



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



In the matter of:	)	
	)	
XXXXXX, XXXXXXXX Xxx, Xxx	)	ADP Case No. 14-03623
	)	
Applicant for Public Trust Position	)	

**Appearances**

For Government: Candace L. Garcia, Esquire, Department Counsel  
For Applicant: *Pro se*

08/31/2015

---

**Decision**

---

METZ, John Grattan, Jr., Administrative Judge:

Based on the record in this case,<sup>1</sup> I deny Applicant's eligibility for a public trust position.

On 7 February 2015, the Department of Defense (DoD) sent Applicant a Statement of Reasons (SOR) raising trustworthiness concerns under Guideline F, Financial Considerations.<sup>2</sup> Applicant timely answered the SOR, requesting a decision without hearing by the Defense Office of Hearings and Appeals (DOHA). The record in this case closed 27 July 2015, the day Department Counsel indicated no objection to Applicant's Response to the FORM. DOHA assigned the case to me 17 August 2015.

---

<sup>1</sup>Consisting of the File of Relevant Material (FORM), Items 1-5 and Applicant's Response to the FORM

<sup>2</sup>DoD conducts trustworthiness determinations for contractor personnel employed in Information Systems Positions defined in DoD Regulation 5200.2-R, *Personnel Security Program* (Regulation), dated January 1987 pursuant to DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive) and the adjudicative guidelines (AG) effective within the DoD for SORs issued after September 1, 2006.

## **Findings of Fact**

Applicant admitted SOR financial allegations 1.a and 1.d. He denied the remaining allegations. He is a 58-year-old facilities manager employed by a defense contractor since September 2012. Applicant served over 20 years active duty in the U.S. military, retiring in October 2002 in paygrade E-7. He has not previously had a trustworthiness determination. However, he held security clearances as necessary while in the military and while with other Federal contractors since retirement.

The SOR alleges, and Government exhibits (Items 4-5) substantiate, five delinquent debts totaling over \$20,000. Applicant admits two delinquent debts totaling nearly \$19,700. He denies debts totaling about \$1,000. The debts comprise a December 2008 judgment on a voluntary automobile repossession of \$19,600 and four consumer credit accounts totaling about \$1,100. Applicant reported one debt (not alleged in the SOR) on his application for a public trust position (Item 3).

Applicant reported being unemployed from August 2007, when the company he worked for lost its Government contract, until September 2012, when he obtained his current job (Items 3-4). During a subject interview with a Government investigator in April 2014 (Item 4), he stated that he experienced no financial problems during this time. He says he received unemployment and was supported by his wife. Presumably, he relied upon his retired pay as well. He says he spent his time looking for work and going to school. He reported going to school from August 2010 to May 2012, obtaining his undergraduate degree in May 2012 (Item 3). He discussed the five debts alleged in the SOR, acknowledging the same two he admitted in his Answer. He recalled receiving a deficiency notice from the creditor on his repossessed vehicle, and noted that the creditor placed a lien on his house.

Applicant's Response to the FORM included a July 2015 Experian credit report. The credit report confirmed Applicant's claim that he was investigating SOR debts 1.b and 1.c. Those two debts were reported by Experian on Applicant's March 2014 consolidated credit report (Item 5). However, the Experian credit report does not corroborate Applicant's claims about the status of the remaining SOR debts—particularly his claim that the judgment (SOR 1.a) has been removed from his credit report—because those debts were reported by Equifax or Trans Union, the other two major credit bureaus.

Applicant provided no budget or personal financial statement indicating his family's financial situation. He has not documented any credit or financial counseling. He provided no work or character references, or evidence of civic or community involvement.

## **Policies**

The adjudicative guidelines (AG) list factors to evaluate a person's suitability for access to sensitive information. Administrative judges must assess disqualifying and

mitigating conditions under each issue fairly raised by the facts and situation presented. Each decision must also show a fair, impartial, and commonsense consideration of the factors listed in AG ¶ 2(a). The applicability of a disqualifying or mitigating condition is not, by itself, conclusive. However, specific guidelines should be followed when a case can be measured against them, as they are policy guidance governing the grant or denial of a clearance. Considering the SOR allegations and the evidence as a whole, the relevant adjudicative guideline is Guideline F (Financial Considerations).

Trustworthiness decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's public trust position. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to applicant to refute, extenuate, or mitigate the Government's case. Because no one has a right to a public trust position, the applicant bears a heavy burden of persuasion.

Persons with access to sensitive information enter into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring each applicant possesses the required judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels deciding any reasonable doubt about an Applicant's suitability for access in favor of the Government.<sup>3</sup>

### **Analysis**

The Government established a case for disqualification under Guideline F, and Applicant did not mitigate the security concerns. While Applicant voluntarily surrendered his vehicle during the time he was unemployed, he reported to the Government investigator that he experienced no financial hardship during his unemployment. Indeed, while there is documentation that Applicant attended school for two school years to obtain his undergraduate degree in May 2012, there is no documentation that Applicant looked for work during that time, or how hard he looked for work during that time.<sup>4</sup> Certainly, he took no action to address the deficiency judgment on his repossessed vehicle, one debt he was surely aware of.

Applicant meets none of the mitigating factors for financial considerations. His financial difficulties are both recent and multiple.<sup>5</sup> While his period of unemployment may be a circumstance beyond his control, it does not appear that he looked very hard for new employment, and was certainly well enough off that he was able to pursue and complete his undergraduate education. Moreover, he has documented no efforts

---

<sup>3</sup>See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>4</sup>¶ 19 (a) inability or unwillingness to satisfy debts; (c) a history of not meeting financial obligations.

<sup>5</sup>¶ 20 (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur.

dealing with the debts alleged in the SOR, or documenting any efforts to resolve them, despite having discussed them during a subject interview in April 2014.<sup>6</sup> In addition, there is no evidence that he has sought credit counseling or otherwise brought the problem under control.<sup>7</sup> There is little documentary evidence of any good-faith effort to satisfy the debts alleged in the SOR.<sup>8</sup> Finally, given his unwillingness to seek or use financial counseling, there is nothing in the record to suggest that Applicant will put his financial problems behind him. Furthermore, there is insufficient evidence to support a favorable whole-person analysis. I conclude Guideline F against Applicant.

### **Formal Findings**

Paragraph 1. Guideline F:	AGAINST APPLICANT
Subparagraphs a-e:	Against Applicant

### **Conclusion**

Under the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue eligibility for a public trust position for Applicant. Eligibility for a public trust position denied.

---

JOHN GRATTAN METZ, JR  
Administrative Judge

---

<sup>6</sup>¶ 20 (b) the conditions that resulted in the financial problem were largely beyond the person's control . . . and the individual acted responsibly under the circumstances.

<sup>7</sup>¶ 20 (c) the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control.

<sup>8</sup>¶ 20 (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.