



**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. 17-00670

**Appearances**

For Government: David F. Hayes, Esq., Department Counsel  
For Applicant: *Pro se*

05/31/2018

**Decision**

LOUGHRAN, Edward W., Administrative Judge:

Applicant refuted the personal conduct trustworthiness concerns, but he did not mitigate the financial considerations trustworthiness concerns. Eligibility for access to sensitive information is denied.

**Statement of the Case**

On November 27, 2017, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing trustworthiness concerns under Guidelines E (personal conduct) and F (financial considerations). Applicant responded to the SOR on December 27, 2017, and elected to have the case decided on the written record in lieu of a hearing.

The Government's written case was submitted on January 31, 2018. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on February 6, 2018. He responded to the FORM with letters and documents that I have marked Applicant's Exhibits (AE) A through H. The case was assigned to me on April 9, 2018. The

Government exhibits included in the FORM and AE A through H are admitted in evidence without objection.

### **Findings of Fact**

Applicant is a 45-year-old employee of a defense contractor. He has a bachelor's degree, which was awarded in 2006, and a master's degree, which was awarded in 2008. He is married with three children.<sup>1</sup>

Applicant was unemployed from January 2005 until December 2008. Part of that period coincided with Applicant attending college and post-graduate school. He worked for a county government from December 2008 until January 2015. He was unemployed until he started his current job in March 2015.<sup>2</sup>

The SOR alleges 6 defaulted student loans totaling about \$64,500; 16 delinquent medical debts totaling about \$2,450; debts to banks for \$6,653 and \$824; and a \$1,741 tax lien filed against him in 2014. The debts are listed on a May 2015 credit report, a February 2017 credit report, or both credit reports.<sup>3</sup>

Applicant attributed his financial problems to the costs of relocating for work in 2008 and 2015. He stated that he lost contact with several creditors. He also indicated that he had a problem with identify theft and unjust debt collection. He retained a law firm to validate accounts and dispute inaccurate accounts on his credit report.<sup>4</sup>

Applicant's student loans are listed on the May 2015 credit report as current, but with the payments deferred. The six defaulted student loans alleged in the SOR are listed in the February 2017 credit report as in collection. All of the loans have a date of last activity (DLA) of August 2015. In his December 2017 response to the SOR, Applicant established that he had just completed a \$5 per month rehabilitation program for the student loans alleged in SOR ¶¶ 1.a (\$25,468) and 1.b (\$16,956). His new monthly payments of \$505 were to start on December 27, 2017. He requested information from the creditor about an income-based repayment plan. He admitted owing the four defaulted student loans totaling \$22,000 (SOR ¶¶ 1.c and 1.e through 1.g). He stated that he had lost contact with the creditor for those four loans, but he had made efforts to reestablish contact with the creditor.<sup>5</sup>

In his response to the FORM, Applicant provided a receipt showing that he authorized a collection company to debit \$5 from his account for \$43,624 in student loans (SOR ¶¶ 1.a and 1.b). He also provided a March 2018 receipt showing he made a

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<sup>1</sup> Items 1-3.

<sup>2</sup> Items 1-3; AE A.

<sup>3</sup> Items 4, 5; AE A.

<sup>4</sup> Items 1-3; AE A.

<sup>5</sup> Items 1, 4, 5.

\$5 payment and agreed to make another \$5 payment for the four student loans alleged in SOR ¶¶ 1.c and 1.e through 1.g. The balance on those loans was \$27,096.<sup>6</sup>

The state where Applicant lived from 2008 through 2015 filed a \$1,741 lien against him in December 2014 (SOR ¶ 1.u). He discussed his taxes during his background interview in 2015. He stated that he owed state taxes for 2014. He stated that he was paying \$150 a month and the balance had been reduced from about \$1,800 to \$1,500. In his response to the SOR, he noted that he had retained a law firm to “represent make arrangements, dispute and validate the charge on [his] credit report.” He did not indicate that he was paying the taxes at that time. In his response to the FORM, Applicant provided a March 2018 receipt that proves he has a \$99 per month payment plan agreement with the state. He did not submit proof that he made any payments, but the balance was \$1,147.<sup>7</sup>

The SOR alleges 16 delinquent medical debts totaling about \$2,450. The May 2015 credit reports lists 11 medical debts. The February 2017 credit report lists 12 medical debts. Applicant denied owing the debts, stating that he was the victim of identity theft. The creditors for most of the medical debts are unidentified in the credit reports and in the SOR. The law firm disputed the debts, and many of them were removed from Applicant’s credit report. It is difficult to ascertain Applicant’s responsibility for any individual medical debt.<sup>8</sup>

Applicant denied owing the debts to banks for \$6,653 (SOR ¶ 1.d) and \$824 (SOR ¶ 1.h). Both debts are listed on credit reports from May 2015 and February 2017. The debts were disputed by the law firm. Both creditors sent letters indicating they were no longer collecting the debts.<sup>9</sup>

Applicant submitted a Questionnaire for National Security Positions (SF 86) in March 2015.<sup>10</sup> He answered “No” to all of the financial questions under Section 26, which included the following:

**In the past seven (7) years, have you failed to file or pay Federal, state, or other taxes when required by law or ordinance?**<sup>11</sup>

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<sup>6</sup> AE B, C.

<sup>7</sup> Items 1, 3, 5; AE G.

<sup>8</sup> Items 1, 3-5; AE F, H.

<sup>9</sup> Items 1, 3-5; AE D, E, H. One of the letters is in a foreign language. The content of the letter was verified by another administrative judge who is proficient in the language.

<sup>10</sup> Item 2.

<sup>11</sup> The SOR did not allege that Applicant falsified this question.

**In the past seven (7) years, [have] you had a lien placed against your property for failing to pay taxes or other debts. (Include financial obligations for which you were the sole debtor, as well as those for which you were a cosigner or guarantor).**<sup>12</sup>

**In the past seven (7) years, [have] you defaulted on any type of loan. (Include financial obligations for which you were the sole debtor, as well as those for which you were a cosigner or guarantor).**<sup>13</sup>

**In the past seven (7) years, [have] you had bills or debts turned over to a collection agency? (Include financial obligations for which you were the sole debtor, as well as those for which you were a cosigner or guarantor).**

**In the past seven (7) years, [have] you had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed? (Include financial obligations for which you were the sole debtor, as well as those for which you were a cosigner or guarantor).**

**In the past seven (7) years, [have you] been over 120 days delinquent on any debt not previously entered? (Include financial obligations for which you were the sole debtor, as well as those for which you were a cosigner or guarantor)**<sup>14</sup>

**[Are you] currently over 120 days delinquent on any debt? (Include financial obligations for which you were the sole debtor, as well as those for which you were a cosigner or guarantor)**<sup>15</sup>

Applicant denied intentionally falsifying the SF 86. His student loans were in deferment and did not have to be reported. I am not convinced that he knew that a debt was turned over to a collection agency or that he had an “account or credit card suspended, charged off, or cancelled for failing to pay as agreed,” which are the only two questions alleged in the SOR.<sup>16</sup> I find there is insufficient evidence that Applicant intentionally falsified the specific questions alleged in the SOR.

## **Policies**

This case is adjudicated under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended

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<sup>12</sup> The SOR did not allege that Applicant falsified this question.

<sup>13</sup> The SOR did not allege that Applicant falsified this question.

<sup>14</sup> The SOR did not allege that Applicant falsified this question.

<sup>15</sup> The SOR did not allege that Applicant falsified this question.

<sup>16</sup> Items 1, 4.

(Directive); and the adjudicative guidelines (AG), which became effective on June 8, 2017.

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.

## **Analysis**

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

The trustworthiness concern 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.

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

- (a) inability to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

Applicant has a history of financial problems, including defaulted student loans, delinquent debts, and unpaid state taxes. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate the financial considerations trustworthiness concerns are provided under AG ¶ 20. The following 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;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;
- (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; and
- (g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant attributed his financial problems to the costs of relocating in 2008 and 2015. He was unemployed from January 2005 until December 2008. Part of that period coincided with him attending college and post-graduate school. He worked for a county government from December 2008 until January 2015. He was unemployed until he started his current job in March 2015. He stated that he lost contact with several creditors. He also indicated that he had a problem with identify theft and unjust debt collection. He retained a law firm to validate accounts and dispute inaccurate accounts on his credit report.

The creditors for most of the medical debts are unidentified in the credit reports and in the SOR. The law firm disputed the debts, and many of them were removed from Applicant's credit report. It is difficult to ascertain Applicant's responsibility for any individual medical debt. The two debts to the banks are no longer being collected. The medical debts and the two bank debts are mitigated.

The remaining concerns are the defaulted student loans and the state taxes. During his 2015 background interview, Applicant stated that he was paying \$150 a month toward his 2014 state taxes, and the balance was about \$1,500 (SOR ¶ 1.u). He apparently did not maintain those payments because he still owes the state. He did not mention any payments when he responded to the SOR. In his response to the FORM, Applicant provided a March 2018 receipt that proves he has a \$99 per month payment plan agreement. He did not submit proof that he had made any payments, but the balance was \$1,147. He established that he has made arrangements with the appropriate tax authority to pay the amount owed, but he has not established that he is in compliance with those arrangements.

Applicant's student loans were current and in deferment in May 2015. By February 2017, they were in collection with no activity since August 2015. In his December 2017 response to the SOR, Applicant established that he had just completed a \$5 per month rehabilitation program for the student loans alleged in SOR ¶¶ 1.a (\$25,468) and 1.b (\$16,956). His new monthly payments of \$505 were to start on December 27, 2017. He requested information from the creditor about an income-based repayment plan. He did not have arrangements for the other four student loans. In his response to the FORM, Applicant provided a receipt that he authorized a collection company to debit \$5 from his account for \$43,624 in student loans (SOR ¶¶ 1.a and 1.b). He also provided a March 2018 receipt showing he made a \$5 payment and agreed to make another \$5 payment for the four student loans alleged in SOR ¶¶ 1.c and 1.e through 1.g. The balance was \$27,096. To sum up, Applicant established that he paid less than \$100 (about \$50 during his loan rehabilitation program and two or three additional \$5 payments) toward his student loans.

There is insufficient evidence for a determination that Applicant's financial problems will be resolved within a reasonable period. I am unable to find that he acted responsibly under the circumstances or that he made a good-faith effort to pay his student loans and state taxes. His financial issues are recent and ongoing. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(b) and 20(g) are partially applicable, but they are insufficient to mitigate the

concerns about Applicant's student loans and state taxes. None of the other mitigating conditions are applicable.

### **Guideline E, Personal Conduct**

The trustworthiness concern for personal conduct is set out in AG ¶ 15, as follows:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security clearance investigative or adjudicative processes.

AG ¶ 16 describes conditions that could raise a trustworthiness concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

There is insufficient evidence that Applicant intentionally falsified the specific questions alleged in the SOR. AG ¶ 16(a) is not applicable. SOR ¶ 2.a is concluded for Applicant.

### **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 Guidelines E and F in my whole-person analysis.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a public trust position. I conclude Applicant refuted the personal conduct trustworthiness concerns, but he did not mitigate the 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
Subparagraph 1.d:	For Applicant
Subparagraphs 1.e-1.g:	Against Applicant
Subparagraphs 1.h-1.t:	For Applicant
Subparagraph 1.u:	Against Applicant
Subparagraphs 1.v-1.y:	For Applicant
Paragraph 2, Guideline E:	For Applicant
Subparagraph 2.a:	For Applicant

### **Conclusion**

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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Edward W. Loughran  
Administrative Judge