

KEYWORD: Financial

DIGEST: Applicant is a 37-year-old employee of a federal government contractor. She has extensive delinquent debt, totaling more than \$48,000, including defaulted student loans and back state taxes. Applicant failed to mitigate the security concerns arising from financial issues. Eligibility is denied.

CASENO: 06-23881.h1

DATE: 05/30/2007

DATE: May 30, 2007

_____)	
In re:)	
)	
-----)	ADP Case No. 06-23881
SSN: -----)	
)	
Applicant for a Position of Trust)	
_____)	

**DECISION OF ADMINISTRATIVE JUDGE
EDWARD W. LOUGHRAN**

APPEARANCES

FOR GOVERNMENT

Daniel Crowley, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 37-year-old employee of a federal government contractor. She has extensive delinquent debt, totaling more than \$48,000, including defaulted student loans and back state taxes. Applicant failed to mitigate the security concerns arising from financial issues. Eligibility is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue Applicant's eligibility for an ADP I/II/III position. As required by Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program*, dated January 1987, as amended (Regulation), and DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive), DOHA issued a Statement of Reasons (SOR) on February 15, 2007, detailing the basis for its decision—concerns raised under Guideline F (Financial Considerations) of the revised Adjudicative Guidelines (AG) issued on December 29, 2005, and implemented by the Department of Defense for SORs issued after September 1, 2006. The revised guidelines were provided to Applicant when the SOR was issued. Applicant answered the SOR in writing on March 8, 2007, and elected to have a hearing before an administrative judge. The case was assigned to me on March 22, 2007. A notice of hearing was issued on March 30, 2007, scheduling the hearing for April 24, 2007. The hearing was conducted as scheduled to consider whether it is clearly consistent with the interests of national security to grant or continue Applicant's eligibility to occupy an ADP I/II/III position. The Government offered seven exhibits that were marked as Government Exhibits (GE) 1 through 7, and admitted without objection. Applicant testified and offered five exhibits that were marked Applicant Exhibits (AE) A through E, and admitted without objection. The record was left open to allow Applicant an opportunity to submit additional material. She did so in a timely manner. The documents, which included Applicant's letter dated May 2, 2007 (AE F), a standard operating procedure (AE G), Equifax letter dated April 2, 2007, and page from a credit report (AE H), bank statement dated January 7, 2007 (AE I), bank statement dated May 2, 2007 (AE J), Equifax letter dated March 7, 2007 (AE K), workforce user guide (AE L), Applicant's fax cover sheet dated May 15, 2007 (AE M), and state tax letter dated May 11, 2007 (AE N), were admitted without objection. The letter from Department Counsel forwarding Applicant's documents was marked Hearing Exhibit (HE) I. DOHA received the hearing transcript (Tr.) on May 2, 2007.

FINDINGS OF FACT

Applicant's admissions to the allegations in the SOR 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 37-year-old employee of a federal government contractor. She attended college, but did not graduate. She has two teenage children. She left college when her second child was born. The father of her two children is approximately two years delinquent on his child support payments.¹

A judgment of \$2,895 was entered against Applicant in December 2002, on behalf of a hospital. Applicant has not paid anything on this debt.²

¹Tr. at 26, 49-54; GE 1.

²Tr. at 33-34; Applicant's response to SOR; GE 2.

Applicant did not file her state income tax returns for tax years 2002 and 2003, when they were due. Applicant had extensive medical problems in 2003, as discussed below. She states her medical issues were the reason she did not file her tax returns. Her state issued a tax lien against her in July 2006, for \$6,563. Applicant submitted documents from her state dated April 13, 2007, showing balances with penalties and interest of \$661 for tax year 2002, and \$898 for tax year 2003. Applicant submitted documentation that she electronically filed her state tax returns for tax years 2002 and 2003, on April 11, 2007. The tax due of \$599 and \$409 is the same amount reflected on the state documents, before the state added penalties and interest. After the hearing, Applicant submitted a payment agreement from the state, wherein Applicant would pay \$157 per month, for twelve months, starting June 16, 2007. The balance due is \$1,808.³

The debt in SOR ¶ 1.c, in the amount of \$231 is for satellite television services. Applicant submitted documentation with her response to the SOR, that the debt was down to \$60, and that the final \$60 was scheduled to be deducted from Applicant's bank account.⁴

The debt in SOR ¶ 1.d, in the amount of \$206 is for a dishonored check. Applicant denies this debt. Equifax has deleted this debt.⁵

SOR ¶ 1.e alleges three medical debts, totaling about \$190. One of the three debts has been paid. Applicant had a difficult time identifying the creditors as the credit reports and SOR do not name the creditor, they simply call them "medical." The credit bureau report (CBR) of April 24, 2007, only lists one of the three debts, and shows that as paid.⁶

The debt in SOR ¶ 1.f, in the amount of \$615 is for cable television services. Applicant stated she disputed this debt, and that she provided the cable company with a receipt. She stated the cable company was satisfied with the receipt and said they would remove it from her credit report. The debt does not appear on the CBR of April 24, 2007. Applicant testified that she would submit a copy of the receipt which she gave to the cable company. She did not provide anything regarding this debt in her post-hearing submission.⁷

The debt in SOR ¶ 1.g, in the amount of \$563 is for telephone services. Applicant stated that she made payment arrangements with this company. She made a payment of \$145 on January 18, 2007, and a \$50 payment on April 18, 2007.⁸

Applicant has delinquent student loans owed to the U.S. Department of Education, totaling approximately \$45,900. She testified she intends to pay this debt. She stated the debt has been transferred several times and it has been difficult to make payment arrangements. She stated she was

³Tr. at 29, 34-37; GE 4; AE D, N.

⁴Tr. at 23, 37-39; AE A.

⁵Tr. at 39-43; GE 7; AE H.

⁶Tr. at 44-45; GE 7 at 1.

⁷Tr. at 45-46; GE 7.

⁸Tr. at 23-25, 46-48; GE 5; AE I, J.

told she would have to make a \$1,000 payment to the account in order to set up monthly payments of \$315. She was unable to raise the \$1,000 to start paying the debt. The Department of the Treasury collected \$613 and \$588 from Applicant's federal income tax refund on March 30, 2007, and forwarded the money to the Department of Education. Applicant testified that she recently called the Department of Education, which told her they do not currently have the debt, but that she could start making payments on the debt. Applicant stated she would start making payments on the 30th of April. She did not provide documentation of a payment toward this debt in her post-hearing submission. Applicant still owes the debt, minus \$1,201, collected from her income tax refund.⁹

Applicant had substantial medical problems beginning around December 2002. She was scheduled for surgery in April 2003. She was placed under anesthesia and preliminary procedures were started when the operation had to be stopped because of equipment malfunction. The operation was rescheduled and conducted two weeks later. Applicant had another operation in November 2003. She estimates she lost about six months work because of her illness and surgeries.¹⁰

Applicant has received on-line credit counseling. She has worked at her current position for about 18 months. She received good reviews and a raise.¹¹

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 determination may be made.¹²

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.¹³ Positions designated as ADP I or ADP II are classified as sensitive positions.¹⁴ ADP III positions are "nonsensitive positions."¹⁵ However, DOHA has been directed by a memorandum from the Deputy Undersecretary of Defense (Counterintelligence and Security) dated November 19, 2004, to apply the due process provisions of the Directive for all trustworthiness determinations under ADP I, II, and including ADP III positions. 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.

⁹Tr. at 25, 48-49; AE C.

¹⁰Tr. at 29-31; AE E.

¹¹Tr. at 32, 57-58.

¹²Regulation ¶ C8.2.1.

¹³Regulation ¶ C2.1.2.

¹⁴Regulation ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3.

¹⁵Regulation ¶ C3.1.2.2.

“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.”¹⁶ The government has the burden of proving controverted facts.¹⁷ The burden of proof is something less than a preponderance of evidence.¹⁸ 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 or her.¹⁹ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.²⁰ The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.²¹ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.²² The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant. 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.²³ The same rules apply to trustworthiness determinations for access to sensitive positions.

The revised Adjudicative Guidelines set forth potentially disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. Additionally, each 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 adjudicative process factors listed in AG ¶ 2(a).

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

CONCLUSIONS

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

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,

¹⁶Regulation ¶C6.1.1.1.

¹⁷ISCR Case No. 97-0016 at 3 (App. Bd. Dec. 31, 1997); Directive, Enclosure 3, ¶ E3.1.14.

¹⁸*Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

¹⁹ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.

²⁰ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.

²¹ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

²²*Id.*; Directive, Enclosure 2, ¶ E2.2.2.

²³Exec. Or. 10865 § 7.

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.

Based on all the evidence, Financial Considerations Disqualifying Condition (FC DC) 19(a) (*inability or unwillingness to satisfy debts*) and FC DC 19(c) (*a history of not meeting financial obligations*) apply in this case. Applicant has substantial delinquent debt, much of which is unpaid.

I have considered all 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 received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control*), FC MC 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*), and FC MC 20(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 still owes several creditors, including delinquent student loans of more than \$44,000, and back state taxes. FC MC 20(a) does not apply.

Applicant had extensive medical problems, resulting in medical bills, time off work, and loss of income. I find her medical problems constitute a condition that was beyond her control. It has been more than three years since her operations. Applicant has paid some of her medical bills, but not others. Her medical problems explain why she had large medical bills. The loss of income during her illness explains why she would have financial issues in 2003, and for some time thereafter. It does not explain why she defaulted on her student loans years before her medical problems. Applicant stated she did not file her state tax returns for 2002 and 2003, because of her ongoing illness. There can be no excuse for not filing them until April 2007. I also considered that the father of Applicant's two children is about two years behind on child support. I find FC MC 20(b) applicable to Applicant's medical expenses. I find it partially applicable to her remaining debts.

Applicant has received on-line credit counseling. She has paid some of her debts, but still owes more than \$48,000. FC MC 20(c) is partially applicable in that Applicant has received some counseling. It is not totally applicable, as there is not a clear indication that Applicant's financial problems are being resolved or are under control. Applicant has not done enough to show a good-faith effort to repay overdue creditors or otherwise resolve debts, sufficient to act as a mitigating condition for all her debts. Applicant has established FC MC 20(d) for SOR ¶¶ 1.c, 1.e, and 1.g. It is not applicable to the remaining debts.

I find FC MC 20(e) at least partially applicable to SOR ¶¶ 1.d, 1.e, and 1.f. The debts do not appear on the most recent credit report.

Whole Person Analysis

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. Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination. In evaluating Applicant's case, I have considered the adjudicative process factors listed in the Directive and AG ¶ 2(a). I have also considered every finding of fact and conclusion discussed above.

Applicant has extensive delinquent debt, totaling more than \$48,000. She defaulted on her student loans years ago. They remain unpaid except for what has been obtained from her income tax refunds. She did not file her state tax returns for several years, and owes her state for back taxes. I considered that Applicant had significant medical issues, which contributed to her financial problems. The father of her two children is a "deadbeat dad," who is about two years delinquent on his child support payments. Applicant's medical problems do not explain why she defaulted on her student loans years before her medical problems arose. It also does not account for why she did not file her state tax returns for tax years 2002 and 2003, until recently. I also considered Applicant's favorable employment information.

After weighing the disqualifying and mitigating conditions and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns based on her financial issues. Applicant has not met her burden of demonstrating that it is clearly consistent with the national interest to grant her eligibility for an ADP I/II/III position.

FORMAL FINDINGS

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

Paragraph 1. Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Against 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:	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.

Edward W. Loughran
Administrative Judge