



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



In the matter of:

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Applicant for Public Trust Position

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ADP Case No. 14-04495

**Appearances**

For Government: Gina L. Marine, Esquire, Department Counsel  
For Applicant: *Pro se*

08/21/2015

**Decision**

GALES, Robert Robinson, Administrative Judge:

Applicant has mitigated the trustworthiness concerns regarding financial considerations. Eligibility to occupy a public trust position is granted.

**Statement of the Case**

On April 30, 2014, Applicant applied for a public trust position and submitted an Electronic Questionnaire for Investigations Processing (e-QIP).<sup>1</sup> On December 5, 2014, 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*, dated 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 *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (effective within the DOD on September 1, 2006) (AG) for all adjudications and other determinations made under the Directive. The SOR alleged trustworthiness concerns under Guideline F (Financial Considerations), and detailed reasons why the DOD adjudicators could not make an

<sup>1</sup> Item 2 (e-QIP, dated April 30, 2014).

affirmative finding under the Directive that it is clearly consistent with the interests of national security to grant or continue Applicant's eligibility for occupying a public trust position to support a contract with the DOD. The SOR recommended referral to an administrative judge to determine whether such eligibility should be granted, continued, denied, or revoked.

It is unclear when Applicant received the SOR as there is no receipt in the case file. In a written statement, notarized on December 22, 2014, Applicant responded to the SOR allegations and elected to have his case decided on the written record in lieu of a hearing.<sup>2</sup> A complete copy of the Government's file of relevant material (FORM) was provided to Applicant on May 20, 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 June 5, 2015. The response was due on July 5, 2015. Applicant submitted information in response to the FORM, to which Department Counsel did not object, and they have been marked as Applicant Items (AI) A through AI D.<sup>3</sup> The case was assigned to me on August 12, 2015.

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted all of the factual allegations pertaining to financial considerations (¶¶ 1.a. through 1.h.) of the SOR. Applicant's admissions 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 34-year-old employee of a defense contractor, and he is seeking to retain his eligibility for occupying a public trust position to support a contract with the DOD. He has never served in the U.S. military.<sup>4</sup> He is a 1999 high school graduate with substantial attendance at a university, but no degree.<sup>5</sup> Applicant underwent a security clearance investigation but was apparently denied eligibility in August 2013 for reasons that were never disclosed to him.<sup>6</sup> It is unclear when Applicant joined his current employer in an unspecified position, but he apparently did so between May 2014 and June 2015. Applicant was married in June 2010 and separated in January 2013.<sup>7</sup> He has no biological children.

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<sup>2</sup> Item 1 (Applicant's Answer to the SOR, dated December 22, 2014).

<sup>3</sup> Memorandum, dated July 23, 2015.

<sup>4</sup> Item 2, *supra* note 1, at 20.

<sup>5</sup> Item 2, *supra* note 1, at 11; Item 3 (Personal Subject Interview, dated May 20, 2014), at 3.

<sup>6</sup> Item 2, *supra* note 1, at 38-39; Item 3, *supra* note 5, at 6.

<sup>7</sup> Item 2, *supra* note 1, at 22-23.

## Financial Considerations

There was nothing unusual about Applicant's finances until about May 2004 when he was forced to withdraw from his university due to an inability to pay his living expenses.<sup>8</sup> Applicant attributed his financial difficulties to his youth and fiscal irresponsibility, as well as to his periods of unemployment.<sup>9</sup> He was voluntarily unemployed from September 2005 until September 2008, residing in another country while supported by his fiancé and caring for his stepdaughter; involuntarily unemployed from March 2010 until February 2013, supported by his savings and his parents and playing video games, watching television, and practicing the guitar; and involuntarily unemployed from November 2013 until December 2013, supported by his savings and playing video games, watching television, and practicing the guitar.<sup>10</sup> As a result of those issues, Applicant asserts that he had insufficient money to maintain his monthly student loan payments. As a result, various accounts became delinquent and were placed for collection. Applicant reported his student loan delinquencies in his e-QIP.<sup>11</sup>

The SOR identified eight delinquent debts that had been placed for collection, as reflected by a May 2014 credit report.<sup>12</sup> Those eight debts total approximately \$31,072. Those allegations and their respective current status, according to the credit report, other evidence submitted by the Government and Applicant, and Applicant's comments regarding same, are described below.

(SOR ¶ 1.a.): This is a cable television account ¶ with an outstanding and past-due balance of \$361 that was placed for collection in 2011.<sup>13</sup> During his interview with an investigator from the U.S. Office of Personnel Management (OPM) in May 2014, Applicant claimed he was unaware of the account. He stated that he would find out about it and if it is valid, he would make arrangements to pay it.<sup>14</sup> The record is silent as to what Applicant may have done regarding the account since his interview. The account has not been resolved.

(SOR ¶¶ 1.b. through 1.g.): These are six student loan accounts with the U.S. Department of Education that went into a default status and were placed for collection. As of May 2014, the outstanding balances for the student loans were as follows: \$5,618 (SOR ¶ 1.b.), \$3,339 (SOR ¶ 1.c.), \$4,449 (SOR ¶ 1.d.), \$6,768 (SOR ¶ 1.e.), \$3,520

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<sup>8</sup> Item 3, *supra* note 5, at 3.

<sup>9</sup> Item 3, *supra* note 5, at 8.

<sup>10</sup> Item 3, *supra* note 5, at 4.

<sup>11</sup> Item 2, *supra* note 1, at 41-43.

<sup>12</sup> Item 4 (Combined Experian, TransUnion, and Equifax Credit Report, dated May 13, 2014).

<sup>13</sup> Item 4, *supra* note 12, at 5.

<sup>14</sup> Item 3, *supra* note 5, at 7.

(SOR ¶ 1.f.), and \$3,483 (SOR ¶ 1.g.).<sup>15</sup> Applicant contacted the creditor in February 2014, and on February 12, 2014, he made a payment of \$995. He is now apparently on a repayment plan, and has been routinely making monthly payments of \$275 since May 19, 2014 – at least six months before the SOR was issued.<sup>16</sup> Applicant’s earlier payments were applied to interest, but effective with his November 2014 payment, the majority of his payments are applied to principal.<sup>17</sup> As of May 20, 2015, the total balance due for his student loans was reduced to \$24,298.74.<sup>18</sup> The accounts are in the process of being resolved.

(SOR ¶ 1.h.): This is a loan from the university in the approximate amount of \$1,000 that was to be used for living expenses in 2002 while Applicant attended the university. When Applicant withdrew from the university in May 2004, he was aware that he should have repaid the loan, but he did not have sufficient funds to do so. The account was placed for collection, but it was not reflected in his May 2014 credit report.<sup>19</sup> By March 2014, the outstanding balance had increased to \$3,533.50. In early 2014, Applicant and the collection agent entered into a repayment arrangement under which pre-arranged monthly payments of \$147.95 were authorized. A final payment was made on April 10, 2015, and the account now has a zero balance.<sup>20</sup> The account has been resolved.

Applicant’s May 2014 credit report reflects no other delinquent debts. He has committed himself to remaining current on all of his accounts and intends to continue paying off his student loans.<sup>21</sup> Applicant’s financial problems appear to be under control.

## 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.”<sup>22</sup> 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

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<sup>15</sup> Item 4, *supra* note 12, at 5-7; AI C (Debt Collection Bill, dated May 20, 2015), submitted in Response to the FORM.

<sup>16</sup> AI B (Payment History, dated June 9, 2015), submitted in Response to the FORM.

<sup>17</sup> Payment History, *supra* note 16.

<sup>18</sup> AI C, *supra* note 15.

<sup>19</sup> Item 3, *supra* note 5, at 7; Item 4, *supra* note 12.

<sup>20</sup> AI D (Letters, various dates), submitted in Response to the FORM; AI A (Letter, dated June 9, 2015), submitted in Response to the FORM; Item 3, *supra* note 5, at 7.

<sup>21</sup> Item 3, *supra* note 5, at 8.

<sup>22</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

positions.”<sup>23</sup> “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.”<sup>24</sup> 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.<sup>25</sup>

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.”<sup>26</sup> 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, 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.<sup>27</sup>

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

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<sup>23</sup> Regulation ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3.

<sup>24</sup> Regulation ¶ C6.1.1.1.

<sup>25</sup> Regulation ¶ C8.2.1.

<sup>26</sup> “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 (4<sup>th</sup> Cir. 1994).

<sup>27</sup> See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

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.<sup>28</sup> 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 security 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 classified 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 security 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 security concerns. Applicant's financial problems initially arose in 2004 and continued for several years thereafter. Accounts became delinquent and were placed for collection. Student loans went into a default status. AG ¶¶ 19(a) and 19(c) apply.

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

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<sup>28</sup> *Egan*, 484 U.S. at 531.

“the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.”<sup>29</sup>

AG ¶¶ 20(c) and 20(d) apply. AG ¶¶ 20(a) and 20(b) minimally apply. Applicant’s initial financial problems were attributed to his youth and fiscal irresponsibility, and were subsequently exacerbated by periods of voluntary and involuntary unemployment. He withdrew from the university without attending to his outstanding university loan or his student loans. He avoided his financial responsibilities for three years by remaining voluntarily unemployed while residing in a foreign country, supported by his fiancé and caring for his stepdaughter. He eventually returned to the workforce, and while he apparently maintained his other accounts, his student loans and university loan languished unattended. His actions during subsequent periods of involuntary unemployment were not spent constructively. Instead, he played video games, watched television, and practiced his guitar.<sup>30</sup>

However, during those periods of irresponsible activity, Applicant seemed to morph into a mature, more responsible, adult. In February 2014, Applicant embraced the paradigm of fiscal responsibility. He contacted the U.S. Department of Education in order to rehabilitate his student loans from a default status, and made his initial repayment. At least six months before the SOR was issued, Applicant started his routine monthly payments, and those payments continue to this day. In March 2014, he turned his attention to his university loan and entered into a repayment arrangement. That account has now been fully paid off. Of Appellant’s eight SOR-related accounts, one has been resolved, six are in the process of being resolved, and only one minor account for \$361 remains. There are clear indications that Applicant’s financial problems are under control. His actions do not cast doubt on his current reliability, trustworthiness, or good judgment.<sup>31</sup>

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<sup>29</sup> 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)).

<sup>30</sup> “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.

<sup>31</sup> See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

## 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 this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.<sup>32</sup>

There is some evidence against mitigating Applicant's conduct. He acknowledged his youth and fiscal irresponsibility led to his financial problems. He withdrew from his university and avoided his financial responsibilities by remaining voluntarily unemployed while residing in a foreign country. His student loans and university loan languished unattended for a number of years even though he had eventually gained other employment. During subsequent periods of involuntary unemployment, Applicant acted irresponsibly by playing video games, watching television, and practicing his guitar, rather than looking for employment or addressing his delinquent accounts.

The mitigating evidence is more substantial and compelling. There is no evidence of misuse of information technology systems, mishandling protected information, substance abuse, or criminal conduct. In February 2014, Applicant apparently matured and finally embraced the paradigm of fiscal responsibility. Of Appellant's eight SOR-related accounts, one has been resolved, six are in the process of being resolved, and only one minor account for \$361 remains. There are clear indications that Applicant's financial problems are under control.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:<sup>33</sup>

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<sup>32</sup> 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).

<sup>33</sup> ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

In evaluating Guideline F cases, the Board has previously noted that the concept of ‘meaningful track record’ necessarily includes evidence of actual debt reduction through payment of debts.’ However, an applicant is not required, as a matter of law, to establish that he [or she] has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he [or she] has ‘. . . established a plan to resolve his [or her] financial problems and taken significant actions to implement that plan.’ The Judge can reasonably consider the entirety of an applicant’s financial situation and his [or her] actions in evaluating the extent to which that applicant’s plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) (‘Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.’) There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

Applicant has finally demonstrated a “meaningful track record” of debt reduction and elimination efforts over the last two years, starting to do so months before the SOR was issued. This decision should serve as a warning that Applicant’s failure to continue his debt resolution efforts pertaining to his delinquent student loans or the actual accrual of new delinquent debts will adversely affect his future eligibility for a public trust position.<sup>34</sup> Overall, the evidence leaves me without questions and doubts as to Applicant’s eligibility and suitability for such a position. For all of these reasons, I conclude Applicant has mitigated the trustworthiness concerns arising from his financial considerations. See AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

### 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:	For APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant

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<sup>34</sup> While this decision should serve as a warning to Applicant as security officials may continue to monitor his finances, this decision, including the warning, should not be interpreted as a conditional eligibility to occupy a public trust position to support a contract with DOD. The Defense Office of Hearings and Appeals (DOHA) has no authority to attach limiting conditions to an applicant’s public trust position. See, e.g., ISCR Case No. 10-06943 at 4 (App. Bd. Feb. 17, 2012) (citing ISCR Case No. 10-03646 at 2 (App. Bd. Dec. 28, 2011)). See also ISCR Case No. 06-26686 at 2 (App. Bd. Mar. 21, 2008); ISCR Case No. 04-03907 at 2 (App. Bd. Sep. 18, 2006); ISCR Case No. 04-04302 at 5 (App. Bd. Jun. 30, 2005); ISCR Case No. 03-17410 at 4 (App. Bd. Apr. 12, 2005); ISCR Case No. 99-0109 at 2 (App. Bd. Mar. 1, 2000).

Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant

**Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant Applicant eligibility to occupy a public trust position to support a contract with DOD. Eligibility is granted.

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ROBERT ROBINSON GALES  
Administrative Judge