

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue an ADP I/II/III position for Applicant. As required by Department of Defense Regulation 5200.2-R (Jan. 1987), as amended (Regulation), and Department of Defense Directive 5220.6 ¶ E3.1.2 (Jan. 2, 1992), as amended (Directive), DOHA issued a Statement of Reasons (SOR) on May 30, 2007, detailing the basis for its decision—concerns raised under Guideline F (Financial Considerations) of the revised Adjudicative Guidelines issued on December 29, 2005, and implemented by the Department of Defense effective September 1, 2006. Applicant answered the SOR in writing on July 12, 2007, and elected to her case decided on the written record. Department Counsel submitted the governments’s file of relevant material (FORM) on August 9, 2007. The FORM was mailed to Applicant on August 15, 2007, and it was received on August 20, 2007. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not submit additional material. The case was assigned to me on October 5, 2007.

FINDINGS OF FACT

Applicant is a 25-year-old mother of four children. She lists in her Public Trust Position Application dated January 27, 2006, that she has never been married.¹ In answers to interrogatories she stated she is looking for an attorney “due to a culturly” (sic) divorce.² It is unclear what this means. Applicant has worked for a federal contractor since January 2006, although she was on a leave of absence, for an unknown period of time, when she gave birth to her last child sometime in 2007.

Applicant admitted she owes more than \$29,500 in delinquent debts listed in SOR ¶¶ 1.a, 1.c-1.o. She denies she owes the debt listed in SOR ¶ 1.b, but offered no explanation as to any action she has taken to resolve it with the creditor.³ Applicant also admitted she has not made any payments since September 2004 on any of the delinquent debts. The delinquent debts are for telephone services, credit cards, clothing stores, a repossessed automobile, and student loans.

Applicant admitted she lives paycheck to paycheck and pays her monthly living expenses, but does not earn enough money. She provided no information as to whether she receives child support for her children. She stated she planned on “fixing” her debts but it will take some time because she has a newborn. She stated she was looking into counseling to help her with her credit. She offered no other information as to whether she actually attended credit counseling.⁴ She also stated she is looking into bankruptcy.⁵ Applicant provided this information on February 26, 2007. She did not provide any additional information since then to substantiate that she has taken any of

¹GE 4.

²GE 5.

³GE 3.

⁴*Id.*

⁵GE 5.

these actions. She did not provide any other information to show she is paying or resolving any of her delinquent debts.

POLICIES

The revised adjudicative guidelines are used to make ADP trustworthiness determinations. 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.⁶

An individual may not be assigned to perform sensitive duties unless a competent security authority determines it is clearly consistent with the interests of national security to do so.⁷ Positions designated as ADP I or ADP II are classified as sensitive positions.⁸ ADP III positions are “nonsensitive positions.”⁹ However, DOHA has been directed to apply the due process provisions of the Directive for all trustworthiness determinations under ADP I, II, and including ADP III positions by a memorandum from the Deputy Undersecretary of Defense (Counterintelligence and Security) dated November 19, 2004. Thus, even though ADP III positions are nonsensitive, they are treated in the same way and adjudicated under the same guidelines and procedures as ADP I and II cases.

“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.”¹⁰ The revised adjudicative guidelines set for potentially disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. Department of Defense contractor personnel are afforded the adjudicative procedures contained in the Directive.¹¹

“The adjudicative process is an examination of a sufficient period of a person’s life to make an affirmative determination that the person is an acceptable security risk.”¹² Each eligibility determination must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically these are: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the individual’s age and maturity at the time of the conduct; the voluntariness of participation; the presence or absence of rehabilitation and other pertinent behavioral changes; the

⁶Regulation ¶ C8.2.1.

⁷Regulation ¶ C2.1.2.

⁸Regulation ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3.

⁹Regulation ¶ C3.1.2.2.

¹⁰Regulation ¶ C6.1.1.1.

¹¹Regulation ¶ C8.2.1.

¹²Revised Adjudicative Guidelines 2(a).

motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; and the likelihood of continuation or recurrence. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.¹³ The government has the burden of proving controverted facts.¹⁴ The burden of proof is something less than a preponderance of evidence.¹⁵ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.¹⁶ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.¹⁷ These same burdens of proof apply to trustworthiness determinations for ADP positions.

No one has a right to a security clearance¹⁸ and “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”¹⁹ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.²⁰ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.²¹ It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, pertaining to the adjudicative guideline are set forth and discussed in the conclusions below.

CONCLUSIONS

I have carefully considered all facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

¹³ISCR Case No. 96-0277 at 2 (App. Bd. Jul. 11, 1997).

¹⁴ISCR Case No. 97-0016 at 3 (App. Bd. Dec. 31, 1997); Directive, Enclosure 3, ¶ E3.1.14.

¹⁵*Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

¹⁶ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.

¹⁷ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.

¹⁸*Egan*, 484 U.S. at 531.

¹⁹*Id.*

²⁰*Id.*; Directive, Enclosure 2, ¶ E2.2.2.

²¹Executive Order 10865 § 7.

Based upon consideration of the evidence, I find the following adjudicative guideline most pertinent to the evaluation of the facts in this case:

Financial Considerations are a security concern because 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. Compulsive gambling is a concern as it may lead to financial crimes including espionage.

Based on all of the evidence, Financial Considerations Disqualifying Condition (FC DC) 19(a) (*inability or unwillingness to satisfy debts*), FC DC 19(c) (*a history of not meeting financial obligations*), and FC DC 19(e) (*consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis*) apply in this case. Applicant has more than \$29,500 in debts that are delinquent. She has not made any payments since at least September 2004 and presently does not have the means to pay them. She did not provide any evidence that she has taken any action to resolve them. The amount owed on certain credit cards, at least one which could be considered a luxury store, raises concerns that she is spending beyond her means.

I have considered all of the Financial Considerations Mitigating Conditions (FC MC), and especially considered FC MC 20(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*), FC MC 20(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*), FC MC 20(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*), and FC MC 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*). Applicant's debts are recent and remain unpaid and unresolved. She is a mother of four, but provided no information as to how she became so deeply in debt, if the cause was beyond her control, whether she receives any support for her children, and why she has not taken any action to resolve them since 2004. She stated she was looking into credit counseling and bankruptcy, but did not substantiate any action in this regard. She was also looking into some type of divorce, but again no information was provided regarding how this impacted her finances. Applicant is deeply in debt and admitted she does not earn enough money to repay the debt, but does plan on "fixing" the problem. After careful consideration of all of the mitigating conditions I find none apply. Applicant has not offered any evidence to show she is doing anything to resolve her financial problems.

The Whole Person

In all adjudications, the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of their acts, omissions,

motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I considered all the evidence provided and also considered the “whole person” concept in evaluating Applicant’s trustworthiness. Applicant is a young mother with four children and is having difficulty with her finances. She provided very little information to show the cause of her problems, whether the problems were beyond her control, or that she has taken any substantive action to resolve her financial problems. I find Applicant failed to mitigate the trustworthiness concerns raised by the financial considerations concerns. Therefore, I am persuaded by the totality of the evidence in this case, that it is not clearly consistent with the national interest to grant Applicant a trustworthiness determination. Accordingly Guideline F is decided against Applicant.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline F:	AGAINST APPLICANT
Subparagraph 1.a-1.o:	Against Applicant

DECISION

In light of all of the circumstances in this case, it is not clearly consistent with the interests of national security to grant or continue Applicant’s eligibility for an ADP I/II/III position. Eligibility is denied.

Carol G. Ricciardello
Administrative Judge