



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



In the matter of: )  
)  
) ADP Case No. 14-04171  
)  
Applicant for Public Trust Position )

**Appearances**

For Government: Gregg A. Cervi, Esq., Department Counsel  
For Applicant: *Pro se*

02/01/2016  
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**Decision**  
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HEINY, Claude R., Administrative Judge:

Applicant contests the Department of Defense’s (DoD) intent to deny his eligibility for a public trust position to work in the defense industry. The Statement of Reasons (SOR) alleges he is delinquent on 15 charged-off and collection accounts, and failed to timely file and pay his Federal and state income taxes for tax years 2007 through 2012. Applicant failed to mitigate the trustworthiness concerns arising from his finances. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to sensitive information is denied.

**History of the Case**

On February 7, 2015, acting under the relevant Executive Order and DoD Directive,<sup>1</sup> the DoD issued an SOR detailing the trustworthiness concerns under

<sup>1</sup> Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; 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 September 1, 2006.

financial considerations. DoD adjudicators could not find that it is clearly consistent with the national interest to grant or continue Applicant a public trust position.

On March 18, 2015, Applicant answered the SOR and elected to have the matter decided without a hearing. Defense Office of Hearings and Appeals (DOHA) Department Counsel (DC) submitted the Government's case in a File of Relevant Material (FORM), dated September 28, 2015. The FORM contained seven attachments (Items).

On October 9, 2015, Applicant received a copy of the FORM, along with notice of his opportunity to file objections and submit material to refute, extenuate, or mitigate the potentially disqualifying conditions. He was informed he could submit any material he wished to be considered. His response was due November 8, 2015. No material was received. On January 6, 2016, I was assigned the case.

### **Findings of Fact**

In Applicant's Answer to the SOR, he denied having failed to file his federal income tax returns in a timely manner for tax years 2008 through 2012 and state income tax returns for tax years 2008 and 2010 because he filed some returns in November 2013, June 2014, or October 2014. He stated he intended to file his 2007 federal income tax return and his state income tax returns for tax year 2007, 2009, 2011, and 2012 as soon as possible, (Item 2) He admitted owing the 15 charged-off or collection delinquent obligations, which totaled more than \$24,000. He indicated he was in the process of filing for bankruptcy protection. He provided no documentation showing the bankruptcy was filed or that all of his federal and state income tax returns have been filed. I incorporate Applicant's admissions as facts. After a thorough review of the pleadings, exhibits, and submissions, I make the following additional findings of fact.

Applicant is a 36-year-old customer service representative who has worked for a defense contractor since June 2013 and seeks to obtain access to classified information. (Item 3) From December 1998 through August 2002, he honorably served in the U.S. Navy. (Item 3) Applicant provided no information about his duty performance and provided no character reference letters. Applicant was unemployed from August 2011 through June 2013. (Item 3, 7) In June and July 2007, he was also unemployed. (Item 3)

In early 2012, Applicant received medical treatment for extreme abdominal pain. He did not have medical insurance. Six of the SOR debts, which total more than \$11,000, are for delinquent medical accounts resulting from his 2012 treatment.

In Applicant's June 2013 Electronic Questionnaires for Investigations Processing (e-QIP), he indicated he failed to pay his 2007 through 2012 Federal and state income taxes and estimated he owed approximately \$2,300. (Item 3) He indicated he felt overwhelmed over not filing his taxes and had decided not to address his delinquent

taxes until gainfully employed. (Item 3) On his e-QIP, he also listed nine delinquent debts.

Applicant indicated in a July 2013 Personal Subject Interview (PSI) that he had not filed state or federal income tax returns for seven years. He stated he intended to contact the Internal Revenue Service (IRS) and the state franchise tax board (FTB) to set up reasonable repayment arrangements. (Item 7) When asked about his delinquent accounts, he stated he intended to contact his creditors and make repayment arrangements to address the delinquent obligations for those debts he recognized. (Item 7) He did not recognize numerous debts about which he was questioned. (Item 7)

In March 2015, Applicant indicated he had “obtained representation from a bankruptcy attorney” and had “consulted with a tax professional” and was in the process of filing his remaining state and federal income returns. (Item 2) Applicant did not provide any documentation as to what services these individuals were able to provide him. There is no evidence that the bankruptcy was filed or that that tax returns had been filed. Applicant asserted some returns had been filed and others would be filed as soon as possible, but no documents were provided showing actual filing. Additionally, the amount of state and federal taxes owed has not been established. Applicant failed to show any payments on his taxes or delinquent obligations, evidence of an agreed upon repayment plan, or payment in accord with any such repayment plan. Absent documentary evidence of payment, the Government argued, he failed to mitigate the concern.

### **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.) 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. (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 adjudicative process. The administrative judge’s over-arching 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. 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. 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 as to obtaining 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 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.

Section 7 of Executive Order (EO) 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

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

Adjudicative Guideline (AG) ¶ 18 articulates the trustworthiness concerns relating to financial problems:

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.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his or her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts as agreed. Absent substantial evidence of extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage their finances to meet their financial obligations.

Applicant failed to file his Federal and state income tax returns in a timely manner. He asserted, but failed to document, that he filed state and federal income tax returns for tax years 2007 through 2012. He has unpaid charged-off and collection accounts, which total more than \$24,000. Disqualifying Conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts," AG ¶ 19(c), "a history of not meeting financial obligations," and AG ¶ 19(g), "failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same" apply.

Five financial considerations 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.

Applicant admits his delinquent obligations, which appear on his credit reports, including the three delinquent obligations he denied in his SOR response. There is no evidence he has paid any of his delinquent obligations. Applicant's explanation for failing to timely file and pay his state and Federal income tax was that he did not have funds to pay his taxes and would pay them when he was gainfully employed. He asserts he has filed some of his federal income tax returns, but filed them six month to five years late. Some returns have yet to be filed.

None of the mitigating factors for financial considerations extenuate the security concerns. Applicant's financial difficulties are both recent and multiple. He has been employed with his current employer since June 2013. In July 2013, he was made aware of the Government's concerns about his delinquent debt. He did not recognize some of the delinquent accounts when questioned, but acknowledge the remainder and said he intended to contact the creditors and arrange repayment plans. He also said he intended to file his delinquent federal and state income tax returns. He provided no documentation showing payment on his debts or the filing of his tax returns. By failing to document the payment of delinquent debts he has failed to act responsibly under the circumstances.

In March 2015, Applicant, in responding to the SOR, stated he had filed some of his federal and state returns and planned on filing the remainder as soon as possible. He also said he intended to address his delinquent debts through bankruptcy. In October 2015, he received the FORM and was informed he could submit documentation as to the status of his delinquent accounts. No documents were received.

It is noted Applicant was unemployed from August 2011 through July 2013, when he obtained his current employment. Additionally, six of the debts, which totaled more than \$11,000, were the result of his 2012 medical treatment. The unemployment and medical treatment were events beyond his control; however, AG ¶ 20(b) requires the individual to act responsibly under the circumstances. Failing to make any payment on his delinquent obligations, even on the \$53 medical debt (SOR 1.k), indicates that Applicant has not acted responsibly.

Applicant was given sufficient opportunity to address his financial delinquencies. Failing to pay taxes and his debts casts doubt on his current reliability, trustworthiness, and good judgment. He has not acted responsibly in addressing his debts. He provided no evidence he has received credit or financial counseling. He has not demonstrated that his financial problems are under control or that he has a plan to bring them under control. The mitigating conditions listed in AG ¶ 20(c) do not apply. There is no showing of a good-faith effort to satisfy debts or a showing that payments have been made in accord with a repayment agreement. The mitigating conditions listed in AG ¶ 20(d) do not apply because Applicant has failed to document payment on his taxes or other delinquent obligations.

AG ¶ 20(d) does not apply because no payments have been made. The mitigating condition listed in AG ¶ 20(e) does not apply because Applicant must not only

dispute the obligations, but must also provide documented proof to substantiate the basis of the dispute or provide evidence of actions to resolve the issue. He failed to do this. Additionally, the majority of the delinquent obligations were admitted.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a trustworthiness 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(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 trustworthiness 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. Applicant has failed to document any payment on his delinquent accounts. He has been aware of the Government's concern about his delinquent debts since his July 2013 interview, which was reinforced by the April 2015 SOR, and September 2015 FORM.

In requesting an administrative determination, Applicant chose to rely on the written record. However, he failed to submit sufficient information or evidence to supplement the record with relevant and material facts regarding his circumstances and facts that would mitigate the financial considerations security concerns. He failed to offer evidence of financial counseling or provide documentation regarding his past efforts to address his delinquent debt. He failed to provide such information, and by relying solely on his scant explanation in his response to the SOR, he failed to mitigate the trustworthiness concerns arising from his financial considerations.

The issue is not simply whether all Applicant's debts are paid—it is whether his financial circumstances raise concerns about eligibility and suitability for a public trust position. (See AG ¶ 2 (a)(1).)

This decision should not be construed as a determination that Applicant cannot or will not attain the state of true reform and rehabilitation necessary to be eligible for a public trust position. The determination of an individual's eligibility and suitability for a

public trust position is not a once in a lifetime occurrence, but is based on applying the factors, both disqualifying and mitigating, to the evidence presented. Under Applicant's current circumstances, a clearance is not recommended. In the future, if Applicant has filed his state and federal income tax returns, paid all required income tax, paid his delinquent obligations, established compliance with a repayment plan, or otherwise substantially addressed his past-due obligations, he may well demonstrate persuasive evidence of his security worthiness.

Overall, the record evidence leaves me with questions or doubts about Applicant's eligibility and suitability for a public trust position. For all these reasons, I conclude Applicant failed to mitigate the trustworthiness concerns arising from his financial problems.

### **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, Financial Considerations: AGAINST APPLICANT

Subparagraphs 1.a – 1.aa: Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, 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.

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CLAUDE R. HEINY II  
Administrative Judge