



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



In the matter of:)	
)	
)	ADP Case No. 23-01533
)	
Applicant for a Public Trust Position)	

Appearances

For Government: Aubrey M. DeAngelis, Esq., Department Counsel
For Applicant: *Pro se*

05/15/2024

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the trustworthiness concerns under Guideline F, financial considerations. Eligibility for access to sensitive information is denied.

Statement of the Case

On September 29, 2023, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns under Guideline F, financial considerations. The action was taken under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective on June 8, 2017.

Applicant answered the SOR on December 7, 2023, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government’s file of relevant material (FORM), and Applicant received it on February 5, 2024. He was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. The Government’s evidence is identified as Items 3 through 9 (Item 1 is the SOR; Item 2 is the transmittal

letter). Applicant provided a response to the FORM. He submitted documents that are marked as Applicant's Exhibits (AE) A through D. There were no objections to any of the documents offered in evidence and all are admitted. The case was assigned to me on April 24, 2024.

Findings of Fact

Applicant admitted all the SOR allegations with explanations. His admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 29 years old. He is not married and has no children. He is a high school graduate and attended vocational school. He has no periods of unemployment and has worked for a federal contractor since 2019. (Item 4)

Applicant completed government interrogatories in September 2023. In them, he confirmed that statements he made to a government investigator twice in April 2022 and again in May 2023, were accurate, and he did not have any corrections. He added information about a debt and affirmed and adopted the interviews as accurate summaries of his interviews. (Item 5)

On April 5, 2022, Applicant was interviewed by a government investigator. He voluntarily provided information about a past garnishment that had been resolved. He was confronted with the debts alleged in SOR ¶¶ 1.a (\$12,338-private student loan), 1.b (\$458-credit card), 1.c (\$13,038-repossessed car), 1.d (\$11,254-loan), 1.e (\$1,018) and 1.f (\$354-medical bill) and subsequently acknowledged he owed them all. He intended to contact the creditors and make payment arrangements. He attributed his delinquent debts to not earning sufficient income. On April 22, 2022, he was interviewed again and asked to provide an update of the status of the debts. He said he was unable to contact most of the creditors and had not made payment arrangements regarding any of the debts. (Item 5)

In January 2023, Applicant completed a Questionnaire for National Security Positions (SF 85).¹ In it he reported that he failed to file his 2020 and 2021 state income tax returns because he lost his W-2. He estimated he owed about \$1,000 for each tax year. He also reported that he took a trip to Aruba for tourism purposes in August 2022. (Item 4)

In May 2023, Applicant was again interviewed by a government investigator and asked to provide an update of the status of his delinquent debts. He reported that there were no changes since his 2022 interviews, and he had not resolved or made attempts to resolve any of the SOR debts. He had resolved a debt that was not alleged in the SOR. (Item 5)

¹ It appears the April 2022 interviews were conducted before he completed his SF 85.

Applicant disclosed on his SF 85 that he had failed to file state income tax returns. He did not disclose any delinquent debts. He did not disclose a failure to file federal income tax returns. He was questioned during his May 2023 interview about his failure to file his state income tax returns for tax years 2020 and 2021. He said he was uncertain about the amount he might owe. He said he attempted to obtain a copy of his 2020 W-2 but his former company had been purchased by another company. He further stated that he attempted to file his 2021 state income tax return with his 2022 state return, but he was required to file the 2021 state return manually and could not file it electronically. He said he had not timely filed his 2021 state income tax return due to his family experiencing issues with the pandemic. He did not elaborate on what the issues might have impacted his ability to file the return. (Items 3, 5)

Applicant was further questioned about whether he had any other delinquent tax returns, and he told the investigator that he had failed to timely file his federal income tax returns for tax years 2020 and 2021. He believed he owed about \$1,300 in federal income taxes for the two tax years. He believed he claimed too many exemptions on his W-2, which resulted in insufficient money being withheld. He had not made any effort at that point to resolve the tax debt. He intended to resolve it by the end of 2023. He intended to make payment arrangements with the IRS. He said he attempted to file his federal income tax returns for 2020 and 2021 when he filed his 2022 federal income tax returns in April 2023, but he could not file the 2021 electronically. He told the investigator that he intended to file the delinquent returns no later than August 2023.

In response to interrogatories in September 2023, Applicant provided copies of his tax transcripts from the IRS. In his responses and verified by his tax transcripts, he reported that his 2016 federal and state income tax returns were filed on July 10, 2018, and his 2017 federal and state income tax returns were filed on July 12, 2018. He disclosed that he owed \$1,543 federal income taxes for tax year 2017. He did not report any state income taxes owed for the years he filed and left the amount blank for tax year 2017. He reported that his 2020 and 2021 federal and state income tax returns remained unfiled. He indicated he was still attempting to get a copy of his W-2 from his former employer, and he would be filing his 2021 tax return soon. He reiterated that he attempted to file his 2021 tax return electronically but was unable because it was required to be filed manually. He disclosed that his current state income tax liability was approximately \$1,500. (Item 5)

Applicant also provided a copy of a personal financial statement as part of his interrogatory response. Under the liability section, he disclosed he had approximately \$40,000 of student-loan debt that was deferred. He also listed the debts in SOR ¶¶ 1.a, 1.b and 1.d, noting they were in collection status. He noted he did not have any scheduled payments budgeted to resolve these debts. (Item 5)

IRS tax transcripts from May 2023, provided as part of the interrogatories, report an overpayment for tax year 2022 that was applied to Applicant's delinquent tax debt from 2017. He had a remaining balance for tax year 2017 of \$1,500. Tax transcripts also

showed that as of September 21, 2023, Applicant's 2020 and 2021 federal income tax returns remained unfiled. (Item 5)

Included with Applicant's interrogatories was a Declaration of Federal Employment document signed in August 2019. As part of it, he reported the personal loan he had with the creditor in SOR ¶ 1.d and said he had a payment plan he began in November 2017. No information was provided about whether he abided by this plan. (Item 6)

In October 2023, after receiving the SOR, Applicant contracted with a debt consolidation company. He arranged to make semi-monthly payments of \$272 (total monthly - \$544) for 55 months. Included in the plan are the debts in SOR ¶¶ 1.a, 1.b, 1.c and 1.d. The debts in SOR ¶¶ 1.e and 1.f were not included in the plan. On December 11, 2023, he made a \$100 payment to the IRS to be applied to his 2017 federal income tax debt. He provided an October 2023 document to show he owed \$1,407 for state taxes. The letter indicated he had a payment plan, but it did not provide the specifics of the plan, and he did not show he made payments towards the resolution of the debt. (Item 3)

Applicant answered the SOR in December 2023. The debts in the SOR are supported by Applicant's admissions in his answer to the SOR, admissions made to the government investigator, responses to government interrogatories, credit reports from September 2019, March 2023, and September 2023, along with additional information provided in his response to the FORM. (Items 3, 4, 5, 6, 7, 8, 9)

In his SOR answer, Applicant included a copy of his contract with the debt consolidation company. Included with the plan were the debts in SOR ¶¶ 1.a through 1.d. Regarding the debt in SOR ¶ 1.e, he admitted he owed it and said "My consolidation team couldn't find the debt on my reports. Still looking to resolve." It is included as a collection account on his March 2023 credit report. Regarding the debt in SOR ¶ 1.f, which is a medical account in collection, also on his March 2023 credit report, he admitted the debt and said it would be paid off and resolved by the beginning of the year. He did not provide any proof he paid or is resolving these debts. (Item 3)

In Applicant's SOR answer, he said he was making payments toward the 2017 federal tax debt. No proof was provided. The IRS involuntarily withheld refunds he was entitled to and applied them to his 2017 tax debt. He said he had a payment plan with his state for his delinquent state taxes. The document he provided supports he made a payment agreement with the state, and he owed a balance of \$1,407. He did not provide any information as to the specifics of the plan and if he had made any payments. In addition, regarding the filing of his 2020 and 2021 federal income tax returns, he stated it "has been taken care of." (Item 3)

In Applicant's response to the FORM, he provided documents from his tax preparer that show his 2020 federal and state income tax returns were completed on February 23, 2024, and the 2021 returns were completed on February 26, 2024. He said he had to refile his 2020 and 2021 tax returns. He was entitled to a federal refund for 2020 and 2021. He was entitled to a state refund for 2021 and owed state taxes for 2020 (\$86). His

federal tax transcripts reflected his 2022 federal income tax return was filed timely. He also provided a tax document from his tax preparer that presumably is for tax year 2023 indicating it was filed on February 27, 2024. It indicates that he owes federal income taxes (\$3,292) and state income taxes (\$125). Applicant provided a document from his state tax office from March 2024 that showed he made a payment that month of \$1,223 to the state. It does not report what tax year it was applied to. A second document shows he made a \$125 payment for tax year 2023 and that he does not owe any other state taxes. He provided an IRS document that showed he owed \$340 for tax year 2017 and paid it in March 2024. No document was provided to show if he paid his 2023 taxes when he completed his return or if had a payment plan with the IRS. (AE B, C)

In Applicant's SOR answer, he took responsibility for his conduct. He said he does not indulge in drugs or participate in illegal activity. He hopes to open his own business one day. He said he understands his past has caught up to him, but he has picked up the pieces and put things in order. He feels he is handling his past debt with the debt consolidation agreement. He has hired a tax preparer to help him in the future. He takes his career very seriously. He "honestly and truly forgot to handle certain responsibilities" but is now addressing them. (Item 3; AE A)

I have not considered any derogatory evidence that was not alleged in the SOR. I may consider any information when applying the mitigating conditions and in my whole-person analysis.

Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to sensitive information.

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(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 sensitive information is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility [or eligibility for a public trust position] 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable public trust 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 concern relating to the guideline 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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

AG ¶ 19 provides conditions that could raise trustworthiness concerns. The following are potentially applicable:

- (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 had delinquent debts that he failed to pay. He failed to timely file his 2020 and 2021 federal and state tax returns. He was indebted to his state for delinquent taxes. He also failed to timely pay his 2017 federal income taxes and owed delinquent taxes to the IRS. There is sufficient evidence to apply the above disqualifying conditions.

The guideline also includes conditions that could mitigate trustworthiness concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 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;
- (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
- (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 reported on his 2019 Declaration of Federal Employment that he owed the debt in SOR ¶ 1.d and had a payment plan. No evidence was provided to show he was following a payment plan. He was put on notice in April 2022, when he was interviewed by a government investigator, that his financial delinquencies and tax issues were a concern. Despite making promises to address his tax issues, he instead procrastinated until after he received the SOR. He was confronted with the six delinquent debts alleged in the SOR totaling approximately \$38,460 during his first interview in April 2022. He was again confronted with the debts during his second interview later in the same month and a third interview more than a year later. He failed to take any action on his debts during that time. It was not until after he received the SOR that he contracted with a debt consolidation company. He did not provide evidence with his response to the FORM that he is compliance with the bi-monthly payments. He did not provide evidence of any action he has taken to resolve the debts in SOR ¶¶ 1.e and 1.f.

Applicant alluded to the pandemic impacting his ability to file his tax returns and other family issues impacting his ability to pay his debts. This was beyond his control to a certain extent. He did not elaborate on anything that specifically impacted his ability to contact his creditors. Because Applicant requested a determination on the record without a hearing, I had no opportunity to question him about his efforts or evaluate his credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003).

For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. I cannot find he acted responsibly, and future financial issues are unlikely to recur. An applicant who waits until his clearance is in jeopardy before resolving debts may be lacking in the judgment expected of those with access to sensitive information. His conduct is recent, ongoing and casts doubt on his reliability, trustworthiness, and good judgment. AG ¶¶ 20 (a) and 20(b) have minimal application.

Applicant provided proof that in February 2024 he filed his 2020 and 2021 federal and state income tax returns. He owed \$1,407 in October 2023 and made payments of \$1,223 and \$125 in March 2024. His state noted he did not have a tax balance owed. Most of the tax debt he owed to the IRS was reduced through the involuntary withholding of subsequent years' refunds and applying them to his 2017 tax debt. In March 2024 he paid the remainder owed for this 2017 tax liability. AG ¶ 20(g) applies but does not fully mitigate the concerns. The fact that Applicant has filed his past-due returns does not preclude careful consideration of his trustworthiness based on his prior behavior. A person who fails repeatedly to fulfill his or her legal obligations does not demonstrate the high degree of good judgment and reliability required of those granted access to sensitive information.

There is no evidence that Applicant is participating in financial counseling. AG ¶ 20(c) does not apply. He did not provide evidence that he is resolving the debts not included in the debt consolidation agreement. At this juncture none of the creditors in the SOR have received any payments. AG ¶ 20(d) does not apply.

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 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), 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.

Applicant failed to meet his burden of persuasion under Guideline F, financial considerations. He does not have a reliable financial track record at this time. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a public trust position. For these reasons, I conclude Applicant failed to mitigate the trustworthiness concerns raised.

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
Subparagraphs 1.a-1.f:	Against Applicant
Subparagraphs 1.g-1.j:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, 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.

Carol G. Ricciardello
Administrative Judge