



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



In the matter of: )  
)  
) ADP Case No. 17-00098  
)  
Applicant for Public Trust Position )

**Appearances**

For Government: Jeff A. Nagel, Esq., Department Counsel  
For Applicant: *Pro se*

01/24/2018  
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**Decision**  
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COACHER, Robert E., Administrative Judge:

Applicant failed to mitigate the financial considerations trustworthiness concerns. Eligibility for access to sensitive information is denied.

**Statement of the Case**

On April 24, 2017, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns under Guideline F, financial considerations. DOD acted under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG).<sup>1</sup>

Applicant answered the SOR on May 2 and May 10, 2017, and requested a hearing before an administrative judge. The case was assigned to me on May 31, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on July 17, 2017, and the hearing was convened as scheduled on August 16, 2017. The

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<sup>1</sup> I decided this case using the AG implemented by DOD on June 8, 2017. However, I also considered this case under the AG implemented on September 1, 2006, and my conclusions are the same using either set of AG.

Government offered exhibits (GE) 1 through 6, which were admitted into evidence without objection. Applicant testified, and offered exhibit (AE) A. The record was held open for Applicant to submit additional information, and he timely submitted exhibits (AE) B and C. DOHA received the hearing transcript (Tr.) on August 24, 2017.

### **Findings of Fact**

Applicant admitted all the SOR allegations, except for SOR ¶ 1.a. The admissions are incorporated as findings of fact. After a review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is a 55-year-old employee of a federal contractor. He has worked for this employer for about a year and a half. He is a high school graduate. He is married and has three grown children.<sup>2</sup>

The SOR alleges six delinquent debts, including a past-due mortgage account, two charged-off consumer debts, a utility debt in collection status, and two medical debts, which are duplicate debts (I will only consider one debt and find for the Applicant on the duplicate debt). The debts total approximately \$25,746, of which \$22,598 is attributable to the past-due mortgage account. The debts were listed in some credit reports from January 2016, November 2016, May 2017, and August 2017.<sup>3</sup>

In approximately 2012, Applicant was financially assisting his parents when he fell behind on his mortgage payments. He claims he contacted a mortgage relief company which was to assist him in reducing his mortgage payments, but the company failed to follow through. Applicant did not present documentation to support this interaction. His home was ultimately foreclosed in approximately 2015. No deficiency was reported and Applicant did not receive an IRS form 1099-C, cancellation of debt notice.<sup>4</sup>

### **Status of Debts:**

**SOR ¶ 1.a (past-due mortgage \$22,598).** No further information was provided since the foreclosure. It remains on his credit report.<sup>5</sup>

**SOR ¶ 1.b (consumer charged-off debt \$2,668).** Applicant has not paid this debt or set up a payment plan to pay toward this debt. The debt remains on his latest credit report. This debt is unresolved.<sup>6</sup>

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<sup>2</sup> Tr. at 6, 19; GE 1.

<sup>3</sup> GE 3-6.

<sup>4</sup> Tr. at 24, 26-27; GE 2.

<sup>5</sup> Tr. at 24, 26-27; GE 6; AE A.

<sup>6</sup> Tr. at 28; GE 6; AE A.

**SOR ¶ 1.c (charged-off bank debt \$217)**. Applicant claimed he is making monthly payments of \$25 toward this debt. He provided documentation showing such payments. However, these payments are for a different account number than the charged-off account. Applicant did not present evidence of payment toward this account. This debt is unresolved.<sup>7</sup>

**SOR ¶ 1.d (utility collection debt \$87)**. Applicant has not paid this debt or set up a payment plan to resolve it. This debt is unresolved.<sup>8</sup>

**SOR ¶ 1.e (¶ 1.f is a duplicate debt) (medical debt \$176)**. Applicant admitted this debt is outstanding. This debt is unresolved.<sup>9</sup>

Applicant failed to present any documentary evidence showing his current financial status in the form of a budget or financial counseling. He presented an email from a work supervisor that showed his performance was meeting company expectations.<sup>10</sup>

### **Policies**

When evaluating an applicant's suitability for a public trust position, the 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 the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial and commonsense decision. According to AG ¶ 2(a), 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 national security eligibility will be resolved in favor of the 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 applicant or proven by Department Counsel." The applicant

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<sup>7</sup> Tr. at 28-29; GE 6; AE B.

<sup>8</sup> Tr. at 19, 23.

<sup>9</sup> Tr. at 30; GE 3; Answer (May 10, 2017).

<sup>10</sup> AE C.

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

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.

## **Analysis**

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

The trustworthiness concern for financial considerations is set out in AG ¶ 18 as follows:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a trustworthiness concern insofar as it may result from criminal activity, including espionage.

The guideline notes several conditions that could raise trustworthiness concerns under AG ¶ 19. Three are potentially applicable in this case:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant had numerous delinquent debts, which he failed to pay. The evidence is sufficient to raise the above disqualifying conditions.

Several financial considerations 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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; and

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

Applicant failed to produce documentation evidencing his payment on any of the outstanding debts. Applicant's debts are recent and multiple, and his lack of payment effort tends to cast doubt on his reliability, trustworthiness, and good judgment. AG ¶ 20(a) is not applicable.

Applicant was assisting his parents financially. This was a voluntary act by him and not beyond his control. Additionally, he failed to act responsibly when he did not pay the delinquent debts or enter into payment plans for them. AG ¶ 20(b) is not applicable.

There is no evidence of financial counseling. Applicant made no efforts to establish payment plans on the debts. He claimed to have discussed mortgage debt relief with a company, but failed to document that interaction. There are not clear indications that Applicant's financial problems are under control. He failed to establish any good-faith efforts to pay or resolve his debts. AG ¶ 20(c) and ¶ 20(d) do not apply.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for access to sensitive information 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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for access to sensitive information must be an overall commonsense assessment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

I considered the circumstances by which Applicant became indebted and his work performance. I also considered that he provided no evidence of resolving the SOR debts. He has not established a meaningful track record of financial responsibility.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for access to sensitive information. For all these reasons, I conclude Applicant failed to mitigate the financial considerations trustworthiness concerns.<sup>11</sup>

### **Formal Findings**

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs: 1.a – 1.e:	Against Applicant
Subparagraph: 1.f:	For Applicant

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<sup>11</sup> I considered the exceptions under Security Executive Agent Directive (SEAD) 4, Appendix C, dated June 8, 2017, and determined they are not applicable in this case.

## **Conclusion**

In light of all of the circumstances, it is not clearly consistent with national security to grant Applicant eligibility for access to sensitive information. Eligibility for access to sensitive information is denied.

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Robert E. Coacher  
Administrative Judge