



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



In the matter of:)
)
 ---) ADP Case No. 15-00527
)
 Applicant for Public Trust Position)

Appearances

For Government: Chris Morin, Esquire, Department Counsel
For Applicant: *Pro se*

05/31/2016

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant has failed to mitigate the trustworthiness concerns regarding financial considerations and personal conduct. Eligibility to occupy a public trust position is denied.

Statement of the Case

On June 5, 2012, Applicant applied for a public trust position and submitted an Electronic Questionnaire for Investigations Processing (e-QIP).¹ On August 24, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to him, pursuant to DOD Regulation 5200.2-R, *Personnel Security Program* (January 1987), as amended and modified (Regulation); DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and the *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (December 29, 2005) (AG) applicable to all adjudications and other determinations made under the Directive, effective September 1, 2006. The SOR alleged trustworthiness concerns

¹ Item 3 (e-QIP, dated June 5, 2012).

under Guidelines F (Financial Considerations) and E (Personal Conduct), and detailed reasons why the DOD CAF was unable to make an affirmative finding under the Directive that it is clearly consistent with the interests of national security to grant or continue a position of public trust for Applicant. The SOR recommended referral to an administrative judge to determine whether to grant or continue Applicant's eligibility for occupying a public trust position to support a contract with the Department of Defense.

It is unclear when Applicant received the SOR for there is no receipt in the case file. In a statement, notarized October 1, 2015, Applicant responded to the SOR allegations and elected to have his case decided on the written record in lieu of a hearing.² A complete copy of the Government's file of relevant material (FORM) was mailed to Applicant on December 2, 2015, and he was afforded an opportunity, within a period of 30 days after receipt of the FORM, to file objections and submit material in refutation, extenuation, or mitigation. In addition to the FORM, Applicant was furnished a copy of the Directive, as well as the Guidelines applicable to his case. Applicant received the FORM on December 21, 2015. The response was due on January 20, 2016. Applicant did not submit any information within the time period established. The case was assigned to me on March 31, 2016.

Findings of Fact

In his Answer to the SOR, Applicant admitted two of the factual allegations pertaining to financial considerations in the SOR (¶¶ 1.a. and 1.h.).³ He failed to use the term "admit" or "deny" with respect to the allegations pertaining to personal conduct, and denied all of the remaining allegations. Applicant's admissions and explanations are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 45-year-old employee of a defense contractor. He has been with his current employer, serving as a claims processor, since July 2012.⁴ Applicant graduated from high school in June 1989.⁵ He is still enrolled in online college training in an unspecified discipline and has not received a degree.⁶ He enlisted in the U.S. Air Force in June 1989, remained on active duty until September 1991, and was discharged with a General Discharge Under Honorable Conditions for an inability to adapt.⁷ He was never granted a security clearance.⁸ Applicant was married in January 2000 and

² Item 2 (Applicant's Answer to the SOR, dated October 1, 2015).

³ Item 2, *supra* note 2, at 1.

⁴ Item 4 (Personal Subject Interview, dated August 15, 2012), at 8.

⁵ Item 3, *supra* note 1, at 9.

⁶ Item 3, *supra* note 1, at 10.

⁷ Item 3, *supra* note 1, at 15.

⁸ Item 3, *supra* note 1, at 30.

divorced in February 2001. He married his current wife in July 2011.⁹ He reported having no children.¹⁰

Financial Considerations¹¹

It is unclear when Applicant first experienced the enduring financial difficulties with which he is currently faced, although he identified several incidents that initially led to some temporary financial difficulties. In December 1999, he was involved in an automobile accident for which he was charged with, and convicted of, driving under the influence (DUI). As a result of that incident, he purportedly sustained a traumatic brain injury and a leg injury. His right leg was amputated and he spent 54 days in the hospital.¹² He also went through an unspecified number of years in physical therapy. He also claimed that the injuries eventually resulted in gall bladder surgery in about 2010, although he did not explain how the incident resulted in that subsequent surgery. He reported that he was on unspecified disability from 1999 until March 2001. Applicant did not specify what the impact of the above incident and resulting circumstances was on his finances aside from stating that he was “barely able to make his monthly payments.”¹³

In July or August 2004, Applicant was involved in another automobile accident. He subsequently acknowledged that it was possible he was drinking prior to the accident.¹⁴ As a result of that incident, he purportedly sustained a crushed hip.¹⁵ He reported that he was on Social Security (\$600 per month) from August 2004 until April 2007. While he did not specify what the impact of the 2004 incident and resulting circumstances was on his finances, he did claim that he had difficulties meeting his financial obligations.¹⁶

A third factor arose in August 2011, when Applicant was laid off, and he remained unemployed until July 2012. He indicated that he struggled financially because he was receiving only a small amount of unemployment compensation.¹⁷

⁹ Item 3, *supra* note 1, at 18-19.

¹⁰ Item 4, *supra* note 4, at 9.

¹¹ General source information pertaining to the financial accounts discussed below can be found in the following exhibits: Item 2, *supra* note 2; Item 4, *supra* note 4; Item 5 (Personal Subject Interview, dated October 11, 2012); Item 6 (Combined Experian, TransUnion, and Equifax Credit Report, dated June 19, 2012; Item 7 (Equifax Credit Report, dated January 2, 2015. Additional information can be found in the exhibits furnished and individually identified.

¹² Item 8 (Court Record, dated January 19, 2000); Item 4, *supra* note 4, at 1; Item 5, *supra* note 11, at 1.

¹³ Item 4, *supra* note 4, at 2.

¹⁴ Item 5, *supra* note 11, at 2.

¹⁵ Item 5, *supra* note 11, at 1.

¹⁶ Item 4, *supra* note 4, at 1.

¹⁷ Item 4, *supra* note 4, at 1.

Applicant's finances deteriorated to the point where his accounts were not timely addressed by him, supposedly not because of a disinterest on his part, but rather because he had insufficient funds to make monthly payments. Accounts became delinquent and were placed for collection or charged off. A review of Applicant's June 2012 credit report reveals several accounts for which Applicant made no payments since the 2005 – 2007 time period, well before he was laid off in August 2011. When he was initially interviewed by an investigator from the U.S. Office of Personnel Management (OPM) in August 2012, Applicant acknowledged a general awareness of his delinquent accounts, but admitted he had not been in contact with his creditors for a few years. Nevertheless, since he had obtained his position in July 2012, he contended he had some repayment plans in place and was already making monthly payments to several of his creditors. He was also hopeful to be able to begin making payments to some of his other creditors within the next six months. He disputed some of the accounts discussed.¹⁸

The SOR identified 17 purportedly continuing delinquent debts totaling approximately \$46,153 that had been placed for collection or charged off, as reflected by the two credit reports. Those accounts are: a student loan with the U.S. Department of Education (DOE) with a high credit of \$14,776 and a remaining and past-due balance of \$21,968 (SOR ¶ 1.a.) that Applicant initially (in 2012) contended he was making monthly payments of \$313 by automated draft, and subsequently (2015) stated he was awaiting a negotiated repayment arrangement;¹⁹ an overpayment by the Social Security Administration (SSA) with a remaining and past-due balance of \$9,015 (SOR ¶ 1.b.) that Applicant contended he repaid by having his income tax refunds garnished and applied to the balance, and contended the account was no longer being reported in his October 2015 credit report;²⁰ and an automobile loan with a high credit of \$17,499 (SOR ¶ 1.h.) that Applicant failed to make monthly payments for four months following his second accident, resulting in the repossession of the vehicle and \$4,725 being charged off.²¹

In addition to the above referenced delinquent accounts, there are a number of accounts that Applicant initially (in 2012) either denied knowledge of, or responsibility for, or acknowledged responsibility for, with a promise to start payments within six months, but now disputes and denies responsibility for, because the accounts are no longer reported in his October 2015 credit report. Those accounts are: a telephone account that Applicant's stepson used without Applicant's knowledge leaving a remaining balance of

¹⁸ Item 4, *supra* note 4.

¹⁹ Applicant failed to submit documentation to support his contentions that any repayment arrangement had been made or that he had made any payments to the creditor.

²⁰ Applicant failed to submit documentation to support his contention that a garnishment has taken place, or that payments had been applied to his outstanding debt. In addition, he failed to submit a copy of the October 2015 credit report.

²¹ In August 2012, Applicant stated he intended to contact the creditor to negotiate a settlement for a lesser amount and start making payments within the next six months. He failed to submit any documentation to reflect any such settlement or payment efforts. Furthermore, Applicant seems encouraged that the account is scheduled to be removed for unspecified reasons from his credit reports in June 2016.

\$1,222 (SOR ¶ 1.c.) that was sold to a debt purchaser; a cellular telephone account that Applicant's wife and stepchildren used leaving a remaining balance of \$773 (SOR ¶ 1.d.) that was sold to a debt purchaser (SOR ¶ 1.k.); another cellular telephone account that Applicant's stepson overused leaving a remaining balance of \$568 (SOR ¶ 1.e.) that was sold to a debt purchaser; medical accounts with remaining balances of \$341 (SOR ¶ 1.f.), \$1,677 (SOR ¶ 1.i.), \$734 (SOR ¶ 1.l.), \$389 (SOR ¶ 1.m.), and \$30 (SOR ¶ 1.q.); a utility account with a remaining balance of \$79 (SOR ¶ 1.g.); a telephone account with a remaining balance of \$3,522 (SOR ¶ 1.j.); an Internet or cable television account with a remaining balance of \$207 (SOR ¶ 1.n.); an electric utility account with a remaining balance of \$81 (SOR ¶ 1.o.); and a telephone account with a remaining balance of \$49 (SOR ¶ 1.p.) that was purchased by a debt purchaser. Applicant now denies responsibility for the above debts, and he claims they no longer appear in his October 2015 credit report. Although he has been fully employed since July 2012, there is no evidence that Applicant has taken any steps to resolve his debts since he was interviewed in August 2012 – nearly three years ago. He failed to submit either that October 2015 credit report or documentation that might indicate any efforts by him to contact the creditors or enter into any settlement negotiations, or reflecting any payments made. In the absence of such documentation, it appears that he has simply washed his hands of any financial responsibility towards any of the SOR-related delinquent debts.

It is not known what Applicant's financial resources may be because he did not submit a personal financial statement to indicate his net monthly income, his monthly household or debt expenses, or whether he has any funds remaining at the end of each month for discretionary use or savings. He offered no evidence to indicate that his financial problems are now under control. There is no evidence to indicate that Applicant ever received financial counseling.

Personal Conduct

On June 5, 2012, when Applicant completed his e-QIP, he responded to questions pertaining to his police record. One of the questions in § 22 asked if he had "EVER been charged with an offense involving alcohol or drugs."²² Applicant answered "no" to the question. He certified that the response was "true, complete, and correct" to the best of his knowledge and belief, but the response to that question was, in fact, incorrect, for at that time Applicant had been involved in at least one incident involving alcohol: a December 1999 DUI (SOR ¶ 2.a.(2)). The SOR also alleged that Applicant falsified his response by failing to report one other alcohol-related incident: the July 2004 accident which was alleged as a DUI and open container in motor vehicle (SOR ¶ 2.a.(1)).

During Applicant's OPM interview, he denied any recollection of a 1996 incident involving an alleged charge of open container in motor vehicle, claiming that his traumatic brain injury from 1999 caused him to experience long-term memory loss.²³ In

²² Item 3, *supra* note 1, at 28.

²³ Item 5, *supra* note 11, at 1.

his Answer to the SOR, he ignored the allegation. Other than the “confrontation” by the OPM investigator with unidentified source information, the record contains no evidence of the purported charge such as an incident report, traffic summons, or court record. Furthermore, there is no such allegation in the SOR.

With respect to the 1999 incident, during the OPM interview, Applicant acknowledged the incident, but offered no admission as to any charge. In his Answer to the SOR, he denied that he was arrested for DUI, and claimed he did not appear in court for any such charge.²⁴ The evidence refutes Applicant’s position in that the court record reflects a finding of guilty following a bench trial for DUI.²⁵

The 2004 incident is more challenging for the SOR alleged that Applicant was arrested and charged with both DUI and open container of beer or wine in motor vehicle. There is no admission or documentary evidence such as an incident report, traffic summons, or court record to support the two-charge (DUI and open container) allegation. During his OPM interview, while Applicant agreed to the possibility that he was drinking prior to the accident, he stated he had no recollection of being charged with any offenses or ever going to court, and he stated that he was fairly certain he never appeared in court or paid any fines.²⁶ In his Answer to the SOR, Applicant denied being arrested for DUI, and he denied appearing in court. He acknowledged he paid a ticket, but the infraction on the ticket was not revealed.²⁷

When Applicant completed his e-QIP, he also responded to questions pertaining to his financial record. Several of those questions in § 26 asked if he was currently delinquent on any Federal debt; in the past seven years, if he had bills or debts turned over to a collection agency; and if he had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed, including those for which he was the sole debtor, a cosigner, or a guarantor.²⁸ Applicant answered “no” to those questions. He certified that the responses were “true, complete, and correct” to the best of his knowledge and belief, but the responses to those questions were, in fact, false, for at that time Applicant had several accounts that fell within the stated parameters.

Applicant denied intending to falsify his responses or mislead anyone. He explained that most of the accounts were placed for collection well beyond the seven year period to which the questions referred. In fact, they are still in a delinquent status. Furthermore, a review of his June 2012 credit report reveals that a number of Applicant’s delinquent debts were placed for collection as recently as 2011 and 2012, well within the seven-year period.

²⁴ Item 2, *supra* note 2, at 2.

²⁵ Item 8, *supra* note 12.

²⁶ Item 5, *supra* note 11, at 1.

²⁷ Item 2, *supra* note 2, at 2.

²⁸ Item 3, *supra* note 1, at 31-32.

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no one has a ‘right’ to a security clearance.”²⁹ As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. Positions designated as ADP I/II/III are classified as “sensitive positions.”³⁰ “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.”³¹ 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.³²

When evaluating an applicant’s suitability for a public trust position, 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 used in evaluating an applicant’s eligibility for a public trust position.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging 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 common sense decision. 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 meaningful decision.

In the decision-making process, facts must be established by “substantial evidence.”³³ The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation,

²⁹ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

³⁰ Regulation ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3.

³¹ Regulation ¶ C6.1.1.1.

³² Regulation ¶ C8.2.1.

³³ “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “Substantial evidence” is “more than a scintilla but less than a preponderance.” *See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

extenuation or mitigation, sufficient to overcome the doubts raised by the Government's case. The burden of disproving a mitigating condition never shifts to the Government.³⁴

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 as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those 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 as to potential, rather than actual, risk of compromise of sensitive information. Furthermore, security clearance determinations, and by inference, public trust determinations, should err, if they must, on the side of denials.³⁵ 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.

Analysis

Guideline F, Financial Considerations

The trustworthiness concern relating to the guideline for Financial Considerations 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 [sensitive] information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. . . .

The guideline notes several conditions that could raise trustworthiness concerns. Under AG ¶ 19(a), an "inability or unwillingness to satisfy debts" is potentially disqualifying. Similarly, under AG ¶ 19(c), "a history of not meeting financial obligations" may raise trustworthiness concerns. Applicant has had a long-standing problem with his finances. There are 17 purportedly continuing delinquent debts totaling approximately \$46,153 that had been placed for collection or charged off. A vehicle was repossessed. AG ¶¶ 19(a) and 19(c) apply.

The guideline also includes examples of conditions that could mitigate trustworthiness concerns arising from financial difficulties. Under AG ¶ 20(a), the

³⁴ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

³⁵ *Egan*, 484 U.S. at 531.

disqualifying condition may be mitigated where “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.” Also, under AG ¶ 20(b), financial security concerns may be mitigated where “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.” Evidence that “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” is potentially mitigating under AG ¶ 20(c). Similarly, AG ¶ 20(d) applies where the evidence shows “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.”³⁶ In addition, AG ¶ 20(e) may apply if “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.”

AG ¶ 20(b) minimally applies. AG ¶¶ 20(a), 20(c), 20(d), and 20(e) do not apply. The nature, frequency, and recency of Applicant’s continuing financial difficulties make it difficult to conclude that it occurred “so long ago” or “was so infrequent.” Applicant claimed that he was previously hospitalized for a traumatic brain injury, the amputation of a leg, a crushed hip, and gall bladder surgery. He failed to submit any documentation to support his contentions that he sustained a traumatic brain injury or suffered from a long-term memory loss which might explain his failure to recall his delinquent accounts. He said that he was barely able to make his monthly payments during those earlier periods. In addition, he reported a period of unemployment during which supposedly he struggled financially. Accounts became delinquent because he had insufficient funds to make payments. However, in July 2012, Applicant secured his current position, and since that time, he has not demonstrated any positive actions to contact his creditors, engage in settlement negotiations, arrange repayment plans, or make payments. His verbal descriptions of his purported actions are unsupported by any documentation. Furthermore, a significant number of his debts were incurred before his period of financial struggles. The mere reference to such matters, without specific elaboration as to how they impacted his finances and the inability to maintain his monthly payments is insufficient to support the presence of those conditions.

³⁶ The Appeal Board has previously explained what constitutes a good-faith effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the “good-faith” mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant’s debts. The Directive does not define the term ‘good-faith.’ However, the Board has indicated that the concept of good-faith ‘requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.’ Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy [or statute of limitations]) in order to claim the benefit of [the “good-faith” mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

Applicant offered no explanation as to why he took no action to resolve his delinquent accounts after he obtained his current position in July 2012. Applicant offered no evidence of a good-faith effort to resolve any of his debts, even the smallest of them (\$30 or \$49) and essentially ignored them to this date. He indicated an initial intention to pay some of the accounts and dispute others, and contended he was making payments on some of the accounts. But, as noted above, he failed to submit any documentation to support any of his stated intentions or actions. Likewise, he did not submit documentation regarding possible debt consolidation, disputes, or any continuing contacts with his creditors. There is no evidence to indicate that Applicant ever received financial counseling. It is unclear if he has funds remaining at the end of each month for discretionary use or savings. There is no evidence to reflect that Applicant's financial problems are under control. Applicant has not acted responsibly by failing to address his delinquent accounts and by making little, if any, efforts of working with his creditors.³⁷ Applicant's actions under the circumstances cast doubt on his current reliability, trustworthiness, and good judgment.³⁸

Guideline E, Personal Conduct

The trustworthiness concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

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.

The guideline notes several conditions that could raise trustworthiness concerns. Under AG ¶ 16(a), it is potentially disqualifying if there is 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 failed to acknowledge his delinquent student loan debts to the DOE or his overpayment from SSA, as well as his many other delinquent debts. He also failed

³⁷ "Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current.

³⁸ See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

to acknowledge his alcohol-related charge from 1999. As to those delinquent debts and the 1999 DUI, AG ¶ 16(a) has been established. However, as to the 2004 alleged arrest, AG ¶ 16(a) has not been established.

The guideline also includes examples of conditions that could mitigate trustworthiness concerns arising from personal conduct, but none of them 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 the circumstances. 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.

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. Moreover, I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.³⁹

There is some evidence in favor of mitigating Applicant's conduct. He has been with his current employer since July 2012. There is no evidence of misuse of information technology systems or mishandling protected information.

The disqualifying evidence under the whole-person concept is more substantial. Applicant allowed a number of his accounts to become delinquent. They were placed for collection or charged off. A vehicle was repossessed. He claimed to have approached some of his creditors to enter into some type of settlement negotiations or repayment agreements. He contended he had actually made payments on some accounts, but he offered no documentation to support any of his contentions. Despite his initial promises to resolve his delinquent accounts, Applicant has essentially taken no probative positive actions to do so. Instead, he is waiting for one of those accounts to be removed from his credit report in June 2016, and claims others do not appear in a December 2015 credit report which he failed to furnish to support his claim.

³⁹ See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); See also ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

Subparagraph 1.k.: Duplicate of 1.d.
Subparagraphs 1.l. through 1.q.: Against Applicant

Paragraph 2, Guideline E: AGAINST APPLICANT

Subparagraph 2.a.: For Applicant
Subparagraph 2.b.: 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 to occupy a public trust position to support a contract with the Department of Defense. Eligibility is denied.

ROBERT ROBINSON GALES
Administrative Judge