

DATE: October 25, 2007

In Re:)
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)
 -----) ADP Case No. 05-16749
 SSN: -----)
)
 Applicant for Public Trust Position)
)
)

**DECISION OF ADMINISTRATIVE JUDGE
KATHRYN MOEN BRAEMAN**

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

While he has limited income, Applicant documented no actions to resolve any of his admitted debts to six creditors for over \$17,000. He has a history of not paying his bills. He failed to develop and then implement a plan to resolve them despite a promise to do so in 2004 and again in 2007. Applicant failed to mitigate the government's concerns under Guideline F. Eligibility for trustworthiness is denied.

STATEMENT OF CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant's

application for a public trust position under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended (the "Directive").¹ On April 30, 2007, DOHA issued Applicant a Statement of Reasons (SOR) detailing the basis for its decision based on the revised ("new") Adjudicative Guidelines² issued on December 29, 2005, and implemented by the Department of Defense, effective September 1, 2006. The SOR alleged security concerns under Guideline F (Financial Considerations). On May 25, 2007, Applicant responded to the SOR allegations and admitted all of the allegations. He requested a decision without a hearing.

On June 13, 2007, Department Counsel, prepared a File of Relevant Material (FORM) which was forwarded to the Applicant on June 15, 2007. Applicant was advised he had 30 days to respond to the FORM by submitting any objections or any additional information. Applicant received the FORM on July 27, 2007, but sent no response to the FORM, which was due on August 26, 2007. DOHA assigned this case to me on September 28, 2007.

FINDINGS OF FACT

In the SOR response, Applicant admitted³ to SOR allegations under Guideline F. 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, a 42-year-old man, seeks a position of public trust as a surgical technician for a Department of Defense contractor where he has worked since 2002. He was unemployed for two weeks in 2002 when he was changing jobs. He has a certificate from a school of allied health. He is not married. (Exhibit 4, Public Trust Position Application, SF 85P)

Financial Considerations

Applicant's financial problems began when he became ill in 2002. Then he also was out of work for two weeks when he changed jobs from a hospital to the DoD contractor. However, he did not divulge this unemployment under his employment history in his security form. (Exhibits 4, 5) When interviewed in October 2004, he claimed that he was not aware of his debts as he had not looked at a credit report before he completed his SF 85P in August 2004. Nevertheless, he planned to investigate all of these debts and planned to make arrangements for payments for the judgment and other debts. (Exhibit 5) In October 2004 Applicant provided a Personal Financial Statement showing he had total monthly income of \$2,278 and expenses of \$1,152. His stated household debt of \$3,000 was to repay a 401K loan of \$3,000 with monthly payments of \$89.83. He had a net monthly remainder of \$1,126.09. (Exhibit 5) However, he provided no evidence that he investigated and attempted to resolve even one of his debts. Also, in October 2004 he promised he

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 Applicant was sent a copy of the DoD Directive 5220.6 with his Statement of Reasons (SOR).

³ Response to SOR.

would get credit counseling to resolve these debts. (Exhibit 5) He provided no evidence he had done so. In response to the SOR, he stated in his Answer he would resolve all of these debts in June 2007. He did not provide any evidence he did so. The current status of these debts is as follows:

SOR ¶	TYPE OF DEBT (date)	AMOUNT	CURRENT STATUS
1.a	Judgment for medical debt. (2002)	\$ 850.00	Unpaid; he stated he would set up a plan in June 2007 but submitted no evidence he did so. (Exhibits 3, 5, 6)
1.b.	Judgment for a debt to a hospital (2002)	\$ 15,520.00	Unpaid; he stated he would set up a plan in June 2007 but submitted no evidence he did so. (Exhibits 3, 5, 6)
1.c	Collection account in regard to a cable bill. (2006)	\$ 267.00	Unpaid; he stated he would set up a plan in June 2007 but submitted no evidence he did so. (Exhibits 3, 5, 6)
1.d	Collection account. (2003)	\$ 167.00	Unpaid; he stated he would set up a plan in June 2007 but submitted no evidence he did so. (Exhibits 3, 5, 6)
1.e	Collection account for credit card. (2002)	\$ 519.00	Unpaid; he stated he would set up a plan in June 2007 but submitted no evidence he did so. (Exhibits 3, 5, 6)
1.f	Collection account. (2001)	\$ 151.00	Unpaid; he stated he would set up a plan in June 2007 but submitted no evidence he did so. (Exhibits 3, 5, 6)

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.”⁴ 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

⁴ *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).

sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. 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.⁵ An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person.⁶ 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.⁷

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.⁸ Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts.⁹ An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."¹⁰ Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.¹¹ The same rules apply to trustworthiness determinations for access to sensitive positions.

CONCLUSIONS

Financial Considerations

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

⁵ Directive, ¶ E2.2.1.

⁶ *Id.*

⁷ *Id.*

⁸ Directive, ¶ E3.1.14.

⁹ Directive, ¶ E3.1.15.

¹⁰ ISCR Case No. 01-20700 at 3 (App. Bd. December 19, 2002).

¹¹ Directive, ¶ E2.2.2.

responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

Having carefully considered all the facts in evidence and the legal standards, I conclude that the government established a *prima facie* case for disqualification under Guideline F, Financial Considerations. Based on all the evidence, AG ¶ 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 many unpaid, delinquent debts and did not demonstrate any effort to resolve them.

With the government's case established, the burden shifted to Applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him. I considered the Financial Considerations Mitigating Conditions (MC) but none apply sufficiently to mitigate concerns. He still carries a significant amount of outstanding delinquent debts for a variety of bills which he incurred over several years. AG ¶ 20(b) (*The conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce, or separation)*) applies in part due to his 2002 illness and medical bills; however, he did not explain why he has subsequently been unable to resolve these debts with the \$1,000 he has remaining every month after he pays his expenses. AG ¶ 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*) does not apply as Applicant has had several years to address these debts and has taken no documented steps. Applicant did not document he had even paid any of the small debts he acknowledges.

Most significantly, he does not meet AG ¶ 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*). While promising to do so in 2004, Applicant failed to contact a credit counseling agency to help settle his credit problems or to challenge any of the debts listed on the credit report. Also, he did not establish that he pays his current bills timely or that he has not incurred any significant new delinquent debt. Because of these failures of proof, Applicant has not demonstrated he has met AG ¶ 20(d), (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*). While he has a position with a modest income, he also has modest expenses. His promise to pay in the future is not sufficient to mitigate the financial considerations concern. He entered into no payment plans with any creditor or demonstrated he had made even one payment. Thus, he has not established he continually and timely makes any payments. He has limited expenses, but has not allocated any of his resources to resolve this persistent issue of unpaid debts.

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 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. Applicant's lengthy history of failing to meet his financial obligations, and inability or unwillingness to satisfy his debts raises serious trustworthiness concerns. At 42 years old, he is sufficiently mature to be fully responsible for his conduct. Given his limited income, he had to make choices about how to use his limited resources. All of the SOR debts remain unpaid.

After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole person,¹² I conclude he has failed to mitigate the trustworthiness concerns pertaining to financial considerations.

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:

SOR ¶ 1-Guideline F:	AGAINST APPLICANT
Subparagraphs a-f:	Against Applicant

DECISION

In light of all of the evidence presented in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for assignment to sensitive duties for a public trust position. Eligibility is denied.

Kathryn Moen Braeman
Administrative Judge

¹²See ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006).