DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ADP Case No. 23-02025
	)	
	)	
Applicant for Public Trust Position	)	
	)	

Appearances

For Government: Mark D. Lawton, Esq., Department Counsel
For Applicant: *Pro se*

05/21/2025

Decision

MURPHY, Braden M., Administrative Judge:

The Statement of Reasons concerns allegations of trustworthiness concerns under Guideline J (criminal conduct), Guideline F (financial considerations), and Guideline E (personal conduct). Applicant did not provide sufficient evidence to mitigate trustworthiness concerns under Guidelines J or Guideline F. Guideline E trustworthiness concerns are either not established or are sufficiently addressed under other guidelines so they are resolved favorably. Applicant's eligibility for access to sensitive information is denied.

Statement of the Case

Applicant submitted a Questionnaire for National Security Positions (application) on November 8. 2022, in connection with his employment in the defense industry. On November 16, 2023, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns under Guideline J, Guideline F, and

Guideline E. The DOD took the action under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the National Security Adjudicative Guidelines (AG) effective within the DOD on June 8, 2017.

On November 17, 2023, Applicant answered the SOR and elected a decision on the administrative (written) record, instead of a hearing before an administrative judge from the Defense Office of Hearings & Appeals (DOHA). The case was assigned to the Department Counsel's office on December 4, 2023. On December 12, 2023, the assigned Department Counsel exercised his right to request a hearing within 20 days of receipt, as provided under Paragraph E.3.1.7 of the Additional Procedural Guidance of Directive 5220.6. Department Counsel notified Applicant of that election by memo and letter the same date. (Hearing Exhibit (HE) III) (See discussion below).

The case was assigned to me on September 10, 2024. On October 4, 2024, following consultation with the parties, DOHA issued a notice scheduling an in-person hearing for November 15, 2024. On November 1, 2024, the hearing date was changed to November 14, 2024, again by mutually agreement, and an amended hearing notice was duly issued. (Tr. 7-8)

The hearing convened as rescheduled. Department Counsel submitted Government's Exhibits (GE) 1 through 9. Applicant testified and submitted Applicant's Exhibits (AE) A through E. Applicant Exhibits A and B were attached to his SOR Response. All exhibits were admitted without objection. At the end of the hearing, I left the record open to allow Applicant the opportunity to submit additional information. On December 9, 2024, Applicant submitted one exhibit (AE F) and a statement by email (AE G). Both exhibits were admitted without objection. DOHA received the hearing transcript (Tr.) on November 25, 2024. The record initially closed on December 9, 2024.

Post-Hearing Procedural Matters

In May 2025, while reviewing the record in preparing this decision, I noticed two procedural matters that both warranted addressing.

First, in describing preliminary matters at the start of the hearing, I erroneously stated that when Applicant answered the SOR, he "elected a hearing before an administrative judge." (Tr. 5), instead of an "administrative decision." Department Counsel's December 2023 memorandum converting the case to a hearing was also not in the record.

Accordingly, on May 12, 2025, I emailed the parties to inform them of this matter and to provide a copy of Department Counsel's December 2023 letter and memo. (HE III, HE IV). I gave the parties two days to acknowledge receipt and they did so. There is no issue to resolve as to the validity of the hearing itself, since the parties both appeared and participated fully without incident.

Second, I neglected to send Applicant a Personal Financial Statement (PFS) to fill out and submit after the hearing, as I said I would do. (Tr. 54, 72-74, 134-137) Therefore, on May 15, 2025, I emailed the parties and briefly reopened the record to give Applicant the opportunity to submit a completed PFS and to document his current income. (HE V) Applicant submitted a recent paystub (AE H), documentation of his VA benefit compensation (AE I), and a completed PFS with a spreadsheet attached (AE J). Those three documents were marked and admitted without objection. The record closed on May 19, 2025.

Findings of Fact

Applicant admitted SOR ¶¶ 1.a, 2.a, 2.c-2.f, 2.h, and 3.a, with explanations for most of these allegations. He denied SOR ¶¶ 2.b, 2.g (in part), 2.i, 2.j, and 3.b, with explanations. SOR ¶¶ 2.a and 3.a are cross-allegations. His admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 45 years old. He and his former wife married in 2003 and divorced in 2023. They have three children, ages 25, 20, and 15. He served on active duty in the U.S. Army from June 1998 until September 2012. He reached the enlisted rank of sergeant first class (E-7) and was promoted in 2007 to warrant officer, achieving the rank of CWO-2. He received a general discharge under other than honorable conditions following the events alleged in SOR ¶ 1.a. He held a clearance when he was in the Army. Applicant and his former wife share custody of their youngest child, a daughter. He pays $432 a month in child support. (GE 1; Tr. 12, 51-53, 113-114, 119-120)

Following his discharge from the Army, Applicant was unemployed, from October 2012 to April 2015. During some of this period (July 2013 to April 2015) he was in prison. After his release, he was self-employed as a personal trainer from April 2015 to February 2018. He spent the next three years working for a lighting company, until February 2021, when he started his current position as a logistics analyst for a defense contractor, the job for which he seeks a determination of public trust. (GE 1; 54-57, 71-73, 103-104)

In about 2009 to 2010, Applicant was assigned to an Army unit in State 1. He was responsible for ordering equipment and supplies for various Army units in the region. He was responsible for $25 million worth of equipment. In 2010, Applicant transferred to an

Army unit in State 2. From about 2010 to 2011, in both places, Applicant made over $10 million in unauthorized purchases of items such as high-end engineering equipment, computer equipment, and power tools, and charged them to the Army. He made the purchases over a U.S. government website. He used fake usernames, passwords, points of contact, and approving officials. He used his own cell number as a point of contact. Many deliveries were made to a warehouse in State 2, to Applicant's home address, or to a cousin. Applicant would sell the items for between 10% and 20% of their retail value at local swap meets, on Craig's List over the internet, and to third parties. Applicant's actions were discovered during a government audit of the supply purchases of his unit. (GE 16-18; GE 2 at 5-6; Tr. 78-84)

Applicant explained that the events began when his Army unit in State 1had an extra tool kit that had been purchased but went unused. He said the company first sergeant told him that the kit could not be returned and that he could "just take it home" and "sell it or something." Applicant sold the kit for $100 to a workman who came to his house. The workman then asked for more tools. Eventually two brothers approached him asking to buy 20 or 30 tool kits at a time, so Applicant purchased those as well and shipped them to the buyers, in exchange for money. In about October 2011, around the time Applicant learned of the audit, he said he began having second thoughts. (Tr. 57-59)Around this time, Applicant's old Army unit reached out to him. He said he met with his commander, admitted that he "really messed up," and asked how he could "make this right." (Tr. 60-63)

In October 2011, Applicant was charged with four federal criminal offenses: 1) theft of government property; 2) making a false statement; 3) making unlawful currency transactions; and 4) conspiracy. The FBI sheet indicates he was convicted of all four charges. (SOR ¶ 1.a) (GE 4 at 6; Tr. 131-132)

In May 2013, Applicant pled guilty to count 1, theft of government property. He was sentenced to 30 months in federal prison and three years of supervised release. He was ordered to perform 120 hours of community service. He was also ordered to pay restitution to the U.S. government in the amount of about $10,205,000. Applicant served 21 months of his 30-month jail term, from July 2013 to April 2015. His probation ended successfully in 2018.The court documents regarding this proceeding, reference only one count of theft of government property charge, and not the other counts. (GE 1, GE 3; Tr. 63-65)

The government also seized certain assets of Applicant's, including three vehicles, about $170,000 in cash provided to the FBI, and five bank accounts holding about $274,000. He was also required to resign from the Army with a discharge under other than honorable conditions, and he had to cooperate fully with the prosecution. (GE 3 at

4-7) At the time the SOR was issued, he still owed the U.S. Government about $8,000,000. (SOR ¶ 1.a, cross-alleged at SOR ¶¶ 2.a, 3.a)

On his Application, Applicant disclosed his felony charge, conviction, and jail term, as well as his Army discharge. (GE 1 at 12, 22-23; Tr. 123) In his testimony, he denied, however, that he had ever been indicted, arrested, or taken into custody (before going to jail). He said when he was contacted by the FBI, he "immediately started cooperating." As part of his plea deal, Applicant cooperated with the government in providing evidence against the two brothers involved in the conspiracy who had bought many of the government items from Applicant. He is credited in the sentencing documentation with rendering "substantial assistance" to the investigation. (Tr. 63-65; GE 2 at 5-6; GE 3)

According to Applicant's background interview, he said that at some point in about 2011, after he had been contacted by the FBI, he withdrew about $100,000 from one of his bank accounts and took the $100,000 (in stolen government funds) to Las Vegas to enter a poker tournament to try to win back the $10 million he owed the government. (SOR ¶ 2.b) This was unsuccessful. He was advised by the prosecuting U.S. attorney not to do that again, as the trial court would not look favorably on his efforts to pay off his debt to the U.S. government through gambling. (GE 2 at 10)

Applicant denied this allegation in the SOR and testified that this "absolutely never happened." (Tr. 40, 66, 88) He acknowledged going to Las Vegas, but for a "boys' trip" with his cousins and not a gambling tournament, in February 2011. He said he engages in gambling on occasion, including on a recent trip to Las Vegas. (Tr. 84-89) Applicant authenticated the summary of his January 2023 background interview in an October 2023 interrogatory response. The limited changes he made did not concern the details in the interview summary about the Las Vegas trip. (GE 2)

Applicant acknowledged committing fraud on the government, and said what he did was "a very bad, poor lapse of judgment." He said he had no excuse and said that he had been paying restitution regularly. He said through forfeitures and restitution payments, he had paid back about $2 million of the $10 million he owed. (Tr. 33, 36-39) After the hearing, he verified monthly payments from July 2023 to November 2024 of between $100 and $300, but mostly $150 a month (AE G), though he said he has been making regular restitution since at least 2015, or earlier. He said when he sold his house, $109,000 of the proceeds went towards restitution also. (Tr. 39-41) He said he intends to continue paying the restitution and expects to do so for the rest of his life. (Tr. 129)

Applicant has had no subsequent criminal offenses. He believes he remains a registered voter but his home state has a law prohibiting voters who still owe restitution from voting, so he does not want to run afoul of that law by voting. (Tr. 66, 121-122)

Applicant experienced financial problems after he was released from prison. He made a limited income as a personal trainer. In 2018, he and his wife filed for Chapter 13 bankruptcy protection. They made about $80,000 in payments into the bankruptcy plan over the next three years, until the bankruptcy was voluntarily dismissed in 2021 because they stopped making payments. (Tr. 33-35; AE E; GE 5, GE 6) (SOR ¶ 2.c)

The SOR debts alleged under Guideline F are largely consumer debts, listed on credit reports from December 2022 and July 2023. (GE 7, GE 8) There are also credit reports from December 2023 and November 2024. (GE 9, AE C) These seven debts (SOR ¶¶ 2.d – 2.j) total about $136,273.

Applicant said he reached out to his creditors after the bankruptcy. He said the only the creditor for the debt at SOR ¶ 2.g, proposed a settlement agreement. The other creditors said the debts had been charged off. He also said he sent them documentation that they also received payments through the bankruptcy before it was dismissed. (Tr. 35, 48) He said he assumed all of the joint marital debts through the divorce and acknowledged being obligated for them. (Tr. 114-115)

SOR ¶ 2.d ($18,451) is a past-due debt that has been charged off by a credit union. (GE 7, 8) This was a loan Applicant took out in about 2016 after he was released from prison. He said this creditor told him the debt had been charged off once the bankruptcy was dismissed. He sent a letter to the creditor but has made no payments on the debt since the dismissal, though he acknowledged responsibility for doing so. (Tr. 36, 47-48, 89-94) This debt is unresolved.

SOR ¶ 2.e ($12,172) is a past-due debt that has been charged off by a bank. GE 6 at 6, GE 7, GE 8, GE 9) Applicant said this debt is a loan or line of credit. He sent a letter to the creditor but said they told him the debt had been charged off once the bankruptcy was dismissed. He has made no subsequent payments and said he would look into it. (Tr. 36, 47-48, 94-95) This debt is unresolved.

SOR ¶ 2.f ($9,597) is a past-due account that has been charged off by a bank. (GE 6 at 6; GE 7, GE 8) Applicant said this debt is for a credit card. He sent a letter to the creditor and was told the debt had been charged off once the bankruptcy was dismissed. He has made no subsequent payments. (Tr. 36, 47-48, 95-96) This debt is unresolved.

SOR ¶ 2.g ($11,432) is the deficiency balance on a repossessed auto. (GE 7) Applicant denied this debt in his SOR response and said he was making payments. Government Exhibit 8 shows a balance of $9,432 and AE C, shows a balance of $5,682 as of November 2024. He said he current on his agreement to pay this creditor $250 a month, and he will continue paying on it. (AE C at 21; AE D; Tr. 35-36, 43-47, 110-111, 129-130) This debt is being resolved.

SOR ¶ 2.h ($55,744) is a past-due debt to a credit union for an account identified in Applicant's 2018 bankruptcy. (GE 6 at 6) He said this is a credit-card account taken out by his wife to finance construction of a swimming pool at their home. They also used financing from another lender, creditor S, a creditor noted in the bankruptcy, for about $52,000. He said the creditor for SOR debt ¶ 2.h told him the debt had been charged off once the bankruptcy was dismissed. He believes he may have received an IRS Form 1099-C regarding this debt but did not produce it. (Tr. 36, 47-48, 96-98, 116-118; AE A) This debt is not resolved.

SOR ¶ 2.i ($18,828) is a past-due account to a creditor identified in Applicant's 2018 bankruptcy. (GE 6 at 6) He denied this debt in his SOR response and said he did not recognize it. But he testified that this may be creditor S, within whom he partially financed the pool. He asserted that his credit report (AE C) reflects that the account has been paid off, but AE C does not show this. (Tr. 98-100, 111-112) This debt is not resolved.

SOR ¶ 2.j ($10,049) is a past-due debt to a bank for an account identified in Applicant's 2018 bankruptcy. (GE 6 at 6) He denied this debt in his SOR response and said it was paid by proceeds from a vehicle sale. AE C did not verify this. (Tr. 100-103) This debt is not resolved.

Applicant said he is current on his monthly expenses. He had credit counseling during the bankruptcy but not after he received the SOR. (Tr. 109-110, 119) He plans to reach out to his creditors and will comply with any requests to send money. (Tr. 130)

Under Guideline E, the Government alleged that, while Applicant disclosed his 2018 bankruptcy on his application, he answered "Yes" to the question, "Were you discharged of all debts in the bankruptcy," when in fact the bankruptcy petition had been dismissed for failure to make payments. (GE 1 at 26; GE 6) (SOR ¶ 3.b) He also commented on his application that his bankruptcy was "dismissed and done." (GE 1 at 27)

In his testimony, Applicant denied reporting that his bankruptcy had been "discharged," and said he "always refer[ed] to it as 'dismissed,' because that's what the motion was -- this Motion to Dismiss." He continued, "And I did say 'dismissed and done' because once the bankruptcy is dismissed, it technically is done. . . . because you go back to paying your creditors and not the trustee." (Tr. 69) He said, "a discharge is when it's completely over and you paid . . . your seven years." (Tr. 68) He denied the allegation of intentional falsification as to SOR ¶ 3.b. (Tr. 71)

Applicant acknowledged understanding the difference between a bankruptcy discharge and a dismissal. He acknowledged familiarity with clearance applications,

having completed several since 1999 through the Army. He understood the importance of providing complete, accurate, and truthful answers on a clearance (or trustworthiness) application. He asserted that this was why he put "dismissed and done" in the comment section on the next page, though he said he "just honestly hit the wrong box on that. (GE 1; Tr. 75-76) He did not report any of the unresolved bankruptcy debts as "charged off" or "past due" elsewhere on his application. (GE 1; Tr. 124-128)

Applicant provided a July 2020 email exchange with his bankruptcy attorney's paralegal, in which he asked about dismissing the Chapter 13 petition. Applicant reported that he and his wife did not want to convert their bankruptcy petition to Chapter 7, because they would have to sell their house. He was advised that:

> The only way to get your Ch13 dismissed would be for failure to make payments, which would result in the Trustee filing a motion to dismiss your case. Once your case is dismissed, creditors who are still owed a balance with [sic] have legal right to seek remaining payment from you and your wife. However, you can still reach out to each creditor and make arrangements to pay whatever balance is still unpaid. (AE E)

Applicant responded,

> We are fine with that. So I can reach out to each creditor and if they want payment for anything then make arrangements with them and pay them directly or however they see fit. We will make this last payment and then stop. I will give [the attorney] a call later this afternoon. Thank you.

(AE E; Tr. 76-77) Applicant said he made payments on the bankruptcy until about January 2021. (Tr. 77-78; AE B)

In his closing testimony and in a post-hearing written statement, Applicant made a plea for a second chance. He noted that he is a rehabilitated non-violent offender. He cited his educational opportunities, vocational training, and community service. He has served for many years working with youths as a volunteer sports coach and teacher. He said past mistakes do not define a person's future potential. (Tr. 142-149; AE F)

Applicant's post-hearing submissions in May 2025 included an April 2025 paystub showing he earns a gross salary of $3,833 every two weeks (AE H) (or about $7,666 every month), for an annual salary of about $92,000. He also receives $4,431 per month from the VA as compensation for 100% service-connected disabilities. (AE I)

According to his May 2025 Personal Financial Statement, he has about $9,482 in monthly net income from his job and VA compensation combined, about $5,000 in

monthly expenses, and about $3500 in debt payments (several credit cards, a car payment, a loan, and $350 a month in restitution). This leaves a monthly remainder of about $970. Applicant did not note any payments towards any SOR debts beyond the criminal restitution. (AE J)

Applicant did not submit any exhibits as "character evidence" for consideration under the whole-person concept. However, GE 3 includes a sentencing memorandum prepared by his criminal defense counsel, for consideration by the sentencing judge in 2013. It includes various attachments, including documentation of completion of various re-sentencing classes and programs, reference letters, military evaluation reports, and his military decorations. These included the Combat Action Badge, two Meritorious Service Medals, two Army Commendation Medals, and five Army Achievement Medals. (GE 3)

Policies

It is well established that no one has a right to a security clearance, or as here, eligibility for a position of public trust. As the Supreme Court has held, "the clearly consistent standard indicates that security and trustworthiness determinations should err, if they must, on the side of denials." *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

The adjudicative 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(a), 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 access to classified information 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, 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 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 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 J: Criminal Conduct

AG ¶ 30 details the trustworthiness concern for criminal conduct:

> Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations.

AG ¶ 31 describes conditions that could raise a trustworthiness concern and may be disqualifying. The following disqualifying condition is applicable:

> (b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.

The Government's evidence varies as to how many federal charges Applicant formally faced. The FBI rap sheet (GE 4) suggests he faced four charges, while the court documents (GE 3) indicate he was formally charged with one count of theft of government property, with no mention made of the others. While the end result is the same, I give greater weight to GE 3 and consider that there is one count involved here.

In May 2013, Applicant pled guilty to count 1, theft of government property. He was sentenced to 30 months in federal prison and three years of supervised release. He was ordered to perform 120 hours of community service. He was also ordered to pay restitution to the U.S. government in the amount of $10.2 million, in $150 monthly payments, to begin once he was released from prison. Applicant served 21 months of his 30-month jail term, from July 2013 to April 2015. His probation ended in 2018. He still owes about $8 million in restitution. AG ¶ 31(b) applies.

AG ¶ 32 sets forth the potentially applicable mitigating conditions:

> (a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and
>
> (d) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

Applicant stole over $10.2 million from the U.S Government for a significant period of time, in about 2010-2011. This was many years ago, and he is no longer on probation and has not had any other criminal offenses. But he is still responsible for millions in restitution. And the amount of money involved strongly indicates that this was a continuous course of conduct rather an isolated incident. His admissions in his plea agreement show that this was a scheme with significant planning involved, and not a simple crime of serendipity that occurred on the spur of the moment. Applicant also engaged in a pattern of stealing from his employer, the U.S. Government, while serving in the Army, including as a warrant officer, with a clearance. He was discharged under other than honorable conditions (which is a disqualifying condition under Guideline J, though I have not considered it as such here, since it was not alleged). Applicant has a good work record since he left prison and is paying his restitution regularly. But the amount of money involved and the fact that he did what he did while in a position of public trust weighs heavily against full application of either AG ¶¶ 32(a) or 32(d). Further, the fact that Applicant owes millions in restitution and also has numerous outstanding delinquent debts (as discussed below) is additional evidence that a significant risk of recurrence remains.

Guideline F: Financial Considerations

The trustworthiness concern relating to the guideline for financial considerations is set out, in relevant part, 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. . . . 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 classified or sensitive information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified or sensitive information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified or 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;
>
> (d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, expense account fraud, mortgage fraud, filing deceptive loan statements and other intentional financial breaches of trust; and
>
> (h) borrowing money or engaging in significant financial transactions to fund gambling or pay gambling debts.

Applicant engaged in a pattern of stealing U.S. government property from his employer. AG ¶ 19(d) applies. His ongoing delinquent debts establish AG ¶¶ 19(a) and 19(c).

Despite Applicant's denials, I find that it is more likely than not that he took $100,000 of ill-gotten government money out of one of his bank accounts and went to Las Vegas to try to earn $10 million in gambling winnings once he was under investigation by the FBI. Applicant discussed this event in detail in his background interview and then authenticated the interview summary without making any changes to what he supposedly said in that regard. And the information in the interview is not only very specific, it is very plausible, especially concerning what the prosecutors told him about how the court would react to his efforts to pay off his debt to the U.S. government through gambling. While what Applicant did does not here fit neatly into a specific Guideline F disqualifying condition, I find that he engaged in a "significant financial transaction" to "fund gambling" and thereby attempt to pay his overwhelming debt to the U.S. Government in this manner. AG ¶ 19(h) applies to SOR ¶ 2.b. (And even if it doesn't specifically apply, this does not alter my overall analysis) that what he did is a security concern and an act of desperation and poor judgment.

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, 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.

Applicant's debts are ongoing. He is not delinquent in his restitution payments, but they will continue for years to come, with no end in sight. He has numerous other debts that remain delinquent and ongoing. AG ¶ 20(a) does not apply.

Applicant's debts are attributable to his own actions (the restitution) or are the financial impact of his jail term, which led to delinquent debts which continue to this day. AG ¶ 20(b) does not apply.

Applicant participated in credit counseling during his bankruptcy proceeding but not since then, and his debts are insurmountable and not under control. AG ¶ 20(c) does not apply.

AG ¶ 20(d) does not fully apply to mitigate Applicant's delinquent debts or his restitution debt to the government. He and his wife made a conscious decision to

terminate their bankruptcy petition by stopping payments into the plan. There is insufficient evidence of his subsequent attempts to reestablish contact with his creditors to responsibly address the debts which remain. The exception is the debt at SOR ¶ 2.g, which is being resolved under a responsible repayment plan. Applicant gets some credit for his good-faith efforts to address his $8 million in restitution to the U.S. government, since he has documented efforts for several years to address that debt. But the amount he owes is so large that these efforts cannot have full mitigating effect.

A delinquent debt is not considered mitigated because the creditor has charged off the account. This is because the creditor's choice to charge off the debt for accounting purposes does not affect the debtor's obligations to the creditor. ISCR Case No. 09-01175 at 2 and fn. 1. (App. Bd. May 11, 2010). While some of Applicant's debts may now be charged off, he remains responsible for them, and he did not provide documentation otherwise. AG ¶ 20(e) does not apply.

Guideline E: Personal Conduct

AG ¶ 15 expresses the trustworthiness concern for personal conduct:

> 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 or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. . .

AG ¶ 16 describes conditions that could raise a trustworthiness 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 national security eligibility or trustworthiness, or award fiduciary responsibilities.

Under Guideline E, the SOR alleged that Applicant falsified his November 2022 application in checking a box that indicated that his 2018 bankruptcy debts had been "discharged" when in fact the bankruptcy was dismissed because he and his wife decided to stop making payments into the plan. Taken by itself, this statement was incorrect and false, since his debts were not discharged. However, a full and fair reading of Applicant's answer to this question must include his comment that his bankruptcy was "dismissed and done" on the next page. This explanation was more accurate, though he gave no indication elsewhere in the Financial Record section of his application that any of his

debts were delinquent. He also denied any intent to falsify his application, which puts the burden on the Government to establish that he was lying. I think it quite unlikely that Applicant truthfully detailed several aspects of his felony conviction and jail sentence on one part of his application, and deliberately sought to misrepresent the status of his bankruptcy on another part. I find that Applicant has rebutted the falsification allegation at SOR ¶ 2.b and AG ¶ 16(a) does not apply.

The remaining trustworthiness concern under Guideline E is the cross-allegation of both the Guideline J criminal conduct trustworthiness concerns and the Guideline F financial considerations trustworthiness concerns of his criminal misdeeds and his debts (SOR ¶ 3.a, cross-alleging SOR ¶¶ paragraphs 1 and 2 and all subparagraphs, in full). While Applicant's actions unquestionably establish the questionable judgment, lack of candor, dishonesty, and unwillingness to comply with rules and regulations that raise questions about his reliability, trustworthiness, and ability to protect sensitive information under the personal conduct guideline, those trustworthiness concerns are fully addressed under Guidelines J and F, above, and need not be addressed further here.

Since the Guideline E allegations are either not established or are fully addressed elsewhere, I need not address potentially applicable mitigating conditions.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance or trustworthiness determination 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(a), the ultimate determination of whether to grant eligibility for a security clearance or trustworthiness determination 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 Guidelines J, F, and E in my whole-person analysis.

In his closing remarks, Applicant made an impassioned plea that he is rehabilitated and deserves a second chance. He has completed his jail term and probation, though he still owes about $8 million of the $10 million he stole from the Government. I cannot overlook that fact. Nor can I overlook the fact that Applicant has numerous unresolved delinquent debts, charged off or otherwise. This alone is enough to deny Applicant's eligibility, even without factoring in his criminal conduct. And even though his offense is now quite dated, he once had the trust of the United States Government, and he abused it. That history as a direct bearing on Applicant's eligibility for a position of public trust. And that history is far too much to overcome, particularly when combined with his ongoing insurmountable debts - including, of course, to the government.

This case is not about punishment. It is about risk. And it is ultimately about whether it is in the national interest and in the interests of national security to entrust Applicant with access to sensitive information and once again in a position of public trust. Here, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a position of public trust. For all these reasons, I conclude that while the alleged personal conduct trustworthiness concerns are resolved favorably, Applicant did not mitigate the criminal conduct or financial considerations trustworthiness concerns are not mitigated.

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 J:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Paragraph 2, Guideline F:	AGAINST APPLICANT
Subparagraphs 2.a-2.f:	Against Applicant
Subparagraph 2.g:	For Applicant
Subparagraphs 2.h-2.j:	Against Applicant
Paragraph 3, Guideline E:	FOR APPLICANT
Subparagraphs 3.a-3.b:	For Applicant

Conclusion

In light of all of the circumstances presented, it is not clearly consistent with the interests of national security to grant Applicant eligibility for access to sensitive information. Eligibility for access to sensitive information is denied.

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Braden M. Murphy
Administrative Judge