



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



In the matter of:

Applicant for Public Trust Position

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ADP Case No. 15-03748

**Appearances**

For Government: Aubrey De Angelis, Esq., Department Counsel  
For Applicant: Gerald C. Hunt, Personal Representative

08/17/2016

**Decision**

Harvey, Mark, Administrative Judge:

Applicant made substantial progress addressing the delinquent debts alleged in his statement of reasons (SOR), and his current delinquent debt total is \$7,237. He surrendered his expired Jamaican passport to his security manager. Financial considerations and foreign preference trustworthiness concerns are mitigated. Eligibility for a public trust position is granted.

**Statement of the Case**

On September 8, 2014, Applicant signed an Electronic Questionnaires for Investigations Processing (e-QIP) (SCA). (Government Exhibit (GE) 1) On November 11, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued an SOR to Applicant, pursuant to DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended, and modified; DOD Regulation 5200.2-R, *Personnel Security Program*, dated January 1987, as amended (Regulation); and the adjudicative guidelines (AG), which became effective on September 1, 2006.

The SOR alleges trustworthiness concerns under Guidelines F (financial considerations) and C (foreign preference). (HE 2) The SOR detailed reasons why the DOD CAF was unable to find that it is clearly consistent with the interests of national

security to grant or continue Applicant's eligibility to occupy a public trust position, which entails access to sensitive information. (HE 2) The DOD CAF recommended referral to an administrative judge to determine whether such access to sensitive information should be granted, continued, denied, or revoked. (GE 1)

Applicant provided an undated response to the SOR allegations. (HE 3) On October 16, 2015, Department Counsel indicated she was ready to proceed. On April 4, 2016, the case was assigned to me. On June 20, 2016, the Defense Office of Hearings and Appeals issued a hearing notice setting the hearing for July 12, 2016. The hearing was held as scheduled. At the hearing, the Government provided five exhibits, and Applicant offered three exhibits, which were admitted into evidence without objection. (Tr. 20-24; GE 1-5; Applicant's Exhibit (AE) A-C) On July 20, 2016, I received a transcript of the hearing (Tr.). On July 28, 2016, Applicant submitted one document, which was admitted into evidence without objection. (AE D)

### **Findings of Fact<sup>1</sup>**

In his Answer to the SOR, Applicant admitted the allegations in SOR ¶¶ 1.b through 1.i, 1.k, and 2.a. He did not address, or he denied the remainder of the SOR allegations. He also provided extenuating and mitigating information. (HE 3) His admissions are accepted as findings of fact.

Applicant is a 56-year-old medical-enrollment specialist, who has been working for his employer for two years. (Tr. 44-45) He attended college for three years, and he did not receive a degree. (Tr. 44) His sons are ages 20 and 22. (Tr. 45) He has never married. (GE 1) He has not served in the Jamaican or U.S. military. (Tr. 44) There is no evidence of criminal offenses, alcohol or drug abuse, or violations of his employment rules.

### **Financial Considerations**

Applicant's financial problems began in 2008 or 2009, and they were caused by four circumstances: (1) an employee stole customers and funds from Applicant's business; (2) he was separated from the mother of his children; (3) he has been underemployed for several years; and (4) he is paying \$500 monthly for his son's college expenses. (Tr. 29, 32-33, 36-37, 54-55, 67-68; SOR response)

Applicant's annual salary working for a government contractor is \$61,000, and he earns \$15 per hour working in his part-time retail employment. (Tr. 45-46) His part-time employment is inconsistent, and he was unable to estimate the annual income from that employment. (Tr. 45-46) Applicant pays \$500 monthly to fund his son's college education. (Tr. 51, 79) He is able to pay his expenses and has sufficient income to make some progress paying his delinquent SOR debts. His son will soon graduate from college which will enable him to pay \$500 monthly to address his debts. His taxes are

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<sup>1</sup> Some details have been excluded in order to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

current, except he is paying an \$1,800 federal income tax debt from tax year 2015 with automatic \$125 deductions from his checking account. (Tr. 52-53, 70-72)

The status of his SOR debts is as follows:

SOR ¶¶ 1.a and 1.l are the same medical debt for \$54. (SOR response) Applicant was “pretty sure” it was paid; however, if it is not paid, he promised to pay it. (Tr. 57) A \$54 medical debt is shown as delinquent on his most recent credit report in the record, which is dated July 11, 2016. The duplicated debt in SOR ¶ 1.l is not indicated in his July 11, 2016 credit report.

SOR ¶ 1.b is a credit card debt under collection for \$2,975. On December 21, 2015, Applicant paid \$1,785, and the creditor wrote the debt is resolved. (Tr. 57-59; AE A at 1)

SOR ¶ 1.c is a credit card debt under collection for \$3,374. On December 18, 2015, Applicant paid \$2,024, and the creditor wrote the debt is resolved. (Tr. 57-59; AE A at 3)

SOR ¶ 1.d is a credit card debt under collection for \$4,534. On December 31, 2015, Applicant paid \$2,721, and the creditor wrote the debt is resolved. (Tr. 57-59; AE A at 2)

SOR ¶ 1.e is a charged-off debt owed to a bank for \$3,087. The bank is listed as the original creditor in SOR ¶ 1.d and in Applicant’s August 24, 2014 credit report as the originating creditor in SOR ¶ 1.e. Applicant’s October 26, 2015 credit report shows a charged-off account with a zero balance, and it indicates the seller is the collection company in SOR ¶ 1.d. (GE 4) Applicant’s July 11, 2016 credit report does not list this charged-off bank debt. (GE 5) It is reasonable to infer SOR ¶ 1.e is a duplication of SOR ¶ 1.d, and the debt was paid on December 31, 2015.

SOR ¶ 1.f is a charged-off store debt for \$1,888. Applicant contacted the store and learned the debt was transferred. (Tr. 59) He has not been able to locate the entity holding the debt. (Tr. 59-60)

SOR ¶ 1.g is a credit card debt under collection for \$3,871. Applicant contacted the bank and learned the debt was transferred. (Tr. 60) He has not been able to locate the entity holding the debt. (Tr. 60)

SOR ¶ 1.h is a charged-off store debt for \$845. Applicant contacted the store and learned the debt was transferred. (Tr. 59) He has not been able to locate the entity holding the debt. (Tr. 59-60) Applicant’s July 11, 2016 credit report shows the store account as paid as agreed. (GE 5) A transferred account is not shown. (GE 5)

SOR ¶ 1.i is a mortgage account that went to foreclosure in 2009. The mother of Applicant’s children and Applicant separated. She remained in their home, and she was supposed to pay the mortgage. (Tr. 32) In 2005, they stopped paying the mortgage, and

she moved out. (Tr. 37, 69) Applicant tried to convince the mortgage lender to use a short sale, or to reduce the payments to no avail, and the property was foreclosed in 2009. (Tr. 37-38) He received documentation from the creditor showing discharge of the debt, and he provided it to the Internal Revenue Service. (Tr. 70) Applicant believes he does not owe the creditor anything, and the debt is resolved. (Tr. 60)

SOR ¶ 1.j is a telecommunications debt under collection for \$349. On January 16, 2016, Applicant returned the creditor's equipment to the creditor and resolved the debt. (Tr. 61)

SOR ¶ 1.k is a telecommunications debt under collection for \$230. On February 22, 2016, Applicant paid the collection company \$231, and this debt is resolved. (AE C)

Applicant's July 11, 2016 credit report, the most recent credit report in the record, shows one collection account, one charged-off debt, one repossession account, a renegotiated mortgage, and late payments on several accounts.<sup>2</sup> The collection account is the \$54 medical debt in SOR ¶¶ 1.a and 1.l. The charged-off debt shows the debt was paid in 2012, and the balance is zero. The repossession account shows pays as agreed in 2014, and the balance is zero.

Applicant maintained contact with his creditors. (Tr. 63) He saved up some of the money and he borrowed \$5,000 from his sister so that he could pay the debts listed in the SOR. (Tr. 63, 74-75)

Applicant plans to pay all of his debts. (Tr. 39) His 2005 vehicle is a paid off. (Tr. 38) He is very careful with purchases, and he does not live beyond his means. (Tr. 38) Applicant's uncle was in the U.S. Air Force for 30 years, and his brother was in the U.S. Marine Corps. (Tr. 38) Applicant treasures his integrity, honor, and respect. (Tr. 38) He is loyal to his employer and the United States. (Tr. 39)

## **Foreign Preference**

Applicant was born in Jamaica. (Tr. 40; SOR response) His birth records in Jamaica were destroyed in a fire. (Tr. 40-41; SOR response) He obtained a Jamaican passport to establish the location and date of his birth. (Tr. 40-41; SOR response) His Jamaican passport is a functional equivalent of a birth certificate. (Tr. 64) He did not use his Jamaican passport to travel. (Tr. 64) His passport expired in March 2016. (Tr. 65) On July 27, 2016, he surrendered his expired Jamaican passport to his security manager. (AE D) He does not intend to renew his Jamaican passport. (Tr. 65)

Applicant has significant connections to the United States, including his employment. Most of his family is living in the United States. (Tr. 41-42)

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<sup>2</sup>The source for the information in this paragraph is Applicant's July 11, 2016 credit report. (GE 5)

## Character Evidence

Applicant's friend has known Applicant for 15 years. (Tr. 16, 25) He described Applicant as an honest, generous, and honorable person with excellent integrity who is conscientious about compliance with rules, diligent as an employee, and dedicated to his family and the United States. (Tr. 15-19, 25-33)

## 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 [public trust position]." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). The Government's authority to restrict access to classified information applies similarly in the protection of sensitive, unclassified information. As Commander in Chief, the President has the authority to control access to information bearing on national security or other sensitive information and to determine whether an individual is sufficiently trustworthy to have access to such information. See *Id.* at 527.

Positions designated as ADP I and ADP II are classified as "sensitive positions." Regulation ¶¶ C3.1.2.1.1.7, C3.1.2.2, and C3.1.2.1.2.3. "The standard that must be met for . . . assignment to sensitive duties is that, based on all available information, the person's loyalty, reliability, and trustworthiness are such that . . . assigning the person to sensitive duties is clearly consistent with the interests of national security." Regulation ¶ C6.1.1.1. Department of Defense contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination may be made. See Regulation ¶ C8.2.1.

When evaluating an applicant's suitability for a public trust position, an administrative judge must consider the disqualifying and mitigating conditions in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

A person who seeks access to sensitive information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to sensitive information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of sensitive information.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant which may disqualify the applicant from being eligible for access to sensitive information. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s suitability for a public trust position. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

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 ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her access to sensitive information[.]” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

The protection of national security and sensitive records is paramount. 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.”

## **Analysis**

### **Financial Considerations**

AG ¶ 18 articulates the trustworthiness concern relating to financial problems:

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.

AG ¶ 19 provides two disqualifying conditions that raise a trustworthiness concern and may be disqualifying in this case: “(a) inability or unwillingness to satisfy debts;” and “(c) a history of not meeting financial obligations.” Applicant’s SOR alleges 11 delinquent debts totaling \$21,261 and foreclosure of his residence in 2009.

In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government’s obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the

burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.

(internal citation omitted). Applicant's history of delinquent debt is documented in his credit reports and SOR response. Applicant's SOR states, and his credit reports corroborate 11 delinquent debts totaling \$21,261 and foreclosure of his residence in 2009. The Government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c), requiring additional inquiry about the possible applicability of mitigating conditions.

Five mitigating conditions under AG ¶ 20 are potentially applicable:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;<sup>3</sup> and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

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<sup>3</sup>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) 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)).

The Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's eligibility [for a public trust position], there is a strong presumption against the grant or maintenance of a [public trust position]. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising [trustworthiness] concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in [public trust position] decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to [sensitive] information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

AG ¶¶ 20(a) to 20(d) are applicable. Four circumstances caused financial damage to Applicant in the previous eight years, and some of those circumstances delayed resolution of his SOR debts. An employee stole customers and funds from Applicant's business; he was separated from the mother of his children; he was underemployed; and he was financially assisting his son with his college expenses. All of these are circumstances beyond his control except for his decision to assist his son with his college expenses.

Applicant paid three large debts and one small debt; his foreclosure debt is resolved; two debts are duplications; another debt was resolved with the return of the creditor's property; and his current delinquent debt total is \$7,237. Several debts included in this delinquent debt total are being transferred and are not payable until the current creditor surfaces. He promised to pay his remaining delinquent debts. Applicant is working a full-time job and a part-time job. His son will soon graduate from college, which will enable him to use the money sent to his son to address his debts.

In ISCR Case No. 08-06567 at 3 (App. Bd. Oct. 29, 2009) the Appeal Board addressed a situation where an applicant, who had been sporadically unemployed and lacked the ability to pay his creditors, noting that "it will be a long time at best before he has paid" all of his creditors. The applicant was living on unemployment compensation at the time of his hearing. The Appeal Board explained that such a circumstance was not necessarily a bar to having access to classified or sensitive information stating:

However, the Board has previously noted that an applicant is not required to be debt-free nor to develop a plan for paying off all debts immediately or simultaneously. All that is required is that an applicant act responsibly given his [or her] circumstances and develop a reasonable plan for repayment, accompanied by "concomitant conduct," that is, actions which evidence a serious intent to effectuate the plan. See ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008).

ISCR Case No. 08-06567 at 3 (App. Bd. Oct. 29, 2009). The applicant in ISCR Case No. 08-06567 used his limited resources to (1) resolve some of his debts; (2) had a repayment plan for the remaining debts; and (3) took “reasonable actions to effectuate that plan.” *Id.* The Appeal Board remanded the Administrative Judge’s decision because it did not “articulate a satisfactory explanation for his conclusions,” emphasizing the Administrative Judge did “not explain[] what he believes that applicant could or should have done under the circumstances that he has not already done to rectify his poor financial condition, or why the approach taken by applicant was not ‘responsible’ in light of his limited circumstances.” *Id.*

Applicant has made significant progress on his SOR debts in the last year. He understands what he must do to establish and maintain his financial responsibility.<sup>4</sup> He admitted responsibility for and took reasonable actions to resolve as much of his debts as was possible based on his limited income. There are clear indications the problem is being resolved and is under control. His efforts are sufficient to mitigate financial considerations trustworthiness concerns.

## **Foreign Preference**

AG ¶ 9 describes the foreign preference trustworthiness concern stating, “when an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.”

AG ¶ 10(a) describes one condition that could raise a trustworthiness concern and may be disqualifying in Applicant’s case: “(a) exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen . . . . This includes but is not limited to: (1) possession of a current foreign passport.” Applicant, who is a citizen of the United States, possessed a current Jamaican passport, which he obtained because he could not otherwise establish the place and date of his birth. AG ¶ 10(a)(1) applies to his possession of a current Jamaican passport after becoming a U.S. citizen.

AG ¶ 11(e) provides one condition that could mitigate trustworthiness concerns as follows: “(e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated.” AG ¶ 11(e) applies to his possession of a Jamaican passport. On July 27, 2016, Applicant surrendered his expired Jamaican passport to his security manager. Foreign preference trustworthiness concerns are mitigated.

## **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

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<sup>4</sup>The Appeal Board has indicated that promises to pay off delinquent debts in the future are not a substitute for a track record of paying debts in a timely manner and otherwise acting in a financially responsible manner. ISCR Case No. 07-13041 at 4 (App. Bd. Sept. 19, 2008) (citing ISCR Case No. 99-0012 at 3 (App. Bd. Dec. 1, 1999)).

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.

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. AG ¶ 2(c). I have incorporated my comments under Guidelines F and C in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is a 56-year-old medical-enrollment specialist, who has been working for his employer for two years. He attended college for three years. He is sufficiently mature to comply with his public trust responsibilities. On July 27, 2016, he surrendered his expired Jamaican passport to his security manager. Applicant's friend described Applicant as honest, generous, honorable, having excellent integrity, diligent, and conscientious about compliance with rules. There is no evidence of criminal offenses, alcohol or drug abuse, or violations of his employment rules.

Applicant's SOR alleges 11 delinquent debts totaling \$21,261 and foreclosure of his residence in 2009. His taxes are current, except he is paying an \$1,800 federal income tax debt from tax year 2015 with automatic \$125 deductions from his checking account. He made substantial progress on his SOR debts by paying three large debts and one small debt; his foreclosure debt is resolved; two SOR debts are duplications; another SOR debt was resolved with the return of the creditor's property; and his current delinquent debt total is \$7,237. He would have resolved more of his delinquent debts if he had been able to locate the creditor currently seeking payment. He promised to pay his remaining delinquent debts. He currently holds full-time and part-time employment. His underemployment and lack of income have contributed to his financial problems. 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 has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has . . . established a plan to resolve his 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 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.

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

Applicant understands what he needs to do to establish and maintain his financial responsibility. He took reasonable actions under his particular financial circumstances to address his delinquent debts. His overall history shows a "meaningful track record" of debt repayment. I am confident he will continue his establishment and maintenance of his financial responsibility.<sup>5</sup>

I have carefully applied the law, as set forth in *Egan*, the Directive, the Regulation, and the AGs, to the facts and circumstances in the context of the whole person. Financial considerations and foreign preference trustworthiness concerns are mitigated, and eligibility for a public trust position is granted.

### **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 to 1.l:	For Applicant
Paragraph 2, Guideline C:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

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<sup>5</sup>Of course, the Government may re-validate Applicant's financial status at any time through credit reports, investigation, and interrogatories. Approval of access to sensitive information now does not bar the Government from subsequently revoking it, if warranted. "The Government has the right to reconsider [trustworthiness] significance of past conduct or circumstances in light of more recent conduct having negative [trustworthiness] significance." ISCR Case No. 10-06943 at 4 (App. Bd. Feb. 17, 2012). An administrative judge does not have "authority to grant an interim, conditional, or probationary clearance." 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. 04-03907 at 2 (App. Bd. Sep. 18, 2006) (stating, "The Board has no authority to grant [a]pplicant a conditional or probationary [public trust position] to allow her the opportunity to have a [public trust position] while she works on her financial problems."). This footnote does not imply that this Applicant's public trust position is conditional.

## **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 for a public trust position. Eligibility for access to sensitive information is granted.

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Mark Harvey  
Administrative Judge