



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



In the matter of: )  
)  
) ADP Case No. 19-03369  
)  
Applicant for Public Trust Position )

**Appearances**

For Government: Erin P. Thompson, Esq., Department Counsel  
For Applicant: Carl A. Marrone, Esq.

03/23/2023

**Decision**

Benson, Pamela, Administrative Judge:

Applicant successfully addressed his delinquent financial obligations and unpaid Federal and state income taxes that resulted from a circumstance beyond his control. The majority of his delinquent accounts are resolved or in the process of being resolved. Guideline F (financial considerations) trustworthiness concerns are mitigated. Eligibility for access to sensitive information is granted.

**Statement of the Case**

On August 10, 2018, Applicant completed and signed a Questionnaires for National Security Positions (SF 86). On February 5, 2020, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a statement of reasons (SOR) under SORDOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992; and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017.

The SOR detailed reasons why the DOD CAF did not find under the Directive that it is clearly consistent with the interests of national security to grant or continue eligibility for Applicant’s public trust position. Specifically, the SOR set forth trustworthiness concerns arising under Guideline F.

The processing of the case was delayed due to the outbreak of the COVID-19 pandemic in March 2020. Applicant, through counsel, provided a response to the SOR in May 2021 and requested a hearing. He submitted documentation with his SOR response, as cited below. On June 8, 2022, the case was assigned to me. On December 16, 2022, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for February 15, 2023, using the Microsoft Teams video teleconference system. His hearing was held as scheduled.

During the hearing, Department Counsel offered five Government exhibits (GE) 1-5; Applicant offered 56 documents labeled as Applicant exhibits (AE) A through DDD. All proffered exhibits were admitted into evidence without objection. Three witnesses testified on behalf of Applicant. I held the record open until March 1, 2023, in the event either party wanted to supplement the record with additional documentation. On February 23, 2023, I received a copy of the hearing transcript. (Tr.) On March 1, 2023, Applicant's counsel requested an additional two-week extension, which I granted without objection. On March 14, 2023, Applicant submitted 15 documents, (AE EEE through SSS); which were admitted into evidence without objection. The record closed on March 15, 2023.

### **Findings of Fact**

In Applicant's SOR response, he admitted all 16 delinquent accounts totaling \$130,670. (SOR ¶¶ 1.a through 1.p.) Applicant's admissions are accepted as findings of fact. After a complete and thorough review of the evidence of record, I make the following additional findings of fact.

Applicant is 47 years old. He enlisted in the U.S. Navy in April 1995. He was active duty and served as an electrician's mate until January 1999, when he received a general discharge under honorable conditions for a personality disorder. He maintained a DOD security clearance during his military service without any security incidents. He married in January 2002, and he has a son and daughter, ages 12 and 20. In April 2022, he and his wife separated while their divorce is pending. He has worked for a government contractor for over 20 years, and his duties include ensuring the security of the company's electronic medical records infrastructure and information technology (IT) systems. His annual salary for the past ten years has been greater than \$135,000. He requires a position of trust to perform his employment duties. (Tr. 25-30, 39, 87-89; GE 1; AE Q, AE R, AE S, AE T, AE U, AE BBB)

### **Financial Considerations**

Applicant experienced health issues beginning in 2011, and he lost 60 pounds within six months. He also suffered from intense headaches. After a medical screening detected no signs of cancer, he was prescribed different medications that did not help his condition. He saw a psychiatrist in about late 2011, and he was prescribed Abilify, a psychotropic medication used, in part, to treat symptoms of severe depression and anxiety. He testified at the hearing that he felt amazingly better on this medication, and he quickly became a completely different person. For example, he has a fear of public

speaking, but while on this medication, he volunteered to give presentations on behalf of the company, speaking in front of thousands of people. (Tr. 30-39)

Applicant testified at the hearing that his financial problems can be attributed to the medication's side-effect, which put him into a manic state. It also affected his memory from about late 2011 to at least April 2013. He stated that he felt like he was intoxicated during this period. He had always been a frugal person, but while he was taking Abilify, he started purchasing broken guns and computer equipment. He had great aspirations to start a new business where he would fix these broken items and resell them for a profit on his website. He also purchased several gifts for his wife and children without any consideration of how he was going to pay for these purchases. (Tr. 39-44, 46-47; AE C, AE D, AE E)

Applicant gave another example of a poor financial decision he made while under the influence of Abilify. In about 2012, he went with his wife to a tattoo parlor, and he soon became friends with the employees. He noticed their computer system was antiquated, and he offered to update their computer system. He spent approximately \$20,000 on their new system, for which the owner of the tattoo parlor provided some small payments, but the payments were not nearly enough to cover his expenses. The owner also gave him a free tattoo. Applicant provided documented medical studies of the drug, Abilify, to support his claim that this drug has put thousands of other users into a manic state, which is one of its side-effects. (Tr. 44-47)

In April 2013, while Applicant was off work and recovering from surgery, he realized for the first time that he was in serious financial trouble. He panicked, stopped taking his prescribed medications, and he tried to develop a plan to pay his maxed-out credit cards. He met with a bankruptcy attorney, but he eventually decided against filing for bankruptcy. He decided he would pay back his creditors on his own, and his top priority was to pay his tax debt with the Internal Revenue Service (IRS). He always filed his income tax returns timely, but he was unable to pay his \$18,142 in taxes due for tax year (TY) 2012, and \$13,264 in taxes for TY 2013. (SOR ¶¶ 1.m and 1.o.) He made several payments to the IRS, and in late 2020, he took out a 401(K) loan and used the proceeds to pay the remainder of the tax debts. He provided copies of his tax transcripts. The outstanding tax debts for TYs 2012 and 2013 are fully resolved. (Tr. 54-66, 82-84, 96-97, 111; AE O, AE P, AE WW)

SOR ¶¶ 1.n and 1.p. allege Applicant is indebted to his state tax department in the amount of \$3,296 for TY 2012, and \$2,396 for TY 2013. He made several payments to the state tax authority, and then he took out a 401(K) loan in late 2020 and used the proceeds to pay the remainder of the tax debts. The outstanding tax debts for TYs 2012 and 2013 are fully resolved. (Tr. 82-84; AE XX)

Applicant received a FORM 1099-C from a credit card bank creditor for tax year 2022. The SOR alleged he was indebted to this creditor in the amount of \$39,285. (SOR ¶ 1.a. Note: SOR ¶ 1.c. is a duplicate allegation.) The 1099-C is a cancellation of the debt, and he is required to report the creditor's loss of \$45,275 as income when he files his 2022 Federal and state income tax returns. Applicant intends to be compliant with this

requirement when he files his 2022 income tax returns. This debt has been resolved. (Tr. 68-71, 73; AE RR)

SOR ¶ 1.b. alleges Applicant is delinquent in the amount of \$27,755, for a consumer credit card account. This creditor garnished his wages in the amount of about \$2,000 per month until the amount was paid in full. This account has been resolved. (Tr. 71-73; AE SS)

SOR ¶ 1.d. alleges that Applicant is indebted to a collection agency in the amount of \$2,932. Applicant was unable to determine the original creditor or contact information for this account. After the hearing, Applicant submitted documentation of contact with the creditor. Since this account was disputed, an internal process was initiated and the account was locked until March 27, 2023, so the dispute could be processed. It is Applicant's intent to settle or pay this account if he is responsible for it. This account has not been resolved. (Tr. 74-75; AE G, AE H, AE I, AE J, AE LL)

SOR ¶ 1.e. alleges that Applicant is indebted to a credit card bank creditor in the amount of \$1,789. After the hearing, Applicant submitted documentation of a Form 1099-C in the amount of \$1,318. The 1099-C is a cancellation of the debt, and he is required to report the creditor's loss as income when he files his 2022 Federal and state income tax returns. Applicant intends to be compliant with this requirement when he files his 2022 income tax returns. This debt has been resolved. (Tr. 75, 77-79; AE MMM)

SOR ¶ 1.f. alleges that Applicant is indebted to a consumer credit card creditor in the amount of \$1,449. Applicant was unable to determine the third-party collector's contact information for this account, as the creditor has since sold this account. After the hearing, Applicant submitted documentation that an agreed upon settlement in the amount of \$1,087 was reached between the parties. Applicant paid one-third of the settlement of \$363 on March 14, 2023. He is required to make the remaining payment(s) by June 9, 2023. This account is being resolved. (Tr. 75, 77-79; AE NNN)

SOR ¶ 1.g. alleges that Applicant is indebted to a collection agency for a credit card debt that was referred for collection in the amount of \$840. Applicant was unable to determine the third-party collector's contact information for this account, as the creditor has since sold this account. After the hearing, Applicant provided documentation that the account has been settled and shows a \$0 balance. This account has been resolved. (Tr. 75, 77-79; AE OOO)

SOR ¶ 1.h. alleges that Applicant is indebted to a credit card bank creditor in the amount of \$638. Applicant was unable to determine the third-party collector's contact information for this account, as the creditor has since sold this account. After the hearing, Applicant provided documentation that the account has been settled and shows a \$0 balance. This account has been resolved. (Tr. 75, 77-79; AE PPP)

SOR ¶ 1.i. alleges that Applicant is indebted to a collection agency for a credit card debt that was referred for collection in the amount of \$128. Applicant was unable to determine the third-party collector's contact information for this account, as the creditor

has since sold this account. This creditor is not listed on his current credit report. Once he can determine this information, it is his intention to pay this debt. This account has not been resolved. (Tr. 75, 77-80)

SOR ¶ 1.j. alleges that Applicant is indebted to a collection agency for a credit card debt that was referred for collection in the amount of \$4,950. A default judgment was entered against Applicant. This creditor garnished his wages until the amount was paid in full and the judgment was satisfied in July 2020. This debt has been resolved. (Tr. 75-76, 80; AE UU)

SOR ¶ 1.k. alleges that Applicant is indebted to a collection agency for a credit card debt that was referred for collection in the amount of \$590. Applicant was unable to determine the third-party collector's contact information for this account, as the creditor has since sold this account. This creditor is not listed on his current credit report. Once he can determine this information, it is his intention to pay this debt. After the hearing, Applicant provided documentation of his multiple efforts to contact the creditor, but no communication has yet been established. This account has not been resolved. (Tr. 76, 81; AE RRR)

SOR ¶ 1.l. alleges that Applicant is indebted to a collection agency for a cable service utility company in the amount of \$482. Applicant discovered this amount was related to cable equipment that was not returned after he stopped cable services. Applicant testified that he had returned the cable equipment to a drop-off location. After the hearing, Applicant provided documentation that the account has been settled and shows a \$0 balance. This account has been resolved. (Tr. 81-82; AE SSS)

Applicant was asked during the hearing what steps he has taken to prevent his finances from accumulating into a large, unmanageable liability again. He stated if he is ever prescribed medication in the future, he would research the medication carefully to see the potential side-effects. He also said that the stress and his time-consuming efforts to resolve his outstanding accounts is an experience he does not want to repeat. He has not participated in financial counseling. (Tr. 86-87; AE M, AE N)

After the hearing, Applicant provided documentation that verified he paid other delinquent creditors after April 2013 that were not alleged in the SOR. He provided documentation verifying that he paid approximately \$45,000 from 2014 through 2018, to seven creditors. Most of these payments came from wage garnishments. Applicant testified that he did not protest any garnishments because he owed the creditor the money and it was easier to have the money taken directly from his pay than set up payments. Out of the 16 delinquent debts alleged in the SOR totaling \$130,670, all but three accounts have been resolved, or are currently being resolved. The three remaining delinquent debts total \$3,650, and it is Applicant's intention to resolve these accounts if he is found to be responsible for them. (AE EEE, AE FFF, AE GGG, AE HHH, AE III, AE JJJ and AE KKK.)

## Character Evidence

Three witnesses testified at the hearing and described Applicant as dependable, well-informed, and responsible. Applicant also provided copies of his past employee performance evaluations from his current employer. He has never received a negative rating during his 20-year career. He received praising remarks from several character references, to include he is extremely hard working and thorough. Applicant is a professional, a team player, and his work ethic and passion displayed on the job make him a key asset to any team. Applicant also submitted several awards and special recognitions he received from his employer over the years for his outstanding contributions. Applicant volunteered for a program that invited high school students to his place of employment. This allowed the students the opportunity to work alongside IT professionals. Applicant was a participant and mentor to some students. (AE HH, AE II, AE JJ, AE KK, AE LL, AE MM, AE NN, AE OO, AE PP)

## 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 [public trust position].” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). The Government’s authority to restrict access to classified information applies similarly in the protection of sensitive, unclassified information. As Commander in Chief, the President has the authority to control access to information bearing on national security or other sensitive information and to determine whether an individual is sufficiently trustworthy to have access to such information. *See Id.* at 527.

The standard that must be met for assignment to sensitive duties is that, based on all available information, the person’s loyalty, reliability, and trustworthiness are such that assigning the person to sensitive duties is clearly consistent with the interests of national security. 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 a public trust position, an 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 an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

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 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.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant which may disqualify the applicant from being eligible for access to sensitive information. See *Egan*, 484 U.S. at 531. “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 guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s suitability for a public trust position. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her [access to sensitive information].” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). 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). “[S]ecurity clearance [or trustworthiness] determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

The protection of the national security and sensitive records is of paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to [sensitive] information will be resolved in favor of national security.”

## **Analysis**

### **Financial Considerations**

AG ¶ 18 articulates the trustworthiness concern for financial problems:

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. . . . An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

The Appeal Board explained the scope and rationale for the financial considerations trustworthiness concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) as follows:

This concern is broader than the possibility that an applicant might knowingly compromise [sensitive] information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the

totality of an applicant's financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant's self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant's [eligibility for a public trust position].

AG ¶ 19 includes potentially disqualifying conditions that could raise a trustworthiness concern and may be disqualifying in this case, as follows:

- (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.

The credit reports in the record and Applicant's admissions support his history of indebtedness and his failure to pay state and Federal taxes when due. AG ¶¶ 19(a), 19(c), and 19(f) apply.

AG ¶ 20 lists six financial considerations mitigating conditions which may be applicable in this case:

- (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.

Beginning in late 2011, Applicant's experienced mania, one of the medical side-effects from taking a prescribed medication, Abilify. He was unable to fully comprehend the consequences of his spending spree, which was a circumstance beyond his control. At the time he was taking this medication, he was under the care of a doctor and followed the doctor's treatment plan. This new behavior was completely out of character for him, as Applicant had been known to be frugal.

In April 2013, when Applicant realized the depth of his financial quandary, he began repaying his creditors, which took a long time due to the large amount of accumulated debt. It is important to note that some of his delinquent creditors were not listed on his SOR because he had, or was in the process, of paying these accounts, albeit, usually from a wage garnishment. This course of action was viewed by him as a responsible way to repay his creditors. He has made significant progress in managing his finances. He has also paid his state and Federal back taxes from TYs 2012 and 2013. AG ¶¶ 20(a), 20(b), 20(d) and 20(g) apply. Overall, I find his efforts are sufficient to mitigate financial considerations trustworthiness concerns.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an Applicant's eligibility for access to sensitive information 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 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), "[t]he ultimate determination" of whether to grant access to a public trust position and access to sensitive information "must be an overall commonsense judgment based upon careful consideration of the guidelines" and the whole-person concept. My comments under Guideline F are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines but some warrant additional comment.

Applicant is 47 years old, and he has worked for a government contractor for over 20 years. His employment duties include ensuring the security of the company's

electronic medical records infrastructure and IT systems. He suffered from mania from late 2011 to early 2013, and then he took responsible action to repay a large amount of accumulated debt attributed to his mental state. Although it took him a decade, he made significant progress in the resolution of his delinquent taxes and finances.

I have carefully applied the law, as set forth in *Egan*, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. Applicant mitigated the trustworthiness concerns under Guideline F.

### **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:	FOR APPLICANT
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Subparagraphs 1.a-1.p:	For Applicant
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### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant or continue Applicant's eligibility for a public trust position. Eligibility for a public trust position is granted.

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Pamela Benson  
Administrative Judge