



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



In the matter of: )  
)  
) ADP Case No. 08-03371  
)  
)  
Applicant for Public Trust Position )

**Appearances**

For Government: Caroline H. Jeffreys, Esquire, Department Counsel  
For Applicant: *Pro Se*

October 20, 2009

**Decision**

CREAN, THOMAS M., Administrative Judge:

Applicant submitted his Questionnaire for Public Trust Positions (SF 85P) as part of his employment with a defense contractor on August 8, 2006 (Item 5). On April 22, 2009, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns for financial considerations (Item 1). 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 revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006. Applicant acknowledged receipt of the SOR on May 4, 2009 (Item 3).

Applicant answered the SOR in writing on May 21, 2009. He admitted four and denied four of the eight allegations under Guideline F. He noted that four of the debts had been settled and paid and he was saving funds to pay the remaining four debts. He elected to have the matter decided on the written record in lieu of a hearing (Item 4). Department counsel submitted the Government's written case on June 23, 2009.

Applicant received a complete file of relevant material (FORM) on July 1, 2009, and was provided the opportunity to file objections, and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant has not provided additional information in response to the FORM within the 30 day time limit. The case was assigned to me on October 8, 2009. Based on a review of the case file and pleadings, eligibility for access to sensitive information is denied.

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a, to 1.c, and 1.h. He denied the debts at SOR ¶ 1.d to 1.g, and provided documentation that the debts had been settled and paid (Item 4, Response to SOR, dated May 21, 2009).

Applicant is 28 years old and has been a computer systems operator for a defense contractor for over three years. He attends college as a part-time student working towards a degree in computer information systems. He is married with no children (Item 5). His net monthly income is \$3,849.70, with monthly expenses of \$2,878.24. He has a monthly remainder of \$366.54 (Item 6, at 6).

Applicant's answer to the SOR (Item 2), his answers to interrogatories (Item 5), and credit reports (Items 7, 8, 9) establish that Applicant has delinquent debts, totaling approximately \$15,175. The documents support a debt in collection for a bank credit card of \$5,326 (SOR 1.a); a credit card debt in collection for a savings and loan of \$5,035 (SOR 1.b); a store account in collection for \$1,951 (SOR 1.c); a medical debt for \$111 (SOR 1.d); a telephone bill in collection for \$207 (SOR 1.e); a medical account for \$308 (SOR 1.f); another medical account for \$85 (SOR 1.g); and another medical account for \$2,152 (SOR 1.h). The accounts became delinquent between 2005 and 2008. Applicant presented no information concerning the reasons he has delinquent debts. He acknowledged he accumulated debts but noted he is attempting to fulfill his financial obligations.

In answer to the SOR, Applicant noted that the delinquent debts in SOR 1. d to 1.g were settled and paid. He provided documentation to verify the agreed settlement and payment of the debts in the February and March 2009 timeframe (Item 4 with attachments). Applicant also acknowledged that he owes the debts at SOR 1. a, 1. b, 1. c, and 1.g. He noted he is saving to pay these debts. There is no documentation to establish any payments made on these debts (See, Item 4, and Response to FORM).

### **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.

## **Analysis**

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

There is a security concern for a failure or inability to live within one's means, satisfy debts, and meet financial obligations indicating 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 (AG ¶ 18). Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligation to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage his finances in such a way as to meet his financial obligations. Applicant's delinquent debts from credit cards and medical debts, as established by credit reports and Applicant's admissions, are a security concern raising Financial Consideration Disqualifying Conditions (FC DC) ¶19(a) (inability or unwillingness to satisfy debts), and FC DC ¶ 19(c) (a history of not meeting financial obligations). Applicant has significant delinquent debts that he has not resolved.

I have considered a number of Financial Considerations Mitigating Conditions (FC MC). FC MC ¶ 20(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) does not apply. While the debts may have been incurred in the past, some are still unpaid and thus current. There are a number of different accounts and debts, so the debts were not incurred infrequently. Applicant has not established that the delinquent debts will not recur. His continued debts and financial situation cast doubt on his current reliability, trustworthiness, and good judgment.

I considered FC MC ¶ 20(b) (the conditions that resulted in the financial problems were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce, or separations) and the individual acted responsibly under the circumstances); and FC MC ¶ 20(a) (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). Applicant has not presented any information to establish circumstances beyond his control that caused his delinquent debts. He has not presented any information to indicate he has received or is receiving financial counseling. He still has four significant debts that he has not taken any action to settle or resolve. His financial problems are not under control.

I considered FC MC ¶ 20(d) (the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts). Applicant presented documentation that four of his delinquent debts have been settled and paid. However, these are the smallest of his delinquent debts and the total settled and paid is only \$711. This still leaves Applicant with \$14,464 in delinquent debts. For FC MC ¶ 20(d) to apply, there must be an "ability" to repay the debts, the "desire" to repay, and "evidence" of a good-faith effort to repay. A systematic, concrete method of handling debts is needed. Good-faith means acting in a way that shows reasonableness, prudence,

honesty, and adherence to duty or obligation. Evidence of past irresponsibility is not mitigated by payment of debt only under pressure of qualifying for a security clearance. Applicant presented information to show he paid four of the eight delinquent debts. Applicant did not present a concrete plan as to how he was to pay his remaining delinquent debts. His only statement was that he was currently working to obtain money to settle the remaining debts. He did not provide information about how he was trying to raise funds to pay the debts. A promise to pay debts in the future is not evidence of a good-faith intention to resolve debts. Applicant did not present sufficient information to establish a good-faith effort to pay creditors or resolve debts. His finances are not under control and he has not acted responsibly towards his finances. He has not mitigated security concerns for financial considerations.

### **“Whole Person” Analysis**

Under the whole person concept, the administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all the circumstances. An 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 a security clearance 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 the facts and circumstances surrounding this case. Applicant has not presented information to show he has taken sufficient action to resolve his financial issues. Applicant must establish that he has a "meaningful track record" of debt payment, including evidence of actual debt reduction through payment of debts. He is not required, as a matter of law, to establish that he paid off each and every debt listed in the SOR. All that is required is that he has a plan to resolve his financial problems and takes significant action to implement that plan. The entirety of his financial situation and his actions can reasonably be considered in evaluating the extent to which his plan to reduce his outstanding indebtedness is credible and realistic. Available, reliable information about the person's behavior, past and present, favorable and unfavorable, should be considered in reaching a determination.

Applicant has not established a "meaningful track record" of debt payment by presenting information to show he is taking sufficient, consistent, reasonable, and

responsible action to resolve his financial issues. He did settle and resolve the four smallest of his delinquent debts. But this is only a small part of his delinquent debts. He did not present any plans on how he intends to resolve and pay his remaining delinquent debts. Applicant has not demonstrated that he is managing his finances responsibly under the circumstances. He has not presented a consistent record of actions to resolve financial issues. He has not established that he has taken and will take reasonable steps to address his remaining delinquent debts and resolve his financial problems. The record shows that he has been irresponsible towards his financial obligations. The lack of responsible management of present finances and past obligations indicates he will not be concerned or responsible, but will be careless, in regard to sensitive information. Overall, the record evidence leaves me with questions and doubts as to Applicant's judgment, reliability, and trustworthiness. He has not established that he is suitable for access to sensitive information. For all these reasons, I conclude Appellant has not mitigated the public trust concerns arising from his financial situation. Access to sensitive information is denied.

### **Formal Findings**

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a public trust position. Eligibility for access to sensitive information is denied.

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THOMAS M. CREAN  
Administrative Judge