



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



In the matter of:

Applicant for Public Trust Position

)  
)  
)  
)  
)  
)

ADP Case No. 14-04492

**Appearances**

For Government: Bryan Olmos, Esquire, Department Counsel  
For Applicant: *Pro se*

12/02/2016

**Decision**

DAM, Shari, Administrative Judge:

Applicant has a long history of financial problems that began in 2006. He failed to rebut or mitigate the trustworthiness concerns raised under Guideline F, Financial Considerations. His eligibility for a public trust position is denied.

**Statement of Case**

On March 6, 2014, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On December 23, 2015, the Department of Defense (DoD) issued Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns under Guideline F, Financial Considerations. The action was taken under DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); DoD Regulation 5200.2-R, *Personnel Security Program* (January 1987), as amended (Regulation); and the adjudicative guidelines (AG) effective within the DoD for SORs issued after September 1, 2006.

On January 28, 2016, Applicant responded to the SOR in writing and elected to have the case decided on the written record in lieu of a hearing. (Item 2.) On February 25, 2016, Department Counsel prepared a File of Relevant Material (FORM), containing eight Items. Applicant received the FORM on March 24, 2016, and had 30 days from its receipt to file objections and submit additional information. Applicant did not object to the Government's evidence and Items 1 through 8 are admitted into evidence. Applicant timely submitted five documents, which I marked as Applicant Exhibits (AE) A through E, and admitted into the record without objection. On November 1, 2016, the Defense Office of Hearings and Appeals (DOHA) assigned the case to me.

### **Findings of Fact**

The SOR contained seven allegations related to delinquent debts. In his answer to the SOR, Applicant admitted all of them. (Item 2.) Those admissions are incorporated into these findings.

Applicant is 64 years old and divorced from his second wife since 1998. He has two children from that marriage, both of whom have reached their majority. From July 1998 to November 2005, he worked for a city health agency. He was then unemployed until October 2007 when he obtained a position with a private company. He worked there until August 2008, after which he was again unemployed for eight months. He started his current position in March 2009. (Item 3.)

Based on credit bureau reports (CBR) from March 2014, April 2015, and December 2015, the SOR alleged seven delinquent debts that totaled \$35,750, and arose between 2006 and 2014. They consisted of unpaid child support, medical bills, and student loans. (Items 6, 7, 8.) The status of each of the delinquent debts is as follows:

1. The state tax liens alleged in SOR ¶¶ 1.a (\$2,876) and 1.b (\$9,947) were filed in 2006 and 2007, for unpaid child support. In his April 2016 response to the FORM, Applicant stated that as of December 2015 he paid his "delinquent child support (\$32,000)." (AE A.) He submitted two judgment releases which appear to address those debts. (AE B, C.) In his 2014 e-QIP, he noted that at one time he owed \$53,000 in delinquent child support. (Item 3.) These allegations are resolved.

2. The \$2,287 debt alleged in SOR ¶ 1.c is unresolved.

3. The medical debts listed in SOR ¶¶ 1.d (\$4,812) and 1.e (\$3,808) are unresolved.

4. The delinquent student loans listed in SOR ¶¶ 1.f (\$4,575) and 1.g (\$7,455) are unresolved. Applicant opened them in 1997. (Item 6.)

Applicant attributed his history of financial problems to periods of unemployment, which related to medical bills that accumulated as a consequence of 2007 or 2008 surgeries, and periods of self-employment without sufficient income. (Item 4.) He said that because he has paid those debts, he is now able to pay other delinquent debts. (AE A.)

There is no evidence that Applicant obtained credit or financial counseling. He did not provide a workable plan or budget from which his ability to resolve the remaining delinquencies and avoid additional debt problems can be predicted with any certainty.

### **Policies**

Positions designated as ADP-I/II/III are classified as “sensitive positions.” (See Regulation ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3.) “The standard that must be met for . . . assignment to sensitive duties is that, based on all available information, the person’s loyalty, reliability, and trustworthiness are such that . . . assigning the person to sensitive duties is clearly consistent with the interests of national security.” (See Regulation ¶ C6.1.1.1.) The Deputy Under Secretary of Defense (Counterintelligence and Security) Memorandum, dated November 19, 2004, indicates trustworthiness adjudications will apply to cases forwarded to the DoD and DOHA by the Defense Security Service and Office of Personnel Management. DoD contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination may be made. (See Regulation ¶ C8.2.1.)

When evaluating an applicant’s suitability for a public trust position, the administrative judge must consider the disqualifying and mitigating conditions in the AGs. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in AG ¶ 2(a), describing the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the whole-person concept. The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to [sensitive] information will be resolved in favor of national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel. . . .” The

applicant has the ultimate burden of persuasion as to obtaining a favorable trustworthiness decision.

A person who applies for access to sensitive information seeks to enter 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.

## **Analysis**

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

The trustworthiness concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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.

This concern is broader than the possibility that an individual might knowingly compromise sensitive information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting sensitive information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding sensitive information.<sup>1</sup>

AG ¶ 19 describes two conditions that could raise trustworthiness concerns and may be disqualifying in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant has a history of being unable or unwilling to satisfy financial obligations, which began before 2006, several of which continue to date. The evidence raises both

---

<sup>1</sup> See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

disqualifying conditions, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes four conditions in AG ¶ 20 that could mitigate trustworthiness concerns arising from Applicant's financial difficulties:

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

Five of Applicant's seven delinquent debts remain unresolved. There is insufficient information to demonstrate that his financial problems are unlikely to continue or recur, calling into question his reliability and trustworthiness. The evidence does not support the application of AG ¶ 20(a).

Applicant provided some evidence that his financial problems arose as a consequence of previous medical problems and periods of unemployment. He did not submit evidence that he responsibly attempted to manage the debts under those circumstances, or since his employment in 2009. Hence, the evidence establishes minimal mitigation under AG ¶ 20(b).

Applicant did not provide evidence that he participated in credit or financial counseling, established a budget, or developed a plan to manage the remaining debts. There are limited indications that his unresolved financial problems are under control. AG ¶ 20(c) has little application. He provided evidence that he is current with his child support, having recently paid 2006 and 2007 tax liens. AG ¶ 20(d) has some application to those two debts.

### **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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

According to AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a trustworthiness determination must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of the facts and circumstances surrounding this case. Applicant is a 64-year-old man, who has been fully employed since 2009, but continues to have significant financial problems. He failed to submit sufficient information that his financial obligations are being responsibly managed and that similar problems are unlikely to recur. Overall, the record evidence leaves me with questions as to Applicant's eligibility and suitability for a public trust position. For these reasons, I conclude Applicant did not meet his burden to mitigate the trustworthiness concerns arising from his financial problems.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant

## **Conclusion**

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

---

SHARI DAM  
Administrative Judge