

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant is 61 years old, divorced, and has five adult children. She works for a defense contractor in the health care industry. She had income tax liabilities incurred as long ago as 1985 based on under withholding of her taxes. She made this mistake because she relied on bad advice from co-workers years ago. She has now corrected her tax information, and mitigated the financial considerations and personal conduct trustworthiness concerns. Eligibility for an ADP I/II/III position is granted.

CASENO: 06-00343.h1

DATE: 04/06/2007

DATE: April 6, 2007

In re:)	
)	
)	
-----)	ADP Case No. 06-00343
SSN: -----)	
)	
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

Pro Se

SYNOPSIS

Applicant is 61 years old, divorced, and has five adult children. She works for a defense contractor in the health care industry. She had income tax liabilities incurred as long ago as 1985 based on under withholding of her taxes. She made this mistake because she relied on bad advice from co-workers years ago. She has now corrected her tax information, and mitigated the financial considerations and personal conduct trustworthiness concerns. Eligibility for an ADP I/II/III position is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a position of trust for Applicant¹. On October 30, 2006, DOHA issued a Statement of Reasons² (SOR) detailing the basis for its decision—trustworthiness concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of the Directive. Applicant answered the SOR in writing on November 13, 2006, and elected to have a hearing before an administrative judge. The case was assigned to me on December 12, 2006. On February 7, 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. At the conclusion of the hearing, Applicant was given additional time to submit exhibits. Two exhibits were received and marked as Exhibits D and E without objection from the Government. DOHA received the hearing transcript (Tr.) on February 15, 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 61 years old, divorced since the early 1980s, and has five adult children, whom she raised by herself. All have college educations. Applicant works for a defense contractor in the health care industry as a lead worker in her office area. She has worked for this employer for the past three years. She rents an apartment and pays \$342 monthly because she also works as a caretaker at the apartment building to keep her rent low. Her caretaker work included painting a two-story apartment building. (Tr. 34, 41, 42; Exhibits 1, 2, 3)

Applicant lived with a friend who died suddenly in July 2006 at 85 years of age. While they lived together he gave her money to pay his expenses and to pay his bills. Applicant and her friend went to casinos as recreation, but she no longer goes to them. She has changed her lifestyle since his death. Her expenses are minimal because one of her daughters pays for her car insurance and repairs in exchange for Applicant dog sitting her pet. Applicant fully paid for her car, a 2002 model. She has had no significant medical expenses in her life so far. She has only basic television cable service to save money. Her cell phone is part of a family plan arrangement for which her daughter pays the bill. Applicant has no land-line telephone. Applicant has no credit cards. (Tr. 32-35, 39; Exhibit 2)

In the early 1980s, after her divorce, a co-worker of Applicant advised her to maintain her income tax exemptions as she had while married. She did so, and kept them even as her children

¹Adjudication 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).

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

reached their majority and departed her home. She consistently filed her tax returns each year. The Internal Revenue Service (IRS) and her state tax department discovered her exemptions exceeded what she was lawfully allowed to claim, and began to assess her back taxes in the late 1980s. They also sought to include the money her friend gave her as her additional income. Applicant owed additional taxes for a number of tax years. When she started her current job, she adjusted her exemptions and there are no current tax liabilities owed. From the time the IRS started billing her for unpaid taxes, Applicant has been paying \$100 on an installment agreement while contesting the additional income claims, penalties and interest that accumulated. In 2002 her attorney recommended she file Chapter 7 bankruptcy to rid herself of those and any taxes that could be discharged. She filed a Chapter 7 bankruptcy in May 2002, and was discharged in bankruptcy on September 4, 2002. Her debts were listed as \$13,256, and her assets as \$6,500. She listed the 1989 and 2000/2001 taxes in Schedules E and F of the bankruptcy. Applicant thought her tax liabilities were included in the bankruptcy, even as she continued to pay \$175 monthly on the installment agreement for federal taxes. She paid \$50 monthly on her state tax lien. She answered Question 20 (Was she now over 180 days delinquent on any loan or financial obligation) on her public trust position questionnaire (PTPQ) with a negative answer. She answered this way because she had been paying for years on her installment agreement and did not consider herself delinquent on any debt on August 25, 2004, when she completed the PTPQ. (Tr. 19-28, 31, 37, 38, 46; Exhibits 1, 2, 3, 4, C, D)

Applicant's debts listed in the SOR are all IRS debts (Subparagraphs 1.b. to 1.i., 1.k. to 1.o.). One debt (\$893.84) was owed to her state tax authority (Subparagraph 1.j.), but she repaid that debt and the state tax lien was released on September 28, 2006. The specific SOR allegations and the current status of each tax debt is as follows:

<i>SOR PARAGRAPH</i>	<i>TAX YEAR and DEBT</i>	<i>CURRENT STATUS</i>
1.b.	1985 IRS \$303.32	Lien released Tr. 21, Exhibit B
1.c.	1986 IRS \$10,406.20	Lien released Tr. 21, Exhibit B
1.d.	1989 IRS \$167	Lien released Tr. 21, Exhibits B, 3
1.e.	1990 IRS \$404.79	Lien released Tr. 21, Exhibit B
1.f.	1996 IRS \$1,502.71	Paid in full, Exhibit D
1.g.	1997 IRS \$4,159.89	Paid in full, Exhibit D
1.h.	1998 IRS \$299.27	Paid in full, Exhibit D
1.i.	1999 IRS \$4,942.07	Paying \$100 monthly, Tr. 23, Exhibit C
1.j.	1999 State tax, \$893.84	Paid, lien released, Tr. 19, Exhibits 6, A
1.k.	2000 IRS \$904.56	Paying, included in bankruptcy, Tr. 23, Exhibits 3 and C
1.l.	2001 IRS \$1,429.93	Paying, listed in bankruptcy, Tr. 23, Exhibits 3 and C

1.m.	2002 IRS \$1,488.36	Paying, and 2006 tax refund of \$1,034 applied to debt, Exhibit D installment plan
1.n.	2003 IRS \$1,350.92	Paying, Exhibit D installment plan
1.o.	2004 IRS \$236.95	Paying, Exhibit D installment plan

Applicant will start receiving a pension from a previous employment in July 2007. That pension amount is calculated presently at \$419 monthly. Applicant will apply all or part of this income to further reduce her tax debt and increase her \$100 monthly installment plan payments. (Tr. 36; Exhibit E)

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:

The Concern. 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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

The Concern: Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

"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

Guideline F: Financial Considerations. All of Applicant’s alleged delinquent financial obligations are tax debts, which she has been paying for many years. She was willing and able to pay these obligations, so they were not delinquent. They arose through an error on her part in claiming too many tax exemptions. She has a history of meeting her financial obligations. I conclude there are no Disqualifying Conditions (DC) that apply in this case under this Guideline.

Guideline E: Personal Conduct. The SOR alleges Applicant deliberately falsified her answer to Question 20 about delinquent debts more than 180 days past due when she completed the PTPQ in August 2004. However, Applicant had been paying her tax debts for several years on a valid installment payment agreement with the respective tax authorities. Therefore, the tax obligations were not delinquent in the context that she had ignored paying any of the debt. She also filed Chapter 7 bankruptcy in 2002 to attempt to rid herself of some of the penalties and interest, and certain taxes. She relied on the advice given her by her tax attorney. Applicant’s presentation and explanation of her actions is credible and persuasive. I conclude there are no DCs that apply under this Guideline because she told the truth as she knew it to be, and particularly because she had been paying regularly for years on her tax debt.

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 evaluating Applicant’s case, I have considered the adjudicative process factors listed in the Directive ¶ E2.2.1.

Applicant’s ignorance of the exemption requirements and calculations under the income tax laws, and her good-faith reliance on her co-workers and attorney, resulted in her tax liabilities, dating back to 1985. She has repaid a number of tax liabilities, and continues to work diligently to satisfy her debts. The IRS and state tax authority have each released liens they filed because Applicant repaid the tax debts. Applicant corrected her exemption form and has not repeated her mistake. Although an adult when these errors occurred, she was naive and unsophisticated about the tax law requirements. She rehabilitated herself financially with the help of her late friend and daughter. She leads a simple cash-based lifestyle with no frivolities. Based on all of these factors, I conclude the financial considerations, personal conduct, and whole person analysis for Applicant.

FORMAL FINDINGS

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

Paragraph 1. Guideline F: FOR APPLICANT

Subparagraph 1.a. to 1.o.: For Applicant

Paragraph 2. Guideline E: FOR APPLICANT

Subparagraph 2.a: For Applicant

DECISION

In light of all of the circumstances presented by the record in this case, it is 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 granted.

Philip S. Howe
Administrative Judge