



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



In the matter of:	)	
	)	
	)	ADP Case No. 14-06793
	)	
	)	
Applicant for Public Trust Position	)	

**Appearances**

For Government: Tara R. Karoian, Esquire, Department Counsel  
For Applicant: *Pro se*

02/02/2016

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**Decision**

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WHITE, David M., Administrative Judge:

Applicant filed for Chapter 13 bankruptcy relief in January 2015 after his home mortgage lender foreclosed. He provided no evidence of any payments to a trustee, or of changes to become financially responsible in the future. He did not mitigate resulting trustworthiness concerns. Eligibility for a public trust position is denied.

On May 12, 2014, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP). On July 31, 2015, the Department of Defense (DoD) issued Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns under Guideline F, Financial Considerations. (Item 1.) The action was taken under DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); DoD 5200.2-R, *Personnel Security Program*, dated January 1987, as amended (Regulation); and the adjudicative guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

On August 12, 2015, Applicant answered the SOR in writing and elected to have the case decided on the written record in lieu of a hearing. (Item 2.) On September 3, 2015, Department Counsel prepared a File of Relevant Material (FORM), containing six

Items.<sup>1</sup> The Defense Office of Hearings and Appeals (DOHA) mailed Applicant a complete copy of the FORM on September 10, 2015. Applicant received the FORM on October 6, 2015, and was provided 30 days from its receipt to file objections and submit additional information. He timely submitted an additional statement, including a copy of the Voluntary Petition for Chapter 13 bankruptcy relief that he and his wife filed on January 29, 2015. He pointed to several erroneous statements, but otherwise made no objection to consideration of any contents of the FORM and did not request additional time to respond. Department Counsel had no objection to the admissibility of this response to the FORM, which I marked Applicant Exhibit (AE) A, and admitted into the record. On November 17, 2015, DOHA assigned the case to me.

### **Findings of Fact**

Applicant is 47 years old. He and his wife were married in October 1996, and have a seven-year-old son. He has never served in the military or held Federal civilian employment. He has worked for the same Federal contractor since April 1996. (Item 3.)

The SOR alleged that six of Applicant's debts were then delinquent in a total amount of just over \$24,000. The combined balance due on those debts was more than \$143,500. Applicant disclosed the five delinquencies alleged in SOR ¶¶ 1.a through 1.e on his e-QIP, as well as another \$15,000 line of credit that had been charged off by the lender in September 2011 in the amount of \$13,058.<sup>2</sup> In his responses to the SOR and FORM, he formally denied the allegations on the basis those debts were included in the Chapter 13 bankruptcy petition that he filed on January 29, 2015. (Item 2; AE A.)

Applicant's SOR-alleged financial delinquencies include his home mortgage, deficiency balances resulting from two vehicle repossessions, and three credit card debts. Applicant said that his financial difficulties began in 2008, due to the additional expenses associated with having a child. (Item 2; Item 3; Item 4; Item 5; AE A.)

Applicant and his wife filed a voluntary petition for Chapter 13 bankruptcy relief on January 29, 2015. He provided no explanation for their decision to do so, but the Statement of Financial Affairs filed with the petition indicated that in late 2014 the credit union holding the mortgage loan on his home had obtained a final judgment of foreclosure. His September 2015 credit report showed a past-due balance of \$12,437 toward this loan as of August 2015, up from the \$1,126 delinquency alleged in the SOR. (AE A; Item 4.)

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<sup>1</sup> Item 6 is inadmissible and will not be considered or cited as evidence. It is an unsworn summary of an interview of Applicant that was conducted by the Office of Personnel Management on July 16, 2014. This summary was not adopted by Applicant, or otherwise certified by him to be accurate. Under Directive ¶ E3.1.20, this Report of Investigation summary is inadmissible in the absence of evidence from an authenticating witness.

<sup>2</sup> This charged-off line of credit was omitted from the SOR for unknown reasons. Department Counsel erroneously described it as, "a newly incurred delinquent debt," in the FORM, as Applicant pointed out in AE A. It is also included in Applicant's Chapter 13 bankruptcy petition. He did not list the debt alleged in SOR ¶ 1.f on his e-QIP, but it appears from Item 5 that this debt was not yet delinquent when he signed it.

Schedule F of Applicant's bankruptcy petition contains 13 pages listing the creditors holding a total of \$95,859 of non-priority unsecured claims against him.<sup>3</sup> All six of the delinquent debts alleged in the SOR are included in the petition and its attached schedules. (AE A.)

In the Argument section of the FORM, Department Counsel said, "Even if Applicant provides documentation to establish that all his debt has been included in his bankruptcy filing, it does not mitigate [the] Government's security concerns. There is no record evidence that Applicant has acted responsibly and in good-faith to repay his financial obligations, or that he has established a meaningful track record of repayment." In his response to the FORM, Applicant provided a copy of his bankruptcy petition that was filed on January 29, 2015. However, he provided neither documentation of a bankruptcy court order setting his required trustee payments under a confirmed five-year Chapter 13 plan, nor documentation showing any actual payments made to a trustee pursuant to such an order between the filing of the petition and his November 3, 2015 response to the FORM.<sup>4</sup> (AE A.)

Schedule I of Applicant's bankruptcy petition sets forth the family income he and his wife earn. It indicates that they have been employed in their current positions for more than 18 and 16 years, respectively. Their combined monthly gross income is \$9,300 with monthly net income of \$5,362. Schedule J of the petition shows their monthly expenses, which total \$5,507 without any allowance for payment toward Applicant's delinquent debts. These figures result in a net monthly deficit of \$145. Applicant and his wife also filed Exhibit D of the bankruptcy petition, in which they certified that they had received certificates from credit counseling agencies describing the credit counseling services provided to them. However, he provided no copy of those certificates or of any resulting debt repayment plan, each of which was supposed to have been attached to Exhibit D. (AE A.)

Applicant submitted no evidence concerning the quality of his professional performance, the level of responsibility his duties entail, or his track record with respect to handling sensitive information and observation of security procedures. No character witnesses described his judgment, trustworthiness, integrity, or reliability. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

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<sup>3</sup> Schedule D of the petition lists the creditors holding secured claims, including his mortgage debt. It says his home's value is \$97,778 and the outstanding loan balance is \$128,363 so \$30,585 of the debt is unsecured. Schedule D also lists his two secured car loans, on which the combined unsecured portion of the balances due is \$19,573. The total unsecured portion of these three collateralized loans is \$50,158.

<sup>4</sup> Applicant's FORM response letter concludes with the statement, "Please let me know if you require any further information." He was clearly informed that he was to submit any additional information that he desired to have considered by the administrative judge with that response. The Directive does not permit either Department Counsel or the administrative judge to continue soliciting additional information from, or to otherwise coach, an applicant concerning how to improve or perfect the submission of evidence in support of his or her case. It is Applicant's burden to obtain and submit the evidence that he or she wants to submit in mitigation of the prima facie security concerns established by the Government's FORM.

## 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 the DoD and DOHA by the Defense Security Service and Office of Personnel Management. DoD 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 AGs. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in AG ¶ 2(a), describing the 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. 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable [trustworthiness] decision.”

A person who applies for access to sensitive information seeks to enter into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to 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.

## **Analysis**

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

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

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect [sensitive] information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

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

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

Applicant accumulated substantial delinquent debt over the past seven years. He has a negative monthly cash flow despite a gross combined annual family income of more than \$111,500. He recently filed for Chapter 13 bankruptcy relief under a five-year plan, listing more than \$146,000 in total non-priority unsecured debt, but provided no evidence indicating that a bankruptcy plan had been confirmed, or that any payments have been made to a plan trustee. This evidence raises security concerns under both of these conditions, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

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

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

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

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant has substantially more than the \$24,000 in delinquent debts that were alleged in the SOR. He did not show that these debts arose from conditions beyond his control or that he acted responsibly under the circumstances by making any payments to either the creditors or a bankruptcy trustee. He documented no actual counseling to assist with debt resolution, nor did he demonstrate an ability to avoid recurrence of financial problems. According to the record evidence, the SOR-alleged debts remain unresolved and no documented basis to dispute the legitimacy of any of them was provided. Applicant therefore failed to establish mitigation of trustworthiness concerns under AG ¶¶ 20(a) through 20(e).

### **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 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.

According to AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a trustworthiness determination 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 the facts and circumstances surrounding this case. Applicant is a mature individual who is accountable for the decisions and choices that led to his financial difficulties. He essentially ignored a number of his voluntarily incurred delinquent debts for years, then

recently filed for Chapter 13 bankruptcy protection after his mortgage lender obtained a final judgment of foreclosure. He failed to demonstrate good judgment or permanent behavioral change. His ongoing delinquent debts establish continuing potential for pressure, coercion, or duress, and make continuation of financial problems likely.

Overall, the record evidence leaves me with serious questions and doubts as to Applicant's present eligibility and suitability to occupy a public trust position. For these reasons, I conclude Applicant did not meet his burden to mitigate the trustworthiness concerns arising from his ongoing financial irresponsibility.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a through 1.f:	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 to occupy a public trust position. Eligibility for access to sensitive ADP information is denied.

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DAVID M. WHITE  
Administrative Judge