



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



In the matter of: )  
)  
) ADP Case No. 14-04309  
)  
Applicant for Public Trust Position )  
)

**Appearances**

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

10/27/2015  
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**Decision**  
\_\_\_\_\_

DAM, Shari, Administrative Judge:

Between 2007 and 2013, Applicant accumulated 19 delinquent debts totaling over \$20,000, the majority of which are medical bills. He resolved or is resolving \$14,000 of the debt and intends to subsequently resolve the remaining debts. He provided documentation of his actions. He sufficiently rebutted allegations that he intentionally failed to disclose debts to the Government when he completed a position of trust application. He mitigated the trustworthiness concerns raised under Guideline F, Financial Considerations and Guideline E, Personal Conduct. His eligibility for a public trust position is granted.

In February 2014, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On November 20, 2014, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns under Guideline F, Financial Considerations, and Guideline E, Personal Conduct. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; 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.

On January 24, 2015, Applicant answered the SOR in writing (AR) and requested a hearing before an administrative judge. On June 26, 2015, the Defense Office of Hearings and Appeals (DOHA) assigned the case to me. That same day DOHA issued a Notice of Hearing setting the case for July 22, 2015. The case was heard as scheduled. Department Counsel offered Government Exhibits (GE) 1 through 5 into evidence without objection. Applicant testified, but did not offer any exhibits into evidence. The record remained open until August 17, 2015, to give Applicant an opportunity to submit evidence. He subsequently submitted exhibits, which I marked as Applicant Exhibits (AE) A through D and admitted into evidence without objection from Counsel. DOHA received the hearing transcript (Tr.) on July 30, 2015.

### **Findings of Fact**

The SOR contains 19 allegations related to delinquent debts. In his response to the SOR, Applicant admitted all allegations, except those alleged in SOR ¶¶ 1.a, 1.f, 1.i, 1.j, 1.m, and 1.p, which he denied and offered explanations. (AR.) His admissions are incorporated into these findings of facts.

Applicant is 52 years old and divorced from his third wife since 2006. He and his first wife have two children, ages 28, and 30. He enlisted in the U.S. Marine Corps in 1982 and served until 1995, when he transferred to the Army National Guard (Guard). He was in the inactive reserves until 1997, when he returned to active duty with the Guard until 2003, when he was medically retired. (Tr. 14.) He was honorably discharged in the paygrade E-5. While serving in the Marines, he received an Army Commendation medal, a Navy-Marine Corps Achievement medal, and four Good Conduct medals. (Tr. 15; AE D.) His supervisor while serving in the Marines wrote that Applicant “is an extremely versatile individual. Polite, courteous, and cheerful, he proved himself technically and administratively knowledgeable time and again.” (AE D.) Applicant earned a bachelor’s degree in business administration in 2010.

From 2005 to 2011, Applicant worked for a large retail store and earned \$20 per hour. He was then unemployed for two months before starting a \$7 per hour cashier position with a gas station. (Tr. 46.) He worked as a clerk for another retail store from 2012 to 2014, earning about \$7 per hour. He had been unemployed for a month when he completed his e-QIP in April 2014. Currently, Applicant has been working two jobs. He works one day a week for a national retailer at \$8 per hour and works through a temporary agency on other days, earning \$11 per hour. (Tr. 47; GE 1.) He has a position pending with a defense contractor, subject to receiving a public trust clearance. (Tr. 17; GE 1.)

Applicant attributed his financial problems to periods of unemployment, under-employment, and medical problems related to a back injury and visits to the emergency

room because he does not have a local physician, as he receives treatment through the Veteran's Administration (VA). (Tr. 27.) His medical problems required him to take time off from work without pay. (GE 2.)

In September 2013 Applicant began resolving his medical debts. In good faith, he contracted with the collection agency (CA) for the health center to which he owed money to establish a weekly payment plan of \$25. (Tr. 29, 35.) He said CA does not group the medical bills together, but resolves each debt separately. (Tr. 28.) It is unclear which medical debts he has resolved at this time. He has made payments since September 2013. (AE B.) He has not participated in financial or credit counseling through CA. (Tr. 44.)

Based on credit bureau reports (CBR), dated May 2014 and April 2015, the SOR alleged 19 delinquent debts totaling \$20,021. They accumulated between 2007 and 2013. (GE 3, 4.) The status of each debt is as follows:

1. The 2010 judgment for \$1,173 alleged in SOR ¶ 1.a was paid through garnishment. (Tr. 29; AE A.)

2. The following ten medical debts are included in Applicant's repayment plan with CA: SOR ¶¶ 1.b for \$5,794; 1.c for \$5,115; 1.g for \$626; 1.h for \$353; 1.k for \$318; 1.l for \$316; 1.n. for \$150; 1.o for \$116; 1.q for \$85; and 1.r. for \$70. These total \$12,943. (Tr. 32, 37, 111; AE A.)

3. The following eight debts remain unpaid or unresolved: SOR ¶¶ 1.d for \$2,997; 1.e for \$909; 1.f for \$909; 1.i for \$328; 1.j for \$328; 1.m for \$294; 1.p for \$111; and 1.s for \$29. These total \$5,905.

Applicant receives \$1,700 month for his medical disability and \$1,600 for other work. His monthly income is about \$3,300 month. (Tr. 18, 20.) He did not submit a written budget, but based on his testimony he has about \$2,500 in expenses, leaving some money at end of the month. (Tr. 22-26.) His student loans are deferred. (Tr. 26; AE C.) He does not use credit cards. (Tr. 23.) Applicant intends to pay the unresolved debts when he earns more money. (Tr. 45.) At this time, he resolved the \$1,173 garnishment. He is resolving the medical debts, which total approximately \$12,943, through \$25 weekly payments.

The SOR alleged that Applicant failed to disclose 18 debts alleged in the SOR in Section 26 of his February 2014 e-QIP. That section requested information about any type of delinquent account that arose within the past seven years. (GE 1.) Applicant disclosed a garnishment, but not the other debts.

Applicant stated that he had never submitted an e-QIP prior to doing so in February 2014. He did not have a clearance while in the Marines or Reserve. (Tr. 40.) He said he knew he had some unpaid debts, but he had not taken time to review his credit report before submitting the e-QIP and did not have a clear idea of the debts. He

also felt rushed to complete the form because the employer wanted him to return it as soon as possible. He admitted that he should have researched his credit before answering any questions. (Tr. 39.) The first time he reviewed his credit report was during a May 2014 interview with a government investigator. He responded to the investigator's inquiry about the delinquent debts noted in the credit report and stated that he did not list them in the e-QIP because he did not know the details of accounts. (GE 2.) Applicant testified that he did not intentionally attempt to mislead the Government. (Tr. 40.)

Applicant stated that he "would never mislead the Government. I served my country for 20 years and during that 20-year time I . . . received numerous awards and honorable discharges . . . and I would never turn against my country." (Tr. 51.) Applicant's supervisor is aware of this proceeding. (Tr. 18.)

### **Policies**

Positions designated as ADP I and ADP II are classified as "sensitive positions." (See DoD 5200.2- R ¶¶ 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 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.

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 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.

Section 7 of Executive Order 10865 provides that “Any determination under this order adverse to an applicant shall be a determination 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 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 classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

AG ¶ 19 describes two conditions that could raise trustworthiness concerns and may be disqualifying in this case:

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

From 2007 to 2013, Applicant accumulated delinquent debts that he has been unable or unwilling to satisfy. The evidence raises both security concerns, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

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 debts have been ongoing since 2007. Although he is making payments on the medical debts, other debts remain unaddressed. The evidence does not support the application of AG ¶ 20(a).

Applicant provided evidence that his financial problems arose from medical issues, periods of unemployment, and underemployment. Those problems were circumstances beyond his control. In order to merit full application of AG ¶ 20(b), he needed to provide evidence that he acted responsibly under the circumstances. Applicant did not submit said evidence, thus AG ¶ 20(b) has limited application.

Applicant did not provide evidence that he participated in credit or financial counseling, or submit a written budget. Currently, he is making monthly payments toward his medical debts, and intends to address the other delinquent debts subsequently. Given his payments since 2013 on a repayment plan for his medical debts, there are some indications that his financial problems are slowly coming under control through his good-faith efforts to pay the delinquent medical bills. Both AG ¶

20(c) and AG ¶ 20(d) provide some mitigation. There is no evidence that Applicant successfully disputed any delinquent debts. AG ¶ 20(e) does not apply.

### **Guideline E, Personal Conduct**

AG ¶ 15 expresses the trustworthiness concerns pertaining to personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The SOR alleged in ¶ 2.a that Applicant falsified his February 2014 e-QIP because he failed to disclose delinquent accounts under questions listed in Section 26. The Government contended that his omissions may raise a trustworthiness concern and be disqualifying under AG ¶ 16:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant admitted that he did not disclose information about all of his debts, and explained that he had not reviewed a credit report or researched his debts before completing the e-QIP. He also felt rushed to submit the e-QIP to the employer. He realized in retrospect that he made a mistake by not disclosing the information, but asserted that he did not do so intentionally. He was aware that the Government would have access to the information.

After listening to Applicant's testimony, observing his demeanor, and considering his years of military service, I find his explanation for not disclosing all of his debts sufficiently credible. His omission was a negligent mistake, but not a deliberate or intentional attempt to omit, conceal, or falsify relevant facts on his e-QIP. Hence, a discussion of the potentially mitigating conditions is not necessary. This guideline is found in his favor.

### **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 the facts and circumstances surrounding this case. Applicant is a 52-year-old man, who honorably served in the military for over 20 years. In 2007 he began experiencing financial problems, which he has been unable to fully resolve as a result of insufficient income. In 2013 he started a payment plan, in good faith, to address unpaid medical debts. He continues to make payments to the CA for those debts. He intends to pay the other eight delinquent debts, which total about \$6,000, when he is able. There is no significant evidence in the record, which leads me to doubt that he will do that and begin establishing economic stability, given his desire to obtain employment with a defense contractor and resolve his financial issues.

Overall, the record evidence does not leave me with questions as to Applicant's eligibility and suitability for a public trust position. For these reasons, I conclude Applicant mitigated the trustworthiness concerns arising from his delinquent debts.

### **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

Subparagraphs 1.a through 1.s: For Applicant

### **Conclusion**

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

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SHARI DAM  
Administrative Judge