



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



In the matter of: )  
)  
) ADP Case No. 14-05479  
)  
Applicant for Public Trust Position )

**Appearances**

For Government: Caroline E. Heintzelman, Department Counsel  
For Applicant: *Pro se*

11/21/2015

**Decision**

DAM, Shari, Administrative Judge:

Applicant has a history of financial problems and criminal conduct, which he did not disclose to the Government in his application for a position of trust. He failed to present sufficient evidence to mitigate those financial, criminal conduct, and personal conduct trustworthiness concerns. Based upon a thorough review of the pleadings, exhibits, and testimony, eligibility for access to ADP I/II/III sensitive information is denied.

**Statement of the Case**

On April 9, 1993, the Composite Health Care Systems Program Office (CHCSPO), the Defense Office of Hearings and Appeals (DOHA), and the Assistant Secretary of Defense for Command, Control, Communications and Intelligence (ASD C3I), entered into a memorandum of agreement for DOHA to provide trustworthiness determinations for contractor personnel employed in Sensitive Information Systems Positions (ADP I/II/III), as defined in Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program* (January 1987), as amended (Regulation).

On January 31, 2013, Applicant submitted a Public Trust Position Application (SF 85P). On March 6, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns under Guideline F, (Financial Considerations); Guideline J, (Criminal

Conduct); and Guideline E, (Personal Conduct). The action was taken under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); the Regulation (*supra*); and the adjudicative guidelines (AG) effective within the DOD for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on March 27, 2015 (Answer), and requested a hearing before an administrative judge. DOHA assigned the case to me on June 18, 2015, and issued a Notice of Hearing on June 26, 2015. I convened the hearing as scheduled on July 22, 2015. Department Counsel offered Government Exhibits (GE) 1 through 7 into evidence, and they were admitted without objection. Applicant testified and offered Applicant's Exhibits (AE) A through I, which were admitted without objection. DOHA received the transcript of the hearing (Tr.) on July 30, 2015. The record remained open until August 14, 2015, to give Applicant an opportunity to submit other exhibits. He did not submit any additional documents.

### **Findings of Fact**

Applicant admitted all allegations contained in SOR, except those contained in SOR ¶¶ 1.p, 2.a, 2.c, 2.e, 2.f, and 3.a through 3.g, which he denied. His admissions are incorporated into the findings of fact herein.

Applicant is 57 years old and divorced since 1989. He has two adult daughters from two previous relationships. He enlisted in the Marine Corps in 1976 and served three years active duty, and three years inactive duty. He received an honorable discharge. He was at a paygrade of E-4 when discharged. Subsequent to leaving the military he earned three associate's degrees in computer sciences.

Applicant started working for his current employer, a defense contractor, in 2013. Prior to this position he interned with a Veteran's Administration (VA) hospital for a period of time, and also worked for a private computer company. (Tr. 31.) His supervisor is aware of this security hearing and has read the SOR. (Tr. 33.)

### **Financial**

Applicant has a history of financial difficulties. He filed a Chapter 7 bankruptcy in 2012 and the court discharged between \$25,000 and \$30,000 of delinquent debts in 2013. (GE 2.) He remained responsible for student loans and some medical bills from heart attacks he had in 2006 and 2010. (Tr. 48.) In early 2015 he was admitted to the hospital for three weeks for a kidney problem, resulting in additional medical debts. (Tr. 57; AE C through I.)

Applicant earns about \$14.31 per hour or approximately \$400 per week, net. He receives \$1,054 a month for his disability from the Social Security Administration and \$106 a month through the VA for a medical injury. His total monthly net income is about \$2,754 and his expenses are about \$1,286. (Tr. 35-36, 46; AE A.) He does not use a budget. He owes unpaid child support for his adult daughters, which is deducted from

his disability payments. (Tr. 38.) Applicant attributed his delinquent debts to his various medical problems, the lack of medical insurance, and unemployment for four or five months in 2012. (GE 2.)

Based on credit bureau reports from March 2014 and February 2015, the SOR alleged 15 delinquent debts totaling \$22,831, which accumulated between 2009 and 2014. The largest debt, \$20,786, is an automobile repossession from 2014. The SOR also alleged that Applicant filed a Chapter 7 bankruptcy in 2012. None of the 15 debts are paid or resolved. Seven debts are under \$100, and the smallest debt is for \$7. Applicant said he paid the debts alleged in SOR ¶¶ 1.o and 1.p, and could provide verification of payment. (Tr. 60-61.) He said his student loans were current. (Tr. 53.) He did not submit evidence to verify both assertions.

### Criminal Conduct

Applicant has a history of criminal incidents. He denied that he was arrested in October 1994 for non-payment of child support, cocaine possession and driving while his license was revoked. He said he called the appropriate sheriff's office about the allegation and that it could not verify the arrest. However, he did not present evidence to contradict the information contained in the criminal justice record from the sheriff's office, including a notation that he was incarcerated for four days in October 1994 after his arrest. (Tr. 64; GE 7.)

In 1995 Applicant was arrested for issuing a worthless check. He said his girlfriend "emptied my bank account," which caused the problem. (Tr. 68.) He said he spent two days in jail and was released. (Tr. 69.) In 1996 Applicant pled guilty to carrying a concealed weapon, possessing a controlled substance, and driving on a suspended license. He pled guilty to the felony weapons charge, and was sentenced to 14 days of confinement, and placed on probation for four years. (GE 3.) In 1998 he was charged with carrying a concealed weapon (a knife) and domestic violence. He was found guilty of the weapons charge, a felony, and sentenced to 24 months of confinement. (Tr. 74-76; GE 3.) In 2011 he was arrested for issuing a check for insufficient funds. He posted a bond. (GE 7.) In 2012 he pled guilty to issuing a check for insufficient funds. He was sentenced to a day in jail, and ordered to pay costs and \$1,800 in restitution. He was placed on probation for 12 months. (GE 7.)

### Personal Conduct

When Applicant completed his SF-85P, he did not disclose the 2012 bankruptcy or any of the delinquent debts alleged in the SOR, including a 2014 automobile repossession or six judgments that were entered between 2007 and 2010. He did not disclose his arrests in 2011 and 2012 for writing checks for insufficient funds, or the conviction for the 2012 offense. He failed to disclose his arrests and convictions for the weapons charges from 1996 and 1998, both felonies. He stated he did not "intentionally try to deceive the Government." (Tr. 96.)

Applicant said he did not disclose his financial problems because his supervisor was “trying to rush us through” the process. (Tr. 85.) He also knew that he had medical debts but did not think he needed to disclose those. (Tr. 85.) He was not at home when he worked on completing the application, and did not have enough time at work. He said that he disclosed the 2012 bankruptcy, but had trouble with the computer recording it. He said he would never hide a bankruptcy. (Tr. 89.) He said he signed the application four times before it could be electronically submitted, and that the system had many computer problems. (Tr. 86-89.)

Applicant said he made a mistake by not disclosing the felonies because he thought the question required disclosure of incidents that were within the past ten years. (Tr. 78.) He said he did not remember the 2011 or 2012 check writing offenses, so he did not disclose them. (Tr. 81.) Applicant said that he “didn’t purposely try to lie to the Government . . . that was never my intent.” (Tr. 83.)

In April 2014 a government investigator interviewed Applicant about his background, delinquent debts, and criminal history. Applicant said he would try to pay many of the debts by May 2015. (GE 2.)

### **Policies**

Positions designated as ADP I, II, and III are classified as “sensitive positions.” (Regulation ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3.) “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.” (Regulation ¶ C6.1.1.1.) The Deputy Under Secretary of Defense (Counterintelligence and Security) Memorandum, dated November 19, 2004, indicates trustworthiness adjudications will apply to cases forwarded to DOHA by the Defense Security Service and Office of Personnel Management. Department of Defense contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination may be made. (Regulation ¶ C8.2.1.)

When evaluating an applicant’s suitability for a public trust position, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant’s eligibility for access to sensitive information.

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 AG ¶ 2 describing the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 access to [sensitive] information will be resolved in favor of the national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states that, “[t]he applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.”

A person applying for access to sensitive information seeks to enter 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 protected information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of sensitive information.

## **Analysis**

### **Guideline F, Financial Considerations**

The trustworthiness concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

Failure or inability 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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

AG ¶ 19 describes two conditions that could raise trustworthiness concerns and may be disqualifying in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant has a history of financial problems that dates back to before he filed his 2012 bankruptcy. Subsequently, he has accumulated additional delinquent debts that he has been unable or unwilling to satisfy. The evidence raises both of the above trustworthiness concerns, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate trustworthiness concerns arising from Applicant's financial difficulties:

(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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated 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 financial problems began prior to his filing a Chapter 7 bankruptcy in 2012 and continue into the present. The evidence does not support the application of AG ¶ 20(a). Applicant provided some evidence that his financial problems arose as a result of a period of unemployment and as a consequence of medical problems that were not covered by insurance. While those circumstances may have been beyond his control, he did not provide evidence that he acted responsibly under the circumstances, a factor that must be considered in establishing mitigation under AG ¶ 20(b). Thus, this mitigating condition has little application to any debts.

Applicant did not provide evidence that he participated in credit or financial counseling, or has a budget and reasonable plan to systematically address the debts. AG ¶ 20(c) has no application because there are no clear indications that his financial problems are under control. Applicant submitted no proof that he made a good-faith effort to pay or resolve any of the 15 debts, including the smallest debt for only \$7. Thus, AG ¶ 20(d) does not apply. There is no evidence that Applicant successfully disputed any debts. AG ¶ 20(e) does not apply.

## **Guideline J, Criminal Conduct**

AG ¶ 30 expresses the trustworthiness concerns pertaining to criminal conduct:

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 describes a condition that could raise a trustworthiness concern and may be disqualifying in this case:

(a) a single serious crime or multiple lesser offenses.

Applicant has a history of criminal incidents, which includes offenses in 1994, 1995, 1996, 1998, 2011, and 2012. The evidence raises concerns under the above disqualifying condition.

AG ¶ 32 provides conditions that could mitigate trustworthiness concerns arising under this guideline:

(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, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.

The first criminal allegation in the SOR documents an offense in 1994, and the last offense occurred in 2012, which resulted in the court placing Applicant on probation for 12 months. Given that history and recency of that last offense, there is insufficient evidence to determine that similar incidents will not recur in the future and establish mitigation under AG ¶ 32(a). While Applicant displayed remorse over these incidents, he did not provide documentation that he successfully completed his last probation, evidence of a good employment record, or constructive community involvement. Hence, evidence of mitigation under AG ¶ 32(b) is minimal.

## **Guideline E, Personal Conduct**

AG ¶ 15 expresses the trustworthiness concerns pertaining to 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 a condition that could raise a trustworthiness concern and may be disqualifying in this case:

(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's assertion that he disclosed the 2012 bankruptcy in the SF-85P, but that he had difficulty with the software program while working on the form, is credible. SOR ¶ 3(a) is found in his favor. The remaining allegations in SOR ¶¶ 3(b) through 3(g) are not found in his favor. Applicant did not disclose any delinquent debt, judgment, or criminal incident in the SF-85P. His explanation for not disclosing the information, namely that he was too rushed or misread the questions, is not sufficiently credible.

AG ¶ 17 includes three conditions that could mitigate trustworthiness concerns arising under this guideline:

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

(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; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Although Applicant discussed many of the SOR allegations during his interview, there is insufficient evidence to conclude that he made an effort to correct the omissions before that interview. Because Applicant did not disclose any negative information about his financial delinquencies or criminal problems in the January 2014 SF-85P, his conduct cannot be considered minor or in the past. Mitigation is not established under AG ¶¶ 17(a) or (c). Applicant stated that his employer is aware of this proceeding, having read the SOR. That disclosure provides some evidence that he has taken a step to reduce his vulnerability to exploitation regarding the trustworthiness concerns raised under this guideline. AG ¶ 17(e) has limited application.

### **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 relevant circumstances. 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. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (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.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant is an intelligent man, who honorably served this country for three years before suffering a medical injury. Since 2013 he has worked for a defense contractor. As a consequence of various medical conditions, he accumulated debts in 2006, 2010, and more recently in 2015, which he has not resolved as a result of insufficient money or efforts. While those medical conditions were serious and affected his employment, he did not provide any evidence that he made an effort to resolve any of the 15 debts, including the \$7 debt alleged in SOR ¶ 1.f. His debts, coupled with a history of criminal incidents and failure to disclose those problems to the Government, raise questions about his reliability and judgment.

After weighing the disqualifying and mitigating conditions, and all facts and circumstances in the context of the whole-person, the record evidence leaves doubt as to Applicant's eligibility and suitability for a position of trust. For these reasons, I conclude that Applicant has not mitigated the trustworthiness concerns arising under the guidelines for financial considerations, criminal conduct, and 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
Subparagraphs 1.a through 1.p:	Against Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraphs 2.a through 2.f:	Against Applicant

Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraph 3.a:	For Applicant
Subparagraphs 3.b through 3.g:	Against Applicant

**Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant eligibility for a public trust position. Eligibility for access to ADP I/II/III sensitive information is denied.

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Shari Dam  
Administrative Judge