



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



In the matter of:	)	
	)	
REDACTED	)	ADP Case No.12-01736
	)	
Applicant for Public Trust Position	)	

**Appearances**

For Government: Robert J. Kilmartin, Esq., Department Counsel  
For Applicant: *Pro se*

09/30/2014

**Decision**

MENDEZ, Francisco, Administrative Judge:

Applicant is a federal contractor applying for access to sensitive information. His eligibility for such access is in question because of accumulation of a substantial amount of delinquent debt and failure to timely file and pay his taxes. He has started to address his financial situation, but has yet to address a significant amount of delinquent debt and his finances are not under control. Trustworthiness concerns raised by his financial situation remain. Eligibility for a position of trust is denied.

**Statement of the Case**

On March 4, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR), alleging concerns under Guideline F (Financial Considerations) and recommending denial of Applicant’s eligibility to occupy an automated data processing (ADP) position, generally referred to as a public trust position. This action was taken under Department of Defense Directive 5220.6, as amended (Directive).<sup>1</sup> Applicant

---

<sup>1</sup> Pursuant to a Memorandum from the Office of the Deputy Under Secretary of Defense for Counterintelligence and Security, dated November 19, 2004 (Memorandum), the Defense Office of Hearings and Appeals (DOHA) is directed to utilize the Directive and the adjudicative guidelines to resolve contractor cases forwarded to it for a trustworthiness determination.

answered the SOR, waived his right to a hearing, and requested a decision on the written record (Answer).

On June 16, 2014, Department Counsel forwarded to Applicant the matters it would be submitting in support of the SOR. The Government's proposed findings of fact, argument, and seven documentary exhibits are contained in Department Counsel's file of relevant material (FORM).<sup>2</sup> Applicant submitted a response to the FORM, which is included in the record as exhibit (Ax.) A.

On September 12, 2014, I was assigned Applicant's case and provided him the opportunity to submit additional matters in support of his case, to include documentation regarding his efforts to resolve the SOR debts.<sup>3</sup> Applicant timely submitted Ax. B – H, which were admitted into evidence.<sup>4</sup> The record closed on September 25, 2014.

### **Findings of Fact**

After a thorough review of the pleadings and exhibits, and making only those reasonable inferences therefrom, I make the following findings of fact:

Applicant is employed as a network administrator. In 2005, he secured a temporary position with his current employer. The following year, Applicant was hired as a permanent, full-time employee. Several co-workers submitted reference letters noting Applicant's dependability and favorable work ethic.<sup>5</sup> On his recent performance evaluation, Applicant received an overall rating of a 3.5 on a 5.0 scale, which denotes that he "sometimes exceeds expectations."<sup>6</sup>

Applicant, 34, is single and has four children, ranging in age from four to fourteen. One of his children was born with a serious medical condition. Applicant's father and mother passed away in 2011 and 2012, respectively. Applicant attributes his financial problems to the high medical costs associated with his child's care and the financial assistance he provided his parents before they died. He also incurred debt in paying for their funerals. Applicant's current personal financial statement (PFS) reflects that, after paying recurring monthly expenses and debts, he has a *negative* monthly net remainder of over \$200.<sup>7</sup> The PFS lists a federal tax debt of over \$14,000.<sup>8</sup>

---

<sup>2</sup> Government Exhibits (Gx.) 1 – 7, without objection, were admitted into evidence.

<sup>3</sup> See Hearing Exhibit (Hx.) I, which has been included and made a part of the record.

<sup>4</sup> Hx. II is a list identifying each of Applicant's exhibits.

<sup>5</sup> Ax. C.

<sup>6</sup> Ax. F.

<sup>7</sup> Gx. 5.

<sup>8</sup> Gx. 5. This significant federal tax debt is not alleged in the SOR. I have only considered it in assessing Applicant's mitigation case and in addressing the whole-person factors set forth in the Directive. ISCR Case No. 14-00019 at 7 (App. Bd. Sep. 18, 2014).

In November 2011, in connection with his current job, Applicant submitted an application for a public trust position (application). He disclosed his failure to timely file his 2010 federal tax return and the existence of several delinquent accounts. He claimed to be working with a debt management program (DMP) to put together a budget to resolve his past-due debts. He also stated, in explaining his failure to timely file his 2010 federal tax return, that “I do not owe any money for taxes.”<sup>9</sup>

In December 2011, Applicant underwent an interview as part of his background investigation. He was questioned about the adverse financial information reflected on his application and credit report. During the course of the interview, Applicant promised on several occasions to review his credit report and address his delinquent accounts.<sup>10</sup>

In May 2013, Applicant submitted a response to a financial interrogatory that was sent to him by DOD asking for information and documentation regarding the status of his delinquent accounts. His response included documentation regarding a \$1,200 state tax lien for unpaid 2010 state income taxes,<sup>11</sup> three student loan payments between August 2012 and May 2013, and a copy of a debt repayment schedule prepared by his DMP counselor. Applicant made only one debt repayment per the terms of the repayment schedule.<sup>12</sup>

In March 2014, the DOD Central Adjudications Facility issued the current SOR. The SOR alleges ten delinquent debts, totaling over \$180,000. The SOR debts include several that Applicant discussed with the background investigator. The SOR debts include the \$1,200 state tax lien, over \$12,000 in student loans in collection status, and a foreclosure on a home with a past-due mortgage balance of approximately \$154,000.

Applicant claims that he resolved the state tax debt, as well as the mortgage-related and student loan debts. He did not submit documentation to substantiate his claim of having paid the state tax lien. He did provide documentation that his mortgage was modified and, pursuant to the modification agreement, he was required to make monthly payments of approximately \$730 starting in July 2013.<sup>13</sup> He did not, however, submit documentation of paying per the terms of the modification agreement.

Applicant also did not submit documentation that he is repaying or has otherwise resolved his delinquent student loan accounts, except for the three payments he made between August 2012 and May 2013. An April 2013 credit report, which was submitted by Department Counsel, notes that Applicant settled and paid several other debts. The credit report also lists several student loan accounts in collection status and others in

---

<sup>9</sup> Gx. 4 at 36. Applicant did not explain the apparent inconsistency between this assertion and the significant federal tax debt he listed in his PFS.

<sup>10</sup> Gx. 5, Personal Subject Interview (PSI).

<sup>11</sup> Based on the account number listed on the notice, this is the same state tax debt listed in SOR 1.a.

<sup>12</sup> PSI at 5.

<sup>13</sup> Ax. B.

deferment status.<sup>14</sup> Applicant did not submit documentation regarding the current status of his student loan accounts, to include whether they are all deferred at this point.

Applicant disputes the other eight SOR debts, claiming to have paid them or challenges their validity. He claims to have paid a \$581 collection account owed to a state court referenced in SOR 1.c. He did not submit documentation to substantiate his claim. He submitted form letters that he sent to his overdue creditors requesting validation and disputing the other SOR debts. He resent the same form letter to his overdue creditors on multiple occasions. He did not provide documentation regarding the resolution or current status of his disputes.

One of the debts Applicant now disputes is a \$5,700 collection account for unpaid rent and fees for an apartment that he vacated in 2009. This debt is listed in SOR 1.k. Applicant was made aware of this collection account during his background interview in December 2011. At the time of the interview, Applicant promised to research the debt and, if necessary, make payment arrangements to resolve the debt. He made similar promises regarding a \$352 judgment and \$9,200 collection account referenced in SOR 1. i and 1.j, respectively.<sup>15</sup> These debts remain unresolved.

The SOR also alleges that Applicant failed to file his 2012 federal income tax return. Applicant admits that he failed to timely file his 2012 tax return, but submitted proof of recently electronically filing (or attempting to file) both his 2012 federal and state income tax returns.<sup>16</sup>

## **Policies**

Positions designated as ADP I and ADP II are classified as sensitive positions. 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.<sup>17</sup>

When evaluating an applicant's eligibility for a position of trust, an administrative judge must apply the provisions of the Directive, to include the adjudicative guidelines (AG or guidelines).<sup>18</sup> In addition to brief introductory explanations, the guidelines list potentially disqualifying and mitigating conditions. The guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge

---

<sup>14</sup> Gx. 6. A more recent credit report was not submitted by either party.

<sup>15</sup> Gx. 5, Personal Subject Interview (PSI) at 6 – 8.

<sup>16</sup> Ax. E.

<sup>17</sup> Memorandum; Directive, § 3.2. Cf. Department of Defense Regulation 5200.2-R, *Personnel Security Program* (January 1987), as amended, ¶¶ C3.1.2.1.1.7, C3.1.2.1.2.3, C6.1.1.1.

<sup>18</sup> Directive, Enclosure 2. See also, Memorandum from the Office of the Under Secretary of Defense for Intelligence, dated August 30, 2006, directing that the adjudicative guidelines be applied to all adjudications and other determinations made under the Directive and DoD Regulation 5200.2-R.

applies the guidelines in a commonsense manner, considering all available and reliable information, in arriving at a fair and impartial decision.

In addition to the guidelines, the Directive sets forth procedures that must be followed in trustworthiness adjudications. The Government must present evidence to establish controverted facts alleged in the SOR. An applicant, on the other hand, is responsible for presenting evidence to mitigate concerns arising from their conduct or circumstances. An applicant bears the ultimate burden of persuasion to establish their eligibility for a position of trust.<sup>19</sup> In resolving questions about an applicant's eligibility for a public trust position, an administrative judge must resolve any doubt raised by an applicant's conduct or circumstances in favor of national security.<sup>20</sup>

## **Analysis**

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

The Government met its burden of proof. Applicant's admissions, coupled with his application, interrogatory response, and credit reports establish the SOR allegations. Applicant's accumulation of delinquent debt and failure to timely file his 2012 federal tax return raise the financial considerations concern, which is explained at AG ¶ 18:

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.

The record evidence also establishes the following disqualifying conditions:

AG ¶ 19(a): inability or unwillingness to satisfy debts;

AG ¶ 19(c): a history of not meeting financial obligations; and

AG ¶ 19(g): failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

The guideline also lists a number of conditions that could mitigate the concern. The mitigating conditions that are potentially relevant in this case are:

AG ¶ 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

---

<sup>19</sup> Directive, Enclosure 3, ¶ E3.1.14 – E3.1.15.

<sup>20</sup> Directive, Enclosure 2, ¶ 2(b).

cast doubt on the individual's current reliability, trustworthiness, or good judgment;

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;

AG ¶ 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;

AG ¶ 20(d): the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(e): the individual has a reasonable basis to dispute the legitimacy of the past-due debt and provides documented proof to substantiate the basis of the dispute.

Applicant's financial situation is partly attributable to matters beyond his control, namely high medical costs of caring for his child and numerous expenses associated with his parent's care and passing. He has taken some positive steps in resolving his financial situation, notably, negotiating a mortgage modification. In addition, the 2013 credit report submitted by the Government shows payment of non-SOR debts. AG ¶¶ 20(b) and 20(d) partially apply.

However, Applicant failed to meet his burden of mitigating the trustworthiness concerns raised by his financial situation. He has been aware of the Government's concerns about his finances since 2011, and has been repeatedly advised of the need to document any claims of debt resolution. He failed to submit documentation that he has resolved his delinquent debts, to include the \$1,200 state tax lien for unpaid 2010 state income taxes. In the absence of clear evidence of debt repayment, doubts raised by the accumulation of delinquent debt must be resolved in favor of national security.<sup>21</sup>

Furthermore, in light of Applicant's failure to file his 2012 federal and state tax returns until relatively recently and the unexplained \$14,000 federal tax debt, I am not convinced that his finances are under control.<sup>22</sup> Also, Applicant's PFS reflects a monthly net remainder of a negative \$200. Even if this form is not completely accurate, it reflects a lack of true financial reform and evidences the likelihood that Applicant's financial problems will continue into the foreseeable future. AG ¶¶ 20(a) and 20(c) do not apply.

---

<sup>21</sup> ISCR Case 07-10310 at 2 (App. Bd. July 30, 2008) (an applicant is expected to present documentation to substantiate his or her claim about the debts at issue).

<sup>22</sup> ISCR Case No. 10-08560 at 3 (App. Bd. Dec. 5, 2011) (conduct that is not alleged may be used to examine an applicant's evidence in mitigation and overall credibility).

Applicant's form letters requesting validation and disputing several SOR debts are by themselves, under the facts of this case, insufficient to undermine the legitimacy of the past-due debts at issue. Applicant was made aware of his delinquent debts during his 2011 background interview. He promised then to review his credit report, research the debts, and address them. He waited until after he was sent the DOD financial interrogatory in 2013 to address his delinquent debts. His efforts for the most part have amounted to nothing more than repeatedly sending the same form letter to his overdue creditors. More importantly, Applicant failed to substantiate the basis of his disputes. AG ¶ 20(e) does not apply.

### **Whole-Person Concept**

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a position of trust by considering the totality of an applicant's conduct and all the relevant circumstances. An administrative judge should consider the nine factors listed at AG ¶ 2(a).<sup>23</sup> I gave due consideration to Applicant's favorable character references, work performance, and the matters beyond his control that impacted his finances. Also, it appears that Applicant has started to put his financial house in order. However, this and other favorable evidence does not mitigate the trustworthiness concerns raised by his debts and overall financial situation.<sup>24</sup>

Applicant has a substantial amount of delinquent debt that remains unaddressed and unresolved. Beyond the recent modification of his mortgage, Applicant presented scant documentation regarding his efforts to repay or otherwise resolve his delinquent debts. Furthermore, Applicant's consistent failure to timely file and pay his federal and state taxes raise heightened concerns, because an individual with a history of failing to meet the obligation of all citizens to file and pay his taxes may similarly fail to discharge the obligations and responsibilities of those granted a position of trust. Overall, the record evidence leaves me with doubts about Applicant's eligibility for access to sensitive information.

### **Formal Findings**

I make the following formal findings regarding the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations):      **AGAINST APPLICANT**

Subparagraphs 1.a – 1.k:      **Against Applicant**

---

<sup>23</sup> The non-exhaustive list of adjudicative factors are: (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.

<sup>24</sup> ISCR Case No. 11-02087 at 2-3 (App. Bd. Mar. 20, 2012) (Favorable record evidence regarding an individual's character, honesty, and reliability "may not be sufficient to mitigate a history of ongoing, significant delinquent debt.").

## **Conclusion**

In light of the record evidence and for the foregoing reasons, it is not clearly consistent with the interests of national security to grant Applicant eligibility for access to sensitive information. Applicant's request for a public trust position is denied.

---

Francisco Mendez  
Administrative Judge