



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



In the matter of:)
)
) ADP Case No. 23-01070
)
Applicant for Public Trust Position)

Appearances

For Government: Cassie L. Ford, Esq., Department Counsel
For Applicant: *Pro se*

05/27/2025

Decision

OLMOS, Bryan J., Administrative Judge:

Applicant failed to mitigate the trustworthiness concerns under Guideline F (Financial Considerations). Eligibility for access to a public trust position is denied.

Statement of the Case

On September 29, 2023, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing trustworthiness concerns under Guideline F, Guideline J (Criminal Conduct) and Guideline G (Alcohol Consumption). This action was taken under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Security Executive Agent Directive 4 (SEAD 4), establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017.

Applicant answered the SOR on January 31, 2024, provided supporting documents and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On April 17, 2024, Department Counsel

amended the SOR and withdrew the trustworthiness concerns under Guideline J and Guideline G.

Following an amendment to scheduling, the hearing convened on April 24, 2025. Department Counsel offered into evidence Government Exhibits (GX) 1-8, which were admitted without objection. Applicant testified and did not provide any additional evidence. The record closed at the conclusion of the hearing. DOHA received the hearing transcript (Tr.) on May 1, 2025.

Findings of Fact

In his Answer to the SOR, Applicant admitted all the SOR allegations. His admissions are incorporated into my findings of fact. After a thorough review of the pleadings and evidence submitted, I make the following additional findings of fact.

Applicant is 57 years old. He was married from 1993 through 2002, which resulted in divorce. He married his second wife in 2006, but they separated in 2019. Neither Applicant nor his second wife filed for divorce. He has one 16-year-old child, one adult-aged child and one adult-aged stepchild. He served in the Navy from 1986 through 2006 and received an honorable discharge, retiring as a Petty Officer First Class (E6). He completed a bachelor's degree in 2019. (GX 1, 3; Tr. 22-28)

Applicant began working as a mechanic at his current location in 2019. In about January 2023, his current employer took over the contract and he has continued as a full-time mechanic. He described that his public trust position is necessary to facilitate access to his work location. (GX 1, 3; Tr. 24-24, 73-75)

The SOR alleged that Applicant owed approximately \$11,810 in delinquent taxes for tax years (TYs) 2013 and 2014 (SOR ¶ 1.b) and that he failed to timely file his Federal income tax returns for TYs 2015 through 2022 (SOR ¶ 1.a). He described that his tax difficulties began in 2013 when he discovered he owed about \$8,000 in additional taxes for TY2012. He claimed that shortly after learning of the debt, he set up an auto-draft for payments of \$300 per month to the IRS. However, those payments terminated for unspecified reasons in about 2014 and were not reinitiated. (GX 3; Tr. 30-34)

Applicant timely filed his tax return for TY2013. A tax account transcript for TY2013, printed in September 2023, reflected that Applicant was assessed an additional \$8,739 in taxes and received an "accuracy-related penalty" of \$782. He recalled owing taxes during this time, but did not recall receiving an additional tax assessment or that he owed penalties. The tax account transcript showed an ongoing tax debt of \$7,983 and no history of payments beyond the initial withholding. (GX 3; Tr. 30-32, 64-66)

Applicant timely filed his tax return for TY2014. The tax account transcript for TY2014 reflected that he received penalties for not prepaying his tax debt and that he continued to owe about \$3,827 in delinquent taxes. He testified that, at an unspecified time, he tried to reinitiate a payment plan with the IRS, but was unable to afford the

requested payment of \$500 per month and no payments were sent. The account transcript reflected that there was a pending installment agreement in 2016, but no history of payments beyond the initial withholding. (GX 3; Tr. 30-33, 65-77)

After discovering that he owed delinquent taxes, Applicant “panicked” and stopped filing subsequent income tax returns. (Tr. 28) Available tax account transcripts show that, as of September 2023, he had not filed income tax returns for TYs 2015 through 2021. He confirmed at hearing that he had not filed a tax return since TY2014, including for TY2024, which would have been due in April 2025. (GX 3; Tr. 40-44, 65-75)

Applicant was aware of his tax problems since they first began in 2013. However, his understanding of the extent of missed filings and taxes owed has varied over time. In his August 2019 SCA, he disclosed tax issues limited to TY2018. During his background interview with a DOD investigator in December 2019, he disclosed tax difficulties beginning in 2012 and stated his belief that he had filed tax returns for TYs 2015 through 2017. He estimated he owed about \$20,000 in delinquent taxes. In his July 2022 response to interrogatories, he stated he was aware of his tax debt and intended on addressing it after resolving other, smaller debts. In his September 2023 response to interrogatories, he confirmed that no tax returns had been filed through TY2022. (GX 1-3)

Applicant testified that, on receiving the SOR, he reinitiated efforts to correct his tax situation, which included gathering his W-2s from past employers. In early 2025, he spoke with a tax service to assist with filing all his delinquent income tax returns. He last communicated with the service in April 2025 but had not yet filed any of his delinquent tax returns at the time of the hearing. Still, he stated his commitment to resolving his tax filings and paying his delinquent tax debt. He planned on continuing to collect his W-2s and working with the tax service he had contacted to get his returns filed soon. (Tr. 28-31, 65-68)

The SOR also alleged that Applicant had multiple delinquent accounts that were not tax related, totaling approximately \$15,374. The debts are established through Applicant’s admissions and credit reports. The evidence concerning the specific SOR allegations is summarized below. (GX 4-6, 8)

SOR ¶ 1.c (\$1,569) is a credit card account that has been placed for collection. In his Answer, Applicant stated that he had reached out to the collection agency and agreed to make payments of \$125 per month toward the debt. However, he never received an agreement in writing from the collection agency and never sent payments. At hearing, he confirmed he had not followed up with the collection agency or sent any payments toward this debt. (GX 2-6, 8; Tr. 40-44)

SOR ¶ 1.d (\$9,467) is a vehicle loan that has been charged off. Applicant co-signed for his stepson to purchase a vehicle in about 2017. In about 2019, his stepson could no longer make payments on the loan and the vehicle was voluntarily repossessed. Applicant admitted that, as a cosigner to the loan, he was responsible for the debt. However, he believes it remains his stepson’s obligation to resolve the debt with the creditor. At the

time of the hearing, Applicant had not communicated with the creditor or sent any payments toward this debt. (GX 1-6; Tr. 45-48)

SOR ¶ 1.e (\$2,098) is a credit card account that has been charged off. In his July 2022 response to interrogatories, Applicant stated that he paid this debt, and it was resolved. At hearing, he again stated his belief that the debt was paid but admitted he did not follow up with the creditor. He did not provide any supporting documents. The debt appeared on his November 2019 and March 2023 credit reports as delinquent but is not on his September 2023 or April 2025 credit reports. (GX 2-8; Tr. 47-50)

SOR ¶ 1.f (\$1,217) is a credit card account that has been transferred to a collection agency. In 2019, the collection agency obtained a financial judgment against Applicant. Applicant disputes the validity of the judgment as it was issued in a state that he had not lived in for over a decade. However, he recognized the delinquent debt from the original creditor. In his July 2022 response to interrogatories, he stated he had requested details of the debt from the creditor to send a payment. However, he testified that he never received any information and did not follow up with the creditor. (GX 2-7; Tr. 48-52, 69-70)

SOR ¶ 1.g (\$1,023) is a credit card account that was transferred to a collection agency. In his interrogatory responses, Answer, and at hearing, Applicant consistently stated that, at an unspecified time, the electronic credentials of this credit card were stolen, and unapproved charges were placed on the account. He testified that he paid the valid charges and disputed the remaining balance. His March 2023 credit report reflects that the account information was disputed, and the debt does not appear on his September 2023 and April 2025 credit reports. (GX 2-6, 8; Tr. 71-72)

Applicant testified that, while he was able to maintain consistent employment, he experienced financial stress relating to his marital separation in 2019 and, over time, while assisting various family members with their expenses. He described himself as a financial base of support for his brothers and stepson. Several times in the past, he felt like his financial plans had been “sidetracked” by trying to help family. (GX 2) He admitted that he hid the extent that he was financially assisting his family from his wife, which was a significant stressor leading to their separation. He continued to help during the COVID pandemic when several family members were out of work. (GX 1-3; Tr. 49-60)

Applicant stated that, in recent years, his financial situation has improved. In addition to his current monthly income of about \$4,500, he receives about \$760 in military retirement and another \$1,000 in monthly benefits based on a 40% disability rating in relation to his military service. He lives on his own and described not having significant personal expenditures. He stated he can pay his monthly bills and is current on a monthly child-support payment of \$500. Still, he admitted he did not keep a monthly budget since he always seemed to have unexpected expenditures, particularly in relation to his family. At the hearing, Applicant committed to reducing his family support and focusing on his own financial situation. He has not received any financial counseling. (GX 3; Tr. 27-51)

At the hearing, Applicant highlighted his 20 years of military service as a reflection that he was reliable, trustworthy, and exercised good judgment. He further noted that his April 2025 credit report showed no new delinquent accounts. (Tr. 70-76)

Policies

When evaluating an applicant's suitability for a public trust position, the administrative judge must consider the disqualifying and mitigating conditions in the AG. 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(a), the entire process is a conscientious scrutiny of several 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 applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion as to obtaining a favorable trustworthiness 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 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

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. . . .

The financial trustworthiness concern is broader than the possibility that an individual might knowingly compromise sensitive information to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting sensitive information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information or sensitive information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) Additionally, the failure to file tax returns suggests that an applicant has a problem with complying with well-established governmental rules and systems. Voluntary compliance with such rules and systems is essential for protecting classified information and sensitive information. See ISCR Case No. 01-05340 at 3 (App. Bd. Dec. 5, 2002)

The adjudicative guideline notes several conditions that could raise trustworthiness concerns under AG ¶ 19. 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's admissions and the evidence reflect that he has not filed Federal income tax returns for TYs 2015 through 2022 and owes delinquent taxes as alleged in the SOR. He also incurred multiple delinquent consumer accounts over the last several years. The above disqualifying conditions are established.

Once delinquent debts are established, an applicant has the burden of presenting evidence to refute, explain, extenuate, or mitigate the trustworthiness concerns arising from those debts. See ISCR 20-03146 at 3 (App. Bd. June 6, 2022). The fact that a debt no longer appears on a credit report does not establish any meaningful, independent

evidence as to the disposition of the debt. See ISCR Case No. 14-03612 at 3 (App. Bd. Aug. 15, 2015).

Conditions that could mitigate the financial considerations trustworthiness concerns are provided under AG ¶ 20. The following are potentially applicable:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;
- (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; 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.

At the hearing, Applicant acknowledged that he initially “panicked” regarding his tax situation. However, in the years that followed, he still had not filed his income tax returns for TYs 2015 through 2022. Instead, his failure to file tax returns has expanded since the SOR to include TYs 2023 and 2024. While these additional tax years were not alleged in the SOR, they undercut assertions of mitigation as his tax problems are recent and ongoing. Additionally, the true nature of his tax debt remains largely unknown as he has not filed a tax return for nearly a decade. His recent efforts to collect his W-2s and communicate with a tax service are positive steps toward resolving his tax problems. However, they are insufficient to mitigate the ongoing trustworthiness concerns. None of the mitigating conditions are applicable to SOR ¶¶ 1.a and 1.b.

Regarding his remaining debts, Applicant's separation in 2019 was an unforeseen event beyond his control that caused financial stress and is unlikely to recur. Mitigation under AG ¶¶ 20(a) and 20(b) must be considered. However, he also admitted that a considerable amount of his financial difficulties resulted from his decision to financially assist his family. He has continued to assist family while disregarding his own delinquent debts. While his current financial situation appears to have improved and he has not experienced any new delinquent debts, he acknowledged at hearing that he is unable to

maintain a monthly budget because he still contends with unexpected needs and expenditures relating to his family. Further, while several of his delinquent debts no longer appear on his April 2025 credit report, this alone does not establish that the debts were resolved. He has not taken reasonable action to resolve these ongoing debts or established that his debts are unlikely to recur. Mitigation under AG ¶¶ 20(a) or 20(b) is not applicable to the remaining SOR allegations.

Applicant further contends that he paid the debt associated with SOR ¶ 1.e. However, he did not provide documents reflecting any payments toward this debt and has not otherwise shown a meaningful track record of repayment to establish good-faith effort to repay overdue creditors. Mitigation under AG ¶ 20(d) is not applicable to the remaining SOR allegations.

Regarding SOR ¶ 1.g, in his interrogatory responses, Answer, and at hearing, Applicant consistently described that the credit card associated with this allegation was compromised and unapproved charges were placed on his account. He testified that he disputed this account, which is reflected in his March 2023 credit report. The charge was removed from subsequent credit reports. His actions regarding this debt are sufficient to establish mitigation under AG ¶ 20(e) for SOR ¶ 1.g.

Applicant's tax situation and financial difficulties are ongoing. He has not made sufficient progress for any of the mitigating conditions for financial considerations to be fully applicable.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a position of public trust 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 position of public trust 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 served in the Navy for 20 years and retired honorably. At the hearing, he candidly spoke about his past financial difficulties and appeared earnest in his desire to resolve his ongoing tax and financial concerns. Nonetheless, he has experienced an extended period of not meeting his tax obligations and has ongoing financial difficulties. I conclude he has not mitigated the financial considerations trustworthiness 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 F:	AGAINST APPLICANT
Subparagraphs 1.a – 1.f:	Against Applicant
Subparagraph 1.g:	For Applicant

Conclusion

In light of all of the circumstances, it is not clearly consistent with the national interest to grant Applicant a position of public trust. Eligibility for access to sensitive information is denied.

Bryan J. Olmos
Administrative Judge