



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



In the matter of:

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Applicant for Public Trust Position

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ADP Case No: 23-00678

**Appearances**

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

03/29/2024

**Decision**

ROSS, Wilford H., Administrative Judge:

**Statement of Case**

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on April 5, 2022. (Item 4.) On March 31, 2023, the Defense Counterintelligence and Security Agency Central Adjudication Services, formerly known as Department of Defense 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 answered the SOR in writing (Answer) on June 28, 2023, and requested his case be decided on the written record in lieu of a hearing. (Item 2.) In his Answer Applicant admitted the four allegations in the SOR. On July 25, 2023, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM), consisting of Items 1 to 6, was provided to Applicant, who received the file on August 17, 2023.

Applicant was given 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. Applicant submitted additional documentation on September 8, 2023. Department Counsel had no objection to the additional information, and the documentation is admitted into evidence as Applicant's Exhibits A through D. Items 1 through 6 are also admitted into evidence. The case was assigned to me on November 15, 2023. Based upon a review of the pleadings and exhibits, national security eligibility for access to classified information is denied.

### **Findings of Fact**

Applicant is 71 years old and divorced. He has a bachelor's degree and additional training in his field. He is employed as a medical assistant/patient care technician by a defense contractor and requires a finding of trustworthiness in connection with his employment. (Item 4 at Sections 12, 13A, and 17.)

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

The Government alleged in this paragraph 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. He admitted all four allegations in the SOR. He also submitted additional information to support the potential finding of national security eligibility for a public trust position.

The SOR stated that Applicant has four debts that are past due, charged-off, or in collection, in the total amount of approximately \$33,891. The existence and amount of these debts is supported by his admissions to all the SOR allegations in his Answer and by a credit report dated March 23, 2023. They are also confirmed by Applicant's answers during an interview with an investigator from the Office of Personnel Management (OPM) held on May 11, 2022. (Items 5 and 6.) The record also includes an undated credit report that appears to be from Applicant. (Applicant Exhibit D.)

Applicant stated with regard to each of the delinquent debts, in his interview with an investigator from the Office of Personnel Management, "Subject [Applicant] is making payments but not the minimal payments so must have went [sic] to collections. . . . The reason for the debt was subject is trying to improve himself and is taking on line training at the Real Estate Academy . . . (not college classes or certificates)." (Item 6 at 5.)

The current status of the debts is as follows:

1.a. Applicant admitted owing \$16,287 for a charged-off debt to a bank. No information was provided to show that this debt has been paid or otherwise resolved. This debt is not resolved.

1.b. Applicant admitted owing \$8,902 for a charged-off credit card debt to a different bank. He submitted documentation showing that he had made a payment arrangement with the creditor for a lower amount. Furthermore, the documentation from the bank shows that the payments were due to begin in August 2023. No information was provided showing that any of the negotiated payments have been made. (Applicant Exhibit B.) This debt is not resolved.

1.c. Applicant admitted owing \$7,445 for a charged-off debt to a third bank. He submitted documentation showing that he had made a payment arrangement with the creditor. Furthermore, the documentation from the bank shows that the payments were due to begin in August 2023. No information was provided showing that any of the negotiated payments have been made. (Applicant Exhibit A.) This debt is not resolved.

1.d. Applicant admitted owing \$1,257 for another delinquent credit card debt to a fourth creditor. He submitted documentation showing that he had made a payment to this creditor for a lower amount. The documentation does not state whether his account is current, or this is a negotiated payment for a lesser amount. (Applicant Exhibit C.) This debt is not resolved.

## **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 Adjudicative Guidelines. 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 or areas 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 security 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 considerable past-due indebtedness that he had not satisfied when the SOR was issued. These facts establish prima facie support for the foregoing disqualifying conditions and shift the burden to Applicant to mitigate those concerns.

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

- (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 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.

After issuance of the SOR and receiving the FORM Applicant made payment arrangements with two of his creditors (SOR 1.b and 1.c). There is no evidence in the record that any payments have been made. He made a payment to one more creditor for an amount that is smaller than his debt (SOR 1.d). He has made no payment arrangements or payments towards his largest creditor (SOR 1.a). None of the mitigating conditions are applicable. Paragraph 1 (Financial Considerations) is found against Applicant.

## **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a finding of trustworthiness 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 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. Applicant provided insufficient evidence to show that he has resolved his financial issues, or that they will not recur in the future. The potential for pressure, exploitation, or duress has not been reduced. Overall, the evidence does create substantial doubt as to Applicant's judgment, eligibility, and suitability for a finding of trustworthiness. Applicant has not 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:

**AGAINST APPLICANT**

Subparagraphs 1.a through 1.d:

**Against Applicant**

## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant national security eligibility for a public trust position. Eligibility for access to sensitive information or areas is denied.

Wilford H. Ross  
Administrative Judge