



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



In the matter of:

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ADP Case No. 17-00385

Applicant for Public Trust Position

**Appearances**

For Government: Alison O'Connell, Esq., Department Counsel

For Applicant: *Pro se*

11/21/2017

**Decision**

TUIDER, Robert, Administrative Judge:

Applicant did not mitigate the trustworthiness concerns under Guideline F (financial considerations). Eligibility for access to sensitive information is denied.

**Statement of the Case**

On March 31, 2017, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing trustworthiness concerns under Guideline F. On April 27, 2017, Applicant responded to the SOR, and elected to have the case decided on the written record in lieu of a hearing.

On May 25, 2017, the Government submitted its written case. On May 31, 2017, Applicant received a complete copy of the file of relevant material (FORM). He was afforded 30 days to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not submit additional information. On October 16, 2017, the case was assigned to me. The Government exhibits, Items 1 through 8, included in the FORM, are admitted in evidence.

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

The SOR alleged 19 debts under financial considerations totaling over \$32,000. Applicant admitted 16 of the allegations, totaling almost \$27,000. He denied or disputed two allegations, and states that he is paying on one allegation. His admissions are accepted as findings of fact. Additional findings of fact follow.

Applicant is a 40-year-old customer service representative employed by a defense contractor since May 2016. He seeks a public trust position in conjunction with his current employment. Applicant graduated from high school in June 1995. He attended a vocational school from September 1999 to June 2000, and was awarded a technical diploma. He then attended an on-line university from September 2008 to January 2010, and was awarded an associate's degree in business. (Items 5, 8) Applicant has lived with his girlfriend since January 2016. (Item 8)

### **Financial Considerations**

Applicant's 19 debts consist of student loans and consumer debts. (SOR ¶¶ 1.a – 1.s) These allegations are established through the Government's exhibits. (Items 1 – 8)

Applicant attributes his financial difficulties to unemployment and underemployment. He was unemployed from March 2010 to September 2011 and from November 2011 to August 2012. From October 2014 to October 2015, he worked full-time as a bartender, and from October 2015 to March 2016, his hours were reduced to part-time. Since March 2016, he has not been assigned a shift, but remains on the payroll. (Items 5, 8)

Applicant's financial difficulties date back to at least 2010. (Items 6 – 8) Although he claimed he is paying on one account and disputing another, Applicant did not submit any documentation that he has paid or otherwise resolved these two debts or his other debts. Even if Applicant's financial delinquencies were caused in large part to circumstances beyond his control, he did not show that he acted responsibly under the circumstances. During Applicant's July 14, 2016 Office of Personnel Management (OPM) Personal Subject Interview (PSI), he provided assurances that he would address or satisfy his debts. (Item 8)

In short, the file lacks sufficient evidence that Applicant paid, arranged to pay, settled, compromised, disputed, or otherwise resolved his SOR allegations. He did not describe financial counseling or present a budget. The record lacks corroborating or substantiating documentation and detailed explanations of the causes for his financial problems and other mitigating information. The FORM noted that Applicant had 30 days from the receipt of the FORM "in which to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation, as appropriate. If you do not

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

file any objections or submit any additional information . . . your case will be assigned to an Administrative Judge for a determination based solely” on the evidence set forth in this FORM. As noted, Applicant did not submit evidence responsive to the FORM.

## **Policies**

While this case was pending a decision, Security Executive Agent Directive 4 was issued establishing National Security Adjudicative Guidelines (AG) applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The AG supersede the adjudicative guidelines implemented in September 2006 and are effective for any adjudication made on or after June 8, 2017. Accordingly, I have adjudicated this case under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), which became effective on June 8, 2017.<sup>2</sup>

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.

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 has the ultimate burden of persuasion to obtain 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 safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of sensitive information.

## **Financial Considerations**

AG ¶ 18 articulates the trustworthiness concern for financial problems:

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<sup>2</sup> [http://ogc.osd.mil/doha/SEAD4\\_20170608.pdf](http://ogc.osd.mil/doha/SEAD4_20170608.pdf)

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 security concern insofar as it may result from criminal activity, including espionage.

AG ¶ 19 provides three disqualifying conditions that could raise a trustworthiness concern and may be disqualifying in this case: “(a) inability to satisfy debts”; “(b) unwillingness to satisfy debts regardless of the ability to do so”; “(c) a history of not meeting financial obligations.” Based on the information in the SOR, the record established the disqualifying conditions in AG ¶¶ 19(a), 19(b), and 19(c), requiring additional inquiry about the possible applicability of mitigating conditions.

AG ¶ 20 lists five potential mitigating conditions:

(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;

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

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 security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. 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 security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified 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).

In summary, no mitigating conditions fully apply. In addition to evaluating the facts and applying the appropriate adjudicative factors under Guideline F, I have reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(d). Applicant has been gainfully employed for the majority of his adult life, and he is presumed to be a mature, responsible citizen. Nonetheless, without other information suggesting his long-standing financial problems are being addressed, doubts remain about his suitability for access to sensitive information. Protection of the national interest is the principal focus of these adjudications. According, those doubts must be resolved against the Applicant.

Applicant chose to rely on the written record. In so doing, however, he failed to submit sufficient evidence to supplement the record with relevant and material facts regarding his circumstances, articulate his position, and mitigate the financial trustworthiness concerns. He failed to offer evidence of financial counseling or provide documentation regarding his past efforts to address his delinquent debt. By failing to provide such information, and in relying on an explanation lacking sufficient detail to fully establish mitigation, financial considerations trustworthiness concerns remain.

### **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.s:	Against Applicant

### **Conclusion**

I conclude that it is not clearly consistent with national security to grant Applicant eligibility for a public trust position. Eligibility for a public trust position is denied.

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ROBERT TUIDER  
Administrative Judge