



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



In the matter of:

ADP Case No. 17-01429

Applicant for Public Trust Position

**Appearances**

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

For Applicant: *Pro se*

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 19, 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 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 June 8, 2017.

Applicant answered the SOR on June 30, 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 20, 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.<sup>1</sup> Applicant testified and offered Applicant's Exhibits (AE) A through F, which were admitted without objection. DOHA received the hearing transcript on January 26, 2018.

### **Findings of Fact**

Applicant denied the SOR allegation in ¶ 1.a and admitted ¶¶ 1.b through 1.f. 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 52 years old. He graduated from high school and earned some college credits, but not a degree. He married in 1988 and has two adult children, ages 32 and 27, and an adult stepchild, age 32. He and his wife do not provide financial support to the children.<sup>2</sup>

Applicant's wife is an accountant and has been employed for the past 13 years. Her current annual salary is approximately \$90,000 annually. Applicant has not had any periods of unemployment since 1988. He works for a federal contractor and earns approximately \$65,000 to \$70,000 annually.<sup>3</sup>

Applicant filed Chapter 13 bankruptcy in 1996 and his debts were discharged in September 2001.<sup>4</sup> He explained he and his wife had financial difficulties when she was going to school and working. He said they "were in over our heads" financially. He estimated they had about \$30,000 to \$40,000 discharged in bankruptcy, but he had difficulty remembering.<sup>5</sup>

In approximately 2009 or 2010, Applicant's father-in-law became sick and his in-laws moved in with Applicant and his wife. They were paying his in-laws' bills. His father-in-law passed away in 2011. His mother-in-law was able to purchase her own house. She has a job and receives social security benefits and medical benefits. She received about \$20,000 from her husband's estate. Applicant estimated that he and his wife spent about \$5,000 to \$6,000 to help his in-laws in 2011. He stated his brother-in-law took about \$10,000 of his mother-in-law's inheritance. He and his wife subsidize her and give her \$300 to \$350 a month.<sup>6</sup>

In August 2012, Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP). In Section 26, which required he disclose any

---

<sup>1</sup> Hearing Exhibit I is a demonstrative chart.

<sup>2</sup> Tr. 16, 19-22.

<sup>3</sup> Tr. 21-22.

<sup>4</sup> GE 7.

<sup>5</sup> Tr. 22-23.

<sup>6</sup> Tr. 24-25, 37-40, 49-50.

problems with his finances, he disclosed three delinquent debts. He disclosed a delinquent balance for the debt in SOR ¶ 1.a (at the time it was \$3,490; it is now \$4,463). Applicant stated in the e-QIP that it was a credit card that was sold to a debt collector. He further stated:

[I] think this is credit card that was \$500 credit line. [I] think this is debt collection agency that keeps selling this one[.] [I] told them I would pay original debt (credit line wasn't paying \$3,000 for \$500 debt.<sup>7</sup>

Applicant was interviewed by a government investigator in February 2016. He was confronted with the debt in SOR ¶ 1.a, and he told the investigator that he did not know what the account pertained to. He stated his wife handles all of the bills, and she may have information about the account. He would follow up with his spouse, and if it was valid he would make arrangements to resolve and pay the account. In his Answer to the SOR, Applicant also denied knowing anything about the account, but stated he would contact the creditor and make arrangements if necessary. Credit reports from September 2012, October 2015 and March 2017, reflect this delinquent debt. At his hearing, Applicant stated that he could not confirm or deny the debt, but it is no longer listed on his credit report from January 2018. When asked if he paid the original amount he said he owed (\$500), he stated he did not.<sup>8</sup> The debt is unresolved.

Applicant admitted the debt in SOR ¶ 1.b (\$3,332). During his February 2016 background interview, he was confronted with the delinquent debt. He told the investigator he believed it was a credit card debt. He stated his wife handles the bills and he would follow up with her regarding its status and make arrangements to resolve it. Applicant testified this debt was a signature loan he obtained in approximately 2009. He was unable to pay it. It remains on all three credit reports. Applicant stated in his SOR answer that the creditor refused to work with him to make payment arrangements to settle the debt. The creditor wants the full amount. Applicant testified he cannot afford to pay the full amount. It remains unresolved.<sup>9</sup>

Applicant testified that he was late three times on the credit card debt in SOR ¶ 1.c (past due \$86). It is now current.<sup>10</sup> Applicant disclosed the delinquent debt in SOR ¶ 1.d (\$1,156) on his August 2012 e-QIP. He was confronted with the debt in his February 2016 background interview and said he was going to follow up with his wife to resolve and pay it. In his June 2017 answer to the SOR, he stated this debt “fell through the cracks” and was still outstanding. He intended to make arrangements to pay it. Applicant’s 2018 credit reports shows it was reported as settled for less than the full amount in October 2017.<sup>11</sup>

---

<sup>7</sup> GE 5.

<sup>8</sup> Tr. 33-38, 43-44; GE 2, 3, 4, 5, 6; AE A, B, C, D.

<sup>9</sup> Tr. 40-43; GE 2, 3, 4; AE C; Answer to SOR.

<sup>10</sup> Tr. 32; GE 2, 3, 4, 6; AE D.

<sup>11</sup> Tr. 30-31, 45-46; GE 2, 3, 4, 5; AE C, D.

Applicant disclosed on his August 2012 e-Qip the delinquent debt in SOR ¶ 1.e (\$941). The last activity on the account was December 2011. He was confronted with the debt during his 2016 background interview. He believed it was a credit card, but did not have further information, and he intended to consult his wife to determine its validity and arrange to resolve it. In his June 2017 Answer to the SOR, he indicated this debt “fell through the cracks” and he was unaware it was still outstanding. He indicated he intended to arrange to pay it. Applicant testified he paid the account. He provided a copy of a court order from November 2017 dismissing with prejudice a suit by the creditor.<sup>12</sup> The debt is resolved.

Applicant was confronted during his February 2016 background interview with the debt in SOR ¶ 1.f (\$304). The last activity on the account was 2012. Applicant told the investigator he was unfamiliar with the account, but would discuss it with his wife to determine its validity and resolve it. In his June 2017 Answer to the SOR, he admitted the debt and said it “fell through the cracks” and he intended to resolve it. He testified that he did not pay it because he forgot about it. Applicant paid the account in August 2017.<sup>13</sup>

Applicant testified that he contacted the creditors for his delinquent debts in June 2017, and they all wanted their money. Applicant has not been saving money to pay his delinquent debts, but intended to do so in the future. In 2008, Applicant and his wife purchased a home. They make their monthly mortgage payments. Applicant has about \$100,000 in his 401k pension plan. He does not know if his wife has any investments. They do not support their adult children. His wife has student loans that she is paying. He has approximately \$1,500 to \$2,000 in the bank. He owns a 2013 truck and a 2017 car. His wife manages their finances. He does not know if they have a budget, but presumes his wife keeps one.<sup>14</sup>

## **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.

---

<sup>12</sup> Tr. 27-30, 32, 46-47; GE 2, 3, 4, 5, 6; AE F.

<sup>13</sup> Tr. 25-26; GE 2, 3, 4; AE E.

<sup>14</sup> Tr. 41, 48-49, 50-51, 53.

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 is 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 began having financial problems in 2011. He had numerous delinquent debts that he was unwilling or unable to resolve until recently. 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;
- (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.

Applicant disclosed the delinquent debts in SOR ¶¶ 1.a, 1.b and 1.e on his 2012 e-QIP. During his 2016 background interview he stated that he was unfamiliar with these debts and others because his wife handled the finances, but said he would discuss them with her and resolve them if they were valid. In his Answer to the SOR, he denied SOR ¶ 1.a indicating he was unfamiliar with it. He said he was unable to pay SOR ¶ 1.b because the creditor would not agree to a payment arrangement. SOR ¶ 1.e

was resolved in November 2017. Applicant brought current the debt in SOR ¶ 1.c. He paid or settled the debts in SOR ¶¶ 1.d and 1.f, but not until after he received the SOR, despite them being brought to his attention during his background interview. Applicant has not resolved the two largest debts. I cannot find that his financial problems are unlikely to recur. His almost five year delay in paying some of his delinquent debts cast doubt on his current reliability, trustworthiness and good judgment. AG ¶ 20(a) does not apply.

Applicant attributed his financial problems to a period in 2009 and 2010 when he and his wife were caring for her parents. They incurred extra financial responsibilities and expended about \$6,000 to help his in-laws get settled. After his father-in-law passed away in 2011, his mother-in-law found a place to live. Applicant estimated they continue to subsidize her with about \$300 to \$350 a month. These were conditions beyond Applicant's control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. In 2012, Applicant disclosed three delinquent debts on his e-QIP. The two largest remain unresolved. He was also confronted with other delinquent debts during his background interview in 2016. It has been five years since Applicant helped his in-laws. He addressed the small debts after he received the SOR. He and his wife earn approximately \$160,000. He has not resolved the two large debts, one that he disclose on his 2012 e-QIP. Applicant provided little insight as why he failed to timely pay his delinquent debts or resolve the large one he admitted he owed. AG ¶ 20(b) partially applies.

No evidence was submitted that Applicant is or has received financial counseling. There are not clear indications his financial problems are under control. AG ¶ 20(c) does not apply.

I am unable to conclude that Applicant initiated and is adhering to good faith efforts to repay overdue creditors or otherwise resolve debts. Applicant has resolved the past due debt in SOR ¶ 1.c. However despite being made aware during his background interview of the delinquent debts alleged in the SOR, many that were years old, he did not take action to resolve them until after he received the SOR. This does not constitute a good-faith effort to repay his overdue creditors. The two largest debts remain unresolved. AG ¶ 20(d) does not apply.

Applicant denied ¶ 1.a in his answer to the SOR; a debt he disclosed in his 2012 e-QIP. In the e-QIP, he indicated he did not want to pay the larger amount owed on what he claimed was a \$500 debt. He testified he has not paid the \$500 or any amount on the debt. He has not provided any evidence regarding this debt to substantiate his dispute. AG ¶ 20(e) 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 52 years old. He has delinquent debts that remain unpaid. Although the amount owed is relatively small, Applicant has had years to address the problem and failed to do so. He paid some of the smaller debts, but not until after he received the SOR, even though he had been aware they were a trustworthiness concern for more than a year. Applicant does not have a reliable financial track record. Despite having the time and the means to resolve his delinquent debts, he failed to pay the two largest debts. I have concerns about his reliability, trustworthiness, and good judgment. I find Applicant's conduct raises questions and doubts about his eligibility and suitability for a public trust position. For all these reasons, I conclude 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.b:	Against Applicant
Subparagraphs 1.c-1.f:	For 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.

---

Carol G. Ricciardello  
Administrative Judge