ 2. h is a collection account in the amount of \$241. Applicant stated that he never had an account with this company. He stated that he would investigate the account.

SOR ¶ 2. i is a collection account in the amount of \$191. He does not know anything about the account. He believes that it is a school account for his children.

SOR ¶ 2.j is another medical account in collection in the amount of \$160. He has no knowledge of this account but will investigate. The account is still not resolved.

SOR ¶ 2.k is a collection account for a phone in the amount of \$117. Applicant does not recall this account and believes he never had this phone service.

SOR ¶ 2.l concerns Applicant's indebtedness to the Federal government for delinquent taxes in the amount of \$7,000 for tax years 2017 and 2018. In his Answer to the SOR, he stated that he owed nothing on his 2018 taxes and is trying to file his 2017 tax returns but his ex-wife will not disclose her earnings to him. However, in his 2019 SF 86, Applicant disclosed that he owed about \$8,000. He also disclosed that he failed to file his federal and state tax returns from 2017. (Item 3)

SOR ¶ 2.m is for delinquent state taxes for tax years 2017 and 2018 in the amount of \$5,500. In his answer to the SOR, he stated that he did not owe anything. In his subject interview Applicant admitted owing the \$5,500. (Item 3) In Applicant's response to the FORM, he stated that he had been mistaken about owing state taxes. (Item 7)

SOR ¶ 2.n concerns a wage garnishment in November 2019 in the approximate amount of \$600 bi-weekly. He denies that he ever worked for this company and that there was no garnishment.

In Applicant's response to the FORM, Applicant admitted that he did not keep a "close eye" on his credit report. He stated that he was somewhat negligent in this area and did not understand the process for clearing up or disputing items effectively. He believes he has a total of \$31,000, credit card debt on three small car loans and a few credit cards totaling \$13,000. He blames his ex-wife for some collection accounts and wants to investigate possible fraud. (Item 7)

Applicant, in that response to FORM, said that he was mistaken about owing state taxes for any previous years. He believes that he does not owe anything. He does owe back taxes for 2017 for Federal taxes, but is waiting for a total amount from the IRS and he hired a legal tax defense firm to file his taxes for 2017. He had no intention of withholding tax from the government. Also, he explained he was working in Kuwait that entire year and was told that he was in a "Tax Free Zone." He wants to pay his taxes. (Item 7)

Applicant's net monthly salary is \$4,200. He receives \$4,500 from his GI bill for attending college. He stated that his total monthly income is \$7,500 net. He reports his total monthly debt as \$4,530. His net remainder is \$3,145. He has no other overdue accounts. He does not gamble or drink.

Applicant submitted a property order attachment to his divorce judgement. He also submitted his April 2022 pay slip which showed no further garnishment.

### **Foreign Influence**

Applicant is a U.S. citizen by birth. In October 2019, Applicant married his second wife who is a citizen of Tunisia. Applicant met her when he was working in Kuwait. She now resides with her husband in their U.S. home. She is a legal resident of the United States, and received her resident alien card on July 27, 2021. Applicant's wife has been in the United States since 2019. She wants to build a future in the United States with her husband. At the time of his subject interview, Applicant stated that his wife was unemployed, but had been self-employed in Tunisia. (Item 6) Applicant and his wife have a new born son. (Item 2) She is a Christian and she and Applicant attend church together. (Item 2) Applicant's wife speaks to her family, but the record did not specify the frequency. (SOR ¶ 1.a)

Applicant's mother-in-law and father-in-law are citizens and residents of Tunisia. Applicant does not talk to them and has not for about one year. In his SF 86, he noted that he had weekly contact with his mother-in-law, but Applicant states that he had a disagreement with his mother-in-law and does not speak to her. His father-in-law does not communicate frequently with Applicant due to the language barrier. SOR ¶1.b (Item 2) Applicant did see him in person in 2019, and he sometimes texts him using a translator. (Item 3) Applicant's parents-in-law have no connections with the Tunisian government.

Applicant's sister-in-law is a citizen and resident of Tunisia. In his answer to the SOR, Applicant stated that he has no relation with her at all. He stated that he met her

twice in Tunisia on vacation. She has no connection to the government of Tunisia. She is an agricultural engineer. (Item 6) SOR ¶1.c

Applicant's brother-in-law is a citizen of Tunisia, but Applicant states that he is not a resident of Kuwait. Also, in his answer, Applicant states that he now lives in the U.S. He lived with Applicant in Kuwait for a few months. (Item 2) Applicant states that he also lived with him in the U.S. He has no connection with the Tunisian government. (Item 6) SOR ¶1.d

Applicant, in his answer, denied that he provides support to his mother-in-law, but he admitted that he sends her about \$500 each month to cover some of his wife's expenses. His wife bought a car before he met her and she has a car loan. Applicant stated that he does not provide support to his mother-in-law, but sends her money to pay expenses for his wife. SOR ¶ 1.e The money pays back taxes on a failed business that his wife owned, but closed in 2016. (Item 2)

In his March 2022 response to the FORM, Applicant stated that he would no longer send money to Tunisia because he did not know it was a factor that could jeopardize his security clearance. (Item 7) SOR ¶ 1.e. Applicant stated in his response to FORM, that he currently has no property, nor never has had any money, accounts, personal property or other financial interests in Tunisia. (Item 7) Applicant further explained that neither his wife or her family have never had any threats from Tunisia. (Item 7)

Applicant reported that his wife owns nothing in Tunisia except for the car and her parents took over ownership. She has not left the United States since arriving in June 2019. According to Applicant, a background investigation was conducted on his wife in 2021 when she was granted legal residency. Applicant's parents-in-law have no connection with the Tunisian government. (Item 7)

### **Administrative Notice**

Tunisia is a constitutional republic with a multiparty, unicameral parliamentary system and a president with powers specified in the constitution. In 2019 the country held parliamentary and presidential elections in the first transition of power since its first democratic elections in 2014. In October 2019 the country held free and fair parliamentary elections that resulted in the Nahada Party winning a plurality of the votes, granting the party the opportunity to form a new government.

Significant human rights issues exist in Tunisia including reports of unlawful or arbitrary killings, primarily by terrorist groups; allegations of torture by government agents; arbitrary arrests and detentions of suspects under antiterrorism or emergency laws; undue restrictions on freedom of expression and the press, including criminalization of libel; widespread corruption, although the government took steps to combat it; societal violence and threats of violence targeting lesbian, gay, bisexual, transgender, and intersex persons; criminalization of consensual same-sex sexual conduct that resulted in arrests and abuse by security forces; and the worst forms of child labor.

The U.S. Department of State continues to assess Tunisia at Level 4 (out of 4), which indicates that travelers should not travel to the country due to crime, civil unrest, poor health infrastructure, kidnapping, and arbitrary arrest and detention of U.S. citizens.

## Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no one has a ‘right’ to a [position of public trust].” (*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988)) 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. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to such information “only upon a finding that it is clearly consistent with the national interest to do so.” The Deputy Under Secretary of Defense (Counterintelligence and Security) Memorandum, dated November 14, 2004, indicates trustworthiness adjudications will apply to cases forwarded to DOHA. ADP I (critical-sensitive positions) and ADP II (non-critical sensitive positions) constitute such cases.

When evaluating an applicant’s suitability for a public trust position, the administrative judge must consider the guidelines in SEAD 4. In addition to brief introductory explanations for each guideline, the guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant’s eligibility for a public trust position.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging 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. 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 meaningful decision.

In the decision-making process, facts must be established by “substantial evidence.” “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record.” (ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1)) “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 Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial

evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government's case. 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))

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 as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those 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 as to potential, rather than actual, risk of compromise of sensitive information. Furthermore, "security clearance determinations, and by inference, public trust determinations, should err, if they must, on the side of denials." (*Egan*, 484 U.S. at 531) 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.

## **Analysis**

### **Guideline B: Foreign Influence**

The security concern under Guideline B (Foreign Influence) is set out in AG ¶ 6, as follows:

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a [position of public trust]." (*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988)) 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. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to such information "only upon a finding that it is clearly consistent with the national interest to do so." The Deputy Under Secretary of Defense (Counterintelligence and Security) Memorandum, dated November 14, 2004, indicates trustworthiness adjudications will apply to cases forwarded to DOHA. ADP I (critical-sensitive positions) and ADP II (non-critical sensitive positions) constitute such cases.

The following are potentially relevant disqualifying conditions under this guideline:



AG ¶ 7(a): contact, regardless of method, with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion; and

AG ¶ 7(e): shared living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion.

Applicant's wife is a citizen of Tunisia but is a legal resident of the United States. She lives in the United States with her husband and child, who was born in the United States. Her entire family lives in Tunisia and she talks to her family on the phone. Applicant has spoken with his in-laws when they call to speak to his wife. He has met them in Tunisia. Applicant has in past years sent money to his-mother-in-law to pay for his wife's car loan and taxes. His wife's close bonds of affection and obligation to her family in Tunisia must be imputed to Applicant as a result of their marital relationship. This is true even if, as Applicant claims, he no longer has direct contact with his in-laws. Indeed, infrequency of contact is not necessarily enough to rebut the presumption an applicant has ties of affection for, or obligation to his own immediate family as well as his spouse's immediate family. AG ¶¶ 7(a) and 7(e) based on the heightened risk associated with Tunisia and the potential conflict of interest that arises from his connection to them. A heightened risk is associated with Tunisia due to the continued repressive, authoritarian, and anti-American regime which supports known terrorist groups. Moreover, violent crime, corruption, drug trafficking, and human-rights abuses are prevalent. Applicant bears the burden of persuasion to mitigate these concerns. (ISCR Case No. 99-0532 at 7 (App. Bd. Dec. 15, 2000)

Application of AG ¶¶ 7(a) and 7(e) is not a comment on an applicant's patriotism but merely an acknowledgment that people may act in unpredictable ways when faced with choices that could be important to a loved one, such as a family member. (ISCR Case No. 08-10025 at 4 (App. Bd. Nov. 3, 2009). Family relationships can involve matters of influence or obligation. (ISCR Case No. 02-04786 (App. Bd. Jun. 27, 2003).

The following are potentially relevant mitigating conditions under this guideline:

AG ¶ 8(a): the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the United States;

AG ¶ 8(b): there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, or allegiance to the group, government, or country is so minimal, or the individual has such deep and longstanding

relationships and loyalties in the United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest; and

AG ¶ 8(c): contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

For the reasons set out in the discussion of AG ¶¶ 7(a) and 7(e) above, I cannot conclude that it is unlikely that Applicant will be placed in a position of having to choose between the interests of his family and that of the United States. AG ¶ 8(a) is not established.

Applicant is a U.S. citizen, who served honorably in the U.S. military. He met his second wife while serving abroad. He married her in 2019 and they both reside in their home in the United States, but there is no other information or details. She is a citizen of Tunisia but is now a legal resident of the United States. He moved back to the United States after his military career. They have a home. However, the record contains insufficient facts to overcome the equally strong ties that he has to his wife's family in Tunisia, who are at a heightened risk of coercion or pressure from a foreign government. Under these circumstances, I cannot conclude that Applicant could be expected to resolve any conflict of interest in favor of the U.S. interest. AG ¶ 8(b) is not established.

None of Applicant's familial relationships are casual; nor is his contact with them infrequent. There remains a potential risk for foreign influence or exploitation. AG ¶ 8(c) is not established.

When evaluating an applicant's suitability for a public trust position, the administrative judge must consider the guidelines in SEAD 4. In addition to brief introductory explanations for each guideline, the guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for a public trust position.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging 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. 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 meaningful decision.

In the decision-making process, facts must be established by "substantial evidence." "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record." (ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1))

“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 Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government’s case. 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))

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 as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those 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 as to potential, rather than actual, risk of compromise of sensitive information. Furthermore, “security clearance determinations, and by inference, public trust determinations, should err, if they must, on the side of denials.” (*Egan*, 484 U.S. at 531) 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.

## **Analysis**

### **Guideline F, Financial Considerations**

The trustworthiness concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a

security concern insofar as it may result from criminal activity, including espionage.

The guideline notes several conditions that could raise trustworthiness concerns under AG ¶ 19:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (c) a history of not meeting financial obligations; and
- (f) failure to file or fraudulently filing annual Federal, state or local income tax as required.

The SOR alleged 11 delinquent financial accounts totaling \$53,382. The other SOR allegations concerned the indebtedness to the federal government for tax years 2017 and 2018 in the amount of \$7,000 and state delinquent taxes for 2017 and 2018 in the amount of \$5,500. Applicant denied owing these various accounts in his Answer to the SOR, but admitted or denied them in his subject interview. Applicant stated that he had a plan to pay the taxes. He presented no evidence to show that he made any payments on the delinquent accounts or his taxes. The credit reports confirm the debts and his denials and vague explanations are not sufficient to carry his burden of proof. He stated that he obtained an attorney to help with the tax issues and wants to pay his taxes and resolve the issues. Applicant also claimed that some debts were resolved through his divorce, but he failed to provide substantiating documentation evidence. AG ¶¶ 19(a), (b), (c) and (f) are established.

The guideline also includes examples of conditions that could mitigate trustworthiness concerns arising from financial difficulties under 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;
- (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.

AG ¶¶ 20(b) minimally applies, but none of the other conditions apply. Applicant was divorced and his wife was to resolve some of the debts, but he did not act responsibly. He blamed his ex-wife's financial mismanagement but failed to provide substantiating documentation to confirm his claim.

AG ¶¶ 20(c) and 20(d) do not apply as Applicant received no financial counseling or showed a good-faith effort to repay overdue creditors or otherwise resolve debts. He promises to pay his taxes but has not done so at the close of the record.

Applicant disputed some of the reported delinquent accounts, but he failed to offer a reasonable basis to dispute the legitimacy of delinquent debts he disputed. Other than his general promise made to the OPM investigator in February-March 2020, he offered no indication that he intended to pay the bills or that he had made any efforts to do so since receiving the SOR, even though he has held full-time employment. Thus, AG ¶20 (e) does not apply.

A debt that became delinquent several years ago is still considered recent because "an applicant's ongoing, unpaid debts evidence a continuing course of conduct and, therefore, can be viewed as recent for purposes of the Guideline F mitigating conditions." (ISCR Case No. 15-06532 at 3 (App. Bd. Feb. 16, 2017) (citing ISCR Case No. 15-01690 at 2 (App. Bd. Sept. 13, 2016))). Applicant offered no evidence of a good-faith effort to contact his creditors, engage in efforts to resolve any of his delinquent debts, or make any payments. Between the date he was interviewed by the OPM investigator in February March 2020, and the date his response to the FORM was expected, he made no claimed or verifiable efforts to address any of the delinquent debts.

Based on the record, the overwhelming evidence leads to the conclusion that Applicant's financial problems are not under control. He has not acted responsibly by failing to address his delinquent accounts while employed and by failing to make limited, if any, efforts of working with creditors. The Appeal Board has previously commented on such a situation:

Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties. ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current.

An applicant who begins to resolve his or her financial problems only after being placed on notice that his or her public trust position is in jeopardy may be lacking in the judgment and self-discipline to follow rules and regulations over time or when there is no immediate threat to his or her own interests. (See, e.g., ISCR Case No. 17-01213 at 5 (App. Bd. Jun. 29, 2018); ISCR Case No. 17-00569 at 3-4 (App. Bd. Sept. 18, 2018) In this instance, Applicant has failed to offer any evidence that he has even begun making such efforts even after the SOR was issued in October 2021.

Trustworthiness 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. Mere promises to pay debts in the future, without further confirmed action, are insufficient. In this instance, Applicant offered no specifics regarding any repayment efforts; submitted no documentary evidence to reflect any payments made; and only made promises of proposed actions. Not one delinquent debt has been resolved.

The Appeal Board has previously explained what constitutes a good-faith effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the "good-faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term "good-faith." However, the Board has indicated that the concept of good-faith "requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation."

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. Jun. 4, 2001)).

There is no evidence of financial counseling, a budget, or complete financial information. Applicant's inaction under the circumstances cast doubt on his current reliability, trustworthiness, and good judgment. See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance 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 SEAD 4, App. A, ¶ 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 SEAD 4, App. A, ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Moreover, I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis. See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); see also ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

There is some evidence in favor of mitigating Applicant's financial considerations. Applicant is a 41-year-old employee of a defense contractor. He served honorably in the U.S. military. He provides for his family. He has an undergraduate degree and has worked for defense contractors for many years. He is married to a citizen of Tunisia. His wife's family are citizens and residents of Tunisia.

The disqualifying evidence under the whole-person concept is simply more substantial and compelling. See SEAD 4, App. A, ¶¶ 2(d) (1) through AG 2(d) (9).

### **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 B:	AGAINST APPLICANT
Subparagraphs 1.a. through 1.e.:	Against Applicant

Paragraph 2, Guideline F:                   AGAINST APPLICANT

Subparagraphs 2.a. through 2.n.:       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 interest to grant Applicant eligibility for a position of public trust to support a contract with the DOD. Eligibility is denied.

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Noreen A. Lynch  
Administrative Judge