



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



In the matter of:

ADP Case No. 17-00586

Applicant for Public Trust Position

**Appearances**

For Government: Mary M. Foreman, Esq., Department Counsel

For Applicant: Patrick Cox, Personal Representative

02/05/2018

**Decision**

RICCIARDELLO, Carol G., Administrative Judge:

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

**Statement of the Case**

On May 16, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing trustworthiness concerns under Guideline F, financial considerations. The action was taken under *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) effective within the DOD on September 1, 2006. On June 8, 2017, new AG were implemented and are effective for decisions issued after that date.<sup>1</sup>

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<sup>1</sup> I considered the previous AG, effective September 1, 2006, as well as the new AG, effective June 8, 2017. My decision would be the same if the case was considered under the previous AG.

Applicant answered the SOR on June 12, 2017, and requested a hearing before an administrative judge. The case was assigned to me on August 23, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on December 27, 2017. I convened the hearing as scheduled on January 18, 2018. The Government offered exhibits (GE) 1 through 7, and they were admitted into evidence without objection. Applicant testified and offered Applicant Exhibits (AE) A through D, which were admitted without objection. The record was held open until February 1, 2018, to permit Applicant to submit additional documents. He submitted AE E, which was admitted without objection.<sup>2</sup> DOHA received the hearing transcript on January 26, 2018.

### **Findings of Fact**

Applicant admitted all of the SOR allegations. His admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings, testimony, and exhibits, I make the following findings of fact.

Applicant is 37 years old. He graduated from high school in 1998. He served in the military from 1999 to 2003 and received an honorable discharge. He attended college from 2003 to 2005, but did not earn a degree. He was married from 2007 to 2015 and has two children from that marriage, ages 11 and 8 years old. They live with their mother. He pays approximately \$300 a month in child support. He remarried in 2015 and has a one-year-old child from this marriage and two stepchildren, ages eight and four years old. His wife does not work outside the home. He has worked for the same federal contractor since 2011.<sup>3</sup>

Applicant funded his college education using the GI Bill and student loans. He testified that he did not pay his student loans when they were due. He stated, "Student loans, in my opinion, were a bill that was always going to be there, so I never prioritized those."<sup>4</sup> He further stated, "Because I mean, they don't, after a certain period of time, some loans will be written off, or you know, something like that."<sup>5</sup> He explained, "They're never going to go away until I pay them, so I would have in my thinking then was I had my whole life to pay \$13,000 worth of student loans." He determined that it was not necessary to pay his student loans when required because they would not be discharged in bankruptcy and would not be removed from his credit report. He commented that his failure to pay his student loan made his life harder.<sup>6</sup>

Applicant testified he was not making much money when the student loans became due. In the past, he received notices from the creditor attempting to collect

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<sup>2</sup> Hearing Exhibit I is Department Counsel's email memorandum.

<sup>3</sup> Tr. 19-24.

<sup>4</sup> Tr. 24.

<sup>5</sup> Tr. 24.

<sup>6</sup> Tr. 25, 29.

payments. He responded a few times. He arranged payment plans, but defaulted on them. He estimated that over the years he made 10 payments totaling about \$500. The original creditors filed claims against the Government as the guarantor on the defaulted student loans.<sup>7</sup>

Applicant disclosed his delinquent student loans on his November 2011 SF 85P application. During his December 2011 background interview, he told the investigator that he had only made a couple of payments on his student loans since 2005. He admitted he had not made any payments in the past two to three years. He was receiving letters once or twice a month regarding the loan's delinquency. He told the investigator he was unable to make payments in the past, but he now was earning enough and anticipated making the payments in February or March 2012. He anticipated paying the loan in full in the next ten years.<sup>8</sup>

Applicant disclosed in his March 2015 Electronic Questionnaire for Investigative Processing (e-QIP) that his wages were being garnished for past-due student loans. He indicated that he had another student loan that was past due, but his wages were not garnished for that loan. He stated that once the garnishment ended, he would arrange a payment schedule to pay the second student loan. He stated, "Student loan repayment has not been a priority thus far. It will be now that they are garnishing my wages at 15% per paycheck though."<sup>9</sup> He estimated his garnishment would end in January 2015.<sup>10</sup>

Applicant was interviewed by a government investigator in September 2015. He told the investigator that he had no intention of paying his student loans because he was living paycheck to paycheck and it was not a priority to pay it.<sup>11</sup>

In January 2017, Applicant wanted to purchase a house. Because his defaulted student loans and other negative information that were on his credit report, that would prohibit him from obtaining a mortgage, he contacted the student loan creditor (SOR ¶ 1.a - \$13,489), and other creditors. The student loans were then placed in a deferred status and an income-based payment plan was arranged. The payment plan requires him to make monthly payments of \$155 beginning in March 2018.<sup>12</sup> The debt is unresolved.

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<sup>7</sup> Tr. 26-29, 35, 39; GE 4.

<sup>8</sup> GE 5, 6.

<sup>9</sup> GE 1 at page 41.

<sup>10</sup> GE 1. Any derogatory information not alleged will not be considered for disqualifying purposes, but may be considered in the application of mitigating conditions, in making a credibility determination, and in a whole-person analysis.

<sup>11</sup> GE 2.

<sup>12</sup> Tr. 26-29, 40; AE A, D.

Applicant testified that he could not afford to pay his bill to a communications provider, and it became delinquent (SOR ¶ 1.b - \$1,397). The debt is reflected in his May 2015 and December 2016 credit reports.<sup>13</sup> Applicant disclosed this debt in his March 2015 e-QIP and stated, "Payment plan will be setup beginning in January 2015."<sup>14</sup> Applicant was interviewed in September 2015 by a government investigator. He indicated he had not set up a payment plan to resolve this debt because he was living paycheck to paycheck, and it was not a priority to pay it. He did not know when he would pay it.<sup>15</sup> He testified he paid the debt in January or February 2017. He provided a document that shows the debt had been delinquent since May 2014. He paid it in May 2017.<sup>16</sup>

The debt alleged in SOR ¶ 1.c (\$1,171) was reported in Applicant's December 2011 and May 2015 credit bureau reports as a collection account delinquent since 2010. He was confronted with the debt in his December 2011 background interview. He told the investigator the account might be with a cable company. He was unable to recall if he was delinquent on the account. He was again confronted with the debt during his September 2015 background interview. He told the investigator that he did not recognize the account. He admitted he owed the debt in his answer to the SOR. He testified that he paid the debt in January or February 2017. He did not provide documentary proof that it was paid. He provided a credit report that does not report the debt. A post-hearing email from Applicant stated that the debt was purchased by another creditor and its collection agency did not have a record of the debt. He stated, "I contacted the loan officer for my home and the [name] account was not part of the agreement to pay in order to secure the loan."<sup>17</sup> The debt is unresolved.

When asked why Applicant did not pay his debts, he said, "Just financial troubles at the time. My previous marriage, I was not the – I did not run the money. I didn't see it. I didn't – so things were happening I was unaware of."<sup>18</sup> He provided no further explanations.

Applicant estimated he has between \$400 and \$500 of expendable income after he pays his monthly bills. He purchased a house in May 2017. He purchased a used car in January 2017 (\$12,000) and a motorcycle (\$5,000) in June 2017. Applicant has no savings. He has not had financial counseling. He testified that he has a written budget.<sup>19</sup>

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<sup>13</sup> GE 3, 4.

<sup>14</sup> GE 1 at 43-44.

<sup>15</sup> Tr. 31-33; GE 2.

<sup>16</sup> Tr. 31; Answer to SOR.

<sup>17</sup> Tr. 30-33; GE 2, 3, 6, 7; AE E.

<sup>18</sup> Tr. 31.

<sup>19</sup> Tr. 36-39, 41.

## **Policies**

When evaluating an applicant's suitability for national security eligibility, 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 to be used in determining an applicant's eligibility for a position of trust.

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."

Directive ¶ E3.1.14, states that the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states that 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.

## **Analysis**

### **Guideline F: Financial Considerations**

The trustworthiness concern relating to the guideline for financial considerations is set out in AG ¶ 18:

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 conditions that could raise trustworthiness concerns. The following are potentially applicable:

- (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 has delinquent debts from 2010 and a delinquent student loan from about 2005 that he is unwilling or unable to resolve. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate trustworthiness concerns arising from financial difficulties. The following 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 has been aware of his delinquent student loan for many years through notices from the creditor and being confronted by investigators in 2011 and 2015 regarding its status. His wages were garnished for another delinquent student loan and he stated he would pay the remaining delinquent loan once the garnishment was completed in January 2015. He failed to take action on his student loan until he wanted to secure a home mortgage. He has an income-based payment plan, but has not yet made a payment. Applicant also failed to take timely action on the two other delinquent debts alleged. He eventually paid the three-year-old debt in SOR ¶ 1.b in May 2017, at the time he was attempting to secure a mortgage. The remaining debt in SOR ¶ 1.c, which dates back to 2010, presumably can no longer be found by the creditor. Applicant's past inaction, disregard for his legal obligations, and his repeated failure to follow through on his promises are indications of his ongoing financial problems. I am unable to conclude future financial problem are unlikely to recur. His behavior casts doubt on his current reliability, trustworthiness and good judgment. AG ¶ 20(a) does not apply.

Applicant provided minimal information about why he failed to timely address his student loan debt or other debts. He indicated his divorce impacted him, but provided no details. He submitted some evidence that when the student loans became due, he did not have the money, but did not explain why when his income increased he did not take affirmative action to pay his debts. I have considered his divorce as a condition beyond his control. The second prong of AG ¶ 20(b) requires Applicant to have acted responsibly under the circumstances. Applicant repeatedly ignored his obligation to repay his student loans. He indicated his intent to repay his student loan and delinquent debts, but has not followed through. It was not until he applied for a mortgage that he contact the delinquent creditors. Applicant did not act responsibly. AG ¶ 20(b) has minimal application.

There is no evidence that Applicant has received financial counseling. Applicant has defaulted on past payment plans and testified that the reason he contacted the student loan creditor was because he wanted to secure a mortgage, which he has accomplished. Applicant's unreliable past conduct leads me to conclude that there are not clear indications that his problem is being resolved or is under control. AG ¶ 20(c) does not apply.

Applicant was confronted in the past by government investigators about his student loan debt. He repeatedly was notified by the creditor. He indicated because student loans would never drop off his credit report or be discharged he was not motivated to pay them. It was only when he wanted to secure a home mortgage that he made a payment arrangement with the student loan creditor. He has not yet made any payments. Applicant failed to address the debt in SOR ¶ 1.c that was reported in collection from 2010 and brought to his attention during his investigative interview. According to Applicant, the creditor no longer has the debt on its books. This is likely due to the age of the debt. He stated he paid the debt, but did not provide proof of the payment. Finally, he paid the debt in SOR ¶ 1.b in May 2017, after it was delinquent for more than three years. None of these actions constitute a good-faith effort to repay overdue creditors or resolve the debts. AG ¶ 20(d) does not apply.

## **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(d):

(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.

I considered the potentially disqualifying and mitigating conditions in light of all the 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.

Applicant is 37 years old. He has been steadily employed since at least 2011. Despite being aware of his defaulted student loans and other debts, he failed to responsibly address them until he wanted to secure a home mortgage. Applicant has ignored his student loan debt and failed to follow through on payment plans in the past. A fundamental aspect of working in a position of trust is that one is required to do the right thing, even if it is not in one's personal best interest. Applicant's past conduct raises concerns in this regard, in addition to his unreliable financial track record. Concerns remain about his reliability, trustworthiness, and good judgment. Applicant failed to mitigate the Guideline F, financial considerations trustworthiness concerns.

## **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.c:	Against Applicant

## **Conclusion**

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

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Carol G. Ricciardello  
Administrative Judge