



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



In the matter of:)	
)	
)	ADP Case No. 20-02969
)	
Applicant for Public Trust Position)	

Appearances

For Government: Jenny Bayer, Esq., Department Counsel
For Applicant: *Pro se*

05/30/2023

Decision

HYAMS, Ross D., Administrative Judge:

Applicant did not provide sufficient information to mitigate the financial considerations trustworthiness concerns arising from his delinquent debts. Eligibility for access to sensitive information is denied.

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on July 31, 2019. On January 12, 2022, the Department of Defense (DoD) issued a Statement of Reasons (SOR) to Applicant detailing trustworthiness concerns under Guideline F, financial considerations. Applicant submitted an undated answer to the SOR and requested a hearing before an administrative judge. The case was assigned to me on November 17, 2022.

The hearing was initially scheduled for January 20, 2023. Applicant requested more time to prepare, and the hearing was rescheduled. The hearing convened on February 9, 2023. Department Counsel submitted Government's Exhibits (GE) 1-12, which were admitted in evidence without objection. Applicant submitted Applicant's Exhibits (AE) A-H, which were admitted in evidence without objection. After the hearing, I held the record open for 30 days to provide Applicant with the opportunity to submit

additional documentary evidence. He timely submitted documents that I marked as AE G-P and admitted in evidence without objection.

Amendment to the SOR

During the hearing, Applicant testified that he not yet filed his 2021 federal and state income tax returns. (Tr. 69-72) At the end of the hearing, Department Counsel moved to amend the SOR to add a new allegation:

SOR ¶ 1.o – You failed to timely file as required, federal and state income tax returns for tax year 2021.

The motion to amend the SOR was granted without objection. Applicant was given 30 days to respond to the new allegation and to submit evidence in response. In his response, he admitted the allegation and submitted tax documentation into the record. (Tr. 69-72, 84-87; AE L-O)

Findings of Fact

In his answer, Applicant admitted all the SOR allegations (¶¶ 1.a-1.o) with explanation. His admissions are incorporated into the findings of fact. Based on my review of the pleadings, evidence submitted, and testimony, I make the following additional findings of fact:

Applicant is 38 years old. He married in 2003, separated in about 2011, and divorced in 2014. He has three minor children with his first wife. He was married a second time from 2016-2021, and a third time in 2022. He served on active duty in the Air Force from 2002-2012, and in the Air Force Reserve from 2012-2016. He received an honorable discharge. He has attended some college classes, but has not earned a degree. He has worked for a government contractor in an information technology position since 2017. (Tr. 22-25; GE 1)

When Applicant and his first wife separated in about 2011, he signed a support agreement where he agreed to pay \$3,000 monthly in child support and alimony. He stated that he was pressured into signing this agreement, and that this amount was almost his whole monthly paycheck. He was advised by base legal counsel not to sign the agreement, but he believed it would impact his military career if he did not. He reported that this support agreement was incorporated into his final divorce decree. He stated that it was rare that he was able to pay his ex-wife the full amount of support, and he would pay her partial cash payments when he was able. After their divorce, he and his ex-wife moved to State A. In 2017, she filed an enforcement action with the state child support agency. He represented himself in the proceeding. While his monthly support obligations were lowered to \$1,200, he was assessed with an arrearage of about \$122,000. The current balance of his outstanding child support is about \$134,794. (Tr. 27-83; GE 5; AE K)

Applicant reported having financial problems since the early 2000s. He and his first wife filed for Chapter 7 bankruptcy in 2004, with about \$31,000 in liabilities. Over the last ten years, he has had continual financial delinquencies. He and his first wife had their home foreclosed in 2014. He claimed that they could have sold the home before foreclosure, but she would not agree to the sale terms. In 2018, a state tax lien was filed against him for about \$1,800. He stated that he was unaware of the lien, and it has not been satisfied. These items were not alleged in the SOR. (Tr. 27-83; GE 6, 10)

The SOR alleges 14 delinquent debts totaling \$86,204, and failure to file his federal and state income tax returns for 2021. The status of the allegations are as follows:

SOR ¶ 1.a alleged a debt for child support arrears totaling \$57,740. The record shows that Applicant actually owes \$134,794. While it appears that his paycheck has been consistently garnished since March 2020, he is not meeting his obligations because the balance has steadily grown about \$10,000 over three years. He did not provide documentation showing his track record of payments from earlier dates. (Tr. 27-83; GE 2, 3, 5; AE K, P)

SOR ¶ 1.b is an auto-loan that has been charged off for \$6,545. The vehicle was repossessed in about 2012, after he became separated from his first wife. He has not taken any action on it and this debt is unresolved. (Tr. 51-68; GE 2, 3)

SOR ¶ 1.c is a credit card placed for collection for \$5,043. The debt originates from about 2012. He has not taken any action on it and this debt is unresolved. (Tr. 51-68; GE 2, 3)

SOR ¶¶ 1.d and 1.e are student loans placed for collection for \$2,203 and \$1,639, respectively. These debts originated in about 2019. Applicant settled the loans in February 2022 for \$2,300. (Tr. 51-68; GE 3, 4, 12; AE F)

SOR ¶ 1.f is a Defense Finance and Accounting Service (DFAS) debt placed for collection for \$1,491. This debt originated in 2016. Applicant stated that this debt could have been a tuition overpayment. He has not taken any action on it and this debt is unresolved. (Tr. 51-68; GE 2, 3, 4, 12)

SOR ¶¶ 1.g and 1.i are medical debts placed for collection for \$1,306 and \$592, respectively. Applicant is unsure of the origin of the first debt. He stated that the second medical debt may be connected to a work injury. He does not know the first creditor and has not taken any action with the second creditor. These debts are unresolved. (Tr. 51-68; GE 2, 3)

SOR ¶ 1.h is a Department of Veterans Affairs (VA) debt placed for collection for \$616. Applicant stated that this may have been an overpayment to him from 2015, and he may have made a payment on this debt. He did not provide any documentation supporting this claim. This debt is unresolved. (Tr. 51-68; GE 2, 3)

SOR ¶ 1.i is a utility bill placed for collection for \$592. Applicant has not taken any action on it and this debt is unresolved. (Tr. 51-68; GE 3)

SOR ¶ 1.j is a personal loan that has been charged off for \$7,316. Applicant stated that he used this loan to pay off some credit card debt and prepay his car payments. He has not taken any action on it and this debt is unresolved. (Tr. 51-68; GE 2)

SOR ¶ 1.k is a credit card placed for collection for \$548. This debt originated from about 2018. Applicant stated that he could not afford to pay the debt. He has not taken any action on it and this debt is unresolved. (Tr. 51-68; GE 2, 4)

SOR ¶ 1.m is a home service bill placed for collection for \$293. This debt originated over ten years ago. Applicant stated that he and his first wife could not agree on who should pay the debt when it was incurred. He has not taken any action on it and this debt is unresolved. (Tr. 51-68; GE 2)

SOR ¶ 1.n is a utility bill placed for collection for \$280. Applicant claims that he does not know the origin of this debt. He has not taken any action on it and this debt is unresolved. (Tr. 51-68; GE 2)

SOR ¶ 1.n concerns Applicant's failure to timely file federal and state income returns for tax year 2021. He stated that his second wife, who is a bookkeeper, told him that he could file his tax returns at any time. He submitted unsigned federal and state income tax returns for tax year 2021, but did not provide documentation showing that these returns were filed. (Tr. 69-72; AE L, M)

Applicant failed to provide documentation concerning his current financial situation, such as his monthly income and expenses, his assets, or whether he follows a budget. He has not had credit counseling. He submitted three employment records showing that for the last two years his work performance has exceeded expectations and met expectations for three years prior. He submitted four character letters stating that he is a valued employee, reliable, and trustworthy. (Tr. 33; AE A, B, C, D, E)

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 adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's eligibility for a public trust position.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines 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(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."

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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable security 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 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.

This concern is broader than the possibility that an individual might knowingly compromise sensitive information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting sensitive information. An individual who is financially irresponsible may also be

irresponsible, unconcerned, or negligent in handling and safeguarding sensitive information. ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

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.

The SOR allegations are established by the credit reports and Applicant's admissions. AG ¶¶ 19(a), 19(c), and 19(f) apply.

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.

Applicant provided sufficient evidence that he has undertaken good-faith efforts to resolve the two alleged student loans. AG ¶ 20(d) applies to SOR ¶¶ 1.d and 1.e, and I find those allegations in Applicant's favor.

AG ¶ 20(a) does not apply. Applicant failed to provide sufficient documentation showing that any of the remaining debts are resolved, or that any became delinquent under such circumstances that are unlikely to recur. His failure to pay his delinquent debts is both long-term and recent, as well as ongoing and unresolved. This continues to cast doubt on his current reliability, trustworthiness, and good judgment.

Applicant did not provide sufficient evidence showing that his debts or unfiled tax returns occurred largely due to circumstances beyond his control or that he acted responsibly under the circumstances. AG ¶ 20(b) does not apply.

AG ¶ 20(g) does not apply. Applicant admitted that he failed to timely file his federal and state income tax returns for tax year 2021. He did not provide sufficient evidence that the returns have been filed, only that the paperwork has been completed.

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 considered his military service and character letters. 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 for a public trust position. He did not provide sufficient evidence to mitigate the trustworthiness concerns under Guideline F arising out of his delinquent debts and unfiled federal and state income tax returns. Eligibility for access to sensitive information is denied. This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for eligibility for a public trust position in the future.

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.c:	Against Applicant

Subparagraphs 1.d and 1.e: For Applicant

Subparagraphs 1.f – 1.o: Against Applicant

Conclusion

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

Ross D. Hyams
Administrative Judge