



**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. 17-01749

Appearances

For Government: Tara R. Karoian, Esq., Department Counsel

For Applicant: *Pro se*

05/02/2018

Decision

GARCIA, Candace Le'i, Administrative Judge:

Applicant did not mitigate the financial considerations trustworthiness concerns. Eligibility for access to sensitive information is denied.

Statement of the Case

On August 11, 2017, the Department of Defense (DOD) 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) implemented by DOD on June 8, 2017.

Applicant answered the SOR on October 3, 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 November 21, 2017. 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 trustworthiness concerns. Applicant received the FORM on December 21, 2017. Applicant did not respond to the Government's FORM. The case was assigned to me on April 13, 2018.

The Government's documents identified as Items 1 through 7 are admitted into evidence. Other than his Answer to the SOR, admitted into evidence as Item 2, Applicant failed to submit any additional documentation.

Findings of Fact

Applicant denied all of the financial considerations allegations. He is 43 years old. He is married. He has four children, two adult and two minor.¹

Applicant served in the U.S. military from July 1993 to July 2013, when he retired with an honorable discharge. He was subsequently unemployed and a full-time student. He earned an associate's degree in August 2004 and a bachelor's degree in January 2015. In December 2015, he began working as a general clerk for a defense contractor; he was also attending seminary school since February 2015. He was first granted a DOD security clearance in 1993.²

The SOR alleges 7 delinquent consumer accounts for \$29,887 (SOR ¶¶ 1.b to 1.f, 1.h, 1.j), 2 delinquent medical debts for \$143 (SOR ¶¶ 1.g, 1.i), and a foreclosed home in 2012 due to Applicant's inability to pay his mortgage (SOR ¶ 1.a). The debts are established by the credit reports from December 2015 and April 2017. He also listed and discussed his delinquent debts in his December 2015 SCA and during his 2016 background interview.³

Applicant attributed his delinquent debts to his period of unemployment from July 2013 to December 2015. He stated that he anticipated being hired as a civil servant upon his military retirement, but the individual who was in charge of hiring was transferred and the position was filled by someone else. During his unemployment, he supported himself through his and his wife's military retirement, their educational benefits from the U.S. Department of Veterans Affairs (VA), their disability benefits, as well as his financial aid and student loans.⁴

As alleged in SOR ¶ 1.a, Applicant became delinquent on his mortgage for the home that he purchased in August 2011 for \$245,000. He timely paid his mortgage of \$1,908 monthly until around August 2013. He obtained a loan modification in February 2014, but he did not subsequently pay his modified monthly mortgage payment because

¹ Items 2-3.

² Items 3, 7.

³ Items 1, 4-5, 7.

⁴ Items 3, 7.

he was under the misimpression that he could continue to modify the loan until it was an affordable amount. He also prioritized his household bills. In around June 2014, the creditor issued a foreclosure notice. In October 2014, the home was sold at auction for \$298,000. He received an IRS Form 1099-A in October 2014, reflecting that though he was personally liable for repayment of the debt, the fair market value of the property exceeded his outstanding principal balance by \$40,299. Both credit reports reflect that this account carries a zero balance.⁵

SOR ¶ 1.b is for Applicant's car that was repossessed in May 2015. While he believed SOR ¶¶ 1.b and 1.c were duplicate accounts, the credit reports reflect that they carry different account numbers and outstanding balances. He purchased his car in July 2011 for \$20,000. He made timely payments of \$359 monthly until August 2013. At the time of repossession, his outstanding balance was \$14,000. After the car was sold at auction in June 2015, his outstanding balance was \$15,250. As of February 2016, SOR ¶ 1.b was in collection with an outstanding balance of \$13,721. He stated that when he contacted the collection agency to make a payment, it referred him back to the initial creditor. When he contacted the initial creditor, he was referred back to the collection agency. He stated that he was unable to make any payments towards SOR ¶ 1.b because the collection agency and initial creditor were unwilling to accept payments. He provided an IRS Form 1099-C reflecting that SOR ¶ 1.c was canceled in December 2016. He did not provide documentation to show that he resolved SOR ¶ 1.b.⁶

SOR ¶ 1.d is for a \$10,000 debt-consolidation loan that Applicant obtained in 2011, to repay debts associated with his home. He stated that he began repaying it at an unrecalled amount in late 2014. It subsequently became delinquent after the creditor temporarily blocked his ability to repay it because of his wife's intended bankruptcy. He resumed repaying it in April 2016 at \$51 monthly, in accordance with a payment arrangement he reached with the creditor. As of October 2016, he made payments totaling \$255 and his outstanding balance was \$4,848. In March 2017, he made a \$51 payment and his outstanding balance was \$4,644. He did not provide documentation to show that he continued to pay this debt or that it was resolved.⁷

The April 2017 credit report reflects that SOR ¶ 1.e is for an auto loan. Applicant opened the account in January 2016. It was subsequently charged off for \$3,264. As of January 2017, his outstanding balance was \$2,364. Applicant did not provide documentation to show that he has resolved this debt.⁸

SOR ¶ 1.f is for a credit card or an online payment account that Applicant opened in late 2013. He maxed it out but was unable to pay it. He stated that he began repaying

⁵ Items 3-7.

⁶ Items 3, 4-7.

⁷ Items 6-7.

⁸ Items 4, 6.

it in June 2016, at \$53 monthly. He made a \$53 payment in January 2017, and the outstanding balance was \$323 as of March 2017. He did not provide documentation to show that he continued paying this debt or that it was resolved.⁹

Applicant indicated that his outstanding medical bills in SOR ¶¶ 1.g and 1.i stem from his children's medical bills from around 2013 to 2015. He stated that they should have been covered by his TRICARE insurance. Instead, they were incorrectly billed to his wife's TRICARE account and the bills were not covered since she had already retired from active duty service. The bills were then subsequently referred to a collection agency. At TRICARE's direction, he had them re-billed to his TRICARE insurance and the outstanding medical bills were resolved. He did not provide documentation to corroborate his claim.¹⁰

SOR ¶ 1.h is for a store credit card that Applicant opened in late 2012. He maxed out the card but was unable to pay it. He stated that he paid the debt in July 2016. He did not provide documentation to corroborate his claim.¹¹

SOR ¶ 1.j is a bill for pest control performed on Applicant's home at an unrecalled date. He stated that he was making payments towards this debt, but it became delinquent in the summer of 2014 and was placed for collection in late 2015. He stated that he paid it in August 2016. He did not provide documentation to corroborate his claim.¹²

Applicant indicated in his SCA that he was unable to negotiate a payment plan with his outstanding creditors because of his lack of income due to his unemployment, but he planned to do so. During his background interview, he stated that he began paying his outstanding debts upon obtaining employment. He did not provide documentation to corroborate his claims of payment for the outstanding SOR debts in SOR ¶¶ 1.b and 1.d through 1.j. There is no evidence that Applicant received financial counseling.¹³

Policies

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,

⁹ Items 6-7.

¹⁰ Items 3, 7.

¹¹ Item 7.

¹² Item 7.

¹³ Items 3, 6-7.

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

AG ¶ 18 expresses the trustworthiness concern pertaining to financial considerations:

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 [trustworthiness] 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 [trustworthiness] concern insofar as it may result from criminal activity, including espionage.

AG ¶ 19 describes conditions that could raise a trustworthiness concern and may be disqualifying. I considered the following relevant:

- (a) inability to satisfy debts; and

(c) a history of not meeting financial obligations.

Applicant accumulated delinquent debts and was unable to pay his financial obligations. The above disqualifying conditions are applicable.

I have considered all of the mitigating conditions under AG ¶ 20 and considered the following relevant:

(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;

(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's period of unemployment from July 2013 to December 2015 was beyond his control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances. He supported himself through his and his wife's military retirement, VA educational benefits, disability benefits, as well as his financial aid or student loans. He prioritized his household expenses.

Concerning SOR ¶ 1.a, when he became delinquent on his mortgage in August 2013, he successfully obtained a loan modification in February 2014. He became delinquent on his modified mortgage because of his misimpression that he could continue to modify the loan until it was an affordable amount. His home was foreclosed in around June 2014 and sold at auction in October 2014. He provided an IRS Form 1099-A reflecting that he did not have any outstanding liability for the home. Upon obtaining employment, he began paying SOR ¶ 1.d in April 2016 and SOR ¶ 1.f in January 2017. He provided an IRS Form 1099-C reflecting that SOR ¶ 1.c was cancelled in December 2016. AG ¶ 20(b) applies.

Applicant has not, however, provided documentation to corroborate his claims that he communicated with the collection agency or initial creditor to resolve SOR ¶ 1.b, after he received notification from the collection agency in February 2016 of an

outstanding \$13,721 balance. He has not provided documentation to show that he made additional payments towards SOR ¶¶ 1.d and 1.f since March or January 2017, respectively, to resolve the outstanding balances of \$4,644 and \$323. He did not provide documentation to corroborate his claims that he resolved his medical debts in SOR ¶¶ 1.g and 1.i, or that he paid SOR ¶ 1.h in July 2016 and SOR ¶ 1.j in August 2016. Finally, he has not provided documentation to show that he has made any attempts to resolve SOR ¶ 1.e.

An Applicant's intentions to pay off debts in the future are not a substitute for a track record of debt repayment or other responsible approaches." See ISCR Case No. 11-14570 at 3 (App. Bd. Oct. 23, 2013). I am unable to find that Applicant made a good-faith effort to pay his debts, or has a reasonable basis to dispute the legitimacy of some of his medical debts and provided documented proof or evidence of actions to resolve them. His financial issues are recent and ongoing. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a), 20(d), and 20(e) are not applicable. I find that financial considerations concerns remain despite the presence of some mitigation.

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 the 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 Applicant's honorable military service. I also considered the factors that led to Applicant's financial difficulties. However, the limited information in the record has not convinced me that Applicant has a viable plan to address his outstanding financial obligations. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a public trust position. For all these reasons, I conclude Applicant has not mitigated 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:	For Applicant
Subparagraphs 1.b, 1.d – 1.j:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, 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.

Candace Le'i Garcia
Administrative Judge