



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



In the matter of: )  
)  
) ADP Case No. 08-07290  
)  
)  
Applicant for Public Trust Position )

**Appearances**

For Government: Ray T. Blank, Jr., Esquire, Department Counsel  
For Applicant: *Pro Se*

September 21, 2009

**Decision**

CREAN, THOMAS M., Administrative Judge:

Applicant submitted a Questionnaire for Public Trust Position (SF 85P), on November 20, 2005. 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 under Guideline F. 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 January 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 1, 2009.

Applicant answered the SOR in writing on May 5, 2009. He admitted the seven allegations under Guideline F, but noted that he was disputing the amount owed on two debts listed in the SOR. He requested a hearing before an administrative judge. Department Counsel was prepared to proceed on June 5, 2009, and the case was assigned to me on July 24, 2009. DOHA issued a Notice of Hearing on August 13, 2009, for a hearing on August 31, 2009. I convened the hearing as scheduled. The

government offered five exhibits, marked Government Exhibits (Gov. Ex.) 1 through 5, which were received without objection. Applicant submitted two exhibits, marked Applicant Exhibits (App. Ex.) A and B, which were received without objection. Applicant and one witness testified on his behalf. DOHA received the transcript (Tr.) of the hearing on September 8, 2009. Based on a review of the case file, pleadings, exhibits, and testimony, eligibility for access to sensitive information is denied.

### **Procedural Issues**

Applicant signed for the Notice of Hearing on August 19, 2009. Applicant is entitled to 15 days notice of hearing (Directive E3.1.8). Applicant discussed with Department Counsel the hearing date of June 9, 2009, prior to the Notice of Hearing being mailed so notice was given more than 15 days prior to the hearing. However, Applicant signed for the Notice of Hearing only 13 days prior to the hearing. If there was an issue on notice, Applicant waived the 15 days notice requirement (Tr. 5-6).

### **Findings of Fact**

Applicant is 30 years old and has worked for over five years for a defense contractor providing technical support on a U.S. Army installation. He served briefly in the Navy. He is now married with three children. When he started to incur delinquent debt in 2004, he was a single parent with a daughter to support. He is presently taking college courses (Tr. 20); Gov. Ex. 1, Questionnaire for Public Trust Position, dated November 20, 2005; App. Ex. B, Enrollment and Grades, dated June 23, 2009). While Applicant and his wife have a combined salary of about \$6,200 monthly, they manage their finances separately because of his credit issues. His personal net monthly salary is approximately \$2,400 with monthly expenses of approximately \$1,800. He has \$400 to \$600 monthly in discretionary funds which he uses to pay his past due obligations (Tr. 33-34, 42-44).

Credit reports listed the following delinquent debts for Applicant: a credit card debt in collection for \$27,316 (SOR 1.a); a delinquent credit card debt for \$6,842 (SOR 1.b); another credit card debt in collection for \$18,330 (SOR 1.c); a car repossession debt in collection for \$12,706 (SOR 1.d); a credit card debt in collection for \$6,941 (SOR 1.e); a medical debt for \$343 (SOR 1.f); and a credit card debt in collection for \$328 (SOR 1.g; Gov. Ex. 3, Credit report, dated February 20, 2009; Gov. Ex. R, Credit report, dated August 7, 2008; Gov. Ex. 5, Credit report, dated December 14, 2005). Applicant does not dispute the debts at SOR 1.f and 1.g. He does dispute the amount of each of these debts.

Applicant's credit was good until he was terminated by a former employer in late 2003. The employer noted that he was terminated because of his attitude towards management and the company. Just prior to his termination, he received an award as Service Representative of the Year for 2002 (App. Ex. A, Award Plaque). Applicant stated he was terminated because he applied for another job and the prospective employer called his current employer for a reference. Since he was terminated and out of work, he accepted a position with another company about a month later that paid

approximately half of his former salary. He worked at this company for about a year until mid 2004 when he accepted a position with his current employer at a salary rate similar to what he made with his first employer. He has been with this employer for over five years, and has received salary increases so that he now makes more than he made with his first employer (Tr. 20-23).

When he was with his first employer, he had a number of personal credit card accounts. He used the bank credit card listed at SOR 1.a for household items and groceries. The initial credit limit on the card was \$12,000, and he had a balance of over \$11,000 in 2003 when he lost his job and stopped making payments. The bank and the collection agency have added fees to this account so the debt is listed at \$27,000. He has not been able to make any payments to the bank or the collection agency (Tr. 24-25).

Applicant also used the credit card at SOR 1. b for household items. He has not made any payments on this debt. The delinquent debt listed at SOR 1.c is a revolving credit account. Applicant first used the card to purchase electronics. He has made no payments since 2003 to the creditor or the collection agency (Tr. 25-26).

The delinquent debt listed at SOR 1.d is for an automobile repossession. He returned the car to the dealer in 2003 when he lost his job. After the sale of the car at auction, he still owed the creditor more than \$6,000. He has not made any payment on this debt since 2003 because he does not have the ability to pay it. Applicant believes the debt at SOR 1.e is a duplicate of the debt either at SOR 1.c or SOR 1.d. He did not present any information to support his conclusion that the debts were duplicates (Tr. 26-27).

Applicant is disputing the amount of \$343 listed for the medical debt at SOR 1.f. Applicant sought medical treatment for a chest injury. He was unhappy with the totality of the care he received. Some of the care was fine, but he did not believe the hospital or medical personnel did a good job. He never questioned or challenged the medical provider or the collection agency about his opinion of the care, or disputed the charges with them (Tr. 27-29).

Applicant also disputed the amount of the debt listed at SOR 1.g. Applicant was enrolled in a correspondence course. He received the course material and requested an exam to complete and receive credit for the course. The school never sent him the final examination, so he refuses to pay for the course (Tr. 29-31). His requests and dealings were with the school. He provided no documentation of his dispute. He never disputed the account with the credit reporting agency.

Applicant stopped making payments on his debts in mid 2003. As he changed employers and received more salary, he did not pay the delinquent debts because he had current debts to pay. He received settlement offers from some of the companies, but he did not accept them because he was unable to pay the settlement amount (Tr. 29-31). He never sought financial counseling as he tried to repay these debts. He

indicated he would start making payments on these debts in 2007 but has not made any payments on the accounts (Tr. 31-32).

Applicant's government employee supervisor testified she has known and supervised Applicant for over five years. He is honest and reliable. He is a good person to work with and he can be counted on to support the mission. He has assisted the organization whenever he was called, on days off or on vacation. She has never known him to do anything to jeopardize sensitive information (Tr. 44-48).

### **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 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 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**

### **Financial Considerations**

There is a public trust 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 public trust position. 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 a car repossession, credit cards, and bank revolving accounts as established by credit reports and Applicant's statements and testimony, 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 delinquent debts dating to 2003 which he has not resolved and indicates a history of not meeting financial obligations as well as an inability or unwillingness to satisfy his debts.

I considered Financial Considerations Mitigating Conditions (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), and 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 separation) and the individual acted responsibly under the circumstances). While the debts were incurred some time ago, they are still unpaid and thus considered current. Applicant lost employment when terminated by his company. He has not made payments on the debt even though he had been employed

since he was terminated. Even though there is a disagreement on the reason for termination, Applicant played a sufficient role in the termination so that the circumstances were not beyond his control. He either indicated to his employer his dissatisfaction with company management or he sought different employment without first notifying his current employer of his intentions and actions. He has not acted responsibly towards his debts. His inaction to pay his delinquent debts casts doubt on his reliability, trustworthiness, and good judgment.

I have not considered FC MC ¶ 20(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). Applicant presented no information on financial counseling and his finances are not under control or being resolved.

I considered FC 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 provided documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue) and it does not apply. Applicant does not dispute a debt for medical care and another for school course work. He does dispute the amount owed on each of the debts. However, he made no payment on either debt and provided no information concerning his dispute or attempts to resolve them.

I considered FC MC ¶ 20(d) "the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve 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. Most of the debts arose in the 2006 and 2007 time frame. He has been gainfully employed since 2004 and has a good income. Applicant presented no information to show he is paying his delinquent debts. He may have resolved two debts, but he has numerous debts for which he admits he has not contacted the creditors or made any attempt to pay. He has not established a meaningful, reasonable, honest, or prudent plan to pay his debts. Applicant has not presented 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. He did not mitigate security concerns for financial considerations.

### **Whole Person Concept**

Under the whole person concept, an administrative judge must evaluate an applicant's eligibility for a public trust 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) 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 eligibility for a public trust position 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. I considered that Applicant was a single parent raising a child when he encountered delinquent debt. He has a good reputation for honesty and reliability in the workplace.

Applicant must establish 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. There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan and concomitant conduct may provide for the payment of such debts one at a time.

Applicant has not established a meaningful track record of debt payment because he has not paid most of his debts. He has had sufficient monthly income from at least 2004 to address some of his financial obligations. However, he has not paid any of these debts and has not presented a credible and realistic plan to pay his delinquent debts. He has not demonstrated that he is managing his finances responsibly under the circumstances. The lack of responsible action to manage past obligations indicates Applicant will not be concerned and responsible, but careless in regard to sensitive information. Overall, the record evidence leaves me with questions or doubts as to Applicant's judgment, reliability, and trustworthiness. I conclude Appellant has not mitigated the public trust concerns arising from his financial situation, and I conclude Applicant has not mitigated the trustworthiness concerns arising from his financial situation.

### **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:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant

Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	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