



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



In the matter of:)
)
 ---) ADP Case No. 15-01542
)
 Applicant for Public Trust Position)

Appearances

For Government: Chris Morin, Esquire, Department Counsel
For Applicant: Alan V. Edmunds, Esquire

03/10/2017

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 22, 2014, Applicant applied for a public trust position and submitted an Electronic Questionnaire for Investigations Processing (e-QIP).¹ On September 27, 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 22, 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 October 16, 2015. In a sworn statement, dated October 26, 2015, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. On February 25, 2016, Department Counsel indicated the Government was prepared to proceed. The case was assigned to me on March 23, 2016. A Notice of Hearing was issued on April 28, 2016. I convened the hearing, as scheduled, on May 16, 2016.

During the hearing, 3 Government exhibits (GE) 1 through GE 3, 19 Applicant exhibits (AE) A through AE S, and 1 administrative exhibit were admitted into evidence without objection. Applicant testified. The transcript (Tr.) was received on May 24, 2016. I kept the record open to enable Applicant to supplement it. He took advantage of that opportunity and timely submitted additional documents, which were marked and admitted as AE T through AE X, without objection. The record closed on June 7, 2016.

Findings of Fact

In his Answer to the SOR, Applicant failed to use the words "admit" or "deny" in responding to the factual allegations pertaining to financial considerations (§§ 1.a. through 1.q.) of the SOR. Nevertheless, Applicant's admissions and comments 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 60-year-old employee of a defense contractor. He has been a full-time senior project leader and consultant for his employer since August 2012. He previously held a number of similar positions while self-employed or with other employers, including periods with an investment bank and a board of trade as a market maker and futures broker. He is seeking to obtain continuing eligibility for occupying a public trust position to support a contract with the DOD. He is a 1974 high school graduate, and he earned a bachelor of arts degree in 1978 and a master of business administration degree in 1982. He never served in the U.S. military. Applicant was married in July 1978 and divorced in 1992; married again in 1999 and divorced in 2007; and married again in 2013. He has three sons, born in 1985, 1987, and 1991, and two stepdaughters, born in 1966 and 1970.

Financial Considerations²

Applicant was unemployed on several different occasions; he was self-employed from April 2004 until May 2008 when the recession of 2008 “destroyed” his business; he was unemployed from May 2008 until September 2010; his temporary job from September 2010 came to a conclusion in April 2011, and he was again unemployed from April 2011 until May 2011; he was self-employed working for another company from May 2011 until that company went bankrupt in October 2011, and he was again unemployed until April 2012; and he was self-employed working for another company from April 2012 until August 2012 when that company lost their contract.

Over a period of time, because his annual salary plummeted from \$60,000 to \$70,000 to zero, and because Applicant had insufficient money to pay his bills and keep his accounts current, a number of his accounts became delinquent. Some were placed for collection, some were charged off, and others went to judgment. Federal and state income taxes went unpaid. Applicant reduced his expenses by necessity, and he eventually moved into a backyard shack owned by his sister, where he resided, rent-free, for 18 months. His mother assisted him financially with other necessities. Although he was overwhelmed and unsure what to do to resolve his financial issues, he established a repayment plan, starting with the smaller debts and intending to work up to the larger ones. He finally obtained financial counseling on such topics as your banking relationship, understanding credit and credit reports, your financial life for young adults, identity theft and predatory lending, introduction to borrowing, introduction to investing, and setting your financial goals and creating a budget. In his Response to the SOR, Applicant attributed several factors that combined to create financial difficulties for him:

The “Great Recession” of 2008 had a massive and catastrophic effect on my financial life. As a result of this recession, I was out of work for almost 3 years. In addition, during this time frame, I went through a divorce. What was left was a man who was bankrupt in every sense of the word. However, I chose not to file for bankruptcy, but instead decided that at some point I will make good on all my debts. . . .

Not all debts have been resolved yet, however I plan on having them resolved before the close of 2016. I want to note here that resolution of these items has been steady and consistent. The only reason there are some still outstanding is because of my financial bandwidth. I can only resolve so many at a time without creating a financial disjoint for myself. I would like to also note that of the 17 items, only 5 remain.

² General source information pertaining to the financial accounts discussed below can be found in the following exhibits: GE 1, *supra* note 1; GE 2 (Combined Experian, TransUnion, and Equifax Credit Report, dated June 12, 2014); GE 3 (Equifax Credit Report, dated February 6, 2015; Applicant’s Answer to the SOR, dated October 26, 2015. More recent information can be found in the exhibits furnished and individually identified.

Going forward, I have made it a policy in my life to not incur any debt. I have been successful with this life policy. Anything that is needed or wanted, I save cash for and purchase it outright.

The SOR identified 17 purportedly continuing delinquent accounts, totaling approximately \$72,741, as reflected by Applicant's June 2014 credit report and his February 2015 credit report. Several of the accounts alleged in the SOR appear to be duplicates or separate versions of the same account. Some of the accounts have been paid off or otherwise settled, some are in the process of being resolved, and a few of the accounts remain in an ambiguous status. The account numbers listed in the credit reports are inconsistent, with some listings only offering the first two numerical digits, some a string of numbers without the final few digits, and even others with completely different numbers associated with the collection agent, rather than the original creditor. The SOR identified account numbers for only 3 of the 17 accounts alleged. There is documentation to support many of Applicant's contentions. 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:

The debts in SOR ¶¶ 1.a., 1.b., 1.c., 1.h., and 1.i. are held by the same collection agent/debt purchaser. SOR ¶ 1.a. refers to an unspecified type of bank account, thought to be a line of credit, with an unpaid and past-due balance of \$27,919 that was placed for collection. On May 3, 2016, Applicant sent a letter to the collection agent seeking validation of the account because he denied ever having an account with the original creditor.³ There was apparently no response to the letter, as none was submitted to me by Applicant. That account remains unresolved.

SOR ¶ 1.b. refers to a credit card account with an unpaid and past-due balance of \$9,276 that was placed for collection. On May 3, 2016, Applicant sent a letter to the collection agent seeking validation of the account.⁴ There was apparently no response to the letter, as none was submitted to me by Applicant. That account remains unresolved.

SOR ¶¶ 1.c. and 1.i. refer to two snapshots of the same bank credit card account with an unpaid and past-due balance of \$3,724, that was initially increased to \$4,634 by the credit agent, and eventually to \$4,858.84. The collection agent obtained a judgment in the amount of \$5,793 in April 2014.⁵ At some point before October 1, 2014 – approximately 12 months before the SOR was issued – Applicant and the credit agent entered into a repayment arrangement under which Applicant agreed to make monthly

³ GE 2, *supra* note 2, at 11; GE 3, *supra* note 2, at 2; AE B (Letter, dated May 3, 2016); Tr. at 32, 50.

⁴ GE 2, *supra* note 2, at 16; GE 3, *supra* note 2, at 2; AE B (Letter, dated May 3, 2016); Tr. at 33.

⁵ GE 2, *supra* note 2, at 10; GE 3, *supra* note 2, at 2; AE B (Letter, dated May 3, 2016); Tr. at 34.

payments of \$75 until the balance was paid in full.⁶ Applicant has made the required monthly payments since October 2014.⁷ The account is in the process of being resolved.

SOR ¶ 1.h. refers to an unspecified type of bank account with a high credit of \$1,564 that was placed for collection and a judgment was obtained in the amount of \$1,643 in October 2012.⁸ The account was settled in full on November 12, 2012 – nearly three years before the SOR was issued.⁹ The account has been resolved.

SOR ¶¶ 1.d. and 1.k. refer to two snapshots of the same bank credit card account with an unpaid and past-due balance of \$966 that was placed for collection and charged off. The collection agent obtained a judgment in the amount of \$823 in February 2010.¹⁰ At some point before mid-November 2015, Applicant paid the collection agent an unspecified sum that was deemed sufficient to satisfy the judgment.¹¹ The account has been resolved.

There are two alleged bank credit card accounts with the same creditor. SOR ¶ 1.e. had a high credit of \$3,610 and SOR ¶ 1.f. had a high credit of \$5,759. Both accounts, with unspecified unpaid balances, were placed for collection, charged off, and sold to an unidentified debt purchaser in late 2009.¹² In February 2010, a known debt purchaser obtained a judgment in the amount of \$5,607.¹³ Although the original creditor was not identified in the credit reports, there is substantial circumstantial evidence to conclude that these two accounts were purchased by the debt purchaser which then obtained the judgment referred to in SOR ¶ 1.j. On May 3, 2016, Applicant sent letters to the creditor seeking validation of the accounts.¹⁴ There was apparently no response to the letters, as none was submitted to me by Applicant. Those accounts remain unresolved.

SOR ¶ 1.g. refers to a state lien in the amount \$7,930 filed in November 2009 for underpayment of income taxes for the tax year 2005, following an audit in 2008.¹⁵ Applicant eventually entered into an installment agreement with the state division of

⁶ AE F (Letter, dated October 3, 2014).

⁷ AE W (Cancelled Checks, various dates).

⁸ GE 2, *supra* note 2, at 6, 10; GE 3, *supra* note 2, at 4; Tr. at 37.

⁹ AE G (Letter, dated November 12, 2012); AE G (Warrant for Satisfaction of Judgment, dated November 14, 2012).

¹⁰ GE 2, *supra* note 2, at 6, 8; GE 3, *supra* note 2, at 2, 4.

¹¹ AE E (Warrant to Satisfy Judgment, dated November 17, 2015); AE E (Letter, dated December 14, 2015); Tr. at 38.

¹² GE 2, *supra* note 2, at 12-13; GE 3, *supra* note 2, at 3.

¹³ GE 2, *supra* note 2, at 6; GE 3, *supra* note 2, at 4.

¹⁴ GE 2, *supra* note 2, at 11; GE 3, *supra* note 2, at 2; AE B (Letters, dated May 3, 2016).

¹⁵ GE 2, *supra* note 2, at 5; GE 3, *supra* note 2, at 4; Tr. at 55-58.

taxation, and in 2008, 2012, and 2014, when he could do so, he made a number of periodic payments. By March 2015, he had reduced the outstanding balance, including penalty, interest, and installment fee, to \$2,660.24.¹⁶ In 2015 and early 2016, Applicant focused on resolving other delinquent accounts and he interrupted his payments on the lien. During the hearing, he indicated that he was about to reestablish a formal repayment structure with the state to again address the lien.¹⁷ Although he failed to submit any documentation to support his renewed intention, it appears that, in light of his past actions and expressed intentions, the account is in the process of being resolved.

SOR ¶ 1.l. refers to a medical account with an unpaid and past-due balance of \$765 that was placed for collection.¹⁸ On October 20, 2015, Applicant paid the collection agent the entire amount.¹⁹ The account has been resolved.

SOR ¶ 1.m. refers to a bank credit card account with a high limit of \$3,724 that was placed for collection, charged off in an unspecified amount, and sold to a debt purchaser in about 2009.²⁰ In 2011, the debt purchaser reported the unpaid balance as \$6,577.²¹ While the account is listed with the original creditor in Applicant's February 2015 credit report, the account is not listed with the credit purchaser. On May 3, 2016, Applicant sent a letter to the collection agent seeking validation of the account.²² There was apparently no response to the letter, as none was submitted to me by Applicant. The account remains unresolved, although Applicant's legal liability and responsibility for the account may have expired because of the statute of limitations.

SOR ¶¶ 1.n. and 1.o. refer to Applicant's federal income taxes for the tax year 2012. SOR ¶ 1.n. alleged that Applicant failed to pay his federal income taxes in the approximate amount of \$6,577, and that as of the date of the SOR (September 27, 2015), the tax debt remained unpaid. In fact, on December 1, 2014 – nearly ten months before the SOR was issued – Applicant paid the Internal Revenue Service (IRS) \$1,000, and on December 31, 2014 – approximately nine months before the SOR was issued – he paid the IRS \$6,259.13.²³ The account has been resolved. SOR ¶ 1.o. alleged that Applicant failed to file his federal income tax return for that tax year “until no earlier than 2014.” Applicant acknowledged that his filing was late, but noted that he did eventually file the

¹⁶ AE A (Billing Notice, dated March 4, 2015); Tr. at 36-37.

¹⁷ Tr. at 56-58.

¹⁸ GE 2, *supra* note 2, at 11.

¹⁹ AE H (Account Payment History, dated October 23, 2015).

²⁰ GE 2, *supra* note 7, at 9, 16; GE 3, *supra* note 2, at 2.

²¹ GE 2, *supra* note 7, at 16.

²² AE B (Letter, dated May 3, 2016); Tr. at 39.

²³ AE C (IRS Direct Pay Confirmations, various dates); Tr. at 40.

federal income tax return in March 2014 – 18 months before the SOR was issued.²⁴ The matter has been resolved.

SOR ¶¶ 1.p. and 1.q. refer to Applicant's state income taxes for the tax year 2012. SOR ¶ 1.p. alleged that Applicant failed to pay his state income taxes in the approximate amount of \$800, and that as of the date of the SOR (September 27, 2015), the tax debt remained unpaid. In fact, on October 14, 2014, Applicant entered into an Installment Agreement under which he agreed to make monthly payments. His payments commenced at that time and throughout 2014 and 2015, he routinely made them.²⁵ On October 23, 2015, the department of revenue issued Applicant a notice of agreement satisfaction, indicating that the "receivables" had been "paid in full."²⁶ The account has been resolved. SOR ¶ 1.q. alleged that Applicant failed to file his state income tax return for that tax year "until no earlier than 2014." Applicant acknowledged that his filing was late, but noted that he did eventually file the state income tax return in March 2014, before the SOR was issued.²⁷ Although he indicated an intention to submit a copy of the filed return, he failed to do so. In the absence of such documentation, it is difficult to determine the true status of the tax return. Accordingly, it appears that the matter has not yet been resolved.

Applicant currently earns about \$150,000 a year. In May 2016, he submitted a Personal Financial Statement to reflect \$10,284 as combined monthly net income for himself and his wife; \$7,805 in monthly expenses; and \$2,264 in various debt and other financial obligations; leaving \$215 as a monthly remainder available for discretionary spending or savings.²⁸ Applicant has engaged various creditors to make payments for various accounts that are not listed in the SOR, and he intends to follow up with those accounts listed that have not yet been resolved.²⁹ He claimed to be somewhat concerned about those SOR-related accounts for which he requested validation because of the notice he had received from the U.S. Office of Personnel Management regarding the "malicious cyber intrusion" carried out against the U.S. Government. His personal information was included in the intrusion.³⁰ In the absence of any additional unidentified delinquencies, it appears that Applicant's financial situation has improved dramatically and that his finances are finally under control.

²⁴ AE L (U.S. Individual Income Tax Return (Form 1040) (2012), dated March 16, 2014); Tr. at 40.

²⁵ AE U (Installment Agreement, dated October 14, 2014); AE V (Transaction History, dated May 23, 2016).

²⁶ AE D (Notice – Payment Agreement Satisfaction, dated October 23, 2015).

²⁷ Tr. at 41, 66.

²⁸ AE K (Personal Financial Statement, dated May 8, 2016).

²⁹ Tr. at 46-47.

³⁰ AE I (Letter, undated); Tr. at 89.

Work Performance and Character References

A variety of friends, professional colleagues, his human resources manager, and a business partner are all enthusiastically supportive of Applicant's application to obtain eligibility for a position of public trust. They describe him with such terms as trustworthy, honesty, integrity, professionalism, strength, character, reliable, and incredible role model.³¹ His annual employee performance reviews for 2013 and 2014 reflect individual ratings routinely "sometimes exceeds expectations."³² Applicant has been vetted, and he was issued a state concealed weapons permit.³³

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a [position of public trust]."³⁴ 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."³⁵ "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."³⁶ DOD contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination may be made.³⁷

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

³¹ AE R (Character References, various dates).

³² AE O (Annual Employee Performance Reviews, various dates).

³³ AE P (Concealed Weapons Permit, dated March 12, 2015).

³⁴ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

³⁵ 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.

³⁶ Regulation ¶ C6.1.1.1.

³⁷ 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 the Defense Office of Hearings and Appeals (DOHA) to continue to utilize the Directive in ADP contractor cases for trustworthiness determinations.

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."³⁸ 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.³⁹

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.⁴⁰ 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

³⁸ "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).

³⁹ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

⁴⁰ *Egan*, 484 U.S. at 531.

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. Similarly, under AG ¶ 19(c), "a history of not meeting financial obligations" may raise trustworthiness concerns. In addition, the "failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same" may be disqualifying under AG ¶ 19(g). Applicant's initial financial problems apparently commenced in mid-2008, and continued partially interrupted until August 2012. Eventually, a number of accounts became delinquent, and they were placed for collection, charged off, or went to judgment. He failed to timely file some federal and state income tax returns. A tax lien was filed. AG ¶¶ 19(a), 19(c), and 19(g) 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, 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."⁴¹ In addition, AG ¶ 20(e) may apply if "the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the basis of the dispute or provides evidence of actions to resolve the issue."

AG ¶¶ 20(a), 20(b), 20(c), 20(d), and 20(e) apply. Much of what occurred was largely beyond Applicant's control and took place under such circumstances that it is unlikely to recur. Applicant was divorced in 2007, but a combination of circumstances

⁴¹ 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)).

arose in mid-2008 that severely devastated Applicant's finances. Commencing with the economic recession in 2008, he was largely unemployed, "self-employed," or underemployed during various periods from May 2008 until August 2012. His annual salary plummeted from \$60,000 to \$70,000 essentially to zero. With insufficient money to pay his bills and keep his accounts current, a number of those accounts became delinquent. Applicant reduced his expenses by necessity, and he eventually moved into a backyard shack owned by his sister, where he resided, rent-free, for 18 months. His mother assisted him financially with other necessities. Although he was overwhelmed and unsure what to do to resolve his financial issues, he rejected bankruptcy, and he established a repayment plan. He started with his smaller debts and worked up to the larger ones. He finally obtained financial counseling.

After securing his current position, and stabilizing his financial situation, Applicant started resolving his delinquent accounts. Approximately one year before the SOR was issued, Applicant entered into his first few repayment installment plans. Accounts were resolved or are in the process of being resolved, unpaid federal and state taxes were paid or are in the process of being paid, and late federal and state income tax returns were finally filed. Several accounts have not yet been resolved because the debt purchasers and collection agents failed to respond to Applicant's requests for validation, and they are essentially disputed. Applicant currently earns about \$150,000 per year. He has addressed all of his creditors, including some that were not identified or alleged in the SOR. A number of non-SOR accounts, as well as SOR accounts, have been resolved. There is documentation to support most of Applicant's contentions. Several alleged debts are actually snapshots of the same accounts.

Trustworthiness adjudications are aimed at evaluating an applicant's judgment, reliability, and trustworthiness. They are not a debt-collection procedure. The adjudicative guidelines do not require an applicant to establish resolution of each and every debt alleged in the SOR. An applicant need only establish a plan to resolve financial problems and take significant actions to implement the plan. There is no requirement that an applicant immediately resolve or make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in an SOR be paid first. Rather a reasonable plan and concomitant conduct may provide for the payment of such debts one at a time.

There is a substantial risk when one accepts, at face value, the contents of credit reports without obtaining original source documentation to verify entries. Credit bureaus collect information from a variety of sources, including public records and "other sources," and it is these other unidentified sources that are the cause for concern. Likewise, when accounts are transferred, reassigned, sold, or merely churned, an individual's credit history can look worse than it really is. In this particular instance, the combined credit reports referred to numerous creditors for relatively few delinquent accounts. Because of abbreviated names and acronyms, multiple and partial account numbers for the same account listed several times under different creditors, debt purchasers, or collection agents, many of those entries are garbled and redundant, and have inflated the financial concerns. Likewise, when the information in the credit report is refuted by documentation from the actual creditor, and the credit reporting company, the creditor, collection agent,

or debt purchaser is furnished the correct information but still refuses or fails to correct its entries in a timely manner, or refuses to respond to requests for validation, one can conclude that the information in the credit report – actually a summary or secondary evidence pertaining to an account – is less accurate, trustworthy, or reliable than the other evidence of record.

Given Applicant's appreciation for financial stability and his focused efforts on his remaining delinquent debts, and with a modest monthly remainder available for discretionary savings or spending, it appears that Applicant's financial problems are finally under control. His actions no longer cast doubt on his current reliability, trustworthiness, or good judgment.

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.⁴²

There is some evidence against mitigating Applicant's conduct. Applicant failed to maintain his various accounts in a current status, and many of his accounts were placed for collection, charged off, or went to judgment. He failed to timely file federal and state income tax returns for the tax year 2012, and he failed to pay all of his federal and state income taxes. A tax lien was filed. He apparently became overwhelmed by delinquent debt, and took little action to resolve his situation until 2014.

The mitigating evidence is more substantial. There is no evidence of misuse of information technology systems, mishandling protected information, or substance abuse. Instead, there is an individual who is a loving, caring parent, friend, and employee who is

⁴² 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).

highly praised by those who know him. The national economic recession severely impacted him financially, and commencing in mid-2008, and continuing until August 2012, Applicant was unemployed, underemployed, or “self-employed” on several different lengthy occasions. His periods of unemployment, underemployment, and self-employment combined to render his efforts to accumulate funds to resolve his debts ineffective. Nevertheless, Applicant developed a strategy to resolve his delinquent accounts. He dramatically reduced his expenses. As noted above, well before the SOR was issued, Applicant initiated his resolution efforts. Repayment installment plans were established. Since then, accounts were resolved or are in the process of being resolved, unpaid federal and state taxes were paid or are in the process of being paid, and late federal and state income tax returns were finally filed. Other than those accounts which are in the process of being resolved, the only unresolved accounts are those for which the debt purchasers and collection agents failed to respond to Applicant’s requests for validation, and they are essentially disputed. It should be noted that Applicant did not conceal his financial difficulties when completing his e-QIP. Instead, he was honest and forthright, and he reported them. 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.⁴³

Applicant has demonstrated a somewhat delayed, but remarkably good record of accomplishment of debt reduction and elimination efforts, limited only by his former 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

⁴³ ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

debts, this decision should serve as a warning that Applicant's failure to continue his debt resolution efforts pertaining to those remaining accounts, or the actual accrual of new delinquent debts, will adversely affect his future eligibility for a position of public trust.⁴⁴

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.q:	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

⁴⁴ 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).