



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



In the matter of: )  
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XXXXXXXXXXXXXXXXX ) ADP Case No. 14-02581  
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 )  
Applicant for Public Trust Position )

**Appearances**

For Government: Braden M. Murphy, Esquire, Department Counsel  
For Applicant: *Pro se*

03/31/2015

**Decision**

HOWE, Philip S., Administrative Judge:

On January 20, 2014, Applicant submitted his electronic version of the Security Clearance Application (e-QIP). On July 30, 2014, the Department of Defense issued to Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns under Guideline F. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program*, dated Jan. 1987, as amended (Regulation); and the adjudicative guidelines (AG) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing on August 20, 2014. Applicant admitted the allegations in the SOR. Applicant requested his case be decided on the written record in lieu of a hearing.

On December 3, 2014, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) was provided to the Applicant on December 14, 2014. He was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the file on December 15, 2014. Applicant did not file a Response to the FORM within the 30 day time allowed that would have expired on January 14, 2015. I received the case assignment on March 12, 2015. Based upon a review of the complete case file, pleadings, and exhibits, eligibility for access to sensitive information is denied.

### **Findings of Fact**

Applicant admitted all allegations in Subparagraphs 1.a to 1.f. (Items 1-6)

Applicant is 40 years old. He was married and is now divorced. He has no children. He was born in Vietnam and came to the United States in 1974. He became a naturalized U.S. citizen in 1995. He works for a defense contractor. He obtained a masters' in business administration in 2009. (Items 1-6)

Applicant could afford foreign travel in 2009, 2011, and 2013 for personal vacations. He traveled to countries in Europe in 2009 and 2011. In 2011 he also traveled to the Middle East. In 2013 he traveled in Asia. During that time he fell into arrearages on his \$2,300 monthly mortgage payment. He also incurred three small debts totaling \$479. (Items 1-6)

Applicant owed a collector \$248 and has not resolved this debt with any payment (Subparagraph 1.a). Applicant's Answer claims he was unaware of it until the government investigator brought it to his attention. This debt is for water service from his municipality and dates from 2011. (Items 1-6)

Applicant also owes the same collection agent \$115 on another account (Subparagraph 1.b) dating from 2013. This debt also is for water service. This debt is not resolved. (Items 1-6)

Applicant owes \$116 on a debt owed to a gas company from 2013 (Subparagraph 1.c). This debt is not resolved. (Items 1-6)

Applicant defaulted on a mortgage on his residence in 2010 (Subparagraph 1.d). Foreclosure proceedings started in 2012. The past due balance on the mortgage was about \$30,000 on an initial mortgage amount of \$470,000. This debt has not been resolved. (Items 1-6)

Applicant filed a Chapter 13 bankruptcy on September 9, 2010 (Subparagraph 1.f). It was dismissed by the U.S. Bankruptcy Court on October 19, 2010. The only debt listed was Applicant's mortgage. (Items 1-9)

Applicant then filed a Chapter 13 bankruptcy again on January 28, 2011 (Subparagraph 1.e). This action was converted to a Chapter 7 bankruptcy on March 8, 2011. It was dismissed by the U.S. Bankruptcy Court on July 13, 2011. The mortgage delinquency remains unresolved. (Items 1-9)

Applicant completed the required credit counseling under the U.S. Bankruptcy Code on September 8, 2010. He does not have any further financial counseling. (Items 7-9)

Applicant claimed to be unemployed from September 2008 to October 2009 while attending school for his masters' degree. He was also unemployed from October 2011 to February 2012 while searching for a new job. (Item 6)

Applicant did not submit any documentation showing that he has participated in additional credit counseling or budget education. He provided no evidence concerning the quality of his job performance. He submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

### **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 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 over-arching adjudicative goal is a fair, impartial and common sense 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.

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.

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

The guideline at AG ¶ 19 contains nine disqualifying conditions that could raise trustworthiness concerns. From these nine conditions, two conditions are applicable to the facts found in this case:

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

From 2011 to the present, Applicant accumulated four delinquent debts, totaling \$30,479, that remain unpaid or unresolved. Applicant has not resolved three small utility debts for his house and the mortgage delinquency on the same home. AG ¶ 19 (a) and (c) apply.

The guideline in AG ¶ 20 contains six conditions that could mitigate trustworthiness concerns arising from financial difficulties. No mitigating condition has any applicability.

- (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;

(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

(f) the affluence resulted from a legal source of income.

Applicant's failure to repay his debts is current and ongoing. AG ¶ 20 (a) has not been established.

Applicant's failure to repay his debts was not beyond his control. He did not act responsibly in trying to resolve his debts, particularly his mortgage obligation. He did not show by any evidence that his periods of unemployment adversely affected his ability to repay his debts. AG ¶ 20 (b) has not been established.

Applicant received counseling as part of his bankruptcy filing requirement. No other financial counseling was obtained by him. His financial problems are not under control. Applicant did not submit any documents to counter the allegations in the SOR. AG ¶ 20 (c) has not been established.

Applicant has not submitted any proof of any payment or other resolution of his financial delinquencies. AG ¶ 20 (d) has not been established in the absence of any good-faith efforts to resolve his debts.

There is no evidence of a legitimate basis held by Applicant to dispute these four debts. AG ¶ 20 (e) has not been established.

Finally, affluence is not an issue in Applicant's case. Therefore, AG ¶ 20 (f) has not been established.

## 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 facts and circumstances surrounding this case. Applicant was an adult when he incurred the debts. He has not taken any action to resolve his delinquent debts. This inaction leaves him vulnerable to pressure, coercion, exploitation, or duress based on the magnitude of his financial obligation. His lack of action continues to this day, and is obviously voluntary. His inaction will continue based on his past performance. Applicant displayed a lack of good judgment incurring the debts. Next, he exhibited a continued lack of appropriate judgment by failing to make payments on any of his delinquent debts during the past four years.

At the same time his debts remained unresolved, Applicant took three international vacations. The money spent on those trips would have resolved some or all of the four debts listed in the SOR. His financial irresponsibility shows he is not interested in resolving his debts.

Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a public trust position. For all these reasons, I conclude Applicant did not mitigate the trustworthiness concerns arising from his financial considerations. I conclude the whole person-concept against Applicant.

### **Formal Findings**

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a to 1.f:	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 is denied.

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PHILIP S. HOWE  
Administrative Judge