

KEYWORD: Financial

DIGEST: Applicant is 27 years old, unmarried with two minor children. She works as a claims processor for a defense contractor who provides health care services to Department of Defense employees. Applicant has 20 listed delinquent debts that she is addressing by her recent filing of Chapter 7 bankruptcy. Applicant mitigated the financial considerations' trustworthiness concern. Her eligibility for assignment to sensitive positions and for eligibility for an ADP I/II/III position is granted.

CASENO: 06-01074.h1

DATE: 08/27/2007

DATE: August 27, 2007

In re:)	
)	
)	
-----)	ADP Case No. 06-01074
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 27 years old, unmarried with two minor children. She works as a claims processor for a defense contractor who provides health care services to Department of Defense employees. Applicant has 20 listed delinquent debts that she is addressing by her recent filing of Chapter 7 bankruptcy. Applicant mitigated the financial considerations' trustworthiness concern. Her eligibility for assignment to sensitive positions and for 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 Applicant. On December 11, 2006, DOHA issued a Statement of Reasons¹ (SOR) detailing the basis for its decision—trustworthiness concerns raised 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, 2006². Applicant answered the SOR in writing on January 17, 2007, and elected to have a hearing before an administrative judge. The case was assigned to me on May 2, 2007. On June 28, 2007, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government and the Applicant submitted exhibits that were admitted into evidence. I left the record open for the submission of additional exhibits by Applicant. She submitted them within the time period allowed. The Government had no objection to them, and I admitted them as Exhibits B to D. DOHA received the hearing transcript (Tr.) on July 12, 2007.

FINDINGS OF FACT

Applicant's admissions to the SOR allegations are incorporated here 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 27 years old, unmarried, and has two minor children. She works for a defense contractor in the health care management business as a claims processor. She started this job in October 2003. She earns about \$2,100 a month, net income being \$1,730 monthly. Her monthly expenses are about the same. She is owed about \$15,000 in child support from the father of her children. Their relationship broke up sometime in the past two years. Before her current employment, Applicant had a series of clerk and cashier positions, paying minimum wage or slightly higher. (Tr. 14, 16, 17, 37; Exhibits 1, 6, A)

Applicant is now working on a budget for herself. She admits she had children before she was financially secure, but now has a full-time job and depends only on herself to take care of her two children. Her current monthly expenses are paid on time and are not in a delinquent status. (Tr. 26-30; Exhibits 1, 6)

Applicant has 11 medical delinquent debts listed in the SOR (subparagraphs 1.a to 1.d, 1.f and 1.g, 1.k to 1.m, 1.p and 1.q.) These debts total \$7,919.11. Applicant claims she had medical insurance at her former employment positions and thought it paid these bills. Applicant also has 9 non-medical delinquent debts (subparagraphs 1.e, 1.h to 1.j, 1.n, 1.o, 1.r to 1.t) which total \$4,286.43. The total of debts listed in the SOR is \$12,205.54. On June 20, 2007, Applicant filed

¹Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive).

²Adjudication of trustworthiness cases for ADP I, II, and III positions are resolved using the provisions of DoD Directive 5220.6, 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)

Chapter 7 bankruptcy. The total amount of her 30 listed debts in the bankruptcy is \$26,140. Applicant has not yet been discharged in Chapter 7 bankruptcy. Some of these debts dated from 1998 with the latest referral for collection being January 2006. She attended and completed the mandatory financial counseling required under the latest amendments to the Federal Bankruptcy Law. (Tr. 13, 19; Exhibits 2-6, A-D)

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 ¶2 of the Adjudicative Guidelines. 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, 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: 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 could 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.

CONCLUSIONS

Financial Considerations: The Government established by substantial evidence and Applicant's admissions each of the allegations in the SOR. Applicant's debts arose from medical expenses, telephone bills, and miscellaneous expenses. Her income was and is insufficient to repay these delinquent debts in a timely manner. The disqualifying conditions applicable are Financial Considerations Disqualifying Condition ¶19.a. (inability or unwillingness to satisfy debts) and ¶19.c. (a history of not meeting financial obligations).

Applicant filed Chapter 7 bankruptcy on June 20, 2007, eight days prior to the hearing. While tardy in doing so, the magnitude of Applicant's debts, the separation from the father of her two children and whatever income he had, and her series of low-paying jobs, together made it unlikely she could never repay these debts without using bankruptcy. Chapter 7 bankruptcy is the classic solution provided under Federal law for such situations. The Financial Considerations Mitigating Conditions applicable are ¶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), and ¶20.d (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts).

Whole Person Analysis

In evaluating Applicant’s case, I have considered the adjudicative process factors listed in the AG ¶ 2(a) under the “whole person concept.” The majority of Applicant’s financial problems arose from medical bills she thought her health insurance coverage from her jobs between 1998 and 2007, should have paid. She knew she was not paying these bills, and the non-medical bills, but had no income to pay them beyond her monthly expenses for her family. Applicant was in her early and mid-20s when these debts were incurred. She exhibited a lack of maturity in having her children before she could afford to do so, as she admitted. Now she realizes her responsibility better and depends only on herself to take care of her family. She did not deliberately fail to pay these delinquent debts, but expected some to be paid by her medical insurance. She seems to have learned to verify payments and not spend more than she earns. Thus, there is minimal likelihood she would engage in this conduct again. With the Chapter 7 bankruptcy filing, there is no potential for duress or coercion because her debts will be eliminated. Applicant is credible in her explanations of the changes in her life and her acceptance of increased individual financial responsibility. Her testimony and actions demonstrate a greater maturity on her part as she raises two children alone, working full-time, and paying her debts on time.

Therefore, I conclude the financial responsibility trustworthiness concern for Applicant. I conclude the “whole person concept” for Applicant.

FORMAL FINDINGS

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

Paragraph 1. Guideline F: FOR APPLICANT

Subparagraphs 1.a to 1.t: 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's eligibility for assignment to sensitive duties. Her application for eligibility for an ADP I/II/III position is granted.

Philip S. Howe
Administrative Judge