

DATE: October 26, 2007

In re:	)	
	)	
-----	)	ADP Case No. 06-23550
SSN: -----	)	
	)	
Applicant for Public Trust Position	)	

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

**APPEARANCES**

**FOR GOVERNMENT**

Gina L. Marine, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant has approximately \$14,094 in delinquent debt and a \$60,452 student loan account that was in deferment. Approximately \$10,651 of the delinquent debt are medical accounts related to past and current health issues. Several factors beyond Applicant's control have caused and continue to cause financial problems for her. She fully disclosed her financial situation when she completed her trustworthiness application. She does not live above her means. Under her current circumstances, she has acted responsibly. Trustworthiness concerns are mitigated. Applicant's eligibility for an assignment to a sensitive position is granted.

## STATEMENT OF CASE

On September 23, 2005, 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.<sup>1</sup> On February 20, 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 March 12, 2007, Applicant responded to the SOR allegations and elected to have her case heard before an administrative judge. The case was assigned to another administrative judge on June 20, 2007. The case was transferred to me on August 2, 2007. A Notice of Hearing was issued on August 23, 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 one 17 page exhibit which was admitted as Applicant Exhibit (AE) A without objection. The record was held open until October 2, 2007, to allow Applicant the opportunity to submit additional documents. Applicant timely submitted a 50 page document which was marked and admitted as AE B without objection. The transcript (Tr.) was received on September 28, 2007.

## FINDINGS OF FACT

In her SOR response, Applicant admits the allegations in SOR ¶¶ 1.a and 1.j but denies 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 35-year-old woman employed with a Department of Defense contractor who is seeking a position of public trust.<sup>2</sup> She is divorced and has two children, a daughter, age 12, and a son, age 11.<sup>3</sup> She is an operations and processing specialist with a healthcare company that works on a government contract. She has worked for the company for approximately five years. She worked as a term employee for 18 months and was made permanent in October 2004.<sup>4</sup>

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<sup>1</sup> 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.

<sup>2</sup> Tr. at 5; Gov 1.

<sup>3</sup> Tr. at 10.

<sup>4</sup> Tr. at 11.

On September 23, 2005, Applicant completed a public trust position application (SF 85-P). She attached a Trans Union credit report , dated June 2, 2005 to the application.<sup>5</sup>

A subsequent background investigation revealed that Applicant had the following delinquent accounts: a \$227 delinquent phone bill account placed for collection (SOR ¶ 1.a, Tr. at 21-22; Gov 1, Trans Union at 2; Gov 3 at 1; Gov 4 at 2); a \$61 account owed to a phone company placed for collection (SOR ¶ 1.b, Tr. at 22); a \$160 medical account, placed for collection (SOR ¶ 1.c; Tr. at 23; Gov 1, Trans Union at 4; Gov 4 at 2); \$115 dental account placed for collection (SOR ¶ 1.d; Tr. at 27-28; Gov 1, Trans Union at 4; Gov 3 at 2; Gov 4 at 2); a \$914 account placed for collection in May 2005 (SOR ¶ 1.e; Tr. at 28; Gov 6 at 5); a \$885 phone bill charged off in June 2002 (SOR ¶ 1.f; Tr. at 29; Gov 1, Trans Union at 5; Gov 2 at 3; Gov 3 at 2; Gov 4 at 3); a \$1,356 account placed for collection in February 2001 (SOR ¶ 1.g; Tr. at 32; Gov 3 at 2; Gov 4 at 3); a \$60,452 student loan account more than 120 days past due (SOR ¶ 1.h; Tr. at 35; Gov 3 at 3); and a \$10,376 medical account, placed for collection in June 2004 (SOR ¶ 1.i; Tr. at 37; Gov 1; Trans Union at 4; Gov 2 at 9).

In her response to the SOR, Applicant admits that she is unable pay her delinquent debts.<sup>6</sup> She claims that she is unaware of the debts alleged in SOR ¶¶ 1.b, 1.d, 1.e and 1.g.<sup>7</sup> She currently has an account with the debtor alleged in SOR ¶ 1.b and owes them \$400.<sup>8</sup> She thinks the accounts alleged in SOR ¶¶ 1.e and 1.g might be her ex-husband's credit cards.<sup>9</sup> She terminated a cell phone contract with the cell phone company that is alleged in SOR ¶ 1.f. The cell phone company charged an excessive termination fee. She contested this charge a few years ago.<sup>10</sup>

Applicant's financial problems began when she separated from her husband in December 2001. She filed for divorce and the divorce became final in December 2002.<sup>11</sup> Initially, Applicant had custody of their daughter and her ex-husband had custody of their son. Applicant gained full custody of both children in April 2006 after charges were filed against her ex-husband for sodomy and sex abuse of his stepchild in 2005.<sup>12</sup> Her ex-husband's court proceedings continue. Applicant receives very little child support (\$58 a week) because her ex-husband's income was reduced as a result of the pending charges.<sup>13</sup>

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<sup>5</sup> Gov 1.

<sup>6</sup> Answer to SOR, dated March 12, 2007.

<sup>7</sup> Tr. at 23, 27-32.

<sup>8</sup> Tr. at 23.

<sup>9</sup> Tr. at 28, 32.

<sup>10</sup> Tr. at 29-31.

<sup>11</sup> Tr. at 30.

<sup>12</sup> Tr. at 34; AE B at 23.

<sup>13</sup> Tr. at 10.

In February 2007, her 12-year-old daughter was raped. She has incurred additional medical expenses and prescription medications related to her daughter's treatment.<sup>14</sup> In July 2007, Applicant moved out of the apartment complex where the rape occurred out of concern for her daughter. Her daughter suffers from post traumatic stress disorder as a result of the rape.<sup>15</sup> She moved in with a cousin and her rent has been reduced from \$714 a month to approximately \$300 a month plus utilities.<sup>16</sup> She made arrangements with the apartment complex to pay what she owes them. She owed a total of \$1,088. Her \$500 security deposit was applied towards this debt. In August 2007, she entered into a repayment agreement, and is currently paying \$100 a month until the debt is paid in full.<sup>17</sup>

Applicant has several health issues that contributed to her financial situation. Most of her delinquent accounts are medical bills. She did not have health insurance when she was a term employee. In 2005, while she was uninsured, she was treated in the emergency room and hospitalized and required three blood transfusions.<sup>18</sup> She incurred approximately \$10,000 in medical bills as a result (SOR ¶ 1.i).<sup>19</sup> In June 2007, she had back surgery and was placed on the disabled list by her doctor. She was also placed on Family Medical Leave. Even though her doctor advised her not to return to work until August 6, 2007, she returned to work earlier in order to earn money to pay her bills.<sup>20</sup>

One of the hospitals garnished Applicant's paycheck. They recently stopped garnishing her paycheck. She does not know why but thinks it might be related to a request for financial assistance that she submitted. The total amount of the garnishment was \$10,000 and relates to Applicant's 2005 hospital treatment while uninsured.<sup>21</sup> The hospital's charity fund took care of two of the medical bills in the amount of \$837 and \$500.<sup>22</sup>

Applicant has not attempted to contact the creditors in SOR ¶¶ 1.b, 1.d, 1.e, 1.f. and 1.g. Her focus right now is to focus on the needs of her children. She realizes that she has bills to pay but her children are more important to her.<sup>23</sup> She claims that her student loan account is in deferment and is working with the student loan company to extend the deferment. She claims that her student loans

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<sup>14</sup> Tr. at 11; AE A at 6, 11-13,

<sup>15</sup> AE B at 37.

<sup>16</sup> Tr. at 20-21; 52.

<sup>17</sup> Tr. at 21; AE A at 7.

<sup>18</sup> Tr. at 19.

<sup>19</sup> Tr. at 20.

<sup>20</sup> Tr. at 19; AE A at 14-15.

<sup>21</sup> Tr. at 19-20, 26-27; AE A at 17.

<sup>22</sup> Tr. at 20; AE A at 3-4.

<sup>23</sup> Tr. at 33-34.

have never been delinquent.<sup>24</sup> She has been taking college courses off and on since 1998. She intended to take classes off campus recently but that was put on hold after her daughter's rape. She needs 20 more credits to earn her degree.<sup>25</sup> She claims that she currently does not have time to complete her college courses.<sup>26</sup>

Applicant pays her cousin \$300 a month for rent and is responsible for half the utility bill, and anything above the amount he normally pays. She pays car insurance of \$834 annually, approximately \$69.50 per month.<sup>27</sup> She does not have a car payment. She purchased a 1987 car from a relative about two years ago for \$750, and it is paid off.<sup>28</sup> She gets financial assistance for before and after school care for her son which costs \$67 a week.<sup>29</sup> She pays \$88 a month for a storage unit.<sup>30</sup>

She pays for her daughter's prescription medications. Her insurance does not cover anything until after she pays a \$4,000 deductible. The state Crime Victim's Compensation Board will reimburse Applicant for some, but not all, of her daughter's medical costs which were incurred as a result of the rape.<sup>31</sup> She makes too much income to qualify for additional assistance.<sup>32</sup> Applicant is current on her state and federal income taxes. She receives a tax refund and applies the refunds towards her debts.<sup>33</sup> She has no credit cards but has one debit card.<sup>34</sup> She has not opened any new accounts.<sup>35</sup>

Applicant's co-worker testified that Applicant is the only permanent employee in the department. She is currently training as a back-up to Applicant, and is amazed at the amount of knowledge and work that she does. She states that Applicant is truly an asset to her position and truly knows how to get the work done.<sup>36</sup> Applicant's work performance is also reflected by favorable

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<sup>24</sup> Tr. at 35-36.

<sup>25</sup> Tr. at 5.

<sup>26</sup> Tr. at 36.

<sup>27</sup> AE B at 35.

<sup>28</sup> Tr. at 37-38, 41.

<sup>29</sup> Tr. at 38-39.

<sup>30</sup> Tr. at 45; AE B at 37.

<sup>31</sup> Tr. at 40; 47-48; AE A at 6; AE B at 13-17.

<sup>32</sup> Tr. at 45.

<sup>33</sup> Tr. at 40,

<sup>34</sup> Tr. at 40.

<sup>35</sup> Tr. at 43.

<sup>36</sup> Tr. at 54-55.

comments she received from co-workers and customers.<sup>37</sup> Performance evaluations from her current and a previous employer also indicate that she is a valued employee.<sup>38</sup>

## 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.”<sup>39</sup> 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.<sup>40</sup>

Conditions that could raise a trustworthiness concern and may be disqualifying, as well as those which could mitigate security concerns pertaining to this adjudicative guidelines, 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.”<sup>41</sup> An administrative judge must apply the “whole person concept,” and consider and carefully weigh the available, reliable information about the person.<sup>42</sup> 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)

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<sup>37</sup> AE B at 2-6.

<sup>38</sup> AE B at 40-42; 43-50.

<sup>39</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).

<sup>40</sup> Revised Adjudicative Guidelines, ¶ 18.

<sup>41</sup> Directive, ¶ E2.2.1.

<sup>42</sup> *Id.*

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.<sup>43</sup>

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.<sup>44</sup> Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts.<sup>45</sup> An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."<sup>46</sup> Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.<sup>47</sup> 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 has struggled financially since 2001. She currently has approximately \$14,094 in delinquent debt. She will soon be required to resume payments on her student loan accounts which have a total approximate balance of \$60,452. Applicant has been unable to resolve much of this debt due to her limited income.

The concern under Financial Considerations can be mitigated. Applicant has a history of financial irresponsibility spanning several years. She still has significant financial problems. Therefore, I cannot apply Financial Considerations Mitigating Condition (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. Applicant's financial problems were caused by circumstances beyond her control. Her

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<sup>43</sup> *Id.*

<sup>44</sup> Directive, ¶ E3.1.14.

<sup>45</sup> Directive, ¶ E3.1.15.

<sup>46</sup> ISCR Case No. 01-20700 at 3 (App. Bd. December 19, 2002).

<sup>47</sup> Directive, ¶ E2.2.2.

financial problems began after her divorce in 2001. She supports two children while receiving minimal child support from her ex-husband who is pending serious criminal charges. The probability of additional child support is, at best, uncertain. She has several medical issues that caused her to incur a lot of medical expenses when she had no health insurance. She continues to incur medical costs having recently undergone back surgery in June 2007. She was on Family Medical Leave for a several weeks after the back surgery which reduced her income. The unfortunate rape of her 12-year-old daughter in February 2007 triggered additional medical costs and related expenses. The shock of this event continues to cause Applicant great distress.

Applicant meets the first element of FC MC ¶ 20(b) - (*the conditions that resulted in the financial problem were largely beyond the person's control*). A question remains as to whether she met the second element of FC MC ¶ 20(b) - (*and the individual acted responsibly under the circumstances*). Given the circumstances that Appellant has endured over the past several years, she has acted as responsibly as is within her means. Applicant is still dealing with circumstances that are beyond her control. She and her daughter's health cause medical expenses. The status of her ex-husband is uncertain. She is still coping with the aftermath of her daughter's rape. While she states that she has not taken steps to resolve the delinquent accounts, given her situation this is reasonable. She did not hide her financial situation when she filled out her trustworthiness application. She even attached a copy of her credit report to her application. She has made attempts to resolve her delinquent medical accounts by applying for financial assistance with the hospital. Of the delinquent debts, which total \$14,094, approximately \$10,651 are for medical accounts. Applicant has only \$3,443 of delinquent consumer debt. She does have a significant student loan balance but she is working with the student loan company to make sure the account does not default. She does not live above her means. She recently moved in with a relative in order to reduce her living expenses. Her trustworthiness and reliability is demonstrated by her five years of favorable work performance with her current employer. Considering her current situation, she is acting responsibly. For these reasons, I conclude FC MC ¶ 20 (b) applies.

Based on the facts of this case, I find that circumstances beyond Applicant's control have adversely affected her financial situation. She has 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, common sense 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. While Applicant has financial problems, many factors beyond her control contributed to the situation. She fully disclosed her financial problems when she submitted her trustworthiness application. She has a five year track record of favorable performance with her current employer. She is highly regarded by her clients and coworkers. She has acted responsibly under the circumstances that she has endured over the past several years. Applicant should be advised that it is in her best



interests to seek out financial counseling in order to deal with her financial situation after things settle down in order to avoid this issue should she apply for a renewal of a trustworthiness position in the future. Based on the evidence in the record and the particular facts of this case, 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

### **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