



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



In the matter of:	)	
	)	
-----	)	ADP Case No. 20-01285
	)	
Applicant for Public Trust Position	)	
	)	

**Appearances**

For Government: Aubrey De Angelis, Esquire, Department Counsel  
For Applicant: *Pro se*

November 29, 2022

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**Decision**  
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ROSS, Wilford H., Administrative Judge:

On November 5, 2019, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On July 24, 2020, the Department of Defense (DoD) issued Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns under Guideline F, Financial Considerations. The action was taken under DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DoD on June 18, 2017.

Applicant answered the SOR in writing (Answer) on or after November 4, 2020, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on April 25, 2021. The case was assigned to me on April 12, 2022. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on April 18, 2022. I convened the hearing as scheduled on May 31, 2022. The Government offered Government Exhibits 1 through 5, which were admitted without objection. Applicant testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on June 21, 2022. The record was left open at the request of Applicant until June 30,

2022, for the receipt of additional documentation. Applicant submitted additional information that was marked as Applicant Exhibit A and admitted without objection. The exhibit is an IRS Wage and Tax Statement for tax year 2016. The record then closed.

### **Findings of Fact**

Applicant is 52 years old and married for the third time. He has two children, one of whom is a minor living with his second ex-wife. He has two Bachelor's degrees. Applicant began work with his current employer in March 2017. He requires access to sensitive personal information in connection with his employment. (Government Exhibit 1 at Sections 12, 13A, 17, and 18.)

The SOR contained four allegations under Guideline F, Financial Considerations, concerning consumer debts. Applicant admitted all the allegations in the SOR under this paragraph with explanations.

Evidence for the existence of the debts set forth in the SOR is found in a credit report of Applicant dated November 16, 2019. (Government Exhibit 3.) The total amount of past-due indebtedness owed by Applicant is alleged to be approximately \$34,083. None of the debts appear in two other credit reports submitted by the Government dated April 28, 2021; and May 23, 2022. (Government Exhibits 4 and 5.) The debts also do not appear in a credit report dated February 12, 2021, and attached by Applicant to his Answer.

Applicant and his second wife divorced in April 2014. The debts in the SOR all date to this marriage. He has consistently stated that his financial difficulties primarily resulted from this marriage and eventual divorce. Applicant stated, and the credit reports in the record show, that he has been consistent in paying his student loans, current automobile loans, credit cards, and child support. He has been able to buy a house and an automobile recently. His current financial situation is stable. (Tr. 17-18; Government Exhibit 2 at 3-4.)

#### **Paragraph 1 (Guideline F - Financial Considerations)**

1.a. Applicant admitted that this automobile loan in the amount of \$5,441 had been charged off. This debt related to an automobile that was retained by his ex-wife at the time of the divorce. She did not maintain the payments and the vehicle was repossessed by the creditor and sold. Applicant testified that he had received a Form 1099-C from the creditor about this account, but he did not introduce a copy into the record. He further stated that he did not believe this was an active account that he could pay. Based on the state of the record, there is insufficient evidence to show that it is resolved. (Tr. 20-23.)

1.b. Applicant admitted owing a past-due medical debt in the amount of \$301. He stated that this delinquency was due to his insurance company not paying the bill. Once

Applicant was informed of the delinquency he resubmitted the bill to his insurance company. He stated that he believed the debt had been resolved because it was no longer showing as delinquent on his credit reports. Based on the state of the record, there is insufficient evidence to show that this debt has been resolved. (Tr. 26-27.)

1.c. Applicant admitted that he owed a charged-off credit card debt in the amount of approximately \$11,563. This debt arose during his marriage to his second wife. He stated that the debt had been forgiven by the creditor and a Form 1099-C issued. Applicant Exhibit A indicates that a credit card debt in the amount of \$11,019 had been discharged and forgiven. He testified that he had paid the resulting taxes. The IRS document further stated that the banking entity is the same as that set forth in allegation 1.d, below, which is not that stated in the SOR or Government Exhibit 3 for this allegation. However, based on the fact the figures in the credit report and Applicant Exhibit A are so close, and based on all other evidence in the record, I find that this debt has been resolved. (Tr. 28-31.)

1.d. Applicant admitted that he owed a charged-off credit card debt in the amount of approximately \$16,778. This debt also arose during his marriage to his second wife. He stated that the debt had been forgiven by the creditor and a Form 1099-C issued. He stated that he had paid the resulting taxes. Applicant Exhibit A indicates that a credit card debt in that amount had been discharged and forgiven. I find that this debt has been resolved. (Tr. 28-33.)

## **Policies**

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

When evaluating an applicant’s suitability for national security eligibility for a public trust position, the administrative judge must consider the disqualifying and mitigating conditions in the AGs. 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 AG ¶ 2(d), describing 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 national security eligibility will be resolved in favor of the national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to 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 the applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion as to obtaining a favorable national security eligibility decision.

A person who applies for access to sensitive information seeks to enter into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to sensitive information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of sensitive information.

## **Analysis**

### **Paragraph 1 (Guideline F - Financial Considerations)**

The trustworthiness concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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 personal 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.

AG ¶ 19 describes two conditions that could raise trustworthiness concerns and may be disqualifying in this case:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant has a history of being unable to fully satisfy all of his debts. The evidence raises both trustworthiness concerns, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes two conditions in AG ¶ 20 that could mitigate trustworthiness concerns arising from Applicant's financial difficulties:

- (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
- (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, or 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 application of both of these mitigating conditions in this case. Applicant's financial difficulties occurred several years ago in conjunction with his divorce from his second wife. The two largest debts have been forgiven by the creditor or creditors. Applicant was issued a Form 1099-C for them, and he paid the resulting taxes. Such documentation was not provided for allegations 1.a and 1.b. However, under the circumstances of this case, particularly Applicant's credible testimony and outstanding current credit history, the lack documentation is not dispositive in this case. AG ¶¶ (a) and (b) apply. Paragraph 1 is found for Applicant.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a public trust position by considering the totality of the applicant's conduct and all relevant 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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security 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 the facts and circumstances surrounding this case. Applicant submitted sufficient information from which to conclude that his financial obligations are being responsibly managed and that similar problems are unlikely to recur. Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a public trust position. For these reasons, I conclude Applicant met his burden to mitigate the trustworthiness concerns arising from his financial problems.

### **Formal Findings**

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

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraph 1.a through 1.d:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant national security eligibility for a public trust position. Eligibility for access to sensitive ADP information is granted.

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WILFORD H. ROSS  
Administrative Judge