

KEYWORD: Financial

DIGEST: Applicant is 26 years old, married, and working as a customer service representative for a defense contractor in the health insurance business. Applicant borrowed money on credit cards while in college, and has not repaid these delinquent debts totaling \$8,992. Applicant did not mitigate the financial considerations trustworthiness concern. Eligibility for an ADP I/II/III position is denied.

CASENO: 06-07628.h1

DATE: 05/24/2007

DATE: May 24, 2007

In re:)	
)	
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SSN: -----)	ADP Case No. 06-07628
)	
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 26 years old, married, and working as a customer service representative for a defense contractor in the health insurance business. Applicant borrowed money on credit cards while

in college, and has not repaid these delinquent debts totaling \$8,992. Applicant 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 security clearance for Applicant. On June 23, 2006, DOHA issued a Statement of Reasons¹ (SOR) detailing the basis for its decision—security concerns raised under Guideline F (Financial Considerations) of the Directive. Applicant answered the SOR in writing on September 18, 2006, and elected to have a hearing before an administrative judge. The case was assigned to me on December 19, 2006. On April 4, 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 moved to amend the SOR by striking subparagraph 1.g. and adding a phrase to subparagraph 1.c. to incorporate that debt into the debt listed in subparagraph 1.c. to avoid duplication of debts. Applicant had no objection, and I granted the motion. (Tr. 9, 10) The Government and the Applicant submitted exhibits that were admitted into evidence. DOHA received the hearing transcript (Tr.) on April 13, 2007.

FINDINGS OF FACT

Applicant denied all of the allegations in the SOR. After a complete and thorough review of the evidence in the record, and full consideration of that evidence, I make the following findings of fact:

Applicant is 26 years old, married, and works as a customer service representative for a defense contractor in the health care insurance business. Applicant started this job three years ago. His wife works at the same company in another division. Together, their gross income is \$70,000. Their monthly expenses are \$3,245, minus the \$600 the state pays his wife monthly for caring for her two young cousins. Applicant and his wife have a monthly net income of \$3,260. His monthly net income is \$1,860 and her monthly net income is \$1,400. She owes \$1,800 for furniture and appliances purchased for their house. She also owes \$2,000 on a personal loan she incurred in 2006. (Tr. 20-29, 34-42, 57, 58, 67; Exhibits 1, 4-6)

In July, 2006, they bought a house for \$123,900, and placed the deed in his wife's name. No down payment was made because neither of them had any money with which to make a down payment. They have two mortgages on the house, one for \$99,000 at 6% interest, and the second mortgage for \$24,000 at 12% interest. Applicant makes the \$900 monthly payment on both mortgages from his income. These mortgages are adjustable rate loans, changing every three years. In 2006, they also purchased a \$23,000 used Chevrolet Suburban sport utility vehicle, placing the title in the wife's name, with no down payment being made. The monthly payment on this loan is \$500, which Applicant makes from his income. The total payments for the car over the six year term of the fixed rate loan are \$36,000. The wife has title to these items because Applicant has bad credit due to his unpaid debts, so it was easier for his wife to obtain the loans needed to purchase these items. When they married in September 2006 they spent \$6,000 on their wedding, and \$2,000 on

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).

wedding rings. The debt for the wedding rings is now reduced to \$800. (Tr. 30-36, 49-57; Exhibits 2-6)

Applicant owes seven delinquent debts, totaling \$8,992. These debts arose from purchases he made on several credit cards he took out while a college student, starting in 1998. He used them for living expenses. He paid on one debt listed in subparagraph 1.d. for \$2,629. He paid \$150 monthly for 11 payments between August 2005 to August 2006, for a total of \$1,700. He ceased payments when he got married in September 2006. He has not made any payments on any of the other six debts for several years, though he expressed a willingness to pay them “eventually.” Applicant submitted a proposed household budget after the hearing showing he intends to pay \$400 monthly to his creditors and has “started setting up agreements for repayment with the proper creditors” over the next 20.5 months. In his April 2005, statement to the Government investigator, he stated his intent to contact his creditors and make repayment arrangements because he had sufficient income to start to repay his delinquent debts. Since that time, he made only the one repayment arrangement that he did not complete. (Tr. 18, 19, 32, 35, 36, 75; Exhibits 2-6, A)

Applicant’s character witness testified to his honesty and trustworthiness. Applicant claims he is a good employee and would not disclose confidential client information. (Tr. 45-48)

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

CONCLUSIONS

Guideline F. Financial Considerations: Applicant borrowed money on his credit cards while in college with no ability to repay the money. His current employment started three years ago, and he has not tried to repay any creditor, except for partial payment to one creditor which ended when he married in September 2006. The SOR is dated June 2006, telling Applicant at that time of the Government's concern that he is not repaying regularly his delinquent debt, yet Applicant did nothing to repay those creditors. Subsequently, Applicant spent, with his new wife, \$6,000 for a wedding and \$2,000 for wedding rings. They purchased a house and a large automobile at about the same time, totaling \$146,000 in debt, with no down payments. Therefore, while the Government was concerned about \$8,992 of delinquent debt, Applicant spent \$154,000 to start his new married

life, while not repaying aged delinquent debt. After the hearing, Applicant formulated a household budget designed to use \$400 monthly to repay debt over the next 20.5 months, despite having previously declared in April 2005, his intention to repay his delinquent debts, which he failed to do so. His presentation is not persuasive based on his past record of non-payment.

The Disqualifying Conditions (DC) that apply to these facts are 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). Applicant has not repaid his delinquent debts, while spending his income on mortgages, loans, and other purchases. Applicant had two years notice of the Government’s concern about these delinquent debts, as shown on his April 2005, statement. Yet he took no significant remedial action to repay these debts.

There are no Mitigating Conditions that apply to these facts. His present attempt to formulate a budget and repay his creditors is not persuasive given the age of the debts and his two-year old statement that he would start to repay the debts in 2005.

“Whole Person Concept:” Under this concept, the elements I considered are set forth in the **POLICY** section of this decision. Applicant’s age, the nature of the conduct, etc., do not recommend a conclusion for Applicant. He was an adult when he voluntarily took out these credit cards. He knew what he was doing by charging money on the cards and that he could not repay the monies because he was in college and did not have a job. There are no behavioral changes because he has incurred sizeable debt for a house and car with no down payments on either purchase . He placed a heavy financial burden on himself in the amount of \$1,400 monthly, which is also the monthly net amount of Applicant’s joint income with his wife. He participated in those purchases, even though title is in his wife’s name due to his bad credit history. Based on his financial track record, there is a substantial likelihood of repetition of this type of behavior. Lastly, there is a great possibility of pressure or coercion because of vulnerability caused by his debt load.

Therefore, I conclude the “whole person concept” against Applicant. I also conclude the financial considerations trustworthiness concept against Applicant.

FORMAL FINDINGS

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

Paragraph 1. Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.h:	Against 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 or continue Applicant's eligibility for a public trust position. Eligibility for an ADP I/II/III position is denied.

Philip S. Howe
Administrative Judge