



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



In the matter of:	)	
	)	
[REDACTED]	)	ADP Case No. 17-00684
	)	
Applicant for Public Trust Position	)	

**Appearances**

For Government: Andre M. Gregorian, Esq., Department Counsel  
For Applicant: *Pro se*

03/29/2018

**Decision**

MARINE, Gina L., Administrative Judge:

This case involves trustworthiness concerns raised under Guideline F (Financial Considerations). Eligibility for access to sensitive information is denied.

**Statement of the Case**

Applicant submitted an Electronics Questionnaire for Investigations Processing (e-QIP) on March 10, 2016. On May 3, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns under Guideline F. The action was taken under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.

Applicant answered the SOR on June 19, 2017, and requested a decision on the record without a hearing. On January 18, 2018, a complete copy of the Government's written case, including a file of relevant material (FORM) and documents identified as Items 1 through 10, was sent to Applicant. He was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. He received the FORM on February 6, 2018, and did not respond. Item 1 contains the pleadings in the case. Items 2 through 10 are admitted into evidence. The case was assigned to me on March 27, 2018.

On June 8, 2017, the DOD implemented new AG (2017 AG).<sup>1</sup> Accordingly, I have applied the 2017 AG, as required.<sup>2</sup> However, I have also considered the 2006 AG, because they were in effect on the date the SOR was issued. I conclude that my decision would have been the same under the earlier version.

### **SOR Amendment**

In the FORM, the Government amended the SOR to add additional Guideline F allegations under paragraph 1, as follows:

k. You filed Chapter 7 bankruptcy in or around March 2017. In or around July 2017, your dischargeable debts were discharged.

l. You are indebted to the IRS for delinquent taxes in the approximate amount of \$3,416.00 for tax year 2009. As of the date of this Statement of Reasons, the taxes remain unpaid.

m. You are indebted to [a local government] for delinquent taxes in the approximate amount of \$3,815.00 for tax year 2013. As of the date of this Statement of Reasons, the taxes remain unpaid.

Each of the amended allegations are supported by record evidence.<sup>3</sup> Because Applicant did not respond to the FORM, I conclude that he has waived any objection to the Government's SOR amendment.

I *sua sponte* amended the SOR to correct apparent typographical errors with respect to the characterization of this case as an ISCR case rather than as an ADP case. As drafted, the SOR references an ISCR case number, refers to Applicant as an "Applicant for Security Clearance," and contains ISCR language in the initial paragraph of the body of the SOR.

The header of the SOR has been amended to "ADP Case No. 17-00684" and to refer to Applicant as an "Applicant for Public Trust Position." The initial paragraph of the body of the SOR has been amended to reflect the following language required of an ADP case:

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<sup>1</sup> On December 10, 2016, the Security Executive Agent issued Directive 4 (SEAD 4), establishing a "single, common adjudicative criteria for all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position." (SEAD 4 ¶ B, *Purpose*). The SEAD 4 became effective on June 8, 2017 (SEAD 4 ¶ F, *Effective Date*). The new AG, which are found at Appendix A to SEAD 4, apply to determine eligibility for initial or continued access to classified national security information or eligibility to hold a sensitive position. (SEAD 4 ¶ C, *Applicability*).

<sup>2</sup> ISCR Case No. 02-00305 at 3 (App. Bd. Feb. 12, 2003) (decisions must be based on current DOD policy and standards).

<sup>3</sup> Items 9 and 10.

A review of your eligibility to occupy an automated data processing (ADP) position designated ADP-I/II/III to support a Department of Defense (DoD) contract has been made pursuant to DoD Directive 5220.6, dated, January 2, 1992, (as amended). Because this office is unable to conclude that you are eligible to occupy such a position, your case will be submitted to an Administrative Judge for a determination as to whether or not to grant, deny, or revoke your eligibility. This determination is based on the following reasons:

Because these *sua sponte* amendments are not substantive in nature and have not affected my decision, prior notice to the parties is not required.

### **Findings of Fact<sup>4</sup>**

Applicant is 54 years old. He has never been married and has no children. He earned a bachelor's degree in 2014. Applicant honorably served in the U.S. Army from 1982 through 1991. Although the record is not clear, I assume that Applicant has remained employed full time since October 2015 either by the employer listed on his e-QIP, or by the entity of a different name that is noted as his public-trust application sponsor.

The SOR alleged the following:

- Two Chapter 7 bankruptcies, both of which resulted in discharges of Applicant's dischargeable debts, one in 1996 (SOR ¶ 1.a) and the other in 2017 (SOR ¶ 1.k);
- Two Chapter 13 bankruptcies, one of which resulted in a discharge of Applicant's dischargeable debts in 2003 (SOR ¶ 1.b) and the other which was dismissed for failure to make plan payments in 2009 (SOR ¶ 1.c);
- Three income tax debts, including \$9,932 owed to IRS for tax years 2004 through 2006 (SOR ¶ 1.d); \$3,416 owed to IRS for tax year 2009 (SOR ¶ 1.l); and \$3,815 owed to a local government for tax year 2013 (SOR ¶ 1.m);

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<sup>4</sup> Unless otherwise indicated by citation to another part of the record, I extracted these facts from Applicant's SOR answer (Item 1), his e-QIP (Item 2), and the summaries of his 2016 subject interview (Item 3). I considered that Item 3 was not authenticated as required by Directive ¶ E3.1.20. However, Applicant was informed by Department Counsel that he was entitled to make corrections, additions, deletions, and updates to Item 3. He was also informed that he was entitled to object to consideration of Item 3 on the ground that it was not authenticated. Because Applicant did not respond to the FORM, I conclude that he has waived any objection to Item 3. ISCR Case No. 14-06781 (App. Bd. Dec. 16, 2016).

- A mortgage account past due in the amount of \$128,226 and in foreclosure status with a total loan balance of \$215,104 (SOR ¶ 1.e); and
- Five collection accounts totaling debt \$4,719 (SOR ¶¶ 1.f through 1.j).

Applicant admitted the allegations in SOR ¶¶ 1.a through 1.d. He denied, without explanation, the debts alleged in ¶¶ SOR 1.e through 1.j. Because he did not answer the allegations in SOR ¶¶ 1.k through 1.m, they are denied. The denied allegations are established by record evidence.<sup>5</sup>

Applicant was interviewed by an authorized DOD investigator about his e-QIP in 2016. During that interview, he attributed his failure to timely file and pay taxes and his financial indebtedness to medical problems he began experiencing in 2009 and also to inconsistent employment. He described his financial status at the time as poor. Applicant retired from 20 years of federal-government employment in January 2013. He was unemployed from January 2013 through November 2014. From February 2013 through May 2014, he was a full-time student. In November 2014, he began an internship program with an employer that he expected would eventually hire him for a full-time position. After four months, the internship ended and he was not hired full time. He was then unemployed for six months until October 2015 when he resumed full-time employment. During the periods of his unemployment, he relied upon his retirement income, a school stipend, and federal and state government funds (type unspecified). He did not specify the amounts of these income sources.<sup>6</sup>

The record is silent as to specific details about Applicant's relevant income and expense history and about any particulars concerning the financial impact that his past or present circumstances have had on his ability to pay his delinquent debts. The record is also silent as to whether he has sought out or received any credit counseling.

### **Policies**

Positions designated as ADP I and ADP II are classified as sensitive positions. 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.<sup>7</sup>

When evaluating an applicant's eligibility for a position of trust to support a DOD contract, an administrative judge must consider the disqualifying and mitigating conditions

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<sup>5</sup> Items 3 through 10.

<sup>6</sup> Items 2 and 3.

<sup>7</sup> Directive, § 3.2.

in the AG.<sup>8</sup> These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies the guidelines in a commonsense manner, considering all available and reliable information, in arriving at a fair and impartial decision.

In addition to the guidelines, the Directive sets forth procedures that must be followed in trustworthiness adjudications. The Government must present evidence to establish controverted facts alleged in the SOR. Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. An applicant has the ultimate burden of persuasion to establish their eligibility for a public trust position.<sup>9</sup> 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.” 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 under this guideline 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 . . . .

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<sup>8</sup> Directive, Enclosure 2.

<sup>9</sup> Directive, Enclosure 3, ¶¶ E3.1.14, E3.1.15.

This concern is broader than the possibility that a person might knowingly compromise sensitive information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting sensitive information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding sensitive information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's admissions and the record evidence establish three disqualifying conditions under this guideline: AG ¶ 19(a) (inability to satisfy debts), AG ¶ 19(c) (a history of not meeting financial obligations), and AG ¶ 19(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).

Because bankruptcy is an acceptable form of debt resolution, the concern is not with the bankruptcies themselves, but with underlying history of financial indebtedness surrounding them. Applicant did not provide sufficient evidence to fully establish any of the potentially applicable mitigating factors.<sup>10</sup> Therefore, I conclude that Applicant has not mitigated the trustworthiness concerns raised by his financial indebtedness and his failure to timely pay federal and local income taxes. I have also considered the whole-person factors at AG ¶ 2(d).<sup>11</sup> Accordingly, Applicant has not carried his burden of showing that it is clearly consistent with the interests of national security to grant him eligibility for a public trust position.

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<sup>10</sup> AG ¶ 20 (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); AG ¶ 20 (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); AG ¶ 20 (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); AG ¶ 20 (d) (the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts); AG ¶ 20 (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 AG ¶ 20 (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).

<sup>11</sup> (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.

### **Formal Findings**

I make the following formal findings on the allegations in the amended SOR:

Paragraph 1, Guideline F (Financial Considerations): AGAINST APPLICANT

Subparagraphs 1.a – 1.m: Against Applicant

### **Conclusion**

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

Gina L. Marine  
Administrative Judge