



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



In the matter of:

ADP Case No. 17-01951

Applicant for Public Trust Position

**Appearances**

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

For Applicant: *Pro se*

02/06/2018

**Decision**

RICCIARDELLO, Carol G., Administrative Judge:

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

**Statement of the Case**

On June 20, 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, and Guideline J, criminal conduct. 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 July 27, 2017, and requested a hearing before an administrative judge. The case was assigned to me on November 6, 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 17, 2018. The Government offered exhibits (GE) 1 through 6, and they were admitted into evidence

without objection. Applicant testified and did not offer any exhibits. DOHA received the hearing transcript on January 24, 2018.

### **Findings of Fact**

Applicant admitted both 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 28 years old. He graduated from high school in 2008 and attended college in 2008-2009, but did not earn a degree. He is not married and has no children. He held a secret security clearance from 2008 to 2013.<sup>1</sup>

Applicant worked full time for a federal contractor from October 2008 to May 2013. There was a government furlough, and the company lost their contract. He worked from June 2013 to May 2014 for a college. He voluntarily resigned from the job because he wanted to pursue his hobbies, particularly cycling. He was unemployed from May 2014 to September 2014. He worked part time as a bicycle delivery person for a sandwich shop from September 2014 to May 2015. He was terminated due to not showing up for work and being late. He was unemployed from May 2015 to July 2015. He worked as a technician from July 2015 to April 2016, when he voluntarily resigned because he wanted to work remotely and his employer wanted him to work in the office. He has worked in his current job with a federal contractor beginning part time in May 2016 and then full time in November 2016 to the present.<sup>2</sup>

Applicant lives with his brother in a house owned by their mother. He does not pay rent. His only expense is his phone bill. He has a credit card with a \$2,500 balance that is current. He does not own a car. His past salary was about \$45,000. He recently got a raise and presently earns about \$55,000 annually. He has no investments or assets. He has about \$400 in the bank. He testified he spends his money on entertainment.<sup>3</sup>

Applicant had a loan and a credit card he opened in July 2012 and July 2013 respectively. These accounts were consolidated and are reflected in the debt alleged in SOR ¶ 1.a (\$10,054). The debt is supported by credit reports from July 2016 and May 2017. Applicant testified that he used loan money to fix a vehicle he owned. He stopped paying the loan in approximately 2014 when he began working as a bicycle delivery person. He was interviewed by a government investigator in January 2017 and explained he discontinued to pay the debt because he did not have a steady job at the time. He did not know why he did not resume paying it after he was steadily employed in July 2015. He testified that his understanding was that after the delinquent debt was charged off, it would not help his credit score even if he did pay it, so he did not see the

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<sup>1</sup> Tr. 16-17.

<sup>2</sup> Tr. 17-21, 31-36; GE 1, 2, 3, 4.

<sup>3</sup> Tr. 21, 36-37, 42-45.

point in paying it off if it was still going to be held against him. He never contacted the creditor or made any attempt to resolve the debt even after it was brought to his attention by the government investigator. He has made no effort to pay the debt. At his hearing, Applicant said he now intends to pay the debt at some point, but had no explanation for why he had not taken any action to do so.<sup>4</sup> His testimony was not credible.

Applicant testified that in September 2014, he was in a store, saw headphones that he liked, took them out of the packaging, and proceeded to walk out of the store and steal them. He was confronted by store security and was arrested. He was charged with theft of property valued between \$50 and \$500. The charges were eventually dropped because the witness from the store did not appear in court. He had no explanation for his actions. He testified, "It looked pretty easy" to steal them.<sup>5</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.

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.

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<sup>4</sup> Tr. 23-28, 37-41; GE 2.

<sup>5</sup> Tr. 27-30; GE 1, 2, 5, 6.

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:

(b) unwillingness to satisfy debts regardless of the ability to do so.

Applicant has a debt that has been delinquent since approximately 2014. Applicant admitted he owes the debt and has made no attempt to resolve the debt. There is sufficient evidence to support the application of the above disqualifying condition.

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; and

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant has made no attempt to repay the delinquent debt alleged in the SOR. He has been aware it is a trustworthiness concern since his January 2017 interview. He has been steadily employed since July 2015. His financial issues are ongoing. There is insufficient evidence to conclude they are unlikely to recur. AG ¶ 20(a) does not apply.

Applicant stopped paying his loan when he voluntarily resigned from his full time job so he could pursue cycling. He then worked as a bicycle delivery person. He was terminated from that position due to unreliable attendance. His employment issues were within his control. He has been working full time since July 2015 and has not made an effort to resolve the debt. He has not acted responsibly or initiated a good-faith effort to pay debt despite the ability to do so. AG ¶¶ 20(b) and 20(d) do not apply.

## **Guideline J: Criminal Conduct**

The trustworthiness concern relating to the guideline for criminal conduct is set out in AG ¶ 30:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations.

AG ¶ 31 provides conditions that could raise trustworthiness concerns. The following are potentially applicable:

(b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.

Applicant was arrested and charged with theft of property between \$50 and \$500 in September 2014. The above disqualifying condition applies.

The guideline also includes conditions that could mitigate trustworthiness concerns arising from criminal conduct. The following mitigating conditions under AG ¶ 32 are potentially applicable:

(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(d) there is evidence of successful rehabilitation, including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

Applicant stole headphones from a store. It has been over three years since the conduct took place. Applicant offered no explanation for his actions, other than he thought "it looked easy." He offered no evidence of successful rehabilitation other than the passage of time, without recurrence of criminal activity. The above mitigating conditions have minimal application except for the passage of time.

### **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 F and J 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 28 years old. He has a delinquent debt that he has not made a payment on since 2014, despite being employed steadily since July 2015. He has minimal expenses and earns \$45,000 to \$55,000 annually. Because the debt has been charged off, he indicated paying it would not help his credit. In September 2014, he stole headphones from a store. He was arrested and charged with theft, but the witness

from the store failed to appear, and the charge was dismissed. Applicant had no explanation for his actions, other than it looked easy. There is no evidence of recurrence of criminal conduct. However, there is also minimal evidence of rehabilitation. I have considered all of the evidence including Applicant's attitude toward his delinquent debt and his theft charge. I considered his testimony, demeanor, and credibility. 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 and Guideline J, criminal conduct 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
Subparagraph 1.a:	Against Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraph 2.a:	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