



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



In the matter of: )  
)  
) ADP Case No. 21-01422  
)  
Applicant for Public Trust Position )

**Appearances**

For Government: Tara Karoian, Esquire, Department Counsel  
For Applicant: *Pro se*

January 19, 2023

**Decision**

GLENDON, John Bayard, Administrative Judge:

**Statement of Case**

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on September 30, 2020. On January 20, 2022, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility issued a Statement of Reasons (SOR) to Applicant, detailing trustworthiness concerns under Guideline F (Financial Considerations). The action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position*, effective within the Department of Defense on June 8, 2017. Applicant submitted a response to the SOR, dated March 29, 2022, and requested a hearing before an administrative judge.

The Government was ready to proceed with the hearing on August 2, 2022. The case was assigned to me on August 16, 2022. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on October 3, 2022, which was amended on October 5, 2022. The hearing was convened as rescheduled via TEAMS video conference on November 3, 2022. Department Counsel offered Government Exhibits (GE) 1 through 5. I admitted GE 1 through 4 without objection, but I sustained Applicant's objection to GE 5, which is a summary of Applicant's Personal Subject Interview conducted on October 15, 2020. Applicant testified on his own behalf and offered 14 exhibits. I marked the exhibits as Applicant Exhibits (AE) A through N, and admitted them without objection. The document marked as AE O is Applicant's March 29, 2022 SOR response and is referred to herein as the "Answer." Also, Applicant submitted three additional reference letters prior to the hearing, which I marked collectively as AE P. As noted below, I left the record open for one week to permit both the Government and Applicant the opportunity to supplement the record with respect to certain issues. See comments below. DOHA received the transcript of the hearing (Tr.) on November 10, 2022. (Tr. 19-31.)

### **Findings of Fact**

Applicant is 46 years old, divorced, and has two adult children. He is engaged to remarry. Applicant enlisted in the U.S. Army in 1996 and served as a paramedic. He was honorably discharged in 2005 due to a disability. Following his discharge, he worked as a civilian for the Army, then for the U.S. Navy, and at a later date for the Veterans Administration (VA). He was not earning enough money to support his family so he decided to pursue an education. He earned a bachelor's degree in October 2017 and a master's degree in September 2019. Applicant was unemployed from 2014 to 2019 while he was attending college and pursuing his post-graduate degree. He paid for his education with benefits from the VA. His benefits terminated upon his graduation. After receiving his master's degree, he was unemployed for an extended period due in part to the COVID-19 pandemic. He began working in his current position with a Government contractor in October 2020. He is seeking eligibility for a public trust position in connection with his employment. (Answer at 1; Tr. at 15, 24-31; GE 1 at 10-15, 19-20, 22, 24-25.)

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

The Government alleged in this paragraph of the SOR that Applicant is ineligible for clearance because he has failed to meet his financial obligations and is therefore potentially unreliable, untrustworthy, or at risk of having to engage in illegal acts to generate funds. The SOR sets forth 12 allegations, 10 of which are for debts totaling approximately \$72,000. In the Answer, he admitted 11 of the 12 allegations in the SOR and denied one debt for \$3,594 (SOR 1.f). He also submitted additional information in support of his eligibility for a public trust position.

The status of the matters alleged in the SOR is as follows:

1.a Debt charged off in the approximate amount of \$25,074. Applicant opened this unsecured loan account in March 2017 and defaulted on the account in about October 2019. In March 2022 Applicant entered into a payment plan with the attorney for the creditor. Under the plan, he agreed to pay \$150 per month. He provided a document evidencing the agreed-upon plan, and he is current on his payments. This debt is being resolved. (Answer at 3; Tr. at 32-40; GE 2 at 4; GE 3 at 2; GE 4 at 8; AE I.)

1.b. Debt charged off in the approximate amount of \$21,234. Applicant opened this loan account in July 2018 to pay off some debt that accrued during the years he attended college. He defaulted on the account in about January 2019. Applicant has since made payment arrangements with the creditor and is repaying the loan. Since April 15, 2022, he has made payments of \$50 per month. When other debts have been paid off by the end of 2022, he expects to increase his monthly payment on this debt. He provided a letter from the creditor confirming that this debt is under a payment plan. This debt is being resolved. (Answer at 3; Tr. at 40-42; GE 2 at 5; GE 3 at 2; GE 4 at 8; AE J.)

1.c Debt charged off in the approximate amount of \$5,280. Applicant opened this credit-card account in June 2015 with the same creditor as the debt alleged in SOR 1.a. Applicant defaulted on paying this account in about May 2019. He negotiated a settlement of this account with the creditor. He understands that the settlement covers the loan account in SOR 1.a and this credit-card account, which are both owed to the same creditor. This debt is being resolved. (Answer at 3; Tr. at 42-46; GE 2 at 10; GE 3 at 2; GE 4 at 9; AE I.)

1.d Debt placed for collection in the approximate amount of \$4,993. This is a credit-card account that Applicant was unable to pay after the completion of his master's program in 2019. Applicant negotiated a settlement of this account. He credibly testified that since March 2022 he has been making payments of \$50 per month pursuant to an agreed-upon payment plan. He has been unable to obtain a confirming letter from the collection agency handling this settlement. This debt is being resolved. (Answer at 3; Tr. at 46-47; GE 2 at 3; GE 3 at 2; GE 4 at 9, 10.)

1.e Debt placed for collection in the approximate amount of \$3,822. Applicant defaulted on this credit-card account in 2019. He has reached a settlement with the collection agency and has been making payments of \$100 per month since February 2022. Under the payment plan, his last payment is due in April 2025. Applicant provided a letter from the collection agency confirming the terms of the settlement. This debt is being resolved. (Answer at 3; Tr. at 47-54, 59-60; GE 2 at 6; GE 3 at 3; GE 4 at 9; AE N.)

1.f. Debt placed for collection in the approximate amount of \$3,594. Applicant disputes this account. Applicant does not recognize the address the collection agency has on file for this account. Applicant is willing to pay this account if the creditor can establish that it is his account. The Government's evidence in the record establishes that

this account is in Applicant's name, but it does not provide any address information, which is the subject of Applicant's dispute. The creditor has not yet responded to Applicant's dispute. This debt is being disputed. (Answer at 3; Tr. at 54-57, 59-63; GE 2 at 4; GE 3 at 3; GE 4 at 9.)

1.g. Debt charged off in the approximate amount of \$3,121. Applicant opened this credit-card account in January 2019 and defaulted on paying the account in about July 2019. He reached a settlement with the creditor and paid the amount of \$468 in full satisfaction of this debt. The Government's August 2022 credit report in the record (GE 2) reflects that this debt has been paid. This debt has been resolved. (Answer at 3; Tr. at 57-59; GE 2 at 11; GE 3 at 3; GE 4 at 10.)

1.h. Debt placed for collection in the approximate amount of \$674. Applicant has reached a settlement of this account and is making payments pursuant to a payment plan. Under the settlement, he is paying \$108 per month by automatic withdrawals from his bank account. All payments under this payment plan were scheduled to have been completed by October 2022. As of the hearing date, Applicant believes that he has fully paid this debt. This debt has been resolved. (Answer at 3; Tr. at 63-65; GE 2 at 5; GE 3 at 3; AE M.)

1.i. Debt charged off in the approximate amount of \$352. Applicant paid this credit-card debt in full in February 2022 and provided substantiating documentation. This debt has been resolved. (Answer at 3; Tr. at 65-66; GE 4 at 10; AE K; AE L.)

1.j. Failure to timely file Federal tax returns for Tax Years (TYs) 2016, 2017, 2018, and 2019. Applicant was a full-time student during the years when he failed to file Federal returns. He had no income to report to the IRS, though he did receive VA education benefits, specifically benefits under the Vocational Rehabilitation and Employment Program, which he received as a disabled veteran. Applicant's VA education counselor advised him that these benefits are not taxable. Other tax advisors have told him the same thing. Applicant never received a tax document from the VA indicating that the benefits he received were taxable or that the VA reported the benefits to the IRS as income. I provided Department Counsel with the opportunity to supplement the record if the Government concluded that Applicant's VA benefits were taxable under U.S. tax law and therefore he failed to report the benefits as taxable income by filing tax returns. Department Counsel timely responded after the hearing and declined to submit any additional documentation or information in support of its allegations in SOR 1.j and 1.k. Accordingly, the record evidence supports the conclusion that Applicant was not obligated to file tax returns during the period TYs 2016 through 2019 because he had no taxable income. Since Applicant began his current employment in 2020, he has filed his returns for TYs 2020 and 2021. (Answer at 3; Tr. at 67-73; GE 6.)

1.k. Failure to timely file state income tax return for TYs 2016, 2017, 2018, and 2019. Applicant filed no state returns for these four years for the same reason he failed

to file his Federal returns in those years, *i.e.*, he had no taxable income in those years. See the discussion in SOR 1.j, above, for more detail. (Answer at 3; Tr. at 73.)

1.I. Child-support arrearage in the approximate amount of \$4,000. Applicant became delinquent on his child-support obligations for a child he had with a woman other than his ex-wife or his fiancée. This child is now six years old. Applicant is presently making monthly payments of \$350 or more to the state to pay his child support and the arrearage. He credibly testified that he is making this payment every month. As of the date of the Answer, March 29, 2022, Applicant had reduced the arrearage to \$879. He referenced in his Answer a letter evidencing the reduced debt amount, but he failed to submit it with his Answer. I left the record open for one week to give Applicant the opportunity to supplement the record, if he chose to do so. He made no further submission. This debt is being resolved. (Answer at 3; Tr. at 73-78.)

### **Mitigation and Whole-Person Evidence**

Applicant submitted 11 character-reference letters. They all praised Applicant as a hard-working employee who was proud of his many years of service to the U.S. Government in the Army, as a civilian employee, and now as a contractor. They have confidence that Applicant will continue to resolve his financial obligations. (AE A through H, P.)

### **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.

It is well established that no one has a right to a security clearance, or, as here, to a determination of public trust. As the Supreme Court noted in *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988), “the clearly consistent standard indicates that security [and trustworthiness] determinations should err, if they must, on the side of denials.”

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 describing 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 applicable guidelines in the context 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, “Any 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. I have not drawn inferences based 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance [or 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 that an 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.

## **Analysis**

### **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 three conditions that could raise security concerns and may be disqualifying 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 Federal, state, or local income tax as required.

The evidence does not establish that he failed to file any Federal or state tax returns, as required, because he had no taxable income during the four years in question. AG ¶ 19(f) is not established. The record evidence, however, establishes that Applicant had nine consumer debts and a child-support arrearage as of the date of the SOR. These facts support the conclusion that AG ¶ 19(a) and (c) apply. This shifts the burden to Applicant to mitigate the security concerns raised by these delinquent debts.

The guideline includes five conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's delinquent debts:

- (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, or 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 that 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; and
- (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.

The circumstances that gave rise to Applicant's delinquent debts were unusual and are unlikely to recur. Applicant graduated with a master's degree and

lost his VA benefits for vocational retraining at the same time. Shortly thereafter, the COVID-19 pandemic and national shutdown occurred rendering employment opportunities scarce. His lengthy period of unemployment with no unemployment insurance left Applicant with no income and no ability to support himself and his family, let alone pay his debts. These circumstances were beyond his control and do not cast doubt on his current reliability, trustworthiness, or judgment. Moreover, he acted responsibly once his current employer hired him by contacting his creditors, paying debts when he could do so, and negotiating payment plans to resolve his larger debts. Applicant did not receive financial counseling, but there are clear indications that his debts are being resolved. Starting in February 2022, Applicant initiated a good-faith effort to pay the debts he could afford to pay and to contact his other creditors to arrange settlements and payments plans to repay his larger debts. He disputes one debt because the creditor has an incorrect address and he does not have any recollection of the debt. He has a legitimate basis to dispute the debt, but if the creditor documents that this is Applicant's obligation, he intends to repay it. All of the above mitigating conditions have full or partial application to the facts of this case.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a trustworthiness determination 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 eligibility for a position of public trust must be an overall commonsense judgment based upon careful consideration of the applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. I have incorporated my comments under Guideline F and the factors in AG ¶ 2(d) in this whole-person analysis. I have weighed Applicant's nine years of service in the Army and his service-related disability. I have also weighed his other service working as a civilian for the Army, the Navy, and the VA and now his service to the U.S. military as a contractor. Applicant's efforts to resolve his delinquent debts are impressive, and he has exhibited his



trustworthiness and reliability by his actions. His multiple character references endorse Applicant for his trustworthiness and reliability. Overall, the evidence does not raise any questions or doubts as to Applicant's judgment, eligibility, and suitability for a position of public trust. Applicant has met his burden to mitigate the trustworthiness concerns arising under the guideline for financial considerations.

### **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
Subparagraphs 1.a through 1.l:	For Applicant

### **Conclusion**

In light of all of the circumstances presented, it is clearly consistent with the national security interests of the United States to grant Applicant's eligibility for access to sensitive information. Eligibility for access to sensitive information is granted.

John Bayard Glendon  
Administrative Judge