

KEYWORD: Financial; Drugs; Personal Conduct

DIGEST: Applicant is 29 years old, married but separated, and living with her current unemployed boyfriend. She owes 12 delinquent debts totaling about \$29,000, used marijuana from 1995 to 2004, and was discharged from four jobs between 1998 and 2002. She mitigated the drug involvement, and personal conduct trustworthiness concerns. She did not mitigate the financial considerations trustworthiness concern. Eligibility for an ADP I/II/III position is denied.

CASENO: 04-12294.h1

DATE: 04/24/2007

DATE: April 24, 2007

In re:	)	
	)	
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SSN: -----	)	ADP Case No. 04-12294
	)	
Applicant for ADP I/II/III Position	)	
	)	

**DECISION OF ADMINISTRATIVE JUDGE  
PHILIP S. HOWE**

**APPEARANCES**

**FOR GOVERNMENT**

D. Michael Lyles, Esq., Department Counsel

**FOR APPLICANT**

Anthony C. Delyea, Esq.

**SYNOPSIS**

Applicant is 29 years old, married but separated, and living with her current unemployed boyfriend. She owes 12 delinquent debts totaling about \$29,000, used marijuana from 1995 to 2004, and was discharged from four jobs between 1998 and 2002. She mitigated the drug involvement, and personal conduct trustworthiness concerns. She did not mitigate the financial considerations trustworthiness concern. Eligibility for an ADP I/II/III position is denied.

## STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a position of trust for Applicant<sup>1</sup>. On August 1, 2006, DOHA issued a Statement of Reasons<sup>2</sup> (SOR) detailing the basis for its decision—trustworthiness concerns raised under Guideline F (Financial Considerations), Guideline H (Drug Involvement), and Guideline E (Personal Conduct) of the Directive. Applicant answered the SOR in writing, but did not date her Answer. She elected to have a hearing before an administrative judge. The case was assigned to another administrative judge on October 16, 2006. That administrative judge set a hearing for November 28, 2006, but granted Applicant's request for continuance because of Applicant counsel's illness. The case was reassigned to me on December 6, 2006. On January 31, 2007, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a trustworthiness determination for Applicant. The Government and the Applicant submitted exhibits that were admitted into evidence. The Government moved to amend the SOR to delete a reference to paragraph 3-614, DoD Regulation 5200.2-R in the precatory language of the SOR because it was not applicable to this proceeding. The Applicant having no objection, I granted the motion (Tr. 6). DOHA received the hearing transcript (Tr.) on February 13, 2007.

## FINDINGS OF FACT

Applicant's admissions to the SOR allegations are incorporated as findings of fact. After a complete and thorough review of the evidence in the record, and full consideration of that evidence, I make the following additional findings of fact:

Applicant is 29 years old, married but separated from her husband whom she married in December 1999, and lives with her current boyfriend. When she married, her husband started abusing her, and caused a separation between Applicant and her family. Applicant had several miscarriages and her husband forced her to have an abortion during her marriage. Applicant worked two or three jobs while her husband spent her income and did not work. Applicant had no debt when she married. She finally left him in 2000, and moved to her current city of residence. She wants a divorce, but has to save the money to pay for the divorce. Her current boyfriend does not work due to foot and anxiety problems, but is seeking employment. Applicant pays all expenses presently. Applicant miscarried her latest pregnancy in January 2007, resulting in a hospital stay. (Tr. 15-20, 35, 59-61, 66, 75; Exhibit 1)

After Applicant moved to her current location, she had a series of temporary jobs until obtaining a permanent position in October 2002. She remained in that job until February 2004, when she obtained her current position as a customer service representative with the defense contractor. Her current income from that position is \$1,520 monthly. (Tr. 22-26, 49, 57; Exhibit H)

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<sup>1</sup>Adjudication of trustworthiness cases for ADP I, II, and III positions are resolved using the provisions of DoD Directive 5220.6 (Directive), pursuant to the memorandum from Carol A. Haave, Deputy Under Secretary of Defense for Counterintelligence and Security to DOHA Director, *Adjudication of Trustworthiness Cases* (Nov. 19, 2004).

<sup>2</sup>Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and the Directive.

Applicant used marijuana from 1995 until late 2003 or early 2004. She did not use it after February 2004 when she completed the Questionnaire for Public Trust Positions, the standard form 85P (85P). She obtained marijuana from friends to relieve the stress of her financial, physical, and marital problems. She does not intend to use it again. She now exercises, reads, bicycles, meditates, and uses other techniques to relieve her life stresses. She consulted with a licensed clinical social worker in June 2005, attempting to resolve her diagnosed adjustment disorder with mixed emotional features. (Tr. 20, 21, 27-30, 32, 62; Exhibit G)

Between December 1998 and March 2002, Applicant lost four jobs because of various allegations of wrongdoing. Her toy store employer discharged her in December 1998 based on allegations of theft. Next, a drug store employer terminated her on March 2, 1999, for stealing three customer's credit card numbers and using them to purchase merchandise for herself. In a signed statement to that company's investigator, Applicant admitted stealing other merchandise from her employer. The total value of all items taken illegally by Applicant she estimated at \$332.88. Then, a leasing company for whom Applicant worked terminated her in December 2000, for using all her sick time. Applicant wanted to stop working for that company, and told her supervisor that desire. The company then terminated her. Lastly, Applicant lost her job at a mail order company in March 2002 based on harassment allegations. Applicant claims she was harassed by another employee, but the employer terminated her, as Applicant understands the reason to be because she harassed the other employee. Applicant never received a written termination letter from the employer detailing the reasons for this job termination. (Tr. 43-47; Exhibits 1, 3-5)

Applicant owes 12 delinquent debts totaling about \$29,000. She paid one delinquent debt through a garnishment process after the creditor obtained a judgment, paying a total amount of \$857.46 by May 2006 (SOR subparagraph 1.b., \$615 to a financial institution). Applicant does not have the income to repay the other delinquent debts at the present time because her monthly expenses total \$1,611 and her income is \$1,520 monthly. She has no credit cards, and does not have cable television service because she cannot afford it. She attended a financial counseling course in 2002, and is allowed to use the course advisors as needed in the future. She is working on a budget for 2007. She moved from an apartment in mid-2006 where she paid \$905 for rent into an apartment costing \$695 monthly. She does not have a car and takes the bus to work, consuming about an hour's travel time each way. Her boyfriend did not work in 2006 and is looking for a job in 2007, and until he can contribute to the household income she pays all expenses. Those expenses included about \$3,000 in medical expenses over what her health insurance paid in 2006. (Tr. 30-40, 57, 65, 67; Exhibits 2, C-F)

The unpaid delinquent debts owed by Applicant are the following debts as listed in the SOR. Applicant owes \$10,574 to a lender subparagraph 1.a.) for the balance due on a used car she purchased, but which was repossessed in 2001 when she could no longer make payments after she separated from her husband. Applicant claims the delinquent debt for \$13,782 in a judgment from 2002 (subparagraph 1.c.) is the same debt owed for the car in subparagraph 1.a. The delinquent debt for \$123 owed to a retailer in subparagraph 1.d. is unpaid. It occurred because her husband took money from the checking account without telling Applicant, and she later wrote a check that was returned for insufficient funds. The \$74 account owed in subparagraph 1.e. is the same situation as the previous debt to the same retailer. The \$549 debt in subparagraph 1.f. is owed to a "pay day" loan company. The \$456 debt owed in subparagraph 1.g. is for a telephone bill. The bank debt for \$675 in subparagraph 1.h. is an overdrawn account resulting from her husband's withdrawal of funds

from the account. The \$1,135 owed to a credit card company in subparagraph 1.i. is for purchases she made before that card was stolen. A telephone bill for \$1,205 is the debt in subparagraph 1.j. Applicant does not recognize the \$133 debt in subparagraph 1.k.. The \$253 debt listed in subparagraph 1.l is for a cable television bill Applicant incurred and could not pay when she lived with her husband. Applicant is not certain of the basis for the \$128 debt owed in subparagraph 1.m. None of these creditors have contacted Applicant, nor has she contacted them about payment arrangements lately. She contacted some in 2005 when her boyfriend worked and she had some money to repay some portion of the debts. She is currently working with two credit counselors to attempt to consolidate her debt and establish a monthly repayment schedule. Applicant also attends a “get checking” educational program at a local credit union, the completion of which will enable Applicant to open checking and savings accounts at the credit union. (Tr. 40-42, 49-58, 76-89; Exhibits 2, D, F)

## POLICIES

As Commander in Chief, 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.” *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information with Industry* § 2 (Feb. 20, 1960). By direction of the Under Secretary of Defense for Counterintelligence and Security, adjudications of cases forwarded to DOHA by the Defense Security Service or the Office of Personnel Management (OPM) for a trustworthiness determination shall be conducted under the provisions of the Directive. Eligibility for a position of trust is predicated upon the applicant meeting the guidelines contained in the Directive and a finding it is clearly consistent with the national interest to do so. *See* Directive ¶ 2.3. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his trustworthiness determination.” *See* Directive ¶ E3.1.15

The adjudication process is based on the whole person concept. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline that must be carefully considered in making the overall common sense determination required. The decision to deny an individual eligibility to occupy a position of trust is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. 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 such a determination.

In evaluating the trustworthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. Those assessments include: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (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 (See Directive, Section E2.2.1. of Enclosure 2). Because each case

presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible to occupy a position of trust. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's trustworthiness suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996). All that is required is proof of facts and circumstances that indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at \*\*6-8 (App. Bd. 2001). Once the Government has established a *prima facie* case by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. *See* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that is clearly consistent with the national interest to grant or continue his trustworthiness determination. ISCR Case No. 01-20700 at 3 (App. Bd. 2002). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive ¶ E2.2.2

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

Guideline F: Financial Considerations: *The Concern: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. E2.A6.1.1*

Guideline H: Drug Involvement: *The Concern. Improper or illegal involvement with drugs, raises questions regarding an individual's willingness or ability to protect classified information. Drug abuse or dependence may impair social or occupational functioning, increasing the risk of an unauthorized disclosure of classified information. E2.A8.1.1*

Guideline E: Personal Conduct: *The Concern: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information. E2.A5.1.1*

"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." (Regulation ¶ C6.1.1.1) Appendix 8 of the Regulation sets forth the adjudicative policy, as well as the disqualifying conditions (DC) and mitigating conditions (MC) associated with each guideline. DoD contractor personnel are afforded the adjudication procedures contained in the Directive. (Regulation ¶ C8.2.1)

## CONCLUSIONS

**Financial Considerations** Applicant has 12 delinquent debts listed in the SOR. Two may be duplicates of each other, but nonetheless she has significant debts totaling \$19,000 to \$29,000 (the lesser amount would be the debt if the duplication is eliminated). She has made no effort to repay these debts. The one listed debt repaid was by garnishment of her wages. Applicant's income is consumed monthly by her expenses. She supports her unemployed boyfriend, causing her deficit spending. Having a roommate who split the rent costs would allow Applicant to apply about \$300 monthly to debt reduction. Disqualifying Conditions (DC) 1 (A history of not meeting financial obligations E2.A6.1.2.1), and DC 3 (Inability or unwillingness to satisfy debts E2.A6.1.2.3) apply.

Applicant's financial difficulties are caused in part by her marital situation, but she has had seven years during which she could have addressed her delinquent debts, and has not done anything to resolve them. Her unemployed boyfriend is currently a financial drain on her. Mitigating Conditions (MC) 3 (the conditions resulting in the behavior were largely beyond the person's control, such as loss of employment, unexpected medical emergency, and divorce or separation E2.A6.1.3.3) does not apply because of the time interval of separation, and the repeated poor judgment she exercised over the past seven years in not attempting to resolve even her smaller debts. None of the other MC apply.

**Drug Involvement** Applicant used marijuana from 1995 at the age of 17 until February 2004 at the age of 26. She used it to relieve the stress of her life, including the abuse from her husband. DC 1 (any drug abuse. E2.A8.1.2.1) applies.

The last drug use of Applicant was February 2004. She expressed an intent not to use it again in the future, choosing meditation and exercise, among other techniques, to relieve her stresses. I conclude she is credible in her explanation of her future plans. MC 1 (the drug involvement is not recent. E2.A8.1.3.1) and MC 3 (a demonstrated intent not to abuse any drugs in the future. E2.A8.1.3.3) apply.

**Personal Conduct** Four employers between 1998 and 2002 terminated Applicant for various reasons, including two for theft, one for being harassed by another employee or harassing another employee, and one for excessive use of sick leave. DC 1 (reliable, unfavorable information provided by associates, employers, or coworkers. E2.A5.1.2.1), DC 4 (personal conduct that increases an individual's vulnerability to coercion, exploitation or duress, such as engaging in activities which, if known, may affect the person's personal, professional, or community standing or render the person susceptible to blackmail. E2.A5.1.2.4), and DC 5 (a pattern of dishonesty. E2.A5.1.2.5) apply.

Applicant has worked faithfully for two employers for the past five years. She has no difficulties in these two jobs, and she has been working for her present employer for three years. She has taken positive steps to reduce her vulnerability to duress and coercion. She has had no further employment problems since 2002. MC 5 (the individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress. E2.A5.1.3.5) applies.

### **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 eligible for a” trustworthiness decision. Directive E2.2.1. “Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.” *Id*

In addition to evaluating the disqualifying and mitigating conditions under each guideline, the adjudicative process requires thorough consideration and review of all available, reliable information about the applicant, past and present, favorable and unfavorable, to arrive at a balanced decision. The essence of scrutinizing all appropriate variables in a case is known as the “whole person” analysis. Directive ¶ E2.2. In evaluating the conduct of the applicant, an administrative judge should consider: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (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 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.

I considered the totality of the evidence in view of the whole person concept, including Applicant’s age, her demeanor while testifying and candid discussion about her finances and abusive marital relationship. Regarding her financial situation and the delinquent debts, Applicant expressed a willingness to resolve her financial obligations, but has she has done nothing to resolve her debts. Nor has she done anything since the SOR was sent to her to resolve even some of the debts to establish a pattern and commitment to paying her delinquent debts. She saved no money over seven years since her separation. Even during the past five years while holding full-time positions, she ignored the debts and did not develop a plan to repay them. She incurred additional financial burdens by living with an unemployed boyfriend whom she supports.

Evaluating her marijuana usage I conclude it is not recent and she will not use it again in the future to escape from her problems and stresses. Her marijuana use stopped three years ago and she convincingly stated her commitment not to use it again in the future. Even time has passed that her marijuana usage is not recent.

Considering her employment history, her later two discharges were for interpersonal and personal reasons, not work performance or misconduct issues. She has now established a consistent and apparently untroubled work history for the past five years which mitigates that concern. She explained which situations and their context persuasively in contrast to her present employment and interpersonal relationships to show that type of conduct will not recur in the future. Hence, all allegations under Paragraph 1 of the SOR are concluded against her. The allegations under Paragraphs 2 and 3 of SOR are decided for her. The whole person concept analysis is concluded against her on the basis of the financial considerations trustworthiness concern.

### **FORMAL FINDINGS**

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

Paragraph 1. Guideline F:                   AGAINST APPLICANT

Subparagraphs 1.a.:                   Against Applicant



Subparagraph 1.b.: For Applicant  
Subparagraphs 1.c. to 1.m.: Against Applicant

Paragraph 2. Guideline H: FOR APPLICANT

Subparagraphs 2.a. to 2.b.: For Applicant

Paragraph 3. Guideline E: FOR APPLICANT

Subparagraphs 3.a. to 3.d.: For Applicant

### **DECISION**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for assignment to sensitive duties. Her application for eligibility for an ADP I/II/III position is denied.

Philip S. Howe  
Administrative Judge