



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



In the matter of:	)	
	)	
	)	ADP Case No. 14-02976
	)	
Applicant for Public Trust Position	)	

**Appearances**

For Government: Stephanie C. Hess, Esquire, Department Counsel  
For Applicant: *Pro se*

06/24/2015

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**Decision**

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HEINY, Claude R., Administrative Judge:

Applicant has an unpaid judgment and nine collection accounts totaling more than \$11,000. The delinquent accounts have not been resolved. Applicant failed to rebut or mitigate the financial considerations trustworthiness concerns. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to sensitive information and eligibility for a public trust position is denied.

**Statement of the Case**

On October 8, 2014, the DoD issued an SOR detailing trustworthiness concerns. DoD adjudicators could not find that it is clearly consistent with the national interest to grant or continue Applicant a public trust position.

On November 14, 2014, Applicant answered the SOR and elected to have the matter decided without a hearing. Department Counsel submitted the Government's case in a File of Relevant Material (FORM), dated March 3, 2015. The FORM contained four attachments. On April 14, 2015, Applicant received a copy of the FORM, along with

notice of his opportunity to file objections and submit material to refute, extenuate, or mitigate the potentially disqualifying conditions. No response was received from Applicant by the due date. On June 10, 2015, I was assigned the case.

### **Findings of Fact**

Applicant admits all the SOR debts. Applicant's admissions to the SOR allegations are incorporated herein. After a thorough review of the record, pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is a 29-year-old referral specialist who has been working for a defense contractor since December 2013, and is seeking to maintain a public trust position. Prior to obtaining his current job, Applicant was unemployed from August 2013 until December 2013. From July 2004 until January 2008, he served as a personnel specialist in the U.S. Navy.

On Applicant's January 2014 Electronic Questionnaires for Investigations Processing (e-QIP), he indicated he had been evicted from his apartment in August 2013, when his roommate moved. His roommate had told Applicant that he had found someone to take his place on the lease, but that person never appeared. A \$1,415 collection account (SOR 1.b) is owed on the apartment.

Also on his e-QIP, Applicant listed a \$6,000 debt for a 2003 automobile, which became delinquent when he left the Navy. He indicated he had made bi-monthly payments on the debt until it was paid in full.

The SOR lists a \$6,830 judgment (SOR 1.a). Applicant asserts he is making \$122 monthly payments on this debt. He presented a letter from a collection firm indicating that as of November 2014, he had tendered a \$122.50 post-dated check and \$5,155 was yet owed on the debt. No additional documents were received showing any additional payment on this debt or on any other obligation listed in the SOR. Nor was there documentation that the post-dated check had been honored.

Applicant has four medical collection accounts totaling \$2,776, which he intends to pay after the judgment has been paid. He is unsure about the medical debts. He asserted a \$201 collection account (SOR 1.g) was paid by garnishment, but provided no documentation concerning the debt or payment. SOR 1.i lists a \$70 video rental debt. Applicant claims he never rented the video and never lived in the state where it was rented. The company is no longer in business.

### **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.) The Deputy Under Secretary of Defense (Counterintelligence and Security) Memorandum, dated November 19, 2004, indicates trustworthiness adjudications will apply to cases forwarded to Defense Office of Hearings and Appeals (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. (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 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(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 sensitive information 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. 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

Adjudicative Guideline (AG) ¶ 18 articulates the trustworthiness concerns relating to financial problems:

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 classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding sensitive information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a public trust position. An applicant is not required to be debt free, but is required to manage his finances so as to meet his financial obligations.

The evidence supports a conclusion that Applicant has a history of financial problems. Applicant has a judgment and nine other collection accounts totaling approximately \$11,000. Disqualifying Conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts" and AG ¶19(c), "a history of not meeting financial obligations," apply.

Five Financial Considerations Mitigating Conditions under AG ¶¶ 20(a) – (e) 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), and the individual acted responsibly under the circumstances;

(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;

(d) the individual initiated 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 meets none of the mitigating factors for financial considerations. His financial difficulties are both recent and multiple. He produced limited evidence of circumstances beyond his control. He has been full-time employed since December 2013. He provided no documentation showing any payments on any of his debts. Even the five smaller debts of less than \$500 each remain unpaid. He has not acted responsibly in addressing his debts. He provided no evidence he has received credit or financial counseling. He has not demonstrated that his financial problems are under control or that he has a plan to bring them under control. There is no showing of a good-faith effort to satisfy the debts.

AG ¶ 20(a) does not apply because the delinquent debts remain unpaid and because they remain unpaid, they are considered recent. There is nothing in the record supporting that the debts were incurred under unusual conditions not likely to be repeated. Applicant has failed to act timely or responsibly under the circumstances, which casts doubt on his current reliability, trustworthiness, and good judgment.

AG ¶ 20(b) does not apply. Applicant has been fully employed since December 2013. He did have a period of unemployment before obtaining his current job, which is an event beyond his control. Four of the debts were medical accounts, but Applicant provided no documentation concerning the nature of the medical treatment. I am unable to find from the record that the medical treatment was an event beyond his control.

The mitigating condition listed in AG ¶ 20(c) does not apply. There is no clear showing that his financial obligations are being addressed. The mitigating condition listed in AG ¶ 20(d) does not apply because Applicant has failed to document any payments on any of the delinquent accounts. The mitigating condition listed in AG ¶ 20(e) does not apply to the majority of the debt because Applicant has not provided documented proof to substantiate the basis of any disputed account. However, it does apply to the video rental store debt. I find for him as to that debt. He admitted all of the SOR debts.

## 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. The only evidence of payment on any of the delinquent accounts is a post-dated check received by the law firm collecting for the judgment (SOR 1.a). There is no documentation showing the check was honored. Applicant has failed to make payments on those loans or on his other delinquent SOR debts.

In requesting an administrative determination, Applicant chose to rely on the written record. In so doing, however, he failed to submit sufficient information or evidence to supplement the record with relevant and material facts regarding his circumstances and facts which would mitigate the financial considerations security concerns. He failed to provide documentation regarding his past efforts to address his delinquent debt. He failed to provide such information and failed to mitigate the financial considerations security concerns.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of true reform and rehabilitation necessary to justify the award of a position of trust. The awarding of a public trust position is not a once in a lifetime occurrence, but is based on applying the factors, both disqualifying and mitigating, to the evidence presented. Under Applicant's current circumstances, a clearance is not warranted. In the future, if Applicant has paid his delinquent obligations, established compliance with a repayment plan, or otherwise substantially addressed his past-due obligations, he may well demonstrate persuasive evidence of his security worthiness.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. 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 did not mitigate 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, Financial Considerations: **AGAINST APPLICANT**

Subparagraphs 1.a – 1.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	Against Applicant

### **Conclusion**

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

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CLAUDE R. HEINY II  
Administrative Judge