



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



In the matter of: )  
)  
) ADP Case No. 14-01615  
)  
Applicant for Public Trust Position )  
)

**Appearances**

For Government: Caroline E. Heintzelman, Esquire, Department Counsel  
For Applicant: *Pro se*

02/19/2016

**Decision**

DAM, Shari, Administrative Judge:

Applicant has delinquent debts that began accumulating in 2008 and remain unresolved. He also has a history of failing to timely file federal and state income tax returns for at least seven years. He failed to mitigate the trustworthiness concerns raised under Guideline F, Financial Considerations. His eligibility for a public trust position is denied.

**Statement of the Case**

In November 2013 Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On December 4, 2014, the Department of Defense (DoD) issued Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns under Guideline F, Financial Considerations. The action was taken under 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* (January 1987), as amended (Regulation); and the adjudicative guidelines (AG) effective within the DoD for SORs issued after September 1, 2006.

Applicant submitted an undated answer (AR) to the SOR and requested a hearing before an administrative judge. (Tr. 6.) On October 8, 2015, the Defense Office of Hearings and Appeals (DOHA) assigned the case to me. On October 23, 2015, DOHA issued a Notice of Hearing setting the case for November 10, 2015. The case was heard as scheduled. Department Counsel offered Government Exhibits (GE) 1 through 4 into evidence without objection. Applicant testified and offered Applicant Exhibits (AE) 1 to 6 into evidence without objection. All exhibits were admitted. The record remained open until December 18, 2015, to give Applicant an opportunity to submit additional evidence. DOHA received the hearing transcript (Tr.) on November 19, 2015. He timely submitted exhibits, which I marked as AE 7 through 12, and included his transmittal email. They were admitted into evidence without objection from Department Counsel.

### **Findings of Fact**

The SOR contained eight allegations, six related to delinquent debts and two pertained to unfiled federal and state income tax returns. Applicant admitted the allegations, referenced in SOR ¶¶ 1.a through 1.e, and denied those referenced in SOR ¶ 1.f. He admitted in part and denied in part those allegations regarding unfiled tax returns referenced in SOR ¶¶ 1.f. and 1.g. (AR) His admissions are incorporated into these findings of facts.

Applicant is 34 years old and separated from his wife since 2007, when he left the country in which his wife was born. He has a 12-year-old daughter from the marriage. His spouse and daughter reside in the country in which she was born. He has limited contact with them. He enlisted in the U.S. Navy in 1997 and started his naval career in 2001, after graduating from high school. He was on the delayed entry program. He received an honorable discharge in December 2007, at the paygrade of E-6. He held a top secret clearance and sensitive compartmented information (SCI) access while in the military. (Tr. 17-18.) He received four Navy and Marine Corps Achievement Medals. (Tr. 22.)

After being discharged, Applicant was unable to find employment, so in February 2008 he started a computer support business. Because the economy was in a depressed state, he had difficulty making the business profitable or obtaining clients. (Tr. 25.) In 2011 he closed the business and began seeking employment because the economy was getting better. He found a position and worked there for few months. In November 2013 he began a position with his current employer. (Tr. 20-21.) He stated that he is performing well in his job. He started at an entry level position and is now a lead manager in his division. (Tr. 26.)

Applicant attributed his financial problems to the long period of time he was unemployed or underemployed after being discharged from the Navy in late 2007 and until November 2013 when he started his job. Applicant stated that since obtaining employment, he resolved a \$3,247 judgment, paid a state tax lien, and other debts. (AE 2, 3.) He hired a credit company in June 2014 to assist in repairing his credit and

establish a plan to manage his debts. He paid the company \$1,260 for that help. In June 2015 he terminated the company's services and began managing his debts. (AE 3, 4.)

Based on credit bureau reports (CBR), from November 2013 and July 2015, the SOR alleged six delinquent debts totaling \$6,375. They accumulated between 2008 and 2013. (GE 3, 4.) The status of each delinquent debt is as follows:

1. The 2012 judgment for \$1,470 alleged in SOR ¶ 1.a is unresolved. Applicant intends to pay this after he resolves other debts. (Tr. 35.) He previously made a few payments on the judgment. (Tr. 38.)
2. The \$1,537 state tax lien alleged in SOR ¶ 1.b was paid and released in September 2014. (GE 2 at 2.) It was for unpaid taxes for 2004, 2005, and 2006. (Tr. 27.)
3. The \$2,100 checking account debt alleged in SOR ¶ 1.c is unresolved. Applicant said he is disputing it because of the numerous fees included in the balance. (Tr. 39-40.)
4. The \$712 cell phone debt alleged in SOR ¶ 1.d is unresolved. Applicant said he is disputing the account because he terminated the service and does not owe that balance. (Tr. 41.)
5. The \$396 cell phone debt alleged in SOR ¶ 1.e is unresolved. He is disputing the debt because it includes additional fees. (Tr. 43.)
6. The \$160 car insurance debt alleged in SOR ¶ 1.f is unresolved. Applicant said he disputed it with the insurance company. He said he still has the same insurance company. (Tr. 44.)

The SOR also alleged that Applicant failed to file federal and state income tax returns and failed to pay taxes for specific years.

7. SOR ¶ 1.g alleged that Applicant failed to file federal tax returns for 2004 through 2007, and 2011, and failed to pay taxes for those years.

8. SOR ¶ 1.h alleged that Applicant failed to file state tax returns for 2004 through 2007, and 2011, and failed to pay taxes for those years.

Applicant filed his federal and state returns for 2004, 2005, and 2006 late. He subsequently paid the state lien mentioned above with a tax refund he received from the federal government. (Tr. 28.)

Applicant testified that he did not remember if he filed federal and state income tax returns for 2007, 2008, 2009, and 2010. He did not know if he owed money for those years. In 2011, 2013, and 2014, he tried unsuccessfully to find an accountant to assist

him with those filings. He was unsure if he ultimately filed returns for 2011.<sup>1</sup> He said he filed federal and state returns for 2012. He stated that one reason he did not file the returns was because he was under the threshold income level requiring tax returns. (Tr. 28-32, 45.) In addition to that, he was concerned that he would owe money he could not afford once he filed. He said he called several accounting firms over the years for help but did not get return calls. (Tr. 51-53.)

Subsequent to this hearing, in December 2015, Applicant filed federal income tax returns for 2009, 2010, 2011, and 2013. A summary of the returns is as follows:

In 2009 Applicant's adjusted gross income (AGI) was \$7,492, and he owed \$282 for federal taxes.

In 2010 his AGI was \$1,483, and he owed \$21 for federal taxes.

In 2011 his AGI was \$5,638, and he owed \$315 for federal taxes.

In 2013 his (AGI) was \$4,329, and he was owed a tax refund of \$939. (AE 7, 8, 9, 10, and 11.)

Applicant did not provide evidence that he filed state returns for 2009, 2010, 2011, and 2013. There is no evidence that he filed federal or state tax returns for 2007.

Applicant submitted a budget. He said his annual salary is about \$50,000. (Tr. 22.) His monthly income is \$2,400 and his expenses are \$2,390, leaving little money available for repaying additional debts.

Applicant testified candidly and remorsefully. He submitted a letter of recommendation from his supervisor. The supervisor works with Applicant on a daily basis and expressed his support for Applicant. He complimented Applicant's integrity and competency. (AE 5.)

## **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 the DoD and DOHA by the Defense

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<sup>1</sup> The SOR did not allege security concerns related to Applicant's failure to file federal and state income tax returns for 2008, 2009, 2010, and 2013. Hence, those facts will not be considered in an analysis of disqualifying conditions, but may be considered in analyzing mitigating conditions and the whole-person concept.

Security Service and Office of Personnel Management. 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 Adjudicative Guidelines (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 AG ¶ 2(a), describing 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 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

According to 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 the applicant or proven by Department Counsel . . . ." The applicant has the ultimate burden of persuasion as to obtaining a favorable trustworthiness decision.

A person who applies for access to sensitive information seeks to enter 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 concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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 three conditions that could raise trustworthiness concerns and may be disqualifying in this case:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

Applicant has unpaid delinquent debts that accumulated between 2008 and 2013, which he has been unable or unwilling to satisfy. He failed to timely file federal and state tax returns for 2004 through 2007, and 2011. The evidence is sufficient to raise those disqualifying conditions.

The guideline includes five conditions in AG ¶ 20 that could mitigate trustworthiness concerns arising from Applicant's financial difficulties:

- (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's delinquent debts have been ongoing since 2008. Although he is making progress in resolving debts, five of the six SOR-listed debts remain unaddressed. The evidence does not support the application of AG ¶ 20(a) as to the debts. Applicant's history of financial problems also includes multiple years, 2004 through 2007, 2009 through 2011, and 2013 for which he did not timely file federal or state income tax returns, which resulted in a tax lien for unpaid taxes for 2004, 2005, and 2006. In December 2015 he filed his 2009, 2010, 2011, and 2013 federal tax returns, all of which were filed late. There is no evidence that he filed state income tax returns for 2007, 2009 through 2011, and 2013. His tax issues have been ongoing for over seven years. AG ¶ 20(a) does not apply.

Applicant stated that he could not afford to pay delinquent debts as they were accumulating because he was unemployed or underemployed for several years after his discharge from the Navy. Those periods of unemployment and underemployment may have been circumstances beyond his control. He did not provide evidence that he attempted to responsibly manage his debts as they were accumulating. While a lack of money may have affected his ability to pay debts, it is not a credible reason for not timely filing tax returns for 2004 through 2007, 2009 through 2011, and 2013. Applicant has a responsibility to comply with his legal financial obligations, and could have contacted the taxing bodies to establish a minimal payment plan, rather than ignoring the issue. AG ¶ 20(b) does not provide mitigation for the security concerns raised.

Applicant stated that in June 2014 he hired a company to assist him in resolving delinquent debts. He provided proof that with their help he resolved a state tax lien and paid an outstanding judgment not alleged in the SOR. He submitted a written budget which leaves him little excess money to manage additional expenses or debts. It is not clear that his financial problems are coming under control; thus, AG ¶ 20(c) has limited application.

As of December 2015, Applicant provided sufficient proof that he filed all outstanding federal income tax returns, except for tax year 2007. Due to lateness of the filings, his actions do not constitute a good-faith effort to resolve those issues, and do not establish mitigation under AG ¶ 20(d). However, he did resolve the state tax lien in 2014, which demonstrates some good faith and establishes mitigation under AG ¶ 20(d).

Although Applicant stated that he was disputing several debts, he did not provide written evidence verifying those assertions or documenting a successful outcome of the dispute. In several instances, he did not dispute the debt, but only the amount. AG ¶ 20(e) does not apply.

## 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.

According to AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a 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 facts and circumstances surrounding this case. Applicant is an intelligent, articulate 34-year-old man, who honorably served in the military for six years, and held a security clearance during his service. He has successfully worked for a defense contractor since 2013. His current employer provided favorable comments on his performance. After leaving the military in December 2007, he experienced debt problems as the result of being unemployed and underemployed for several years. Since obtaining employment, he is slowly addressing unpaid delinquent debts. While the amount of the delinquent debt is not substantial at this time, about \$4,800, Applicant's history of not managing his tax obligations is significant and is raising questions about his reliability and judgment. At this time, he has not established a sufficient track record of responsibly handling his financial affairs. Overall, the record evidence leaves me with questions as to Applicant's eligibility and suitability for a public trust position. For these reasons, I conclude Applicant did not sufficiently mitigate the trustworthiness concerns arising from his delinquent debts and the late filing of tax returns.

## 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

Subparagraph 1.a:

Against Applicant

Subparagraph 1.b:  
Subparagraphs 1.c. - 1.h:

For Applicant  
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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SHARI DAM  
Administrative Judge