



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



In the matter of: )  
)  
) ADP Case No. 14-02894  
)  
)  
Applicant for Public Trust Position )

**Appearances**

For Government: John Bayard Glendon, Esquire, Department Counsel  
For Applicant: *Pro se*

02/03/2016

**Decision**

HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings and exhibits, I conclude that Applicant's eligibility to occupy a public trust position is granted.

**Statement of the Case**

Applicant completed and certified an Electronic Questionnaires for Investigation Processing (SF 86) on August 7, 2013. The Department of Defense (DOD) Consolidated Adjudications Facility, (CAF) issued a Statement of Reasons (SOR) detailing the trustworthiness concerns under Guideline F, financial considerations on August 1, 2014. The action was taken under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *Adjudicative Guidelines For Determining Eligibility for Access to Classified Information* (AG) implemented on September 1, 2006.

Applicant received the SOR. He submitted a notarized, written response to the SOR allegations dated September 8, 2014, and he requested a decision on the written record in lieu of a hearing.

Department Counsel prepared a file of relevant material (FORM) and mailed Applicant a complete copy on June 15, 2015. Applicant received the FORM on August 30, 2015. He had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. He submitted an undated response. DOHA assigned this case to me on January 27, 2016. The Government submitted six exhibits, which have been marked as Items 1-6 and admitted into the record. Applicant's response to the SOR has been marked and admitted as Item 2, and the SOR has been marked as Item 1. His written response to the FORM is admitted into the record as Applicant Exhibit A (AE A).

### **Procedural Ruling**

In his response to the FORM, Applicant objected to the inclusion in the record of Item 5, a credit report dated August 21, 2013. He requested that this credit report be removed and replaced with a 2015 credit report. Applicant's request to remove Item 5 from the record is denied. This document provides information about his past finances and unpaid debts. The record contains two additional credit reports, which are dated May 2014 (submitted by Applicant) and May 2015 (submitted by the Government). These two credit reports provide additional information about Applicant's current finances.<sup>1</sup>

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted all the factual allegations in the SOR, with explanations. He also provided additional information to support his request for eligibility for a public trust position.

Applicant, who is 53 years old, works for DOD contractor as a benefits specialist. He worked in a similar position from December 1996 until May 2012, when he was laid off from his job. He was unemployed from June 2012 until July 2013, when he began his current employment.<sup>2</sup>

Applicant graduated from college with a bachelor's degree in June 2007. He is single. He has lived in his current residence for 25 years. He never served in the military. The record lacks any evidence of criminal conduct, drug use, gambling, or alcohol abuse.<sup>3</sup>

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<sup>1</sup>Item 3; Item 6; AE A.

<sup>2</sup>Item 4.

<sup>3</sup>Item 4.

Applicant provided a copy of his earnings statements for March 2014 with his answers to interrogatories. He has not provided more recent earnings statements. Two years ago, he earned \$2,615 a month in gross income, and he received \$1,904 a month in net income after deductions for taxes, Social Security, and insurance. He also provided a list of his monthly expenses, which included rent of approximately \$500, utilities of \$300, clothing of \$250, food of \$100, miscellaneous expenses of \$150, tax payment of \$200, and student loan payment of \$270, now \$304. His monthly expenses in 2014 totaled approximately \$1,800, leaving \$100 a month to pay other debts.<sup>4</sup>

The SOR identified eight debts totaling \$50,000. The largest debts (allegation 1.a (\$23,074) and allegation 1.b (\$22,879)) related to his student loans. The three credit reports of record indicated that Applicant obtained many small student loans while in college and that these loans were consolidated into two larger loans. The May 2015 credit report reflected that the two large loans have been combined into one loan of nearly \$46,000. The May 2015 credit report also indicated that the debt is being paid at the rate of \$304 a month through wage garnishment<sup>5</sup> even though it is still listed as past due.<sup>6</sup>

When he completed his e-QIP, Applicant acknowledged that he had not paid income taxes owed for the tax year 2012 in the amount of \$250,000 to his state of residence. When he met with the Office of Personnel Management (OPM) investigator on September 11, 2013, he clarified this answer.<sup>7</sup> He actually owed \$2,500 to the Internal Revenue Service (IRS) on his federal income taxes, not his state income taxes. He also advised that when the IRS contacted him about his taxes, he agreed to a \$100 a month payment beginning in October 2013.<sup>8</sup> Applicant volunteered that he owed \$1,900 for unpaid federal income taxes for the tax year 2010. He paid the amount through a monthly payment plan. His IRS tax transcript for the tax year 2011 reflected that he received a tax refund for that year. None of the credit reports show wage garnishment or a tax lien filed by the IRS or the state.<sup>9</sup>

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<sup>4</sup>Item 3.

<sup>5</sup>The record lacks any evidence that the creditor obtained a judgment for this debt. Before an involuntary court-ordered garnishment attaches to wages, a creditor must obtain a judgment. Applicant advised that he was paying this debt after an agreement was made. I assume that Applicant then agreed to or requested the direct withdrawal of funds from his pay, a voluntary garnishment.

<sup>6</sup>Item 1; Item 3; Item 5; Item 6.

<sup>7</sup>Applicant verified the summary of his personal subject interview in his answers to interrogatories dated May 5, 2014 as required by DoD Directive 5220.6, enclosure 2, ¶ E3.1.20.

<sup>8</sup>The summary of the personal subject interview on September 11, 2013 identifies the date his IRS payment would begin as 10/14. This either means the payment begins on October 14, 2013 or in October 2014. Given the interview was in 2013 and Applicant verified the summary on May 5, 2014, I find that the 10/14 reference means October 14, 2013. Item 3.

<sup>9</sup>Item 3 - Item 6.

The remaining five SOR debts total \$2,045 (SOR allegations 1.c through 1.g). These debts are listed on the 2013 credit report. The \$206 debt in allegation 1.g related to a telephone bill. When he met with the OPM investigator in 2014, Applicant advised that this debt concerned service disconnection fees and that he had paid the debt. This debt is not listed on the 2014 or 2015 credit reports. Of the remaining four debts, only the \$493 debt in allegation 1.e and the \$50 debt in allegation 1.f are listed on the May 2015 credit report. In his answers to interrogatories, Applicant indicated that he was working with a financial representative, but he did not provide any documentation to verify this statement or the results of any advice he received. The 2013 credit report showed that Applicant paid two collection debts in the past. The 2015 credit report indicated that Applicant pays his current accounts.<sup>10</sup>

### **Policies**

Positions designated as ADP I and ADP II are classified as “sensitive positions.” 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 national interests. The Deputy Under Secretary of Defense (Counterintelligence and Security) Memorandum, dated November 19, 2004, indicates trustworthiness adjudications will apply to cases forwarded to DOHA by the Defense Security Service and Office of Personnel Management. Department of Defense contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination may be made.

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 over-arching 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. 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 to obtain a favorable trustworthiness decision.

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<sup>10</sup>Item 3; Item 5; Item 6.

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 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.

AG ¶ 19 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

- (a) inability or unwillingness to satisfy debts; and
  
- (c) a history of not meeting financial obligations.

Applicant's past-due student loans are a significant debt. He also owed additional income taxes for the tax year 2011, which he could not pay when due. At the time the SOR was issued, most of the debts had not been resolved. These two disqualifying conditions apply.

The financial considerations guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 20(a) through ¶ 20(f), and the following are potentially applicable:

- (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), and the individual acted responsibly under the circumstances; and

(c) 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.

Applicant was unemployed for one year, a circumstance beyond his control, which impacted his ability to pay his student loans, in particular, and his other debts. Applicant worked with the IRS to resolve his tax debt, but took no immediate action on his student loans. AG ¶ 20(b) is partially applicable.

While Applicant did not provide supplemental information to support his statement that he met with a financial representative, his statement is credible because he has been forthright throughout the investigation process about his financial problems. Likewise, since he provided the information about his 2012 tax debts, his statement that he and the IRS reached an agreement about paying his tax debt is credited, as is his inclusion of this payment in his monthly expenses. He is paying his student loans through a monthly garnishment of his salary as indicated by the 2015 credit report. He pays his current bills and lives within his monthly income. AG ¶ 20(c) applies.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a public trust position by considering the totality of the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(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) 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. The decision to grant or deny a trustworthiness determination requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a trustworthiness concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a public trust position should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate trustworthiness concern.

In assessing whether an Applicant has established mitigation under Guideline F, the Appeal Board provided the following guidance in ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008):

In evaluating Guideline F cases, the Board has previously noted that the concept of “meaningful track record” necessarily includes evidence of actual debt reduction through payment of debts.” See, e.g., ISCR Case No. 05-01920 at 5 (App. Bd. Mar. 1, 2007). However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. See, e.g., ISCR Case No. 02-25499 at 2 (App. Bd. Jun. 5, 2006). All that is required is that an applicant demonstrate that he has “. . . established a plan to resolve his financial problems and taken significant actions to implement that plan.” See, e.g., ISCR Case No. 04-09684 at 2 (App. Bd. Jul. 6, 2006). The Judge can reasonably consider the entirety of an applicant’s financial situation and his actions in evaluating the extent to which that applicant’s plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) (“Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.”) There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. See, e.g., ISCR Case No. 06-25584 at 4 (App. Bd. Apr. 4, 2008). Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

The evidence in support of granting a trustworthiness determination to Applicant under the whole-person concept is more substantial than the evidence in support of denial. In reaching this conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. The background investigation and the e-QIP reflect that Applicant lives a quiet life. He attended college to improve himself. He has lived in the same place for over 25 years, and he worked one job for more than 15 years before he was laid off. The investigation did not reveal a history of criminal conduct, drug abuse, gambling, or alcohol abuse. These factors reflect a stable individual. Applicant pays his customary living expenses, and the record lacks any evidence that he lives extravagantly.

Applicant lost his job in 2012, and it took him one year to find another job. This loss of regular income impacted his ability to pay all his monthly expenses and bills. Throughout the investigation process, Applicant has provided negative information about his finances. He listed a 2012 tax debt on his e-QIP, and he told the OPM investigator that he did not pay all his taxes for the tax year 2010 on time. Rather, he resolved this debt through a payment plan. The credit reports also showed that he paid two other small collection debts. Thus, his statements that he is paying his tax debt and his education loans through payment plans support his access to sensitive information. These two payments constitute a resolution of more than 95% of the SOR debt.

Applicant has established a track record for debt payment, and he has shown that he has a plan to resolve most of his SOR debt. He also paid one small debt of \$206. Based on the 2015 credit report, he has not resolved two small debts totaling \$543. A review of the entire record reveals that he has taken affirmative action to pay or resolve most of the delinquent debts raising trustworthiness concerns. (See AG ¶ 2(a)(6).) The *de minimus* amount of unresolved debt cannot be a source of improper pressure or duress. Of course, the issue is not simply whether all his debts are paid: it is whether his financial circumstances raise concerns about his fitness to hold a public trust position. While some debts remain unpaid, they are insufficient to raise trustworthiness concerns. (See AG ¶ 2(a)(1).)

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a public trust position. For all these reasons, I conclude Applicant mitigated the trustworthiness concerns arising from his finances under Guideline F.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with interest of national security to grant Applicant eligibility for a public trust position. Eligibility for access to sensitive information is granted.

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MARY E. HENRY  
Administrative Judge