



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



In the matter of:

Applicant for Public Trust Position

)
)
)
)
)

ADP Case No. 15-00155

Appearances

For Government: Chris Morin, Esquire, Department Counsel

For Applicant: *Pro se*

08/24/2016

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant has mitigated the trustworthiness concerns regarding financial considerations. Eligibility to occupy a public trust position is granted.

Statement of the Case

On May 27, 2014, Applicant applied for a public trust position and submitted an Electronic Questionnaire for Investigations Processing (e-QIP).¹ On August 26, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to him, pursuant to DOD Regulation 5200.2-R, *Personnel Security Program*, dated January 1987, as amended and modified (Regulation); DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (effective within the DOD on September 1, 2006) (AG) for all adjudications and other determinations made under the Directive. The SOR alleged trustworthiness concerns under Guideline F (Financial Considerations), and detailed reasons why the DOD adjudicators were unable to make

¹ GE 1 (e-QIP, dated May 27, 2014).

an affirmative finding under the Directive that it is clearly consistent with the interests of national security to grant or continue Applicant's eligibility for occupying a public trust position to support a contract with the DOD. The SOR recommended referral to an administrative judge to determine whether such eligibility should be granted, continued, denied, or revoked.

Applicant acknowledged receipt of the SOR on September 4, 2015. In a sworn statement, dated September 16, 2015, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. On December 10, 2015, Department Counsel indicated the Government was prepared to proceed. The case was assigned to me on January 7, 2016. A Notice of Hearing was issued on January 20, 2016, but was cancelled to accommodate Applicant, and then reissued on April 28, 2016. I convened the hearing, as scheduled, on May 17, 2016.

During the hearing, four Government exhibits (GE 1 through GE 4), four Applicant exhibits (AE A through AE D), and one administrative exhibit were admitted into evidence without objection. Applicant testified. The transcript (Tr.) was received on May 25, 2016. I kept the record open to enable Applicant to supplement it. Applicant took advantage of that opportunity. He timely submitted a number of additional documents, which were marked as AE E through AE P, and admitted into evidence without objection. The record closed on June 21, 2016.

Findings of Fact

In his Answer to the SOR, Applicant admitted, with comments and explanations, only two of the factual allegations pertaining to financial considerations (¶¶ 1.a. and 1.j.) of the SOR. He denied, with comments and explanations, all of the remaining allegations.² Applicant's admissions, comments, and explanations, are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 47-year-old employee of a defense contractor. He has been a full-time infrastructure analyst or infrastructure solutions designer for a defense contractor since July 2014.³ He is seeking to retain his eligibility for occupying a public trust position to support a contract with the DOD. He briefly served in the Army National Guard for two months in 1988 and was issued an entry level separation (ELS) due to a health issue.⁴ He is a 1988 high school graduate with additional vocational, technical, or

² During the hearing, Applicant reiterated his positions regarding his denials of each of the remaining allegations. See Tr. at 14-20.

³ GE 1, *supra* note 1, at 10; Tr. at 68-69.

⁴ GE 1, *supra* note 1, at 19; GE 2 (Personal Subject Interview, dated July 25, 2014), at 3. In his e-QIP, Applicant indicated he received an honorable ELS discharge. ELS is simply a type of service characterization. If the service member has less than 180 days of service and is discharged, the commander can indicate that they didn't have enough time to adequately measure the person's conduct and performance by characterizing their service as "Entry Level." Instead of giving an Honorable, General, or Under Other Than Honorable (UOTHC), the service is

trade school training, but no degree.⁵ Applicant was married in November 1988.⁶ He has a daughter, born in 1990, and two sons, born in 1994 and 1996, as well as another son, born of another relationship in 1996.⁷

Financial Considerations⁸

There was nothing unusual about Applicant's finances until sometime between 1994 and 1996. His initial financial situation deteriorated due to a perceived combination of things, including the birth of his two sons; and a lack of planning on his part.⁹ Another financial situation arose in March 2005 when an employment contract term ended, and subsequent periods of unemployment were followed by part-time employment, small odd jobs with low pay, as well as by full-time underemployment as a laborer or picker until he received his current position in 2014.¹⁰ He said that he paid what he could, and if he couldn't make payments, he did not worry about it.¹¹ Accounts became delinquent and were placed for collection. Some accounts were charged off and at least one went to judgment. Applicant added that since his initial problems arose, a lot has changed and he has grown up a lot.¹² He noted that some of his longstanding debts are still unresolved because he was focusing on getting his last child through college and staying up to date on current obligations, and he did not have the extra funds sufficient for him to resolve them.¹³

At some point in about 2004 or 2005, Applicant entered into a professional relationship with a credit counselor and consolidated some of his delinquent accounts. Over the course of six to eight months, payments were made until he could no longer afford to do so.¹⁴ Applicant stated that all of his documentation regarding his agreement with the credit counselor and payments to creditors was lost in a December 2015 fire

essentially "uncharacterized." An ELS is not honorable nor any other characterization. It simply means that the commander did not have enough time to make a fair decision as to the overall service characterization.

⁵ GE 1, *supra* note 1, at 9-10; Tr. at 5-6.

⁶ GE 1, *supra* note 1, at 22.

⁷ GE 1, *supra* note 1, at 23-24; Answer to the SOR, dated September 16, 2015, at 1; Tr. at 32-33.

⁸ General source information pertaining to the financial accounts discussed below can be found in the following exhibits: GE 1, *supra* note 1; GE 2, *supra* note 3; GE 3 (Combined Experian, TransUnion, and Equifax Credit Report, dated June 21, 2014); GE 4 (Equifax Credit Report, dated October 29, 2015); Answer to the SOR, *supra* note 8. More recent information can be found in the exhibits furnished and individually identified.

⁹ Tr. at 71.

¹⁰ GE 1, *supra* note 1, at 11-17.

¹¹ Tr. at 71.

¹² Tr. at 71-72.

¹³ Answer to the SOR, *supra* note 8, at 1.

¹⁴ Tr. at 65, 72-73.

that damaged his doublewide mobile home.¹⁵ In May 2016, Applicant entered into an agreement with a debt-relief law firm that established a consolidation of debts and the automatic withdrawal of \$190 per month, including a fee of \$55, to be applied to his delinquent accounts.¹⁶

The SOR identified 21 purportedly continuing delinquent accounts, totaling approximately \$27,740, as reflected by the June 2014 credit report,¹⁷ and the October 2015 credit report.¹⁸ Those debts and their respective current status, according to the credit reports, other evidence submitted by the Government and Applicant, and Applicant's comments regarding same, are described below:

SOR ¶¶ 1.a. and 1.j: These are two "snapshots" of the same signature loan account with a high credit of \$1,657 that was placed for collection and charged off. The creditor subsequently obtained a judgment against Applicant in the amount of \$1,760 in January 2013.¹⁹ In his May 2014 e-QIP, Applicant indicated he had reached a pay-off settlement with the creditor, and that the balance would be paid by the end of July 2014.²⁰ It is unclear if any payments were ever made under that agreement, for in his September 2015 Answer to the SOR, Applicant stated that he "will be making payments" of at least \$75 per month.²¹ At the hearing, Applicant altered his version of the facts when he acknowledged that it was not until September 2015 that he agreed to make monthly cash payments of \$25. He made those payments until the December 2015 fire, but eventually resumed them.²² Applicant made his last payment of \$0.01 on May 17, 2016,²³ and that same day, a Satisfaction of Judgment was filed by the creditor.²⁴ The account has been resolved.

SOR ¶¶ 1.b., 1.c., 1.d., 1.e., and 1.f.: These are medical accounts for professional services received by the uninsured Applicant and his family with unpaid balances of \$163, \$120, \$658, \$860, and \$243 that were placed for collection.²⁵

¹⁵ Tr. at 36, 43, 73, 86-87; AE D (Fire Department Incident Report, dated December 19, 2015). The remarks section of the report indicates that upon arrival of the fire department personnel, flames were showing on all sides of the residence, requiring three attack lines to extinguish the flames.

¹⁶ AE P (Agreement, dated May 30, 2016), with associated file documents.

¹⁷ GE 3, *supra* note 8.

¹⁸ GE 4, *supra* note 8.

¹⁹ GE 3, *supra* note 8, at 5, 11; GE 4, *supra* note 8, at 1; GE 2, *supra* note 3, at 4-5.

²⁰ GE 1, *supra* note 1, at 38.

²¹ Answer to the SOR, *supra* note 8, at 1.

²² Tr. at 37-38.

²³ AE F (Receipt, dated May 17, 2016).

²⁴ AE G (Satisfaction of Judgment, dated May 17, 2016).

²⁵ GE 3, *supra* note 8, at 7-8, 10.

Applicant explained that his state income tax refunds are levied by the state department of revenue and applied to his outstanding medical bills.²⁶ The three largest accounts were paid on November 13, 2015, and the two smaller accounts were paid on November 9, 2015.²⁷ The accounts have been resolved.

SOR ¶ 1.g.: This is bank credit card account with a remaining unpaid balance of \$476 that was placed for collection and charged off.²⁸ In September 2015, Applicant contacted the creditor and entered into a repayment plan under which he agreed to make monthly payments of \$50.²⁹ Applicant contended he made those payments until the fire engulfed his home in December 2015, but that he had to temporarily suspend his payments until he could save enough funds to continue.³⁰ Applicant failed to submit any documentation to support his contention regarding the plan or his payments. Nevertheless, it appears that the account is in the process of being resolved.

SOR ¶¶ 1.h., 1.i., 1.k., 1.l., 1.m., 1.n., 1.o., 1.p., 1.r., and 1.s.: These are medical accounts for professional services received by Applicant and his family with unpaid balances of \$699, \$161, \$41, \$1,256., \$650, \$667, \$146, \$536, \$250, and \$440 that were placed for collection.³¹ Applicant explained that his state income tax refunds are levied by the state department of revenue and applied to his outstanding medical bills.³² Because of the manner in which medical accounts are listed in the credit reports it is difficult to identify specific accounts. A payment was made in the amount of \$150 in November 2015, and additional payments were made in the amounts of \$20, \$20, \$37, and \$530 in May 2016,³³ but it is difficult to align payments with medical accounts. These accounts appear to be in process of being resolved.

SOR ¶ 1.q.: This is an automobile loan on a vehicle with an original limit of \$30,000 and monthly payments of \$450 to \$475 that Applicant could not sustain when it went into collection and \$16,539 was charged off.³⁴ Applicant voluntarily relinquished the vehicle. It was supposedly sold at auction. Applicant contended that he was told there would be no deficiency and that the amount of the sale was sufficient to settle the

²⁶ Tr. at 38-39.

²⁷ AE O (Account Information, undated); AE H (Account Information, undated); AE I (Account Information, undated).

²⁸ GE 3, *supra* note 8, at 10.

²⁹ Tr. at 41-42.

³⁰ Tr. at 42-43.

³¹ GE 3, *supra* note 8, at 11-15.

³² Tr. at 44-45, 49.

³³ AE M (Account Information, undated); AE J (Account Information, undated); AE K (Account Information, undated); AE L (Account Information, undated); AE N (Account Information, undated).

³⁴ GE 3, *supra* note 8, at 13.

account.³⁵ Applicant failed to submit documentation to support his contention that the account had been settled without any lingering deficiency remaining, claiming that his documentation was lost in the fire.³⁶ The account no longer appears in Applicant's October 2015 credit report. Nevertheless, it remains unclear if the account has been resolved.

SOR ¶ 1.t.: This is home monitoring system account with an unpaid and past-due amount of \$362 that was placed for collection.³⁷ Applicant listed the debt in his e-QIP and stated that he had contacted the creditor and indicated he would pay a settled amount of \$250 by the end of August 2014.³⁸ At some point before his June 2014 credit report was issued, Applicant disputed the account.³⁹ During his interview with an investigator from the U.S. Office of Personnel Management (OPM) in July 2014, Applicant acknowledged the account and repeated his earlier statement of intent.⁴⁰ Applicant's position changed, and in his Answer to the SOR and during the hearing, Applicant's memory changed and, despite his research efforts, he no longer had any knowledge of the creditor or the account.⁴¹ The account still appears in Applicant's October 2015 credit report.⁴² The account has not been resolved.

SOR ¶ 1.u.: This is a county library account with an unpaid and past-due balance of \$56 that was placed for collection.⁴³ Applicant listed the debt in his e-QIP and stated that he had contacted the creditor to inquire about it, but the creditor had no record of it. He noted that if he does, in fact, owe the amount, he will pay it.⁴⁴ During his OPM interview, he repeated his earlier position, but added an additional comment that he had no knowledge of the collection agent and was not sure if the account was legitimate.⁴⁵ His position in his Answer to the SOR and during the hearing again changed, and he now contends he paid the bill "years ago."⁴⁶ Applicant failed to submit any

³⁵ Answer to the SOR, *supra* note 8, at 1; Tr. at 46. The credit report includes a comment that the account is the responsibility of the "separated/divorced spouse," but Applicant disputes that comment as he has never been separated or divorced. See Tr. at 48.

³⁶ Tr. at 49.

³⁷ GE 3, *supra* note 8, at 16.

³⁸ GE 1, *supra* note 1, at 48.

³⁹ GE 3, *supra* note 8, at 16; Tr. at 50.

⁴⁰ GE 2, *supra* note 3, at 8.

⁴¹ Answer to the SOR, *supra* note 8, at 1; Tr. at 49-50.

⁴² GE 4, *supra* note 8, at 2.

⁴³ GE 3, *supra* note 8, at 16.

⁴⁴ GE 1, *supra* note 1, at 43.

⁴⁵ GE 2, *supra* note 3, at 8.

⁴⁶ Answer to the SOR, *supra* note 8, at 2; Tr. at 50.

documentation to support his contention regarding a payment. The debt is not listed in Applicant's most recent credit report. The account has not been resolved.

Applicant's financial outlook has changed and he now saves as much as he can for his children and his grandchildren. He contends that he works hard and pays his bills. He and his wife share some of the family expenses and each is responsible for other expenses. His personal budget indicates a monthly income of \$4,875; normal monthly expenses, including student loans and credit cards, of \$3,273; leaving him a monthly remainder of \$1,602 available for saving or spending.⁴⁷ He maintains three checking accounts with a combined balance of approximately \$14,305; and one retirement account worth approximately \$6,000.⁴⁸

Other than his normal monthly expenses, Applicant also incurred medical bills when he had to have four kidney stone surgeries and five computerized axial tomography scans (CAT scans) of his heart, leaving him approximately \$15,000 in medical bills.⁴⁹ Some of those bills are being paid by the state income tax levy, and for a period of time, \$200 was deducted from each of his paychecks.⁵⁰ Applicant initially intended to have all of the SOR accounts resolved before the hearing, but his fire disrupted everything and destroyed his proof of payments.⁵¹ Applicant intends to continue reviewing his accounts and continue paying any remaining unpaid accounts that are in his SOR.⁵² He has no other outstanding debts.⁵³ In the absence of any additional unidentified delinquencies, it appears that Applicant's financial problems are finally under control.

Character References and Community Service

Applicant's pastor noted that Applicant has been an active member of the church for years and that he can be counted on and trusted. He routinely displays a high level of work ethic, as well as a can-do attitude.⁵⁴

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security

⁴⁷ AE E (Monthly Budget, undated).

⁴⁸ Tr. at 54-56.

⁴⁹ Tr. at 63-64.

⁵⁰ Tr. at 64.

⁵¹ Tr. at 86.

⁵² Tr. at 66.

⁵³ Tr. at 65.

⁵⁴ AE A (Character Reference, dated November 8, 2015).

emphasizing, “no one has a ‘right’ to a [position of public trust].”⁵⁵ As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. Positions designated as ADP-I and ADP-II are classified as “sensitive positions.”⁵⁶ “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.”⁵⁷ 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.⁵⁸

When evaluating an applicant’s suitability for a public trust position, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant’s eligibility for a public trust position.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging 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 common sense decision. 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 meaningful decision.

In the decision-making process, facts must be established by “substantial evidence.”⁵⁹ The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government’s case. The burden of disproving a mitigating condition never shifts to the Government.⁶⁰

⁵⁵ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

⁵⁶ Regulation ¶¶ C3.1.2.1.1.7, C3.1.2.1.2.3, and C3.1.2.2. See also Regulation app. 10, ¶ 10.2.

⁵⁷ Regulation ¶ C6.1.1.1.

⁵⁸ Regulation ¶ C8.2.1. It should be noted that a memorandum from the Deputy Under Secretary of Defense for Counterintelligence and Security, *Adjudication of Trustworthiness Cases*, dated November 19, 2004, covers the handling of trustworthiness cases under the Directive. The memorandum directed DOHA to continue to utilize the Directive in ADP contractor cases for trustworthiness determinations.

⁵⁹ “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

⁶⁰ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

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 as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those 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. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of sensitive information. Furthermore, security clearance determinations, and by inference, public trust determinations, should err, if they must, on the side of denials.⁶¹ 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.

Analysis

Guideline F, Financial Considerations

The trustworthiness concern relating to the guideline for Financial Considerations is set out in 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 [sensitive] 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 trustworthiness concerns. Under AG ¶ 19(a), an "inability or unwillingness to satisfy debts" is potentially disqualifying. Also, under AG ¶ 19(c), "a history of not meeting financial obligations" may raise trustworthiness concerns. Applicant's initial financial problems arose sometime between 1994 and 1995. They resurfaced in March 2005, and continued until 2014. During those extensive periods, for a variety of reasons, he had insufficient money to maintain all of his monthly payments. Various accounts became delinquent. Some of those accounts, both SOR and non-SOR, were placed for collection or charged off. One account went to judgment. A vehicle was repossessed. AG ¶¶ 19(a) and 19(c) have been established.

The guideline also includes examples of conditions that could mitigate trustworthiness concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where "the behavior happened so long ago,

⁶¹ *Egan*, 484 U.S. at 531.

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." Also, under AG ¶ 20(b), financial trustworthiness concerns may be mitigated where "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." Evidence that "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" is potentially mitigating under AG ¶ 20(c). Similarly, AG ¶ 20(d) applies where the evidence shows "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts."⁶²

AG ¶¶ 20(b), 20(c), and 20(d) apply. AG ¶ 20(a) does not apply. The nature, frequency, and recency of Applicant's continuing multi-year period of financial difficulties especially since 2005 make it difficult to conclude that it occurred "so long ago" or "was so infrequent." Applicant's initial financial problems do not appear to have been caused by events that were largely beyond his control. To the contrary, as he, himself, expressed, there was a lack of planning on his part. He also believed the birth of his two sons contributed to his financial problems. The significant life-event that resulted in the reappearance of financial difficulties occurred in March 2005 when he lost his job. What followed was an extended period of unemployment, part-time employment, and underemployment, all resulting in greatly reduced income. To generate income, Applicant took small odd jobs with low pay, as well as full-time underemployment as a laborer or picker. He managed to maintain his newer accounts, and while he attempted to address his delinquent debts with the assistance of a professional credit counselor, the absence of sufficient income, eventually accompanied by additional medical issues, precluded a more timely success. A fire in December 2015 disrupted everything by causing new expenses and destroying documentary evidence of his debt resolution efforts pertaining to his delinquent debts.

The acquisition of better-paying employment in 2014 enabled Applicant to make a more aggressive effort to resolve his delinquent debts. His state income tax refunds were diverted to pay off a number of medical accounts. Applicant paid other accounts. While he was able to obtain documentation to reflect some of his successful debt

⁶² The Appeal Board has previously explained what constitutes a good-faith effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the "good-faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term "good-faith." However, the Board has indicated that the concept of good-faith "requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation." Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy [or statute of limitations]) in order to claim the benefit of [the "good-faith" mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

resolution efforts, the December 2015 fire essentially destroyed his other documentary evidence. In May 2016, he engaged the professional services of a debt-relief law firm to consolidate some debts and make the necessary monthly payments in a renewed effort to resolve his outstanding accounts.

Given Applicant's new appreciation of financial stability and his focused efforts to resolve his remaining delinquent debts, with a monthly remainder of \$1,602 and approximately \$14,305 in the bank, it appears that Applicant's financial problems finally under control. Applicant's actions no longer cast doubt on his current reliability, trustworthiness, or good judgment.⁶³

Whole-Person Concept

Under the whole-person concept, the 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. Moreover, I have evaluated this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.⁶⁴

There is some evidence against mitigating Applicant's conduct. He initially failed to exercise any financial planning and saw numerous accounts become delinquent. Some debts were charged off, one debt went to judgment, and a vehicle was repossessed. He was apparently confused when asked to explain his debt resolution efforts pertaining to at least two of the accounts, offering inconsistent stories. His state income tax refunds were diverted to pay off his delinquent medical debts.

The mitigating evidence is more substantial and compelling. There is no evidence of misuse of information technology systems, mishandling protected

⁶³ See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

⁶⁴ See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); See also ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

information, or substance abuse. After he lost his job in 2005, Applicant endured an extended period of unemployment, part-time employment, and underemployment, all resulting in greatly reduced income. To generate income, Applicant took small odd jobs with low pay, as well as full-time underemployment as a laborer or picker. After his earlier years of poor financial planning, Applicant finally embraced the paradigm of fiscal responsibility. He prioritized his debts, minimized expenses, and initially focused on maintaining his newer accounts current, before focusing on his older delinquent debts. Although he was beset by a variety of issues, he made various efforts to resolve his delinquent accounts. Applicant did not conceal his financial difficulties when completing his e-QIP. Instead, he was honest and forthright, and he reported them. Repayment plans were established, payments made, and many of his accounts are now either resolved or in the process of being resolved. The absence of documentation to support his contentions with respect to his efforts regarding the other accounts was in large measure caused by the devastating fire at his home in December 2015. The undisputed developed evidence enables me to conclude that there are clear indications that Applicant's financial problems are now under control.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:

In evaluating Guideline F cases, the Board has previously noted that the concept of “‘meaningful track record’ necessarily includes evidence of actual debt reduction through payment of debts.” However, an applicant is not required, as a matter of law, to establish that he [or she] has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he [or she] has “. . . established a plan to resolve his [or her] financial problems and taken significant actions to implement that plan.” The Judge can reasonably consider the entirety of an applicant's financial situation and his [or her] actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) (“Available, reliable information about the person, 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. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.⁶⁵

Applicant has demonstrated a fair track record of debt reduction and elimination efforts, limited only by his modest earnings as a result of a series of issues over which he had little control. Nevertheless, because Applicant is currently in the process of resolving his remaining debts, especially his medical debts, this decision should serve as a warning that Applicant's failure to continue his debt resolution efforts pertaining to

⁶⁵ ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

those remaining accounts, or the actual accrual of new delinquent debts, will adversely affect his future eligibility for a position of public trust.⁶⁶

Overall, the evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a position of public trust. For all of these reasons, I conclude Applicant has mitigated the trustworthiness concerns arising from his financial considerations. See AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

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: FOR APPLICANT

Subparagraphs 1.a. through 1.u.: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant Applicant eligibility to occupy a public trust position to support a contract with DOD. Eligibility is granted.

ROBERT ROBINSON GALES
Administrative Judge

⁶⁶ While this decision should serve as a warning to Applicant as security officials may continue to monitor his finances, this decision, including the warning, should not be interpreted as a conditional eligibility to hold a position of public trust to support a contract with DOD. The Government can re-validate Applicant's financial status at any time through credit reports, investigation, and interrogatories. Approval of a position of public trust now does not bar the Government from subsequently revoking it, if warranted. "The Government has the right to reconsider the security [or trustworthiness] significance of past conduct or circumstances in light of more recent conduct having negative security [or trustworthiness] significance." Nevertheless, the Defense Office of Hearings and Appeals (DOHA) has no authority to attach limiting conditions, such as an interim, conditional, or probationary status, to an applicant's eligibility for a position of public trust. See, e.g., ISCR Case No. 10-06943 at 4 (App. Bd. Feb. 17, 2012) (citing ISCR Case No. 10-03646 at 2 (App. Bd. Dec. 28, 2011)). See also ISCR Case No. 06-26686 at 2 (App. Bd. Mar. 21, 2008); ISCR Case No. 04-03907 at 2 (App. Bd. Sep. 18, 2006); ISCR Case No. 04-04302 at 5 (App. Bd. June 30, 2005); ISCR Case No. 03-17410 at 4 (App. Bd. Apr. 12, 2005); ISCR Case No. 99-0109 at 2 (App. Bd. Mar. 1, 2000).