

ADP Case No. 06-26594

SSN: -----

Applicant for Public Trust Position.

APPEARANCES

Julie R. Edmunds, Department Counsel

Pro Se

Applicant has a history of delinquent debts that stem from periods of unemployment and burdensome student loan obligations. Unable to make any payment progress with her debts with her limited resources, she has petitioned for Chapter 7 bankruptcy. Based on her absence of any payment progress or favorable prospects for being able to do so in the foreseeable future, she is left to rely on a successful bankruptcy outcome to stabilize her finances. Her progress to date with her bankruptcy and the trust she inspires with her friends and colleagues make possible predictions that she will successfully complete the bankruptcy petition she has initiated. Applicant mitigates financial concerns associated with her accumulation of delinquent debts. Clearance is granted.

STATEMENT OF THE CASE

On June 14, 2007, the Defense Office of Hearings and Appeals (DOHA), pursuant to Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, and Department of Defense (DoD) Regulation 5200.2-R, issued a Statement of Reasons (SOR) to Applicant, which detailed reasons why DOHA could not make the preliminary affirmative determination of Applicant eligibility for occupying an ADP I/II/III position, and recommended referral to an administrative judge to determine whether a trustworthiness determination clearance should be granted, continued, denied or revoked.

Applicant responded to the SOR on July 6, 2007, and requested a hearing. The case was assigned to me on October 10, 2007, and was scheduled for hearing on November 1, 2007. A hearing was convened on November 1, 2007, for the purpose of considering whether it would be clearly consistent with the national interest to grant, continue, deny, or revoke Applicant's application for a trustworthiness determination. At hearing, the Government's case consisted of five exhibits. Applicant relied on one witness (herself) and three exhibits. The transcript (R.T.) was received on November 9, 2007.

SUMMARY OF PLEADINGS

Under Guideline F, Applicant is alleged to have incurred numerous delinquent debts: She is alleged to have incurred 16 delinquent debts altogether, which exceed \$24,000.00 in total.

For her response to the SOR, Applicant admitted each of her debt-related allegations, and provided no explanations of the circumstances that contributed to her debt difficulties. Nor did she indicate any plans to resolve her debts.

FINDINGS OF FACT

____ Applicant is a 25-year-old customer service representative of a defense contractor who seeks a trustworthiness determination. The allegations covered in the SOR and admitted to by Applicant are incorporated herein by reference and adopted as relevant and material findings. Additional findings follow.

Applicant has worked for her current employer since 2003 and has supplemented her work with college courses at a local community college (R.T., at 21-23, 41-42). She accumulated a number of delinquent debts during periods of unemployment in 2000 (while still in high school) and 2002 (*see* ex. 1; R.T., at 34). Altogether, she accumulated some 16 delinquent debts that exceed \$24,000.00 in aggregate indebtedness. Of these debts, her deficiency debt with creditor 1.e on a car repossessed by the creditor in September 2006 is by far her largest debt. She purchased a Chevrolet Malibu in May 2004 for \$16,682.00 and made payments of \$380.00 a month for two plus years before defaulting in her loan (R.T., at 24-25). Creditor 1.e repossessed the vehicle and resold it at public auction. Applicant was later advised that a \$10,652.00 deficiency balance remained following public sale of the vehicle (R.T., at 23). Creditor 1.e offered to settle the deficiency for \$5,000.00 in 2007, but Applicant did not have available funds to accept the offer (R.T., at 24).

Another sizeable debt is for back rent for \$2,784.00 that was placed for collection by the landlord (creditor 1.f) in September 2005. Applicant attributes the debt to her alleged failure to give the required 30 days notice to terminate (R.T., at 25). Applicant disputes this claim (assuring she gave the requisite 30 days notice) and found out much later that the rent claim was still reflected in her credit report (*see ex. 5*; R.T., at 25). Once she learned of the rent claim in her credit report, she contacted the lessor's new management company. Neither the new company nor the credit reporting agency were of any help in reversing the rent charges for Applicant (R.T., at 26-27). Without any documentation to evaluate the credibility of her notice assurances, the accuracy of her notice claims cannot be validated.

Besides her major debts with creditors 1.e and 1.f, Applicant remains indebted to creditor 1.m in the amount of \$3,653.00. This debt represents a defaulted school loan. She initially had a payment arrangement with Sally Mae (the original lender) in 2005-2006 but could no longer meet her monthly payment obligations. Her other student loans with Sally Mae are now in default as well (R.T., at 27-30). She is indebted, too, with creditor 1.n in the amount of \$2,379.00 for towing services rendered after her car was accidentally totaled in April 2000. She had no insurance at the time to cover the towing expenses. Her only other major debt in collection is with creditor 1.o in the amount of \$1,275.00. This is a credit card debt, and Applicant has had no contact with this creditor.

Applicant's remaining debts in collection comprise 10 separate debts that collectively total less than \$3,400.00. Her monthly take home pay is around \$1,800.00 (R.T., at 35). She has current monthly expenses in excess of \$1,900.00 and consequently has not been able to develop any repayment plans (R.T., at 40). She is looking for a second job to supplement her income (R.T., at 40-42), and has considered debt consolidation, but has not pursued it (R.T., at 51). She petitioned for Chapter 7 bankruptcy relief in September 2007 and awaits her first hearing, which is scheduled for November 2007 (*see ex. C*; R.T., at 51-52). The docket sheet covering the petition notes that all of the required documents were not filed with the petition (ex. C). Documented debtor credit counseling and current income and means testing were not provided either by Applicant. Whether she has filed the required statements covering counseling and income/means testing with the bankruptcy court is unknown at this time. Without such documentation, though, no predictable assessment can be made as to her likelihood of a successful discharge.

Applicant is highly regarded by coworkers who are familiar with her work. She is described as a caring single parent who has demonstrated consistent honesty and integrity at work and in her personal life (*see ex. A*). She has received certificates of recognition for her quality work with her employer (*see ex. B*).

POLICIES

On April 9, 1993, the Composite Health Care Program Office (CHCSPO), the Defense Office of Hearing and Appeals (DOHA), and the Assistant Secretary of Defense for Command, Control, Communication and Intelligence (ASDC31), entered into a Memorandum of Agreement (MOA), which gave DOHA responsibility to provide trustworthiness determinations for contractor personnel working on unclassified Information Systems Positions as defined in DoD Regulation 5200.2-R.

_____The revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (effective September 2006) list Guidelines to be considered by judges in the decision making process covering DOHA cases. These Guidelines require the judge to consider all of the "Conditions that could raise a security concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating Conditions," if any, before deciding whether or not a security clearance should be granted, continued or denied. The Guidelines do not require the judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in E2.2.2 of the Adjudicative Process of Enclosure 2 of the Directive, which are intended to assist the judges in reaching a fair and impartial common sense decision.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

Financial Considerations

The Concern: An individual who is financially overextended is at risk at having to engage in illegal acts to generate funds. Unexplained influence is often linked to proceeds from financially profitable criminal acts.

Burden of Proof

By virtue of the precepts framed by the Directive, a decision to grant or continue an Applicant's application for a trustworthiness determination may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires Administrative Judges to make a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for an ADP I/II/III position depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the Judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted fact[s] alleged in the Statement of Reasons and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain an ADP I/II/III position. The required showing of material bearing, however, does not require the Government to affirmatively demonstrate that the applicant has actually abused a trust relationship before it can deny or revoke a trustworthiness determination. Rather, consideration must take account of cognizable risks that an applicant may deliberately or inadvertently fail to adhere to principles of trust.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the evidentiary burden shifts to the applicant to establish his or her trustworthiness through evidence of refutation, extenuation or mitigation of the Government's case.

CONCLUSIONS

Applicant is a highly regarded customer service representative for a defense contractor who accumulated a number of delinquent debts during periods of financial setbacks primarily attributable to periods of unemployment, and insufficient income from her jobs to cover her living expenses and student loans. With the limited resources available to her, she has barely been able to keep up with her current household expenses and debts and has not been able to pay on any of her old debts. While at least one of her old debts may be barred by relevant statutes of limitation, most are not. She acknowledges the listed debts, save for one disputed one, and has recently petitioned for Chapter 7 relief. Whether she can achieve a successful discharge is not entirely predictable, but promising.

Security concerns are raised under the financial considerations guideline of the Adjudicative Guidelines where the individual applicant is so financially overextended that he or she is at risk of having to engage in illegal acts to generate funds. Applicant's accumulation of delinquent debts, which heretofore she has not been in a position to address, warrant the application of two of the disqualifying conditions (DC) of the Adjudicative Guidelines for financial considerations: and DC 19(a) (*inability or unwillingness to satisfy debts*) and DC 19(c) (*a history of not meeting financial obligations*).

Extenuating circumstances are associated with Applicant's lack of sufficient income to cover her living expenses and student loan obligations. Due to her periods of unemployment between 2000 and 2002 and her relatively low levels of compensation returned from her current work, she has barely been able to keep up with her current expenses. Her available income sources have not been enough to address her older debts, some of which are quite large. Her three major debt delinquencies alone exceed \$19,000.00 and are simply too large to permit any kind of effective debt consolidation. MC 20(b) of the financial considerations guideline (*the conditions that resulted in the behavior 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)*) has some applicability to Applicant's situation. Her purchase of a new or almost new Malibu automobile in 2004 raises some questions about her living beyond her means, given her financial circumstances at the time. For the most part, though, her financial history reflects a young single parent struggling to better herself with enhanced educational skills.

Because of the limited income available to Applicant over the past six years, Applicant has not heretofore been in a position to address her old debts. Several of Applicant's listed debts were placed in collection before 2004, but only one before 2002. The remaining debts have been charged off since January 2004. None of Applicant's listed debts reflect any collection action by the individual creditors involved. Based on this record, only one of Applicant's debts (*i.e.*, creditor 1.n) appear to be barred from collection by the pertinent six-year statute of limitation in Arizona. *See* §12-548 of A.R.S. (2007). While statutes of limitation in general are considered important policy tools for discouraging plaintiffs from pursuing stale claims and promoting finality in litigation, they have never been equated with good-faith efforts to repay overdue creditors. *See, e.g.*, ISCR Case No. 02-30304, at 3 (App. Bd. April 2004)(quoting ISCR Case No. 99-9020, at 5-6 (App. Bd. June 2001)). Still, there are no indications that any of these listed creditors still have any collection interest in Applicant.

To be sure, Applicant does not assert relevant statutes of limitation in Arizona in her defense. She fully acknowledges most of her debts and disputes the legitimacy of just one of her debts: her

landlord debt (creditor 1.f). With her limited income and relatively high expenses as a single parent, she is simply not in a position to make either individual or collective progress (such as use of debt consolidation) on her listed debts. Faced with no viable alternatives, she petitioned for Chapter 7 bankruptcy relief following her receipt of the SOR. While she has not been able to document her compliance with bankruptcy petition requirements covering counseling and income/means testing, it is likely that the bankruptcy court will afford her some latitude, in this, a no-asset case, when she appears for her first creditors meeting. Her achievement certificates from her employer place her in high regard and attest to her integrity and trustworthiness. Considering the extenuating circumstances of Applicant's accumulated debts, the trust she inspires in her work, and her efforts to discharge her debts with the only realistic program available to her at this time, risks of her not completing the bankruptcy she has initiated appear to be minimal and manageable.

Applicant's documented Chapter 7 petition is enough to justify application of one of the mitigating conditions to her financial situation. MC 20(d) of the guidelines for financial considerations (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) has some beneficial application for Applicant. Her failure to document any bankruptcy-related counseling, however, precludes her reliance on MC 20(d) (*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*) of the guidelines.

Holding a favorable trustworthiness determination involves the exercise of important fiducial responsibilities, among which is the expectancy of consistent trust and candor. Financial stability in a person cleared to access information covered by privacy rights is required precisely to inspire trust and confidence in the holder of the trustworthiness determination.

Based on her documented initiation of Chapter 7 bankruptcy relief to discharge her old debts and the whole person level of trust she has demonstrated in fulfilling her responsibilities at work, gaining college credits, and caring for her family as a single parent, Applicant is able to demonstrate the level of overall personal accountability and responsibility necessary to mitigate the Government's trust concerns.

Taking into account all of the extenuating facts and circumstances surrounding Applicant's debt accumulations, the positive judgment and trustworthiness impressions she has made on her friends and colleagues, and her current bankruptcy initiatives, she mitigates trustworthiness concerns related to her debts. Favorable conclusions warrant with respect to the allegations covered by the financial considerations guideline.

In reaching my decision, I have considered the evidence as a whole, including each of the E2.2 factors enumerated in the Adjudicative Guidelines of the Directive.

FORMAL FINDINGS

In reviewing the allegations of the SOR in the context of the findings of fact, conclusions and guidelines listed above, this Administrative Judge makes the following formal findings:

FINANCIAL CONSIDERATIONS:

FOR APPLICANT

Sub-paras . 1.a through 1.o:

FOR APPLICANT

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's eligibility for a public trust position. Eligibility for an ADP I/II/III position is granted.

Roger C. Wesley
Administrative Judge