



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



In the matter of: )  
)  
) ADP Case No. 14-06540  
)  
Applicant for Public Trust Position )

**Appearances**

For Government: Benjamin R. Dorsey, Esq., Department Counsel  
For Applicant: *Pro se*

09/17/2015

**Decision**

DUFFY, James F., Administrative Judge:

Applicant failed to mitigate the trustworthiness concerns under Guideline F (financial considerations). Eligibility to occupy a position of trust is denied.

**Statement of the Case**

On July 2, 2013, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). Based on a review of Applicant’s e-QIP and the ensuing investigation, Department of Defense (DOD) adjudicators issued Applicant a Statement of Reasons (SOR) on February 3, 2015, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive); and the adjudicative guidelines (AG) implemented on September 1, 2006. The SOR alleged trustworthiness concerns under the financial considerations guideline.

On February 27, 2015, Applicant answered the SOR and elected to have his case decided on the written record in lieu of a hearing. On June 8, 2015, Department

Counsel prepared a File of Relevant Material (FORM) that contained documents marked as Items 1 through 6. On July 1, 2015, Applicant received a copy of the FORM and was given 30 days from its receipt to submit objections and supply additional information. He did not submit a response to the FORM. The case was assigned to me on September 10, 2015.

### Findings of Fact

The SOR alleged that Applicant had 18 delinquent debts totaling \$35,383 (SOR ¶¶ 1.a-1.r). In his Answer to the SOR, Applicant admitted the debts in SOR ¶¶ 1.c and 1.d and essentially denied the remaining debts. Applicant's e-QIP and his credit reports dated July 13, 2013, and May 12, 2014, contain substantial evidence of the alleged debts.<sup>1</sup>

Applicant is a 40-year-old father of two children, ages 15 and 17. When he submitted his e-QIP, he was unemployed and presumably was seeking employment with a federal contractor. He graduated from high school in June 1993. He served on active duty in the Army from September 1993 to October 1996 and in the inactive Army Reserve from October 1996 to September 2001. He received honorable discharges for his military service. He attended college from August 2003 to May 2006. He began attending college again in March 2013, but had not earned a degree by the time he submitted his e-QIP. He married in June 1999 and divorced in April 2007. He has held a security clearance in the past.<sup>2</sup>

In April 2009, Applicant resigned from his job and moved back to his parents' home when he learned his stepfather had cancer. He lived there until September 2011. After his stepfather passed away, he began residing in another location with a roommate. He was fired from a job that he held from March 2010 to January 2013 because of his excessive internet usage. He remained unemployed until he submitted his e-QIP.<sup>3</sup>

In his Answer to the SOR, Applicant stated that, upon moving back to his parents' home, he could no longer afford to make the payments on the vehicle loan in SOR ¶ 1.a. He also indicated that the vehicle was voluntarily repossessed after he explained his situation to the creditor. A credit report dated May 12, 2014, reflected that this debt was past due in the amount of \$10,578 and had a date of last activity of August 2009. The credit report also reflected the vehicle was involuntarily repossessed. Applicant claimed he disputed this debt and it no longer appears on his credit report. He

---

<sup>1</sup> Items 1, 2, 5, 6. The \$389 lien in SOR ¶ 1.e is reflected in the credit report dated May 12, 2014, but the holder of that lien, which is alleged in the SOR, is not reflected in that credit report.

<sup>2</sup> Item 3.

<sup>3</sup> Item 4

failed to provide documents supporting his claim that this debt was removed from his credit report or that showed he had a legitimate basis for disputing it.<sup>4</sup>

In his Answer to the SOR, Applicant claimed that he disputed the debts in SOR ¶¶ 1.b, 1.f through 1.l, and 1.o through 1.q, and that they have been removed from his credit report. However, he failed to provide documentation that showed he had a legitimate basis for disputing those debts. His Answer also indicated that he paid the debt in SOR ¶ 1.e and would pay the debts in SOR ¶¶ 1.c and 1.d, but he provided no proof of payments.<sup>5</sup>

In his Answer to the SOR, Applicant indicated that the student loans in SOR ¶¶ 1.m and 1.n were consolidated, and they were current. He provided a document confirming the consolidated loans are in deferment until August 2017. He also provided proof that he was making regular payments from October 2014 to February 2015 on the \$1,241 in child support arrearages listed in SOR ¶ 1.r and the remaining balance was \$198.<sup>6</sup>

Applicant provided no evidence that he received financial counseling. It is unknown whether Applicant is currently employed. He did not provide a monthly budget. It is unknown whether he has any discretionary income remaining each month after payment of his expenses.<sup>7</sup>

### **Policies**

Positions designated as ADP I and ADP II are classified as “sensitive positions.” (See 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.” (See Regulation ¶ C6.1.1.1.) In a memorandum dated November 19, 2004, the Deputy Under Secretary of Defense (Counterintelligence and Security) indicated that trustworthiness adjudications will apply the procedures contained in the Directive before making a determination. (See Regulation ¶ C8.2.1.)

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

---

<sup>4</sup> Item 6.

<sup>5</sup> Item 2.

<sup>6</sup> Item 2.

<sup>7</sup> Item 2.

adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial and commonsense decision. According to AG ¶ 2(c), 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 access to [sensitive] information will be resolved in favor of 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.

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**

The trustworthiness concern under this guideline is set out in AG ¶ 18:

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.

The record evidence established two disqualifying conditions in AG ¶ 19:

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

Five 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, 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.

None of the mitigating conditions are fully established. Applicant receives credit for making payments on his child support arrearages in SOR ¶ 1.r and for the deferment of his student loans in SOR ¶¶ 1.m and 1.n. He claimed he paid the debt in SOR ¶ 1.e and would make payments on the debts in SOR ¶¶ 1.c and 1.d, but provided no proof of those payments. He indicated that he disputed a number of the debts, but failed to provide documentation showing he had a legitimate basis for disputing them. AG ¶ 20(d) partially applies. AG ¶ 20(e) does not apply.

Applicant moved to his parents' home to assist his ill stepfather. His stepfather's illness was a condition beyond his control. However, he was later fired from a job for excessive internet usage and was thereafter unemployed for at least six months. Based on the evidence presented, I am unable to find that his financial problems were caused by conditions beyond his control or that he acted responsibly under the circumstances in addressing his delinquent debts. Insufficient evidence was presented to conclude his financial problems are being resolved, are under control, and are unlikely to recur. No evidence was presented that he received financial counseling. His financial problems continue to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a), 20(b), and 20(c) do not apply

## Whole-Person Concept

In the adjudication process, an administrative judge must carefully weigh a number of variables known as the whole-person concept. Available information about the applicant as well as the factors listed in AG ¶ 2(a) should be considered in reaching a determination.<sup>8</sup> In this case, I gave due consideration to the information about Applicant in the record and concluded the favorable information, including the mitigating evidence, does not outweigh the trustworthiness concerns at issue. Applicant failed to meet his burden of persuasion. His financial problems leave me with doubts as to his current eligibility to occupy a position of trust. Doubts about granting an applicant eligibility for a position of trust must be resolved in favor of national security.

## Formal Findings

Formal findings as required by Section E3.1.25 of Enclosure 3 of the Directive are:

Paragraph 1, Guideline F:	Against Applicant
Subparagraphs 1.a – 1.l:	Against Applicant
Subparagraphs 1.m – 1.n:	For Applicant
Subparagraphs 1.o – 1.q:	Against Applicant
Subparagraph 1.r:	For Applicant

## Decision

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility to occupy a public trust position. Eligibility to access sensitive information is denied.

---

James F. Duffy  
Administrative Judge

---

<sup>8</sup> The adjudicative process factors listed at AG ¶ 2(a) are as follows:

(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.