



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



In the matter of:)
)
) ADP Case No. 24-01121
)
)
Applicant for a Public Trust Position)

Appearances

For Government: John Renehan, Esq., Department Counsel
For Applicant: *Pro se*

02/03/2025

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of Case

On April 9, 1993, the Composite Health Care Systems Program Office (CHCSPO), the Defense Office of Hearings and Appeals (DOHA), and the Assistant Secretary of Defense for Command, Control, Communications and Intelligence (ASDC3I) entered into a memorandum of agreement for DOHA to provided trustworthiness determinations for contractor personnel employed in Information Systems Positions as defined in DoD Regulation 5200.2-R, Personnel Security Program (Regulation), dated January of 1987.

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on February 19, 2023. (Government Exhibit 1.) On August 22, 2024, the Department of Defense (DoD), issued an SOR detailing the trustworthiness concerns under Guidelines E and F regarding Applicant. 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, 21992), as amended (Directive); and the adjudicative guidelines (AG), effective within the Department of Defense after June 8, 2006.

Applicant responded to the SOR on August 27, 2024, and requested a hearing before an Administrative Judge. The case was assigned to me on October 29, 2024. The Defense Office of Hearings and Appeals issued a notice of hearing on November 19, 2024, and the hearing was convened as scheduled on December 18, 2024. The Government offered five exhibits, referred to as Government Exhibits 1 through 5, which were admitted without objection. Applicant offered six exhibits, referred to as Applicant's exhibits A through F, which were admitted without objection. Applicant testified on his own behalf. The record remained open until close of business on December 27, 2024, to allow the Applicant to submit additional supporting documentation. Applicant submitted several documents collectively marked and admitted into evidence as Applicant's Post-Hearing Exhibit A. DOHA received the final transcript of the hearing (Tr.) on January 13, 2025. Based upon a review of the pleadings and exhibits, eligibility for a public trust position is denied.

Findings of Fact

Applicant is 38 years old. He is divorced with no children. He has a high school diploma, and one semester left of college before finishing his Bachelor's degree in Psychology. He has prior military service. He has been hired, but has not started employment as a Psych Technician at a Veteran's Administration hospital. He is seeking to obtain a determination of trustworthiness in connection with his employment.

Guideline E – Personal Conduct

The SOR alleged that Applicant is ineligible for access to sensitive information because he falsified his security clearance application denying that he illegally used drugs while possessing a security clearance. Applicant admits the allegation set forth in the SOR. His questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations raises questions about his reliability, trustworthiness, and ability to protect classified or sensitive information.

Applicant served on active-duty in the U.S. Army from 2005 through 2008. He obtained a security clearance in 2006. (Tr. pp. 47-53.) His MOS was that of a Motor Transport Operator or "88 Mike." He served as a Combat Driver attached to an infantry unit. He was deployed on one occasion to Iraq for fourteen months. In 2008, Applicant was discharged from the military for illegal drug use.

In 2022, Applicant applied for a position at a Veteran's Administration Hospital as a Psych Tech. This is a public trust position that requires a trustworthiness determination. On February 19, 2023, Applicant completed a security clearance

application. (Government Exhibit 1.) In response to Section 23, "Illegal Use of Drugs or Drugs Activity: Have you ever illegally used or otherwise been illegally involved with a drug or controlled substance while possessing a security clearance other than previously listed?" Applicant answered, "No," and failed to disclose that he used ecstasy while in the military. In fact, Applicant popped positive on a random urinalysis that led to his untimely discharge from the military and a discharge under Other Than Honorable Conditions. Applicant stated that he made a huge mistake that he regrets when he denied his illegal drug use on his application. (Response to SOR.)

In 2010, Applicant went before a discharge review board with top military officials who reviewed his discharge and upgraded his discharge, giving him the benefit of the doubt, and because of the circumstances surrounding the situation, to a General Under Honorable Conditions Discharge. (Applicant's Exhibit D, and Tr. pp. 33-34.)

Guideline F - Financial Considerations

The SOR alleged that Applicant is ineligible for a access to sensitive information because he is indebted to nine separate creditors for delinquent debts that were either placed for collection or charged off that demonstrate a history of poor financial decisions, poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which raise questions about his reliability, trustworthiness, and ability to protect classified information.

After being discharged from the military for drug abuse, Applicant fell into a period of homelessness from 2009 through 2014. His grandfather passed away, and life was difficult for him because he was unable to find suitable employment. Applicant found jobs and worked, but the jobs paid only minimum wage and he could not adequately survive on the pay. During this five-year period, Applicant incurred delinquent debt that he could not afford to pay. (Tr. pp. 54-58.) In 2015 Applicant obtained a job that motivated him to go back to school to learn more about the field he enjoyed working in. For the past fourteen years, he has developed his career helping homeless veterans, working as a case worker, housing specialist, and veteran peer specialist.

Applicant became indebted to nine creditors listed in the SOR for a total of approximately \$36,000. In his answer, Applicant admits each of the debts set forth in the SOR. Credit reports of the Applicant dated November 16, 2023; and October 11, 2024, confirm this indebtedness. (Government Exhibits 4 and 5.)

The following delinquent debts are of security concern:

- a. A delinquent debt is owed to a creditor for an account that was placed for collection in the approximate amount of \$23,451. Applicant explained that this debt was for a vehicle he purchased to get to and from work. The payments were \$800 monthly. After a year or so, he could no longer afford to make the payments, and he returned the car to the dealership. Applicant stated that the debt is old, and although the debt was not paid, it was recently removed from his

credit report in accordance with the seven-year credit reporting requirements. (Applicant's Post-Hearing Exhibit A.)

- b. A delinquent debt is owed to a creditor for an account that was placed for collection in the approximate amount of \$7,720. Applicant stated that this debt was for a DoD housing overpayment. Between 2005 and 2009, Applicant was married and he received a military housing allowance. In error, he was overpaid about \$10,000 for dependents he did not have. Every year since then, between \$300 and \$400 is automatically deducted from his Federal tax refund and goes towards paying off this debt. Applicant stated that the debt is old, and although the debt has not been paid in its entirety, it was recently removed from his credit report in accordance with the seven-year credit reporting requirements. (Applicant's Post-Hearing Exhibit A.)
- c. A delinquent debt is owed to a creditor for an account that was placed for collection in the approximate amount of \$1,517. Applicant stated that this was a Pepco account for utilities that were left overdue when he moved out of the house. His roommate refused to pay his portion of the bill. Applicant claims that he has paid the debt. (Tr. pp. 73-75.) When asked to submit the receipt, he stated that the creditor does not accept formal installment agreements. Applicant is paying the creditor \$100 every two weeks to resolve the debt. He has made a \$100 payment and will continue his payments every two weeks until the debt is paid in full. He currently owes \$1,417.55 towards the debt. (Applicant's Post-Hearing Exhibit A.)
- d. A delinquent debt is owed to a creditor for an account that was placed for collection in the approximate amount of \$1,396. Applicant stated that this was a Verizon internet service bill also associated with the house that Applicant moved out of. He contends that his roommate was supposed to pay the bill. Applicant stated that he is taking care of the bill. (Tr. pp. 75-78.) When asked to submit the receipt, he stated that he recently made a payment of \$100 which he plans to continue every two weeks. He currently owes \$1,298.08 toward the debt. (Applicant's Post-Hearing Exhibit A.)
- e. A delinquent debt is owed to a creditor for an account was placed for collection in the approximate amount of \$1,321. Applicant stated that this was a Sprint account for mobile phone services. He claims that he paid the debt in full. (Tr. p. 81.) When asked to submit the receipt, he stated that he reached a settlement agreement with the creditor to settle the debt for \$615. He made a payment of \$100, and currently owes the creditor \$560 before December 30, 2024. (Applicant's Post-Hearing Exhibit A.)
- f. A delinquent debt is owed to a creditor for an account that was placed for collection in the approximate amount of \$583. Applicant stated that this was a store credit account he used to purchase furniture. He stated that he has paid off the account. (Tr. p. 81.) There is no documentary evidence to support his claim.

- g. A delinquent debt is owed to a creditor for an account that was placed for collection in the approximate amount of \$380. Applicant stated that this was for an overdraft fee that he has paid off. (Tr. pp. 81-82.) There is no documentary evidence to support his claim.
- h. A delinquent debt is owed to a creditor for an account that was placed for collection in the approximate amount of \$293. Applicant stated that this was a Discover account that was paid off with back pay he received for his military disability. (Tr. pp. 82-83.) There is no documentary evidence to support his claim.
- i. A delinquent debt is owed to a creditor for an account that was past due in the amount of \$167. Applicant stated that this was a Transworld account with Cox Communications. He stated that he paid the debt off in 2022. (Tr. p. 84-85.) There is no documentary evidence to support his claim.

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines (AG). 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 access to classified information.

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 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 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.

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 clearance decision.

A person who seeks a public trust position 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 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.

Section 7 of EO 10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline E - Personal Conduct

The security concern for the personal conduct guideline is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

AG ¶ 17 provides conditions that could mitigate security concerns. I have considered each of the mitigating conditions below:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress; and

(f) the information was unsubstantiated or from a source of questionable reliability.

Applicant deliberately attempted to conceal his drug use from the government on his security clearance application. There is no excuse for this dishonesty. Deliberately concealing material information from the Government on a security clearance application raises serious questions about one's credibility and trustworthiness. None of the mitigating conditions are applicable. This guideline is found against Applicant.

Guideline F - Financial Considerations

The security 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. 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Three are potentially applicable in this case:

(a) inability to satisfy debts;

(b) unwillingness to satisfy debts regardless of the ability to do so; and

(c) a history of not meeting financial obligations.

Applicant incurred significant delinquent debt that he has not paid. At this time there is insufficient information in the record to conclude that he is financially stable, or

that he can afford his lifestyle, or that he has the financial resources available to resolve his financial obligations. Only recently has there been some evidence to show that he is now making regular monthly payments toward some of his debts. There are other delinquent debts that he did not pay but are no longer reflected on his credit report as owing because they have fallen off of his credit report, after reporting delinquent for seven years. The evidence is sufficient to raise the above disqualifying conditions.

The following mitigating conditions under Financial Considerations are potentially applicable under AG ¶ 20.

(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

(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.

Applicant submitted a Personal Financial Statement dated December 25, 2024, that shows that he just started to make payments to several of his creditors. Some of these were creditors that he stated he had paid in full. Other debts that he did not pay are no longer showing delinquent on his credit report because they have fallen off in accordance with the seven-years reporting requirement. He stated that he is still working to resolve his debts. The mitigating conditions set forth above do not establish full mitigation. This guideline is found against Applicant.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance 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 security clearance 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 relevant facts and circumstances surrounding this case. Applicant is in the process of resolving some of his delinquent debts. He has allowed other debts to fall off of his credit report because they are so old. He has not demonstrated a systematic method of payment over an extended period. Only recently did he start to address his debts. In addition, he was not candid with the Government on his security clearance application concerning his drug history. Insufficient mitigation has been shown. Accordingly, I conclude Applicant has not mitigated the Personal Conduct and Financial Considerations security concerns.

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 E:	AGAINST APPLICANT
Subparagraph 1.a.	Against Applicant
Paragraph 2, Guideline F:	AGAINST APPLICANT
Subparagraphs 2.a., through 2.i.	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 or continue Applicant's national security eligibility for a public trust position. Eligibility for access to sensitive information is denied.

Darlene Lokey Anderson
Administrative Judge