

DATE: October 25, 2007

In re:)
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 SSN: -----)
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 Applicant for Public Trust Position)
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ADP Case No. 07-01283

**DECISION OF ADMINISTRATIVE JUDGE
ERIN C. HOGAN**

APPEARANCES

FOR GOVERNMENT

Gina L. Marine, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant filed for Chapter 7 bankruptcy in December 1997. In April 1998, she withdrew the bankruptcy filing, and resolved the debts on her own. From 2001 to December 2006, Applicant encountered additional financial problems. She assumed responsibility for supporting her mother who has serious health issues but no health insurance. During this period, she incurred 17 delinquent debts with a total balance of \$9,666, and her family home was foreclosed. In December 2006, her mother qualified for disability and medicare insurance and no longer depends on Applicant for support. Applicant accepted a better paying job in another state and has systematically attempted to resolve her delinquent accounts. She mitigated the trustworthiness concerns raised under financial considerations. Applicant's eligibility for an assignment to a position of public trust is granted.

STATEMENT OF CASE

On February 21, 2006, Applicant submitted an application for a position of public trust. The Defense Office of Hearings and Appeals (DOHA) declined to grant the application under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended (the "Directive"); and the Revised Adjudicative Guidelines, approved December 29, 2005, and effective September 1, 2006.¹ On April 9, 2007, DOHA issued Applicant a Statement of Reasons (SOR) detailing the basis for its decision. The SOR, which is in essence the administrative complaint, alleged security concerns under Guideline F, Financial Considerations.

In a sworn statement dated May 8, 2007, Applicant responded to the SOR allegations and elected to have her case decided on the administrative record. At some point, prior to June 21, 2007, she verbally requested a hearing. Her request for a hearing was confirmed in writing on August 23, 2007. The case was assigned to another administrative judge on June 21, 2007. The case was transferred to me on August 2, 2007. A Notice of Hearing was issued on August 30, 2007, scheduling the hearing for September 18, 2007. The hearing was held as scheduled. The government offered four exhibits which were admitted as Government (Gov) Exhibits 1- 4 without objection. Applicant offered 14 exhibits which was admitted as Applicant Exhibit (AE) A - N without objection. The record was held open until October 2, 2007, to allow Applicant the opportunity to submit additional documents. Applicant timely submitted a 21 page document which was marked and admitted as AE O without objection. The transcript (Tr.) was received on September 28, 2007.

FINDINGS OF FACT

In her SOR response, Applicant denies the allegations in SOR ¶¶ 1.c, 1.f, 1.h, 1.k, 1.l, 1.m, 1.n, 1.o, and 1.r and admits to all the remaining SOR allegations. Applicant's admissions are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 31 year-old woman employed with a Department of Defense contractor who is seeking a position of public trust.² She is single and has a nine-year-old daughter.³ She has never received child support from the father of her child. She did not pursue paternity proceedings due to a domestic violence incident which occurred when she was three months pregnant.⁴ She has an

¹ This action was taken under Executive Order 10865, dated February 20, 1960, as amended; and Memorandum from the Deputy Under Secretary of Defense Counterintelligence and Security, titled "Adjudication of Trustworthiness Cases," dated November 19, 2004.

² Tr. at 6; Gov 1.

³ Tr. at 6-7.

⁴ Tr. at 24.

associates degree in medical office management and is a certified medical assistant. She has been with her current employer since February 2006 and is a referral management center liaison.⁵

On February 21, 2006, Applicant completed a public trust position application (SF 85-P). In response to question "19. Your Financial Record - Bankruptcy, Liens, Judgments. In the last 7 years have you, or a company over which you exercised some control, filed for bankruptcy, been declared bankrupt, been subject to a tax lien, or had a legal judgment rendered against you for a debt?" Applicant listed a home foreclosure in April 2005.⁶

A subsequent background investigation revealed that Applicant filed for Chapter 7 bankruptcy in December 1997. She listed \$750 in assets and \$11,717 in liabilities. The bankruptcy was dismissed in April 1998.⁷ Applicant was encouraged to file for bankruptcy by her parents. At the time she was a single parent and they thought it would be best if she started fresh. She voluntarily withdrew the bankruptcy in April 1998 after thinking about the repercussions of filing for bankruptcy. She paid most of the debts by contacting creditors and asking for settlements. None of the debts are listed in the current Statement of Reasons.⁸

Applicant encountered additional financial difficulties in 2001. Her father passed away unexpectedly on March 5, 2001. Her mother has several health issues to include end stage renal disease, diabetes, and congestive heart failure.⁹ She was unable to support and/or take care of herself. Applicant supported her mother as well as her young daughter. Her mother had insurance coverage through COBRA for about a year after her father's death until Applicant could no longer afford the premium. Her mother became more ill and had a series of emergency room visits and hospitalizations as summarized in AE A. Applicant was employed full-time and spent a large part of her income on medication costs for her mother as referenced in AE B as well as co-payments for doctor visits and diagnostic procedures. Certain bills were neglected because Applicant's priorities were her mother's health and supporting her daughter.¹⁰

A credit report dated February 12, 2007, revealed the following delinquent accounts: a \$600 judgment obtained in February 2005 (SOR ¶ 1.b); a \$411 judgment obtained in December 2004 (SOR ¶ 1.c); a \$2,214 judgment obtained in September 2006 (SOR ¶ 1.d); a \$2,204 judgment obtained in January 1999 (SOR ¶ 1.e); five separate medical debts placed for collection, total balance \$368 (SOR ¶ 1.f); a \$370 check cashing account placed for collection in July 2004 (SOR ¶ 1.g); a \$593 account placed for collection in June 2004 (SOR ¶ 1.h); a \$503 cable company account placed for collection in April 2006 (SOR ¶ 1.i); a \$741 utility bill placed for collection in May 2006 (SOR ¶ 1.j); a \$205 account placed for collection in May 2004 (SOR ¶ 1.k); a \$575 account placed for

⁵ Tr. at 7.

⁶ Gov 1.

⁷ Response to SOR, Gov 2 at 1; Gov 4 at 1.

⁸ Tr. at 31-34.

⁹ Tr. at 68.

¹⁰ Tr. at 29-30, 68; Answer to SOR.

collection in August 2002 (SOR ¶ 1.l); a \$40 account placed for collection in July 2002 (SOR ¶ 1.m); a \$46 account charged off in September 2001 (SOR ¶ 1.n); a \$283 account charged off in August 2001 (SOR ¶ 1.o); a \$610 account placed for collection in May 2004 (SOR ¶ 1.p); a \$91 cell phone account charged off in May 2004 (SOR ¶ 1.q); a \$141 account placed for collection in December 2001 (SOR ¶ 1.r).¹¹

In May 2005, Applicant's home was foreclosed as a result of not being able to keep up with the mortgage payments. She realized that she needed to find a job in an area where the cost of living was lower and she could earn more money. In December 2006, her mother was approved for disability and Medicare insurance.¹² In February 2006, Applicant moved to another state to accept the position with her current employer. Her previous job paid her an hourly wage of \$14.57. Her current salary is \$21.75 an hour, approximately \$42,328 a year.¹³ Pay stubs from her previous employer indicate that her income increased when she accepted her new job.¹⁴

In October 2006, Applicant was interviewed by an investigator as part of her background investigation. The investigator showed her a copy of her credit report which listed the delinquent accounts. After the interview, Applicant obtained a copy of her credit report¹⁵ and began to dispute several of the accounts listed.¹⁶ In April 2007, she enrolled in a debt consolidation program to repay her debts.¹⁷ The consolidation program is assisting her in determining whether several accounts that she disputes are valid. She is formally disputing the debts alleged in SOR ¶¶ 1.h, 1.k, 1.l, 1.m, 1.q, and 1.r. If the debts are valid, she will make arrangements to pay the debt.¹⁸ The accounts alleged in SOR ¶¶ 1.b, 1.d are paid.¹⁹ The debts alleged in SOR ¶¶ 1.n, and 1.o were formally disputed and were taken off her credit report because they were concluded to be fraudulent accounts.²⁰ Although Applicant included the debts alleged in SOR ¶¶ 1.e and 1.p in her debt consolidation, it appears they might be resolved. Significant payments were made to both creditors during the mortgage settlement.²¹

The current status of the delinquent accounts are:

¹¹ Gov 2.

¹² Tr. at 55-56; AE G; Answer to SOR.

¹³ Tr. at 26; AE K at 23.

¹⁴ AE L.

¹⁵ AE C.

¹⁶ AE D.

¹⁷ AE E.

¹⁸ Answer to SOR.

¹⁹ Tr. at 35, 38-39.

²⁰ Tr. at 52-53.

²¹ AE G at 2.

SOR Paragraph	Debt	Status	Record
1.b	\$600 judgment related to a check.	Paid.	Tr. at 35, AE F; AE O at 2-4; Gov 2 at 1; Gov 3 at 2; Gov 4 at 1-2.
1.c	\$411 judgment.	Debt consolidation.	Tr. at 36; AE E at 3; AE O at 15; AE C at 2-3; Gov 2 at 1; Gov 3 at 2; Gov 4 at 1.
1.d	\$2,214 judgment.	Paid. Initial debt consolidation, discovered debt was paid.	Tr. at 38-39; AE O at 6; AE C at 2; AE D at 1; AE E at 3; Gov 2 at 1; Gov 4 at 1.
1.e	\$2,204 judgment.	Disputes, claims paid - possibly paid.	Tr. at 40; AE O at 7; AE G at 2; Gov 2 at 1; Gov 4 at 2.
1.f	\$368 total for five unidentified medical accounts.	Certain med accounts are in debt consolidation. Due to lack of specificity in pleading unable to determine if it fits actual allegation.	Tr. at 42-45; AE E at 3; AE O at 17-20; AE C at 3, 6, 7, 9; Gov 2 at 1-2; Gov 4 at 2.
1.g	\$370 collection account.	Debt Consolidation.	Tr. at 46; AE E at 3; AE O at 8, 9, 15; AE C at 7; Gov 2 at 2; Gov 4 at 2.
1.h	\$593 collection account.	Formally disputed. Will pay if valid.	Tr. at 46-48; AE O at 10; Gov 2 at 2; Gov 4 at 2.
1.i	\$503 cable collection account.	Debt consolidation.	Tr. at 48; AE E at 3; AE O at 11, 15; AE C at 4; Gov 2 at 2; Gov 4 at 2.
i.j	\$741 utility collection account.	Debt consolidation.	Tr. at 49; AE E at 3; AE O at 12, 15; AE C at 6; Gov 2 at 2; Gov 4 at 2.
1.k	\$205 collection account.	Formally disputed. Will pay if valid.	Tr. at 50; AE O at 10; Gov 2 at 2.
1.l	\$575 collection account.	Formally disputed. Will pay if valid.	Tr. at 51; AE O at 13; Gov 2 at 2; Gov 4 at 2.

1.m	\$40 collection account.	Formally disputed. Will pay if valid.	Tr. at 52; AE D at 1, 5; Gov 2 at 2; Gov 4 at 2.
1.n	\$46 charged off account.	Not Applicant's debt, fraudulent account. Successfully disputed.	Tr. at 52-53; AE H; AE D at 2, 8, 9; AE C at 8; Gov 2 at 2; Gov 3 at 3; Gov 4 at 2.
1.o	\$283 charged off account.	Not Applicant's debt, fraudulent account. Successfully disputed.	Tr. at 52-53; AE H; AE D at 2, 8, 9; AE C at 7; Gov 2 at 2; Gov 3 at 3.
1.p	\$610 collection account.	Debt consolidation - possibly paid.	Tr. at 54; AE G at 2; Ae E at 3; AE O at 14, 15; AE C at 3-4; Gov 2 at 2; Gov 4 at 3.
1.q	\$91 charged off cell phone account.	Debt consolidation - initially disputed.	Tr. at 56; AE D at 2,13; AE E at 3; AE O at 15, 21; AE C at 10, 14; gov 2 at 2; Gov 3 at 3; Gov 4 at 3.
1.r	\$141 collection account.	Formally disputed. Will pay if valid.	Tr. at 57-58; AE O at 14; Gov 2 at 2; Gov 3 at 3, 5; Gov 4 at 3.

When Applicant enrolled in the debt consolidation program, she underwent financial counseling and established a budget.²² Her net monthly income is \$2,465.67. Her total monthly expenses are \$1,696. A \$410 pre-plan monthly payment is listed. Her pre-plan disposable income is \$359.67. Her consolidation plan payment is \$219. She has approximately \$140 left over each month after total expenses.²³ Her payments towards the debt consolidation are taken directly out of her paycheck. She has made consistent payments since the payment plan started on May 15, 2007.²⁴ Her debt consolidation plan will last for two years.²⁵

²² Tr. at 69.

²³ AE E at 5.

²⁴ AE E; AE I; AE O at 15.

²⁵ Tr. at 69.

Applicant understands the importance of clearing her debt. She has not opened any new credit card accounts. She recently had to purchase a car because her previous car broke down.²⁶ She purchased a 1999 used car for \$6,995. Her car payment is \$300 a month.²⁷

Applicant's friends and co-workers submitted character references attesting to her good character and excellent work ethic.²⁸ Her performance evaluations are favorable.²⁹ Her most recent evaluation describes her as an excellent, crisp, communicator. She knows the technical aspects of her position very well and interacts effectively with others. Her position is critical to the company's success.³⁰

POLICIES

The President has “the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information.”³¹ In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information and determining trustworthiness within the executive branch.

To be eligible for a security clearance or access to sensitive information, an applicant must meet the security guidelines contained in the Directive and the Revised Adjudicative Guidelines, effective September 1, 2006. The Revised Adjudicative Guidelines sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. The adjudicative guideline at issue in this case is:

Guideline F - Financial Considerations - 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.³²

²⁶ Tr. at 65.

²⁷ Tr. at 27.

²⁸ AE J; AE N.

²⁹ AE K.

³⁰ AE K at 29.

³¹ *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).

³² Revised Adjudicative Guidelines, ¶ 18.

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

“The adjudicative process is an examination of a sufficient period of a person’s life to make an affirmative determination that the person is eligible for a security clearance.”³³ An administrative judge must apply the “whole person concept,” and consider and carefully weigh the available, reliable information about the person.³⁴ An administrative judge should consider the following factors: (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 voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent 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.³⁵

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information.³⁶ Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts.³⁷ An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.”³⁸ Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.³⁹ The same rules apply to trustworthiness determinations for access to sensitive positions.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. The government has established a *prima facie* case for disqualification under Guideline F - Financial Considerations.

Based on all the evidence, Financial Considerations Disqualifying Conditions (FC DC) ¶ 19(a) (*Inability or unwillingness to satisfy debts*) and ¶ 19(c) (*A history of not meeting financial obligations*) apply to Applicant's case. Applicant encountered financial problems around 1997 which resulted in her filing for Chapter 7 bankruptcy. She eventually withdrew from the bankruptcy and resolved the

³³ Directive, ¶ E2.2.1.

³⁴ *Id.*

³⁵ *Id.*

³⁶ Directive, ¶ E3.1.14.

³⁷ Directive, ¶ E3.1.15.

³⁸ ISCR Case No. 01-20700 at 3 (App. Bd. December 19, 2002).

³⁹ Directive, ¶ E2.2.2.

debts on her own. In 2001, she encountered financial difficulties again after the unexpected death of her father resulting in her assuming the responsibility for supporting her mother. Her mother's health issues caused further expenses due to her lack of health insurance. Applicant incurred approximately 17 delinquent accounts, an approximate total of \$9,666. The family home was foreclosed in 2005 due to an inability to pay the mortgage.

Several Financial Considerations Mitigating Conditions (FC MC) potentially apply. Applicant has a history of financial irresponsibility spanning several years. Although she has made progress, her financial situation is not completely resolved. Therefore, I cannot apply 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*) applies with respect to Applicant's most recent financial problems beginning in 2001. In addition to being the sole provider for her young daughter, Applicant assumed responsibility for the care and support of her mother. Her mother has significant health issues and had no health insurance until 2006 which was an additional financial burden on Applicant. It appears that the delinquent accounts related to daily living expenses as opposed to unnecessary luxury items. Once Applicant's mother was approved for disability, Applicant sought out a better paying job in a less expensive area. After she was interviewed by the investigator during her background investigation, she took pro-active steps to resolve her accounts. Several accounts were resolved. She enrolled in a debt consolidation program and has made timely and consistent payments towards the program. She encountered financial problems due to conditions that were beyond her control. Once her mother received health and disability benefits, she was able to focus on the delinquent accounts and has pro-actively attempted to resolve her delinquent accounts. She 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*) applies. Applicant received financial counseling in conjunction with her debt consolidation program. She has established a budget and is able to meet her expenses. She is making timely payments towards her debt consolidation program. She has a good understanding of her current financial situation and does not live beyond her means. It appears that her financial situation is likely to be resolved in the near future.

FC MC ¶ 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) applies. In 1997, Applicant filed for Chapter 7 bankruptcy but later withdrew her petition and resolved her delinquent debts on her own. Beginning in 2001, she struggled to support her ill mother and her young daughter. Due to her mother's health costs, she was unable to resolve her accounts until 2006, when her mother qualified for disability. When this occurred, she was able to accept a better paying job in another state. She then took the initiative to resolve her delinquent accounts. Some accounts have been paid. Others are being paid in her debt consolidation program. She is formally disputing other accounts but intends to pay them if they are established as valid debts. She has demonstrated that she has made a good-faith effort to resolve her delinquent accounts.

Applicant mitigated the financial considerations trustworthiness concern. Guideline F is decided for Applicant.

In all adjudications, the protection of our national security is the paramount concern. The objective of the trustworthy determination process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for assignment to sensitive duties. 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 have considered all the evidence and the "whole person" in evaluating Applicant's trustworthiness. In addition to Applicant's efforts made towards resolving her accounts, I considered her favorable performance reviews and reference letters from friends and co-workers. Based on the evidence in the record, it is clearly consistent with the national interest to grant Applicant eligibility for assignment to sensitive duties. Eligibility is granted.

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
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
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	For Applicant
Subparagraph 1.l:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.m:	For Applicant
Subparagraph 1.n:	For Applicant
Subparagraph 1.o:	For Applicant
Subparagraph 1.p:	For Applicant
Subparagraph 1.q:	For Applicant
Subparagraph 1.r:	For Applicant
Subparagraph 1.s:	For Applicant

DECISION

In light of all of the evidence presented in this case, it is clearly consistent with the national interest to grant Applicant eligibility for assignment to sensitive duties. Eligibility is granted.

Erin C. Hogan
Administrative Judge