



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



In the matter of:

ADP Case No. 17-02464

Applicant for Public Trust Position

Appearances

For Government: Allison Marie, Esq., Department Counsel

For Applicant: *Pro se*

04/23/2018

Decision

RICCIARDELLO, Carol G., Administrative Judge:

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

Statement of the Case

On September 5, 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 E, personal 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 October 11, 2017, and requested a hearing before an administrative judge. The case was assigned to me on January 8, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January 23, 2018. I convened the hearing as scheduled on March 21, 2018. The Government offered exhibits (GE) 1 through 5, and they were admitted into evidence without

objection. Applicant testified and offered exhibits (AE) A through F, which were admitted without objection. I specifically asked Applicant if he wanted me to leave the record open so he could provide additional and amplifying documents to substantiate his testimony. He specifically declined my offer.¹ DOHA received the hearing transcript on March 29, 2018.

Findings of Fact

Applicant admitted the SOR allegations in ¶¶ 1.a through 1.e, 1.h through 1.j, and 2.a. He denied the allegation in SOR ¶ 1.f. The Government withdrew the allegation in SOR ¶ 1.g. Applicant's 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 56 years old. He earned an associate's degree in 1982, a bachelor's degree in 1990, and a master's degree in 2004. He has been married four times. His last marriage ended in 2013. He has a 14-year-old son who lives with his mother.²

Applicant has worked for his current employer, a federal contractor, since June 2016. He disclosed in his September 2016 electronic Questionnaire for Investigation Processing (e-QIP) that he was unemployed or "not engaged in a project" during different periods. He worked on contracts for specific projects then would be unemployed. He disclosed his unemployment from November 2015 to January 2016; March 2015 to August 2015; April 2014 to July 2014; October 2013 to December 2013; November 2011 to February 2012; and February 2009 to March 2010.³

Applicant is required to pay \$754 a month for child support. He testified that due to a period of unemployment six years ago he owes about \$20,000 in arrearages. The arrearages are being paid through his paycheck \$70 a month, in addition to his required monthly payment.⁴

When Applicant completed his e-QIP, he disclosed that he was paying delinquent taxes through a payment plan because he was unable to pay the taxes when they were due. The taxes were from an inheritance he received when his father passed away. He was unaware that he was required to pay income tax on the amount. He did not disclose any other financial liabilities in this e-QIP.⁵

¹ Tr. 108-109.

² Tr. 25-29.

³Tr. 33-34; GE 1.

⁴ Tr. 28-33. I have not considered any unalleged derogatory information for disqualifying purposes. I may consider this information when making a credibility determination, in the application of mitigating conditions, and in a whole-person analysis.

⁵ GE 1.

A government investigator interviewed Applicant in December 2016. During the interview, Applicant disclosed the tax payment plan regarding the inheritance he received. He did not disclose any other delinquent debts until he was confronted by the investigator with them. He was confronted with the delinquent student loan alleged in SOR ¶ 1.a (\$26,339). He told the investigator he was aware he had obtained student loans when he was earning his master's degree. He said he was aware the payments on this account were late. He said he set up an automatic payment towards the loan, but did not know when he did it or the amount he was paying. He told the investigator that he believed the account was current and no payments were due. He said he failed to disclose this on the e-QIP due to oversight.⁶

Applicant was confronted with the delinquent student loan in SOR ¶ 1.b (\$5,936). He told the investigator that he believed it was a student loan, but had no further comment on it. He could not confirm that the account was in collection status. He was also confronted with the delinquent student loan in SOR ¶ 1.d (\$664). He acknowledged having obtained a student loan with this creditor, but could not recall the details of the loan and could not recall it was late being paid. He could not recall any details about the loans.⁷

At Applicant's hearing, he testified that he obtained student loans so he could pursue his master's degree that he completed in 2004. He said that he made some intermittent payments. He acknowledged his student loans were in default. He was uncertain how long they were in default. In June 2017, he obtained a copy of his credit report to determine the current owner of the loans and to pursue a rehabilitation program. He said there was a program that would permit him to remove the loans from default status if he paid \$50 a month on each loan. He stated that he is participating in this program and has two separate agreements for two of his defaulted loans. He has not completed the rehabilitation program. He could not recall how many payments he had made or how many remained to complete the program. He anticipated that at some point his payments would be income-based. He testified that he has no explanation for why he did not consistently address his student loans during the past 14 years. It is unknown if the student loan in SOR ¶ 1.d is included in the rehabilitation program. No documents were provided to substantiate Applicant's participation in a loan rehabilitation program or any payments made.⁸

Applicant testified that he has worked to resolve his delinquent debts. He said that the medical debt in SOR ¶ 1.c (\$914) was incurred around 2013. He explained he was not good at managing his debts and occasionally he made a payment toward this debt. He testified that he completed the final payment in early February 2018. The debt is paid.⁹

⁶ GE 2.

⁷ GE 2.

⁸ Tr. 50-59.

⁹ Tr. 40-47; Answer to SOR; AE A.

The debt in SOR ¶ 1.e is a tax lien (\$3,713). Applicant testified that he and his wife lived in State A in 2012 for six months. They filed their joint state income tax return. He told the investigator in December 2016 that he did not report this tax lien on his e-QIP due to oversight. He also said his wife was responsible for paying this debt because she handled the finances. He was aware of the debt and intended to contact the state as soon as possible to arrange a payment plan. He provided to the investigator a receipt from the state for a payment of \$100 made by credit card on December 2, 2016, the same date as his interview. At his hearing, he testified that he and his wife were supposed to split the amount to be paid on the tax bill. When asked if he paid his half, he said “no.” Applicant paid the tax lien in January 2018, after he received the SOR. His brother gave him the money to pay it.¹⁰

The Government conceded that the medical debt in SOR ¶ 1.f (\$359) was sold to a collection agency and then resold, but the name of the new creditor was unknown. Applicant testified that he attempted to find the creditor and was unable. The Government concurs that it is unable to determine who owns the account. The debt is resolved.¹¹

Applicant testified that the collection account in SOR ¶ 1.h (\$315) was for insurance he had approximately three years ago. He received notices from the insurer about the debt, but Applicant did not do anything until his public trust position became an issue. In his answer to the SOR, he provided a letter from September 2017 indicating the account was paid in full. The debt is resolved.¹²

Applicant testified the debt in SOR ¶ 1.i was a medical bill from many years ago that was paid in May 2017. He was waiting for a confirmation letter. His November 2016 credit report shows the debt owed, but his July 2017 credit report does not report this debt. It is resolved.¹³

The debt in SOR ¶ 1.j (\$190) is for accounting services Applicant used to prepare his 2013 tax returns. He provided a confirmation letter from the creditor that he paid the bill in April 2017.¹⁴

Applicant estimated his salary in 2017 was \$93,000. He estimated that for the past seven or eight years his annual salary was approximately \$86,000. In October 2016, he purchased a \$4,000 engagement ring on credit and completed the monthly payments. In January 2015, he traded in his older motorcycle and purchased a new one. In addition to the trade-in value, he made a \$1,000 cash payment and financed \$7,000 of the purchase price. He testified he never missed a loan payment and the loan

¹⁰Tr. 59-64; AE B.

¹¹ Tr. 39-40, 43-44.

¹² Tr. 65-68; Answer to the SOR.

¹³ Tr. 68-75.

¹⁴ Tr. 75-76; Answer to the SOR.

is paid. He traded in a truck and purchased a used car for \$12,000 in June 2015. He financed the balance of the purchase price. He does not maintain a budget. He has three credit cards that he pays monthly. He has approximately \$70,000 in a retirement account.¹⁵

Applicant testified that he has had heart problems since he was 37 years old. He had major surgery in 2013 and was out of work for six weeks. Not all of his medical bills were covered by insurance. Since then he has had three additional medical procedures. He continues to have health challenges. He stated that his 2013 divorce affected his finances. He was not required to pay any spousal support. He stated that he does the best he can managing his finances. His brother provides him financial counseling. He stated that when he received the SOR, it was a motivating force for him to address his finances because obtaining a public trust position was at stake. He acknowledged that he earns a significant salary and can pay his delinquent debts. He said he can be trusted and has shown he can pay his debts on his own.¹⁶

Applicant's brother, who is a financial advisor and senior vice president at a major brokerage firm, provided a character letter for him. His brother stated that he is committed to ensuring Applicant stays on a sound financial path. He attributed Applicant's financial problems to his divorce. He stated that since then Applicant has been vigilant in keeping current with his taxes and improving his credit score and noted that Applicant had no outstanding tax issues. He considered Applicant a hard-working, honest, loyal and caring person.¹⁷ Other character letters describe Applicant as reliable, dependable, professional, trustworthy, valued, well liked, and a positive example for others.¹⁸

Applicant testified that he was aware he had student loans and a tax debt. He did not disclose this information on his e-QIP because he was embarrassed. He said he did not intentionally try to deceive the government. He explained he was never good with finances. He stated he had major life challenges with his health and divorces. I have considered all of the evidence and did not find Applicant's testimony credible. I find Applicant was aware of his delinquent student loans, tax liability, and other delinquent debts when he completed his e-QIP, and he deliberately failed to disclose this information.¹⁹

¹⁵ Tr. 33-38, 48-50, 80-85, 93-97.

¹⁶ Tr. 77-85, 89-90, 97-99.

¹⁷ AE F.

¹⁸ AE D, E.

¹⁹ Tr. 86-89.

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.

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;
- (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 had numerous delinquent debts that began accumulating in 2013 that he is unwilling or unable to resolve. He had unpaid state income taxes from 2012 and student loans he secured in approximately 2004 that were not paid. 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;

(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 recently began to pay some of his delinquent debts after he became aware that it would affect his ability to obtain a public trust position. He testified that he is participating in a rehabilitation program for his delinquent student loans. His student loans are significant. He was unable to state how long he had participated in the rehabilitation program and when it would be completed. He is still resolving his student loans. He has not established a reliable financial track record. There is insufficient evidence to conclude future financial problems are unlikely to recur. AG ¶ 20(a) does not apply.

Applicant attributed his financial problems to unemployment, a divorce, and medical problems. His divorce was in 2013, five years ago. His unemployment is beyond his control. His medical issues were beyond his control. For the full application of AG ¶ 20(b) Applicant must have acted responsibly under the circumstances. Applicant's student loans date back to 2004. He testified that he made some payments, but he conceded he does not know why he failed to address these debts. Applicant did not address debts that were delinquent for years until after he completed his e-QIP and after receiving the SOR. Although many of the SOR debts are now paid, he did not act responsibly when he incurred the debts. AG ¶ 20(b) partially applies.

There is evidence that Applicant's brother helps him with his finances. Applicant does not have a budget. His brother gave him the money to pay his 2012 state income taxes. Applicant told the government investigator in 2016 that he was taking care of this tax debt. It was not paid until January 2018. He neglected his student loans. He testified that he is participating in a rehabilitation program, but no additional evidence was provided as to how many months he has paid, the terms of the program, and when it would be completed. There is insufficient evidence to conclude there are clear indications that the problem is being resolved or is under control. AG ¶ 20(c) does not apply.

Applicant did not begin to address his delinquent debts until his public trust position was an issue. He testified that receiving the SOR motivated him to resolve his delinquent debts. Despite telling the government investigator that he would immediately

resolve his tax debt, he failed to do so until January 2018. Applicant paid many of the delinquent debts after receiving the SOR. Although they may be resolved, I cannot find he acted in good faith. AG ¶ 20(d) does not apply. Those debts that were disputed were resolved in Applicant's favor. AG ¶ 20(e) applies to them. The tax debt was resolved. AG ¶ 20(g) applies.

Guideline E, Personal Conduct

AG ¶ 15 expresses the trustworthiness concern for personal conduct:

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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a trustworthiness concern and may be disqualifying. I find the following 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 security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant was aware he had a tax debt, that his student loans were delinquent, and that he had other delinquent debts. He deliberately failed to disclose this information on his September 2016 e-QIP because he was embarrassed. He told the investigator that the largest student loan was being paid by automatic payments. He could not recall how much was being paid, but said it was not late. He was aware of his 2012 state income tax debt. His explanation for failing to disclose it was due to oversight. Applicant's testimony and explanations were not credible. The above disqualifying condition applies.

The guideline also includes conditions that could mitigate security concerns arising from personal conduct. I have considered the following mitigating conditions under AG ¶ 17:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

There is no evidence that Applicant made prompt, good-faith efforts to correct his omissions before being confronted with the facts. AG ¶ 17(a) does not apply. Deliberately failing to disclose required information on a e-QIP is not a minor offense. Applicant's deliberate omissions cast doubts on his current reliability, trustworthiness, and good judgment. AG ¶ 17(c) 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 Guidelines F and E 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 56 years old. He accumulated delinquent debts due to unemployment, divorce, and medical issues. Applicant's student loans were obtained in 2004. He made minimal attempts to make payments over the next 14 years. He was aware of his tax debt, but did not address it until he realized it affected his ability to obtain a public trust position. Applicant deliberately failed to disclose his financial issues on his e-QIP. The Government relies on those holding clearances to do the right thing regardless of the consequences and not just when it is beneficial to them. Although Applicant paid some of his delinquent debts, there is insufficient evidence to overcome the trustworthiness concerns raised under Guideline F, financial considerations, and Guideline E, personal conduct.

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
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Subparagraphs 1.a-1.b:	Against Applicant
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Subparagraph 1.c:	For Applicant
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Subparagraphs 1.d:	Against Applicant
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Subparagraph 1.e-1.j:	For Applicant
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Paragraph 2, Guideline E:	AGAINST APPLICANT
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Subparagraph 2.a:	Against Applicant
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Conclusion

In light of all of the circumstances, it is not clearly consistent with the national interest to grant Applicant eligibility for a public trust position. Eligibility for access to sensitive information is denied.

Carol G. Ricciardello
Administrative Judge