



case assignment on December 6, 2007. DOHA issued a notice of hearing on January 11, 2008, and I convened the hearing as scheduled on January 30, 2008. During the hearing, I received five Government exhibits, five Applicant exhibits, and the testimony of two Applicant witnesses. At the close of the hearing, the record was left open at Applicant's request to allow him to submit additional documents. Within the time allotted, he submitted one additional exhibit that I incorporated into the record. DOHA received the hearing transcript (Tr.) on February 13, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to sensitive information is granted.

### **Findings of Fact**

Applicant is a 35-year-old married man with one child age 10. He has a bachelor of science degree in computer system management, and is working on a master's degree in the same field. He served in the Army National Guard from 1990 to 1994 before transferring to the Army where he served from 1994 to 1997 (Tr. 19).

Applicant is an information technology specialist whose duties include updating his company's web technology, and maintaining its computer information systems. His supervisor, who oversees 12 employees, characterized him as the best employee on the staff (Tr. 14).

Applicant has been working for his employer since 2006. During the previous nine years, he lived and worked in another state (State 1).

In January 2003, Applicant purchased an old farmhouse with the intention of renovating it and either reselling it, or moving into it (Tr. 23). He underestimated the extent of the necessary renovations, and began to struggle balancing the mortgage payments and the repair costs. He increasingly began charging repair costs to two credit cards. Subsequently, both the mortgage and the credit cards became delinquent.<sup>1</sup>

In July 2004, the bank foreclosed upon the farmhouse (Exhibit 4 at 11). At that time, he had accrued more than \$25,000 of delinquent credit card debt on the two credit cards, as listed in SOR subparagraphs 1.a and 1.b (Exhibit 4 at 3).

In April 2006, Applicant moved to the state where he lives currently (State 2). "Because the real estate market was starting to slow down," Applicant chose to rent his former home in State 1 before moving to State 2 (Tr. 23). Under the rental agreement, the tenant purchased the option of buying the property (Exhibit B).

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<sup>1</sup>SOR subparagraph 1.a alleges that one of Applicant's credit card debts became delinquent in June 2001. Applicant provided e-mail documentation from the creditor stating that the debt did not become delinquent until December 2003 (E-Mail from Creditor to Applicant, dated July 17, 2006, as listed in Answer at 3). I find the debt became delinquent in December 2003.

Within a week of executing the rental agreement with the tenant, Applicant moved into the home he had purchased in State 2 (Tr. 22). In September 2006, Applicant and his wife discovered a rental property in the same city that was closer to their son's elementary school, and chose to move into it (Tr. 37). They located a buyer for the home they were vacating, and settlement was scheduled for December 2006 (Tr. 38). The buyer withdrew from the deal. They then rented the house to a tenant in March 2007 (Tr. 38).

Between September 2006 and March 2007, Applicant had to pay both the rent on the new home where he had moved and the mortgage on the home from which he had moved. Because the property was vacant, he received no rental income to offset the mortgage cost. His credit card delinquencies from the failed 2003 real estate investment remained outstanding (SOR subparagraphs 1.a and 1.b). He fell behind on his mortgage payment on the State 1 rental property (SOR subparagraph 1.c), the State 2 rental property (SOR subparagraph 1.d), and a student loan (SOR subparagraph 1.e). By March 2007, these delinquencies collectively totalled approximately \$55,000 (Answer).

In April 2007, Applicant obtained a deferment on his student loan payments (Exhibit C). He must resume them in April 2008 (Exhibit 5 at 2). The monthly payments will be \$101 per month (*Id.*). In the last six months, he has caught up on the delinquent mortgage payments (Exhibit 5 at 3).

The delinquent debts listed in SOR subparagraphs 1.a and 1.b remain outstanding, and total approximately \$60,000 (Exhibit 5 at 2). The respective creditors assigned these debts to the same collection agent. Applicant attempted to negotiate a settlement of these debts, but was unsuccessful.

Recently, the tenant residing in the State 1 property exercised the option to purchase the property. His financing has been approved, and the parties anticipate settlement to be scheduled some time over the next two weeks (Tr. 40). The property's purchase price is \$128,000 (Exhibit B). Applicant owes the mortgagor \$80,000. After settlement, he intends to apply the net capital gain to the remaining delinquencies (Tr. 40).

Applicant makes \$62,000 per year, and his wife makes \$20,000. For seven years before moving to State 2, she did not work. She had quit working to care for her disabled mother, and their financial struggles were perpetuated in part, by this loss of income (Exhibit 2 at 3). They have approximately \$4,100 in retirement savings (Exhibit E).

Applicant omitted financial information on his application for public trust positions completed in 2006. He thought he did not need to list debts that had been charged off. Six months after completing the application, he met with an investigator, and volunteered the financial information (Exhibit 2 at 3).

## **Policies**

The adjudicative guidelines, as revised December 29, 2005, and implemented September 1, 2006, apply to ADP trustworthiness determinations. In addition to brief introductory explanations for each guideline, they are divided into those that may be considered in deciding whether to deny or revoke an individual's eligibility for access to classified information or eligibility for access to sensitive information (disqualifying conditions), and those that may be considered in deciding whether to grant an individual's eligibility for access to classified information or eligibility for access to sensitive information (mitigating conditions).

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 common sense decision. According to AG ¶ 2(c), the entire process is a 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.

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 decision.

## **Analysis**

### **Guideline F, Financial Considerations**

Under this guideline, "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, [or] trustworthiness . . ." (AG ¶ 18). Moreover, "an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds" (*Id.*).

Here, Applicant's financial problems trigger the applicability of AG ¶ 19(a), "an inability or unwillingness to satisfy debts," AG ¶ 19(c), "a history of not meeting financial obligations," and AG ¶ 19(e), "consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis."

Applicant's financial problems were caused by a failed 2003 real estate investment. They were exacerbated in 2006 when he moved and was unable to sell his former residence for six months. When the situation with his real estate holdings

stabilized, he began catching up on his delinquent debt. He is now current on the mortgage payments listed in SOR subparagraphs 1.c and 1.d, and he got the student loan, as listed in SOR subparagraph 1.e, out of delinquent status by obtaining a deferral. His efforts at negotiating a favorable settlement with the collection agent for the creditors whose charge cards he used to pay for the 2003 investment property repairs were unsuccessful. However, he is in the process of selling his State 1 property, and intends to apply the proceeds to these delinquencies. AG ¶ 20 (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), applies.

These steps constitute clear indications that Applicant is actively trying to resolve his financial delinquencies. AG ¶ 20(c), “. . .there are clear indications that the problem is being resolved or is under control,” and AG ¶ 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” apply.

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

Under this guideline, “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 [and sensitive] information” (AG ¶ 15). Here, Applicant’s omissions from his public trust position application raises the issue of whether 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,” applies. I conclude Applicant’s explanation for the omission was credible. The omission was not intentional, and AG ¶ 16(a) does not pose any concern regarding whether he should have access to sensitive information.

### **Whole Person Concept**

Under the whole person concept, the administrative judge must evaluate an Applicant’s eligibility to occupy a sensitive position by considering the totality of the Applicant’s conduct and all the 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) 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 must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept.

Applicant's delinquent financial indebtedness was not caused by extravagant spending. Instead, it was caused by a failed real estate investment, and perpetuated when he was forced for six months to absorb the mortgage expense on a home, from which he had moved, as he struggled to sell it a second time after the first buyer withdrew a purchase offer.

Applicant's 2006 decision to move three months after relocating to State 2 was questionable in light of the earlier problem he had with real estate in 2003. This concern is outweighed by the steps he has taken since 2006, as described in the Financial Considerations section, to resolve his financial problems. Moreover, Applicant, in describing his finances in an organized manner at the hearing, demonstrated a firm understanding of them. Upon evaluating these variables in addition to Applicant's stellar work performance, I am confident that he will resolve these problems as planned, and that they will not recur. I conclude that he has mitigated the government's concern regarding his eligibility to occupy a sensitive position.

### **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 - 1.f:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	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 access to sensitive information. Eligibility is granted.

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MARC E. CURRY  
Administrative Judge