



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



In the matter of:	)	
	)	
	)	ADP Case No. 07-12782
SSN:	)	
	)	
Applicant for Public Trust Position	)	

**Appearances**

For Government: Nichole Noel, Esq., Department Counsel  
For Applicant: William D. Price, Personal Representative

June 27, 2008

**Decision**

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LAZZARO, Henry, Administrative Judge

On March 6, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing its trustworthiness concerns to Applicant.<sup>1</sup> The SOR alleges a security concern under Guideline F (financial considerations). Applicant submitted a response to the SOR that was received by DOHA on April 4, 2008. He admitted the allegations contained in SOR subparagraphs 1.c, 1.d, 1.f, 1.i, 1.j, 1.l, 1.n, 1.p,<sup>2</sup> and 1.w. He denied the remaining allegations and requested a hearing.

The case was assigned to me on April 24, 2008. A notice of hearing was issued on May 7, 2008, scheduling the hearing for June 3, 2008. The hearing was conducted as scheduled. The government submitted four documentary exhibits that were marked as

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<sup>1</sup> This action was taken under Executive Order 10865, DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive), DoD Regulation 5200.2-R, dated January 1987, as amended (Regulation), and the revised adjudicative guidelines which became effective within the Department of Defense for SORs issued after September 1, 2006.

<sup>2</sup> In his response to the SOR, Applicant indicated he was neither admitting or denying the allegation in subparagraph 1.p. At the hearing, he admitted this allegation. (Tr. 16-17)

Government Exhibits (GE) 1-4, and admitted into the record without objection. Applicant testified and submitted 14 documentary exhibits that were marked as Applicant's Exhibits (AE) 1-14, and admitted into the record without objection. The record was held open to provide Applicant the opportunity to submit additional documentation in support of his case. Three documents were timely received, marked as AE 15-17, and admitted into the record without objection. Department Counsel's forwarding memorandum for AE 15-17 was marked as Appellate Exhibit (App. Ex.) I, and made part of the record. The transcript was received on June 18, 2008.

### **Findings of Fact**

Applicant's admissions to the SOR allegations are incorporated herein. In addition, after a thorough review of the pleadings, testimony and exhibits, I make the following findings of fact:

Applicant is 30 years old and has been employed as a server analyst by a staffing agency working under a contract with a defense contractor since March 2005. He was employed by two different defense contractors from August 1999 to August 2004. He possessed a security clearance at various levels, including top secret with access to sensitive compartmented information, from in or about August 1999 until it was revoked in or about August 2004. His clearance was revoked after he failed a lifestyle polygraph examination as part of a background investigation when he applied for employment with another government agency. The polygraph examination apparently revealed earlier illegal drug use by Applicant.<sup>3</sup>

Applicant graduated from high school in 1995. He served on active duty in the U.S. Army from September 1995 to September 1999, and he attained the rank of specialist fourth class (paygrade E-4). He was awarded an associate of arts degree in September 2000, and a bachelor of science degree in information technology in September 2002. He has been married since January 2006, and has three children, ages four years, sixteen months, and seven months.

The SOR alleges 22 accounts, totaling \$19,711, that have either been charged off as bad debts or submitted for collection. Of those 22 accounts, Applicant successfully challenged his liability on nine accounts, totaling \$1,780, and had them removed from his credit report. He satisfied ten accounts, totaling \$10,846, by paying the creditors either the full amount owing or a negotiated reduced settlement. He retained an attorney to assist him in resolving two accounts, totaling \$6,066, and testified he will pay those accounts in full if the attorney is unable to negotiate a reduced settlement on his behalf. Applicant entered into a repayment plan on the remaining collection account, owing in the amount of \$1,019, and made one payment in the amount of \$141 as of the date of the hearing.

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<sup>3</sup> The record contains very little information about the use of drugs by Applicant. No information is available about whether he actually abused drugs and, if so, when the drug use occurred, what drugs were used, the extent of the drug use, or the duration of the use. Applicant's possible abuse of drugs has not been raised as a trustworthiness concern herein and will not be discussed further.

The SOR alleges one account, owing in the amount of \$4,826, that represents the deficit due following the resale of a vehicle that was repossessed from Applicant. This account has been fully satisfied by the payment of a negotiated settlement in the amount of \$1,569. Finally, the SOR alleges one account, owing in the amount of \$400, that resulted in a judgment being entered against Applicant. This account has been paid in full.

Applicant's financial problems primarily resulted from the loss of his employment with defense contractors when his security clearance was revoked in 2004. From September 2004 to December 2005, he went through a series of jobs that paid him substantially less than he had previously earned. With his current employment and income, he has been able to satisfy most of his delinquent creditors and has demonstrated he is living well within his means.

### **Policies**

Positions designated as ADP I and ADP II are classified as sensitive positions.<sup>4</sup> The standard to 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.<sup>5</sup> Trustworthiness adjudications apply to cases forwarded to DOHA by the Defense Security Service and Office of Personnel Management.<sup>6</sup> Department of Defense contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination is made.<sup>7</sup>

An Administrative Judge must consider the disqualifying and mitigating conditions in the Adjudicative Guidelines when evaluating an Applicant's suitability for a public trust position. The Administrative Judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. The entire process is a conscientious scrutiny of a number of variables known as the "whole person concept." The protection of the national security is the paramount consideration, and any doubt concerning personnel being considered for access to sensitive information will be resolved in favor of national security. Decisions are made in terms of the national interest and are not determinations as to the loyalty of the applicant concerned.<sup>8</sup>

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<sup>4</sup> Regulation ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3.

<sup>5</sup> Regulation ¶ C6.1.1.1.

<sup>6</sup> Deputy Under Secretary of Defense (Counterintelligence and Security) Memorandum, dated November 19, 2004.

<sup>7</sup> Regulation ¶ C8.2.1.

<sup>8</sup> Section 7 of Executive Order (EO) 10865.

The Government is required to present evidence to establish controverted facts alleged in the SOR.<sup>9</sup> 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.<sup>10</sup> The Applicant has the ultimate burden of persuasion as to obtaining a favorable trustworthiness decision.

## Analysis

### Guideline F, Financial Considerations

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. . . . (Adjudicative Guideline [AG] 18)

Applicant had numerous delinquent accounts, totalling almost \$25,000, that were charged off as bad debts, submitted for collection and/or resulted in a judgment being entered against him. Disqualifying Conditions (DC) 19(a): *inability or unwillingness to satisfy debts*; and DC 19(c): *a history of not meeting financial obligations* apply.

Applicant has either satisfied or successfully disputed the vast majority of the delinquent accounts alleged in the SOR. He has entered into a repayment plan on one of the remaining accounts under terms that are fully within his means to comply with and has retained the assistance of an attorney to resolve the other two remaining accounts. Mitigating Conditions (MC) 20(d): *the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*; and MC 20(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* apply.

Applicant's financial problems were primarily caused by the loss of his employment in 2004. His income was thereafter reduced until he was able to obtain employment with his current employer. Since obtaining his current job, Applicant has taken substantial steps to resolve all his financial problems and he is currently living a financially responsible lifestyle. MC 20(b): *the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment . . .), and the individual acted responsibly under the circumstances* applies.

The objective of a trustworthiness determination is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to sensitive information. Indeed, the "whole person" concept recognizes we should view a person by the totality of

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<sup>9</sup> Directive ¶ E3.1.14.

<sup>10</sup> Directive ¶ E3.1.15.

his acts and omissions. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

Considering all relevant and material facts and circumstances present in this case, the whole person concept, the factors listed in ¶ 6.3.1 through ¶6.3.6 of the Directive, and the applicable disqualifying and mitigating conditions, I find Applicant has mitigated the financial considerations security concern. He has overcome the case against him and satisfied his ultimate burden of persuasion. It is clearly consistent with the national interest to grant Applicant access to sensitive information. Guideline F is decided for Applicant.

### **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-x:           For Applicant

### **Conclusion**

In light of all 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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Henry Lazzaro  
Administrative Judge