



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



In the matter of: )  
)  
) ADP Case No. 21-00031  
)  
Applicant for Public Trust Position )

**Appearances**

For Government: Tara R. Karoian, Esq., Department Counsel  
For Applicant: *Pro se*

09/20/2022

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**Decision**

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DORSEY, Benjamin R., Administrative Judge:

Applicant did not mitigate the financial considerations trustworthiness concerns. Eligibility for access to sensitive information is denied.

**Statement of the Case**

On December 15, 2021, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing trustworthiness concerns under Guideline F (financial considerations). Applicant responded to the SOR on December 29, 2021, and requested a decision on the written record in lieu of a hearing.

The Government's written case was submitted on May 12, 2022. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was advised that he had 30 days from his date of receipt to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on May 31, 2022 and responded to the FORM on June 14, 2022, attaching a two-page letter (the June 2022 letter) and exhibits 1 through 13. Applicant claimed that he also provided an exhibit 14 with his response to the FORM, but it is not part of the record. The Government exhibits (Items 1-11), the June 2022 letter, and Applicant's exhibits (AEs) 1-13 are admitted in evidence without objection.

## Findings of Fact

Applicant is a 76-year-old employee of a defense contractor. He has worked for his current employer since October 2010. There is no evidence in the record regarding his education level. He has been married to his current spouse since 1971, after divorcing his first spouse in 1969. He has two adult children. Applicant claimed that he was awarded eligibility for access to sensitive information in 2014. (Item 3)

Applicant has a history of financial problems, including seven years of not timely filing his federal income tax returns and owing delinquent federal income taxes. The SOR alleges untimely filed tax returns for the 2013 through 2019 tax years and delinquent federal taxes totaling \$27,558 for those same tax years. In his SOR response, Applicant admitted the SOR allegations with additional comments. He provided documentation to show that, beginning in May 2021, he paid \$300 per month pursuant to an agreement with the IRS to pay his delinquent taxes. These documents also show that he made sporadic, additional payments to the IRS in October 2020, February 2021, and two payments in April 2021.

The documents he submitted with his response to the SOR reflect that, as of December 2021, he paid \$7,525 toward his delinquent taxes for the aforementioned tax years, as well as for the 2021 tax year. In exhibits attached to his FORM response, he provided a document that shows that he has made five additional \$300 monthly payments through May 2022, and an additional payment of \$1,301 in June 2022. The total amount of payments that Applicant made to the IRS reflected in these documents is about \$10,300. Applicant acknowledged owing about \$40,000 in back taxes in June 2022. The SOR allegations are established through Applicant's admissions, his evidence, and the Government's evidence. (Items 2-9, 11; the June 2022 letter; AE 1, 4-8, 10-13)

Applicant submitted a Questionnaire for National Security Positions (SF 86) in March 2017. The SF 86 required information about Applicant's taxes. He had an interview with a Department of Defense (DOD) investigator in December 2018 in which his tax problems were discussed. Applicant also was required to provide documents and information related to his taxes to the DOD Consolidated Adjudications Facility (CAF). He provided these documents and information in a response in November 2020 and five supplemental responses between March 2021 and July 2021. Each such response provided evidence of incremental progress of Applicant's attempts to file his late federal tax returns and to pay his delinquent federal taxes. (Items 3, 4-9, 11)

As evidenced by documents Applicant submitted in his response to the FORM, the IRS acknowledged receiving his 2019, 2018, and 2016 tax returns in October 2020. It acknowledged receiving his 2017 tax return in December 2020, and his 2015 tax return in November 2020. It acknowledged receiving his 2014 tax return in September 2021, and his 2013 tax return in May 2022. He claimed that he submitted his 2013 federal tax return in November 2020, but the IRS did not process this return until May 2022. However, in one of his supplemental interrogatory responses, he also claimed to have submitted his 2013 federal tax return in February 2021, so his claims are

inconsistent. Regardless, there is no evidence in the record that Applicant filed any of the late federal tax returns or paid any of the delinquent taxes listed in the SOR for over a year-and-a-half after he submitted his SF 86 and had his security interview. There is no evidence that the IRS granted Applicant a filing extension for any of the tax years relevant to the SOR. The IRS acknowledged receiving his 2020 federal tax return in June 2021, with no outstanding taxes being owed for that tax year. (Items 2, 4-9; the June 2022 letter; AE 3-11)

Applicant claimed that he was unaware that his federal tax returns were not being filed because he was traveling for work. He acknowledged that he was not staying on top of his finances because of this travel. He claimed that the outstanding taxes resulted from his wife's social security income. When he realized he had several years of unfiled tax returns, he did not think that he had the money to pay the taxes that would be due, so he did not remedy these filing failures. He claimed that he did not have the money to pay his taxes because his wife was unemployed, he was underemployed, and they had expenses related to the care of his children, his parents, and his in-laws. He also blames staffing shortcomings at the IRS and the pandemic for not allowing him to remedy his late tax return filings as early as he claims he could have. (Items 3, 11; the June 2022 letter)

### **Policies**

This case is adjudicated under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), which became effective on June 8, 2017.

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(a), 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.

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.

## **Analysis**

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

The trustworthiness concern 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.

The guideline notes several conditions that could raise trustworthiness concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

Applicant has a history of financial problems. He did not file his 2013 through 2019 federal income tax returns when they were due, and he has unpaid federal taxes. The evidence is sufficient to raise the above disqualifying conditions.

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;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; 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.

Failure to comply with tax laws suggests that an applicant has a problem with abiding by well-established government rules and systems. Voluntary compliance with rules and systems is essential for protecting classified information. See, e.g., ISCR Case No. 16-01726 at 5 (App. Bd. Feb. 28, 2018). A person who fails repeatedly to fulfill his or her legal obligations, such as filing tax returns and paying taxes when due, does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information. See, e.g., ISCR Case No. 17-01382 at 4 (App. Bd. May 16, 2018).

Applicant has suffered from issues such as underemployment, his wife's unemployment, and caring for aging parents and in-laws. However, none of these issues can reasonably excuse his failure to comply with his tax filing obligations. Likewise, these issues did not cause him to fail to withhold a sufficient portion of income to meet his tax burden. Moreover, Applicant acknowledged that he was not adequately monitoring his financial obligations. A degree of ignorance to one's financial situation may suggest an indifference to the proper satisfaction of legal obligations that draws into question Applicant's willingness or capacity to comply with the sometimes complex rules governing the handling and safeguarding of classified information. ISCR Case No. 18-02914 at 4 (App. Bd. Jan. 18, 2020). Accordingly, Applicant's tax filing and payment delinquencies were not due to circumstances beyond his control.

While Applicant has remedied his late tax return filings and has been complying with a payment arrangement to pay his delinquent taxes, he began these efforts after being put on notice that his failure on these fronts might interfere with his ability to hold a position of public trust. An applicant who begins to resolve security concerns only after having been placed on notice that his or her clearance is in jeopardy may lack the judgment and willingness to follow rules and regulations when his or her personal interests are not threatened. See, e.g., ISCR Case No. 17-04110 at 3 (App. Bd. Sep. 26, 2019). The timing of these efforts undermines any claims that he was acting in good faith or acting responsibly under the circumstances.

There is evidence that Applicant timely filed and paid his 2020 federal tax returns. However, this single year of timeliness is insufficient to show reform and rehabilitation or a track record of voluntary compliance. Applicant's failures to comply with his federal tax obligations continue to cast doubt on his current reliability,

trustworthiness, and good judgment. I find that the trustworthiness concerns arising out of Applicant's unfiled tax returns and delinquent taxes are not mitigated.

### **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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a public trust position 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 Guideline F in my whole-person analysis.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a public trust position. I conclude Applicant did not mitigate the financial considerations 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.b:	Against Applicant

## **Conclusion**

It is not clearly consistent with national security to grant Applicant eligibility for a public trust position. Eligibility for access to sensitive information is denied.

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Benjamin R. Dorsey  
Administrative Judge