

KEYWORD: Financial

DIGEST: Applicant incurred significant delinquent following her husband's loss of his well-paying job in January 2003. They sold their home to reduce monthly expenses and he has returned to work. They are slowly repaying their delinquent debts. She has mitigated the government's concerns about her finances under Guideline F. Eligibility is granted.

CASENO: 05-09313.h1

DATE: 05/07/2007

DATE: May 7, 2007

In re:)	
)	
-----)	
SSN: -----)	ADP Case No. 05-09313
)	
Applicant for Trustworthiness Determination)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
MARY E. HENRY**

APPEARANCES

FOR GOVERNMENT

Richard Stevens, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant incurred significant delinquent following her husband's loss of his well-paying job in January 2003. They sold their home to reduce monthly expenses and he has returned to work. They are slowly repaying their delinquent debts. She has mitigated the government's concerns about her finances under Guideline F. Eligibility is granted.

STATEMENT OF CASE

On August 19, 2004, Applicant submitted an application for a position of public trust, an ADP I/II/III position. 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").¹ On November 17, 2006, DOHA issued Applicant a Statement of Reasons (SOR) detailing the basis for its decision. The SOR, which is in essence the administrative complaint, alleged trustworthiness concerns under Guideline F (Financial Considerations) of the revised Adjudicative Guidelines (AG) issued on December 29, 2005 and implemented by the Department of Defense, effective September 1, 2006. DOHA recommended the case be referred to an administrative judge to determine whether eligibility for a position of trust should be granted, continued, denied, or revoked. On November 30, 2006, Applicant submitted a notarized response to the allegations. She requested a hearing.

DOHA assigned this case to me on March 7, 2007 and issued a notice of hearing on March 16, 2007, which the Applicant received on March 20, 2007. I conducted a hearing on April 11, 2007.² The government submitted eight exhibits (GE), which were marked and admitted into the record as GE 1-8 without objection. Applicant submitted 18 exhibits (App Ex), which were marked and admitted as App Ex A-R without objection. Applicant testified on her own behalf. I held the record open for the submission of additional documentation by Applicant. Applicant timely submitted 9 additional documents, which were marked and admitted as App Ex S-AA without objection. DOHA received the hearing transcript (Tr.) on April 24, 2007.

FINDINGS OF FACT

In her SOR response, Applicant admitted all the SOR allegations under Guideline F, except allegation 1.d, which she denied.³ 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.

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.

²Tr. at 11.

³Applicant' Response to the SOR, dated November 30, 2006.

Applicant, a 35-year-old woman employed as a customer service associate for a Department of Defense contractor, seeks a position of public trust. She began working for her employer in December 1997.⁴

Applicant and her husband married 15 years ago. They have two children, a 10-year-old son and a 3-year-old daughter. For the last 10 years, she has worked steadily.⁵

In 2002, Applicant's husband received a promotion to general manager at his company. His salary increased to approximately \$60,000 a year plus bonuses. In March 2002, they purchased their dream home for approximately \$170,000. In the fall of 2002, Applicant miscarried twins after significant medical treatment. She missed time from work while receiving medical care. Her employer paid her about 60 % of her salary during her absence. In December 2002, she and her husband purchased a new truck for \$26,000, with a monthly payment of \$600.⁶

On January 2, 2003, Applicant's husband reported to work, intending to sign his yearly employment contract. Instead, his company informed him that his job had been eliminated under its restructuring plan to save costs. He received no termination compensation or performance recommendations. Because his employer provided only dates of employment, he encountered significant difficulties in obtaining a new job. He collected unemployment for six months. Applicant and her husband used their income from her job and his unemployment benefits to pay their mortgage, utilities and food. They stopped paying their other bills, including the car payment, because they did not have sufficient money. They incurred significant delinquent debt as a result.⁷

Applicant's husband obtained a position selling insurance in late 2003. He earned \$6,000 in 2003 about 1/10 of his former salary. By early 2004, their the new truck has been repossessed and their home sold. They received enough money from the sale of their home to pay the mortgage debt in full. Applicant's husband secured a better paying job in 2004. In January 2007, he procured another position, which he anticipates will pay him between \$35,000 and \$40,000.⁸

Applicant's income tax returns for 2002 show a joint income of \$72,000. The tax returns for she and her husband for 2003 indicate an income of \$28,134 for her and \$14,360 for him for a total income of \$42,494, a decline of almost \$30,000 from the previous year. Their tax returns for 2004, 2005 and 2006 reflect a joint income of \$46,244, \$60,394 and \$65,175 respectively.⁹

⁴GE 1 (Applicant's Questionnaire for Public Trust Position, dated August 19, 2004) at 1, 3, 5; Tr. at 18-19.

⁵*Id.*

⁶Tr. at 19, 23, 27-28.

⁷*Id.* at 20-21, 48-51.

⁸*Id.* at 21-23, 27-28; App Ex F (Husband's Social Security Benefits Statement, dated August 2, 2006) at 3; App Ex G (Applicant's Social Security Benefits Statement, dated September 15, 2006) at 3.

⁹App Ex U (Applicant and husband's Joint Federal Income Tax return for 2002); App Ex V (Applicant's husband's Federal Income Tax return for 2003); App Ex W (Applicant's Federal Income Tax return for 2003); App Ex X (Applicant and husband's Joint Federal Income Tax return for 2004); App Ex Y (Applicant and husband's Joint Federal Income Tax return for 2005); App Ex Z (Applicant and husband's Joint Federal Income Tax return for 2006).

Applicant's gross monthly income totals approximately \$2,532, including overtime. Her husband's gross monthly income is \$1,200 plus commissions. Her net monthly income totals approximately \$1,732, including overtime, and her husband's net income at his new job varies depending upon commissions earned. For the first three months of 2007, his net monthly income averaged \$1,362 without any withholding for income taxes. Thus, their net monthly household income is approximately \$3,100 plus \$50 a month internet reimbursements costs from her employer.¹⁰

Currently, Applicant and her husband rent a house for \$750 a month. They timely pay their rent each month. Their other monthly living expenses include \$300 for food, \$300 for utilities, \$305 for a car payment, \$200 a month for gasoline, \$75 for car insurance, \$210 for debt payments, \$100 for clothing, and \$120 for miscellaneous expenses. Her minimum monthly expenses total \$2,360, leaving approximately \$800 a month of income available for debt payment. She did not include child care expenses for her daughter.¹¹

Applicant's unpaid debt as listed in the SOR totals \$18,119. Most of her unpaid debt relates to the truck repossession in 2004. The debts listed in allegations 1.d (\$2,054) and 1.e (\$2,096) are the same. She negotiated a settlement of this debt and began making payments, which will conclude in September 2007. The \$145 medical bill in allegation 1.a has been paid. Two other small debts listed in the SOR (allegations 1.b and 1.f), an unidentified medical bill and a cable bill, totaling less than \$500 remain unpaid. The debt listed in allegation 1.c belongs to her husband alone, and is no longer listed with an overdue balance on her credit report. Applicant and her husband have slowly paid the debts incurred subsequent to his lay off, as reflected in her credit reports. They decided against filing bankruptcy as a way to resolve their debt issues.¹²

Applicant's employer rated her performance at a high meets expectations or exceeds expectations from 1998 through 2004. Her more recent evaluations are lower. The commentary criticizes her unscheduled leave use, which was 30 hours last year. Despite her most recent rating, in the last year she received seven certificates of excellence for her work performance, plus a \$1,000 incentive award in early 2007. Her former supervisor describes her as a person of integrity, who is committed to her job and is responsible.¹³

POLICIES

¹⁰App Ex S (Husband's Earnings statements from January 2007 through March 2007); App Ex T (Applicant's Earnings statements from January 2007 through mid-April 2007); Tr. at 39. Because Applicant works at home, her employer reimburses her \$50 a month towards her internet costs. *Id.*

¹¹GE 2 (Applicant's signed statement, dated December 7, 2004); App Ex A (Bill showing debt paid); App Ex E (Letter from landlord, dated March 22, 2007); Tr. at 38-41.

¹²GE 8 (Credit Report, dated March 8, 2007); App Ex AA (Payment plan and bank statement showing payment); Tr. at 25.

¹³App Ex D (Letter, dated February 8, 2006); App Ex J-P (Performance Evaluations for the years 1998 through 2004); App Ex Q and R (Performance evaluations for the years 2005 and 2006); App Ex H (Performance awards in 2006); App Ex T, *supra* note 10, at 6.

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.”¹⁴ 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. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. The adjudicative guidelines at issue in this case are:

Guideline F - Financial Considerations - An individual who is financially overextended is at risk of having to engage in illegal or unethical acts to generate funds to meet financial obligations. Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligation to protect classified or sensitive information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

Conditions that could raise a trustworthiness concern and may be disqualifying, as well as those which could mitigate security concerns pertaining to these adjudicative guidelines, are 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.¹⁵ An administrative judge must apply the “whole person concept,” and consider and carefully weigh the available, reliable information about the person.¹⁶ 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.¹⁷

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.¹⁸

¹⁴ *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).

¹⁵ Directive, ¶ E2.2.1.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Directive, ¶ E3.1.14.

Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts.¹⁹ An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.”²⁰ Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.²¹ 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.

Financial Considerations

Under Guideline F, the “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.” (AG ¶ 18.) The credit reports reflect old, delinquent debts, which were incurred subsequent to her husband’s job loss in January 2003. Because of this income loss and the delinquent status of her debts, Applicant lacked the ability to pay her debts. Based on the evidence of record, the government established the applicability of disqualifying conditions (DC) ¶ 19 (a) *inability . . . to satisfy debts* and DC ¶ 19 (c) *a history of not meeting financial obligations*.

Before January 2003, Applicant and her husband paid their bills. Their income level enabled them to purchase a new home and a new truck in 2002. Her husband lost his job in January 2003, which created a severe financial hardship for them. Their overall income for 2003 decreased by \$30,000 making it very difficult for them to pay their bills. Although he eventually secured a job, they continued to encounter severe financial difficulties because he initially earned about 90% less than his job as a general manager. Mitigating conditions (MC) ¶ 26 (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 has not met with a financial counselor, but as her husband began to work and obtain better paying positions, they began to slowly pay their debts or reduce their debt burdens. They sold their dream home before it went to foreclosure. She contacted some creditors to arrange payment of her debts, one at a time. She currently has a payment plan for the second largest debt listed in her SOR. MC ¶ 20 (c) . . . *there are clear indications that the problem is being resolved or is under control* and

¹⁹ Directive, ¶ E3.1.15.

²⁰ ISCR Case No. 01-20700 at 3 (App. Bd. December 19, 2002).

²¹ Directive, ¶ E2.2.2.

MC ¶ 20 (d) *the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts* apply. While she is not required to be debt free, she must manage her income and expenditures in a reasonable and prudent manner. Applicant and her husband are doing so.

Applicant denied owing the debt alleged in paragraph 1.d. of the SOR. This debt is the same as the debt identified in allegation 1.e of the SOR. Therefore, 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* has some applicability.²²

Whole Person Analysis

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 her 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.

She and her husband worked hard, and as a result, steadily increased their income. Because of their good income, they bought their dream home and months later a new truck, all of which they could afford at the time of purchase. At the same time, they timely paid their bills. When her husband lost his well-paying job, they made decisions about which bills could be paid with their significantly reduced income. They properly decided to reduce their living expenses by selling their dream home and moving to lower cost rental housing. They tried, but could not continue the car payments on the new truck. In the last three years, her husband's income has slowly increased, in part by his willingness to move to better paying jobs as the opportunities arose, but is still well below his salary in 2002. During this same period of time, they undertook to repay their debts, one at a time. Her most recent credit report reflects the improvement, but not elimination, of her debt problems. She declined to use bankruptcy as a means to eliminate her debt. She did not rely on any illegal means to resolve her debt. She chose instead to pay her debt a bit at a time, including debts not listed in the SOR.

For more than 9 years, Applicant has been a reliable and well-performing employee. In the last year, she received seven certificates of excellence for her work performance. I have weighed the mitigating conditions, Applicant's attitude towards debt payment, her assumption of responsibility for her debts, and her overall character against the remaining unpaid debts. I find that the overwhelming weight of the evidence indicates that she is a person of integrity, who is trustworthy. She would not act in a manner which would harm her employer or the government. There is little likelihood she would violate the privacy rights she has agreed to protect because of her existing debt problems, particularly since she did not violate these rights when her finances were at their worst. I conclude she has mitigated the trustworthiness concerns pertaining to financial considerations.

FORMAL FINDINGS

²²The remaining financial considerations mitigating condition set forth in AG 20 (f) does not apply in this case.

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:

SOR ¶ 1-Guideline F:
Subparagraphs a-g:

FOR APPLICANT
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.

Mary E. Henry
Administrative Judge