



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



In the matter of: )  
)  
) ADP Case No. 12-03549  
)  
Applicant for Public Trust Position )

**Appearances**

For Government: Daniel F. Crowley Esq., Department Counsel  
For Applicant: *Pro se*

12/12/2014

**Decision**

LYNCH, Noreen A., Administrative Judge:

On June 3, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant listing trustworthiness concerns arising under Guideline F (Financial Considerations). The action was taken under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), implemented in September 2006.

Applicant timely answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on October 9, 2014. A notice of hearing was issued on October 22, 2014, scheduling the hearing for November 7, 2014 by video teleconference. Government Exhibits. (GX) 1-5 were admitted into evidence without objection. Applicant testified and submitted 12 exhibits (AX) A-L, which were admitted into evidence. The transcript was received on November 18, 2014. Based on a review of the case file, I find Applicant has not mitigated the trustworthiness concerns raised. Eligibility for a position of trust is denied.

## Findings of Fact

In his answer to the SOR, Applicant admitted all of the allegations under Guideline F, ¶¶ 1.a-1.r with explanations.

Applicant is 47 years old, and works as a computer operator at an insurance company. Applicant is divorced and has two children from his first marriage. He remarried but divorced a second time. Applicant has a third child who is in college. Applicant received his GED in 1984 and entered the U.S. Navy. He left after one year due to concerns about his father's health, and received an Other Than Honorable discharge. Applicant has been employed with his current employer since May 2010. On December 20, 2011, Applicant submitted an official application for eligibility for a position of trust.

The SOR alleges 18 delinquent debts, and a 2010 federal and state tax lien. These debts include consumer debts, car loans, and credit card accounts. A Chapter 13 bankruptcy that was filed in 2008, was dismissed in 2010. Credit reports submitted by the Government confirm the debts.

Applicant explained in his Answer that this behavior was uncharacteristic for him. He has been employed since he left the Navy. Until 2005, he worked for one company but was laid off. However, Applicant had another position for which he qualified and did not receive unemployment. The salary was lower than his former salary. His separations and divorces caused legal bills and the loss of an income from his ex-wife. He has paid child support in the amount of \$110 weekly since the 2007 separation. Applicant incurred legal fees for his 2014 divorce. He decided to prioritize his debts by paying the federal and state tax liens before tackling the other debts. (Tr. 31) He hopes to consolidate the smaller debts by using a financial counseling agency.

In 2008, Applicant filed for Chapter 13 bankruptcy. His first wife had spent recklessly and he could no longer make payments on all accounts. He made payments on the bankruptcy plan for almost two years. In 2010, the bankruptcy was dismissed. Applicant explained that after he filed for bankruptcy, he received a notice from the Internal Revenue Service (IRS) that there was an issue with his personal tax return. He noted that this increased his bankruptcy payment. (Tr. 24) He further explained that additional credit card debt was added to his bankruptcy and by 2010, he could no longer afford the payment. Applicant began to miss his payments and the bankruptcy was dismissed.

As for the allegation in SOR 1. b, Applicant explained the collection account for a mobile phone bill for \$175 has been paid. (AX H) The medical account for \$95 alleged in 1.c is paid. (AX I ) (SOR 1.p is a duplicate account).

The allegation in SOR 1.d is not resolved. The charged-off account for \$8,199 was a car loan for his ex-wife. He denied that the account is his, but he admits that he co-signed the note. (Tr. 30) Applicant hoped that his ex-wife would pay the account, but that has not happened.

As to the allegation in SOR 1.e for a car loan in the amount of \$3,703, Applicant admits that the account is unpaid. He states that it was a voluntary repossession. (Tr. 32) He knows that the car was sold at auction but he has not paid the remainder. He admits that he owes the debt. (Tr. 33)

Applicant admits that the delinquent debts in SOR allegations 1.f (\$2,877); 1.g (\$2,188); 1.h (\$7,042); 1.i (\$824); 1.j (\$493) and 1.k (\$1,114) are not paid. They were included in the Chapter 13 bankruptcy that was dismissed in 2010. (Tr. 35) He admits that he has not contacted the creditors since the bankruptcy was dismissed. (Tr. 36)

Applicant paid the bill alleged in SOR 1.l, which was a utility bill for \$382. (AX J) As to the account in 1.m, he has not paid the \$157 that is due.

The medical account alleged in SOR 1.n for a \$75 co-pay has been forgiven. He does not owe the amount. The balance reflected on the account is zero. (Tr. 40)

Applicant admits that the account in SOR 1.o in the amount of \$892 is unpaid. This credit card account had also been included in his bankruptcy plan. He intends to pay the debt.

Applicant entered into a payment plan with the IRS for the 2010 federal tax lien in the amount of \$10,059 alleged at SOR 1.q. His tax refunds have been withheld since 2010. His monthly payments of \$193 since 2010, leaves a balance of \$1,963. (AX ) He hopes to have this paid in full by the end of the year. (Tr. 26)

Applicant paid the state 2010 tax lien which is alleged in SOR 1.r in the amount of \$2,270. (AX L) He accomplished this through a payment plan. (Tr. 44)

Applicant earns about \$65,000 yearly. His net monthly income is \$3,200. After expenses and debt payments, Applicant has a net monthly remainder of about \$520. (Tr. 47) He has paid his legal fees for his divorce and now can concentrate on the remaining delinquent debts.

Applicant submitted seven character reference letters from former managers, colleagues, and friends. (AX A-G) Each letter attests to Applicant's ethics and maturity. Each writer was aware of the financial difficulties that Applicant has encountered. One friend believes this situation is totally inconsistent with Applicant's reputation. A colleague states that Applicant is a hard worker with a calmness and consistency that gets things done. Applicant has had promotions and raises during his work career. (AX G)

Applicant's manager notes that she has worked directly with him and that he is an exceptional worker. He is always professional and dependable. He volunteers for assignments whenever needed. (AX B)

## Policies

Positions designated as ADP I and ADP II are classified as “sensitive positions.” 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 the persons’s loyalty, reliability, and trustworthiness are such that assigning the person to sensitive duties is “clearly consistent with the interests of national security.” Regulation ¶ C6.1.1.1. Department of Defense contractor personnel are entitled to the procedural protections in the Directive before any final unfavorable access determination may be made. Regulation ¶C8.2.1

A person who seeks access to sensitive information enters into a fiduciary relationship with the Government based on 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 safeguard sensitive information.

When evaluating an applicant’s suitability for a public trust position, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” An 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.” The Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). An applicant has the ultimate burden of demonstrating that it is clearly consistent with national security to grant eligibility for a public trust position.

## Analysis

### Guideline F, Financial Considerations

The trustworthiness concern for Financial Considerations is set out in AG ¶ 18:

Failure or an 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.

Applicant's admissions and credit reports establish his delinquent debts. He filed for a Chapter 13 bankruptcy in 2008, but it was dismissed in 2010. Consequently, Financial Considerations Disqualifying Conditions (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations) apply. With such conditions raised, it is left to Applicant to overcome the case against him and mitigate trustworthiness concerns.

The nature, frequency, and relative recency of Applicant's financial difficulties make it difficult to conclude that it occurred "so long ago." An unpaid debt is a continuous course of conduct for the purposes of security clearance adjudications. See, ISCR Case No. 10-11083 at 2 (App. Bd. Dec. 17, 2012). Applicant still has unresolved delinquent debt. While he has paid a few items, the delinquent obligations remain. His bankruptcy was dismissed in 2010. Consequently, Financial Considerations Mitigating Condition (FC MC) 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 cast doubt on the individual's current reliability, trustworthiness, or good judgment) does not apply.

FC MC AG ¶ 20(b) (the conditions that resulted in the behavior 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) partially applies. Applicant had two marriages that ended in divorce. He was reduced to one income to support his family. He also had to take a lower paying job in 2005. While he paid a state tax lien and is in repayment status of the federal tax lien, he still has a large amount of debt that he has neither resolved nor shown that he is in the process of resolving.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) partially applies. Applicant provided documentation that certain accounts have been paid. He paid his state tax lien and is in repayment status for the federal tax lien. He expects to have it paid by the end of the year. He plans to tackle the remaining debts after that. He did not present evidence that

he received financial counseling. AG ¶ 20(c) (the person has received or is receiving counseling for the problem) does not apply. He has not addressed the other debts in a timely manner. Consequently, I find that there are not clear indications that his financial problems are being resolved and are under control.

### **Whole-Person Concept**

Under the whole-person concept, the 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. 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 position of trust must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. As noted above, the ultimate burden of persuasion is on the applicant seeking a public trust position.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors. Applicant is 47 years old. He has worked for his current employer since May 2010. He has three children and has been divorced twice. The separations and divorces caused debt that he could not afford. He filed for bankruptcy in 2008, but after two years could not afford the payments. He tried to resolve his debts in a legal manner. He also incurred federal and state tax liens. He made those debts his priority. One is paid and the other is almost paid. Applicant still has a significant amount of debt that he is responsible for. He has made payments and paid some accounts and produced documentation. Many credit card collection accounts exist with fairly high balances. Applicant intends to pay his debts, but this will not be resolved in a short period of time. I have some doubts about Applicant's judgment. He has not mitigated the security concerns under the financial considerations guideline.

The clearly consistent standard indicates that trustworthiness determinations should err, if they must, on the side of denials. A denial of his eligibility for a position of trustworthiness does not necessarily indicate anything adverse about Applicant's character or loyalty. It means that the individual has presented insufficient mitigation to meet the strict standards controlling access to sensitive information.

### **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.r:	Against Applicant

### **Conclusion**

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

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NOREEN A. LYNCH.  
Administrative Judge