



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



In the matter of: )  
)  
) ADP Case No. 13-01190  
)  
Applicant for Public Trust Position )

**Appearances**

For Government: David F. Hayes, Esq., Department Counsel  
For Applicant: *Pro se*

05/20/2014

**Decision**

ANTHONY, Joan Caton, Administrative Judge:

I have carefully reviewed the administrative file, pleadings, and exhibits in this case and conclude that Applicant failed to mitigate security concerns under the financial considerations adjudicative guideline. Eligibility for access to sensitive information is denied.

**Statement of the Case**

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on August 4, 2013. On December 6, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) alleging trustworthiness concerns under Guideline F. DOD acted 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); DOD Regulation 5200.2-R, *Personnel Security Program*, dated January 1987, as amended (Regulation); and the adjudicative guidelines (AG) effective within the DOD for SORs issued after September 1, 2006.

On December 30, 2013, Applicant answered the SOR in writing. He requested that his case be determined on the record in lieu of a hearing. The Government

compiled its File of Relevant Material (FORM) on February 25, 2014. The FORM contained documents identified as Items 1 through 8. By letter dated February 27, 2014, a copy of the FORM was forwarded to Applicant, with instructions to submit any additional information and/or objections within 30 days of receipt to the Defense Office of Hearings and Appeals (DOHA). Applicant received the file on March 10, 2014. His response to the FORM was due on April 9, 2014. He did not file any additional information or objections within the required time period. The case was assigned to me for a decision on May 14, 2014.

### **Findings of Fact**

The SOR comprises two allegations that raise trustworthiness concerns under AG F, Financial Considerations. Together, the financial delinquencies alleged total approximately \$88,626. In his answer to the SOR, Applicant admitted both allegations (SOR ¶¶ 1.a. and 1.b.). Applicant's admissions are entered as findings of fact. (Item 1; Item 4.)

Applicant is 59 years old, never married, and without children. In 1977, he earned a bachelor's degree with a major in mathematics and a minor in computer science. He is employed by a government contractor, and he seeks eligibility to occupy an automated data processing (ADP) position designated ADP-I/II/III to support a DOD contract. (Item 5; Item 6.)

The record reflects that Applicant has had recent episodes of unemployment. He was unemployed from January to March 2013, from March to April 2013, and from April to July 2013. He had employment for one week in March 2013 and one week in April 2013. Additionally, Applicant was unemployed from February 2009 until March 2011. During these episodes of unemployment, Applicant was supported by state unemployment insurance. (Item 5; Item 6.)

Since July 2013, Applicant has worked for his current employer, a government contractor, who sponsors him for a trustworthiness determination. He seeks a trustworthiness determination for the first time. (Item 5.)

Applicant has a history of financial difficulties, some of them caused by his unemployment. In 2009 and 2010, he timely filed his Federal and state income tax returns, but lacked sufficient funds to fully satisfy the taxes due. In an interview with an authorized investigator from the U.S. Office of Personnel Management (OPM), Applicant stated that he contacted the Internal Revenue Service (IRS) and made arrangements to pay his 2009 and 2010 federal income taxes in installments. He told the investigator that he satisfied his 2009 federal tax obligation in October 2011 and his 2010 federal tax obligation in November 2011. He also reported that he satisfied his state tax obligations for those years in October 2010 and September 2011. (Item 6.)

The SOR alleges at ¶ 1.a. that Applicant owes a credit card company approximately \$33,214 on an account that has been charged off, and, as of the date of the SOR, the account remains unpaid. Applicant's credit report of August 15, 2013,

shows a balance due on the account of \$33,614. His credit report of November 27, 2013, shows a balance due on the account of \$33,314. (Item 1; Item 7; Item 8.)

In his interview with the OPM investigator, Applicant stated that the account alleged at SOR ¶ 1.a. had been purchased by a successor creditor, and he had established a payment plan in July 2011 with the successor creditor. Applicant also asserted that he had been making regular monthly payments of \$100 to the successor creditor since that time. He did not provide further information on his payment plan with the successor creditor, and he did not provide documentation corroborating payments made. (Item 5; Item 6.)

The debt alleged at SOR ¶ 1.b. had been purchased by another lender from the original creditor, a bank. Applicant identified the debt as an unsecured personal loan. He stated that he had been unable to negotiate a payment plan with the creditor, who demanded payment in full. The \$55,312 debt remains unpaid. (Item 5; Item 6.)

On his e-QIP, Applicant reported that he had acquired another credit card debt in 2009, when he was unemployed. This debt was not alleged in the SOR. Applicant stated that he had satisfied the \$1,155 debt by making \$51 monthly payments, beginning in 2011. He stated that the debt was paid in full in November 2012. Applicant did not provide documentation corroborating the existence of a payment plan or monthly payments made. (Item 5.)

Applicant did not provide a personal financial statement for the record, and there is no documentation showing his income, monthly expenses, or current debt. Moreover, there is no documentation showing whether Applicant has savings or other income sources. The record does not reflect that Applicant has had financial credit counseling. (Item 6.)

## **Policies**

Positions designated as ADP I and ADP II are classified as “sensitive positions.” (See Regulation ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3.) “The standard that must be met for . . . assignment to sensitive duties is that, based on all available information, the person’s loyalty, reliability, and trustworthiness are such that . . . assigning the person to sensitive duties is clearly consistent with the interests of national security.” (See Regulation ¶ C6.1.1.1.) DOD contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination may be made. (See Regulation ¶ C8.2.1.)

When evaluating an applicant’s suitability for a public trust position, the administrative judge must consider the disqualifying and mitigating conditions in the AGs. The guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, the administrative judge must apply the guidelines in conjunction with the adjudicative factors. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the “whole-person

concept.” The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to [sensitive] information will be resolved in favor of 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.

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 in seeking to obtain 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.

Section 7 of Executive Order (EO) 10865 provides that 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 F, Financial Considerations**

The trustworthiness concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

Failure or inability 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 [sensitive] information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes conditions that could raise trustworthiness concerns. Under AG ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise trustworthiness concerns. While Applicant admitted the two allegations of financial delinquency on the SOR and claimed to have satisfied several other delinquent debts not alleged in the SOR, he provided no documentation to corroborate payment or to establish that the alleged debts were not his.

Applicant’s history of delinquent debt is documented in his credit reports, his e-QIP, his interview with the OPM investigator, and his SOR response. Applicant accumulated considerable delinquent debt and was unable to pay or satisfy his financial obligations. The evidence is sufficient to raise financial considerations disqualifying conditions identified at AG ¶¶ 19(a) and 19(c).

The guideline also includes examples of conditions that could mitigate trustworthiness concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where “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 trustworthiness, or good judgment.” Applicant’s current financial delinquencies began in about 2009, when he became unemployed. While his financially delinquent behavior began several years ago, it continues unresolved at the present time, is likely to recur, and casts doubt on his current reliability, trustworthiness, and good judgment. Accordingly, I conclude that AG ¶ 20 (a) does not apply to the facts of Applicant’s case.

Under AG ¶ 20(b), mitigation can occur where “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), and the individual acted responsibly under the circumstances.” Applicant’s admitted financial delinquencies began in 2009 and continue to the present. While Applicant was unemployed for several months in 2013 and for more than two years from 2009 to 2011, he provided no documentation to corroborate his statements that he had attempted to pay or settle the two debts alleged in the SOR. Without corroborating documentation, it is not possible to conclude that he acted responsibly in attempting to resolve his delinquent debts. Accordingly, I find that AG ¶ 20(b) applies only in part as a mitigating condition in this case.

Evidence that “the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control” is potentially mitigating under AG ¶ 20(c). Similarly, AG ¶ 20(d) applies where the evidence shows “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” Applicant failed to provide documentation to corroborate his statements that he had paid debts not alleged in the SOR and was paying delinquent debts alleged in the SOR. The record does not reflect that he has received financial counseling. Moreover, the record does not include information on Applicant’s income and expenses. I conclude that AG ¶¶ 20(c) and 20(d) do not apply to the facts of Applicant’s case. AG ¶¶ 20 (e) and 20 (f) are not raised by the facts of this case.

## **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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(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. In 2009, Applicant became unemployed, a condition that continued for two years. He experienced several months of unemployment in the first six months of 2013. He has worked for his current employer since July 2013. Because Applicant failed to provide documentation to corroborate payment or the existence of payment plans, it is not clear from the record that he is addressing his delinquent debts. Applicant has failed to demonstrate that his financial problems will not continue to be a trustworthiness concern in the future.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a public trust position. For all these reasons, I conclude Applicant failed to mitigate the trustworthiness concerns arising from his financial delinquencies.

## **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.b.:	Against Applicant

## **Conclusion**

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

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Joan Caton Anthony  
Administrative Judge