



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



In the matter of:	)	
	)	
	)	ADP Case No. 12-02014
	)	
	)	
Applicant for Public Trust Position <sup>1</sup>	)	

**Appearances**

For Government: Ray T. Blank Jr., Esq., Department Counsel  
For Applicant: *Pro se*

03/05/2014

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**Decision**

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COACHER, Robert E., Administrative Judge:

Applicant has not mitigated the financial considerations trustworthiness concerns. Eligibility for access to sensitive information is denied.

**Statement of the Case**

On August 20, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DOD acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review*

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<sup>1</sup> This case was originally styled as a security clearance determination (See Statement of Reasons). Department Counsel represented at the hearing that the case was a trustworthiness determination. He based that representation on the fact that Applicant filled out a Questionnaire for Public Trust Positions (SF 85P) and that his work position was in the field of automated data processing. (Tr. at 17-18) This case will be treated as a public trust determination.

*Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

Applicant answered the SOR on September 30, 2013, and requested a hearing before an administrative judge. The case was assigned to another administrative judge on November 12, 2013, and reassigned to me on December 11, 2013. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on December 20, 2013, and the hearing was convened as scheduled on January 30, 2014. The Government offered exhibits (GE) 1 through 4, which were admitted into evidence without objection. Department Counsel's exhibit index was marked as Hearing Exhibit (HE) I. Applicant testified and offered exhibit (AE) A, which was admitted into the record without objection. The record was held open for Applicant to submit additional information. He submitted AE B through D, which were admitted into the record without objection. The email transmitting Applicant's post-hearing exhibits is marked as HE II. DOHA received the hearing transcript (Tr.) on February 7, 2014.

### **Findings of Fact**

In his answer to the SOR, Applicant admitted SOR allegations ¶¶ 1.a, 1.i and 1.j. He denied ¶¶ 1.b - 1.h. The admissions are incorporated as findings of fact. After a review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is a 56-year-old employee of a government contractor. He works as a systems administration. He has an associate's degree. He is married with four adult children. He served 24 years in the Air Force and in October 2003 retired honorably as a master sergeant (E-7). He had brief periods of unemployment after he retired as follows: October 2003-January 2004; March-August 2004; and June-August 2005. He previously held a security clearance, apparently without incident.<sup>2</sup>

The SOR alleges 10 delinquent debts for a total of about \$40,667, and Applicant's failure to file federal tax returns for the years 2006, 2008, and 2010. The debts were listed in credit reports from September 2010, and April 2013.<sup>3</sup>

Applicant testified that his financial difficulties came about because he was putting his wife through school and he was incurring expenses resulting from his son's legal issues and short periods of unemployment. He was also impacted by two heart attacks his wife suffered in 2010 and 2011. She no longer works because of her medical situation.<sup>4</sup> Even though he denied many of the debts in his answer to the SOR, he admitted all the debts in his hearing testimony. He explained that he was poor at managing his money and he was afraid to seek assistance from anyone. As a result, he let his debt obligations "slide." He now is more financially stable and is living below his

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<sup>2</sup> Tr. at 6, 27-29; GE 1.

<sup>3</sup> GE 3-4.

<sup>4</sup> Tr. at 29-30, 46; AE A.

means. He now has a budget and pays his current obligations. He also has an emergency fund that contains about \$25,000. This is not a retirement account. He claims to have completely paid two car loans (his credit report documents the payment of one such loan) not listed in the SOR. Specifically, the debts are as follows:

The debt alleged in SOR ¶ 1.a is a delinquent medical debt in the amount of \$133. An April 2013 credit report shows the date of last activity for this account as July 2012. Applicant admitted this debt, but claimed he paid it. He did not provide any documentation to support his claim. This debt is unresolved.<sup>5</sup>

The debt alleged in SOR ¶ 1.b is a collection account in the amount of \$1,028. The date of last activity for this account was February 2005. Applicant admitted this debt. He has not contacted the creditor about this debt, has not made any payments toward the debt, and has not set up a payment plan for the debt. This debt is unresolved.<sup>6</sup>

The debt alleged at SOR ¶ 1.c is a collection account in the amount of \$311. Applicant admitted this debt was related to a gym membership that he was unable to pay when he was unemployed in 2005. Once he was employed, he did not contact the creditor about the debt. This debt is unresolved.<sup>7</sup>

The debt alleged at SOR ¶ 1.d is a collection account in the amount of \$3,168. Applicant admitted this debt was related to a past telecommunications account. The date of last activity for this account was January 2009. Applicant claimed he last made a payment on this account in 2002 or 2003. This debt is unresolved.<sup>8</sup>

The debt alleged at SOR ¶ 1.e is a collection account in the amount of \$272. Applicant admitted this debt, but was unable to recall it. The date of last activity was April 2008. He has not made any payments on the debt. This debt is unresolved.<sup>9</sup>

The debt alleged at SOR ¶ 1.f is a delinquent medical debt in the amount of \$44. Applicant admitted this debt. The date of last activity on this account was March 2005. Applicant has had no contact with the creditor and has not made any payments on this debt. This debt is unresolved.<sup>10</sup>

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<sup>5</sup> Tr. at 39; GE 4.

<sup>6</sup> Tr. at 39-40; GE 3.

<sup>7</sup> Tr. at 41; GE 3.

<sup>8</sup> Tr. at 41-42; GE 3.

<sup>9</sup> Tr. at 44; GE 3.

<sup>10</sup> Tr. at 42; GE 3.

The debt alleged at SOR ¶ 1.g is a collection account in the amount of \$1,671. Applicant admitted this debt. The date of last activity was on this account August 2010. He has not made any payments on the debt. This debt is unresolved.<sup>11</sup>

The debt alleged at SOR ¶ 1.h is a collection account on a credit card debt in the amount of \$8,311. Applicant admitted this debt, but was unable to recall it. The date of last activity on this debt was August 2010. He has not made any payments on the debt. This debt is unresolved.<sup>12</sup>

The debt alleged at SOR ¶ 1.i is a collection account for a repossessed car that Applicant cosigned with his daughter in the amount of \$12,000. Applicant admitted this debt. His daughter stopped making the car payments and it was repossessed in 2010. The car was sold and Applicant was contacted by the creditor for payment on the original loan. Applicant unsuccessfully attempted to work out a payment arrangement. His last contact with the creditor was in 2012. He has not made any payments on the debt. This debt is unresolved.<sup>13</sup>

The debt alleged at SOR ¶ 1.j is for unpaid federal taxes for tax years 2006, 2008, and 2010 in the amount of \$13,729.87. Applicant admitted this debt and admitted that he failed to timely file his federal tax returns for those same years. The Internal Revenue Service (IRS) has since filed returns for those years on his behalf. He offered no reason or excuse for not filing his returns. He just “let them go.” He contacted the IRS and set up a payment plan whereby he would pay \$350 per month toward his tax debt. He represented that he has sent the IRS a check for the past 12-18 months. He did not provide proof of these payments, even though he was given the opportunity to submit additional evidence after the hearing date. This debt is unresolved.<sup>14</sup>

Applicant is receiving financial counseling through his church. His personal financial statement shows that, after expenses, he has approximately \$2,441 in disposable income at the end of the month. When he was asked directly what he intends to do about these SOR-related debts, he testified, “I can go back and make those payments. I can go and pay off, and some of these that are small, I could pay off fairly quickly.” He has not offered proof of payment on any debts, despite having \$25,000 of emergency funds at his disposal.<sup>15</sup>

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<sup>11</sup> Tr. at 43; GE 3.

<sup>12</sup> Tr. at 44-45; GE 3.

<sup>13</sup> Tr. at 34-36; GE 3.

<sup>14</sup> Tr. at 30-33; GE 2, 3.

<sup>15</sup> Tr. at 31, 50; GE 2.

Applicant offered character letters from three coworkers. They attested to his honesty, dependability, and work ethic. They supported his effort to gain a favorable trustworthiness determination.<sup>16</sup>

## 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 overarching 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

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<sup>16</sup> AE B-D.

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.

Section 7 of EO 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

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

The security concern for financial considerations is set out in AG ¶ 18 as follows:

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 guideline notes several conditions that could raise security concerns under AG ¶ 19. Three are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (g) failure to file annual Federal . . . income tax returns as required or the fraudulent filing of the same.

Applicant has numerous delinquent debts that remain unpaid. He also failed to timely file federal tax returns for the years 2006, 2008, and 2010. The evidence is sufficient to raise the above disqualifying conditions.

Several financial considerations mitigating conditions under AG ¶ 20 are potentially applicable:

- (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;

(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;

(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;

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

(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.

Applicant's debts are recent, multiple, and cast doubt on his reliability, trustworthiness, and good judgment. AG ¶ 20(a) is not applicable.

Although Applicant's brief periods of unemployment several years ago, and his wife's medical issues could be considered conditions beyond his control, he has had enough time and resources (\$25,000 emergency fund) to address these debts. He has not put forth responsible efforts to resolve the issues associated with the debts. AG ¶ 20(b) is partially applicable.

There is evidence of financial counseling, but Applicant has not established any type of payment plan for the unresolved debts. He claims he currently has a payment plan with the IRS for his tax debt, but he failed to produce documentation of those payments. AG ¶ 20(c) partially applies, but ¶ 20(d) does not apply.

Applicant failed to provide any documentation supporting disputes of any debts. AG ¶ 20(e) does not apply. At this point, Applicant's finances remain a concern despite the presence of some mitigation.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a sensitive position by considering the totality of the applicant's conduct and all relevant 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 sensitive 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 relevant facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

I considered Applicant's 24 years of honorable service to his country and the circumstances by which Applicant's financial situation were affected by his brief periods of unemployment, and his family's personal circumstances. However, I also considered that despite these factors, and with seemingly ample resources, the debts remain unaddressed. His past financial track record reflects a troublesome financial history that causes me to question his ability to resolve his debts.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for access to sensitive information. For all these reasons, I conclude Applicant has not mitigated the financial considerations trustworthiness concerns.

### **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
Subparagraphs: 1.a – 1.j:	Against Applicant

### **Conclusion**

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

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Robert E. Coacher  
Administrative Judge