

KEYWORD: Financial

DIGEST: Applicant filed for Chapter 13 bankruptcy on three occasions between May 2001 and September 2003. Each case was dismissed as a result of failure to make payments. The SOR alleged approximately \$34,480 in delinquent debt. Several accounts are resolved but over \$21,000 in delinquent debt remains with no plan in place to resolve the debts. Although Applicant expects to pay her debt from money she expects to receive from her late husband's estate, legal proceedings are pending and the outcome is uncertain. Applicant's current monthly expenses exceed her monthly income. Her financial situation is poor and it is unlikely that her financial situation will be stabilized in the near future. The trustworthiness concern is not mitigated under financial considerations. Assignment to a sensitive position is denied.

CASENO: 06-08070.h1

DATE: 09/28/2007

DATE: September 28, 2007

In re:)	
)	
-----)	
SSN: -----)	ADP Case No. 06-08070
)	
Applicant for Public Trust Position)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
ERIN C. HOGAN**

APPEARANCES

FOR GOVERNMENT

Julie R. Edmunds, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant filed for Chapter 13 bankruptcy on three occasions between May 2001 and September 2003. Each case was dismissed as a result of failure to make payments. The SOR alleged approximately \$34,480 in delinquent debt. Several accounts are resolved but over \$21,000 in delinquent debt remains with no plan in place to resolve the debts. Although Applicant expects to pay her debt from money she expects to receive from her late husband's estate, legal proceedings are pending and the outcome is uncertain. Applicant's current monthly expenses exceed her monthly income. Her financial situation is poor and it is unlikely that her financial situation will be stabilized in the near future. The trustworthiness concern is not mitigated under financial considerations. Assignment to a sensitive position is denied.

STATEMENT OF CASE

On July 21, 2003, Applicant submitted an application for a position of public trust. 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"); and the Revised Adjudicative Guidelines, approved December 29, 2005 and effective September 1, 2006.¹ On April 26, 2007, DOHA issued Applicant a Statement of Reasons (SOR) detailing the basis for its decision. The SOR, which is in essence the administrative complaint, alleged security concerns under Guideline F, Financial Considerations.

In a sworn statement notarized on May 15, 2007, Applicant responded to the SOR allegations and elected to have a hearing before an administrative judge. The case was assigned to another administrative judge on July 23, 2007 but was transferred to me on August 8, 2007. A Notice of Hearing was issued on August 8, 2007, scheduling the hearing for August 30, 2007. The hearing was held as scheduled. The government offered seven exhibits which were admitted as Government (Gov) Exhibits 1-7 without objection. Applicant offered one exhibit that was admitted as Applicant Exhibit (AE) A without objection. The record was held open until September 13, 2007, to allow Applicant the opportunity to submit additional documents. On September 13, 2007, Applicant requested additional time to submit additional documents. An extension was granted until September 21, 2007. Applicant did not respond and requested an additional extension until September 25, 2007. On that date, she submitted three documents that were marked and admitted as AE B-D without objection.² The transcript (Tr.) was received on September 12, 2007.

FINDINGS OF FACT

In her SOR response, Applicant admits the allegations in SOR ¶¶ 1.a, 1.b, 1.c, 1.i, and 1.w. She denies the allegations in SOR ¶¶ 1.d - 1.h, 1.j - 1.v, and 1.x -1.y. 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 is a 62- year-old woman employed with a Department of Defense contractor who is seeking a position of public trust.³ She was married for 44 years but was recently widowed. She has a 42-year-old son, and two nine-year-old granddaughters.⁴ She is an enrollment specialist and

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 AE B is a one page letter from the US Department of Justice, dated September 25, 2007, pertaining to debt alleged in SOR ¶ 1.n; AE C is a one page statement pertaining to the debt alleged in ¶ 1.g; and AE D is a three page statement from the attorney handling the Applicant's interests in her late husband's estate, dated September 25, 2007.

³ Tr. at 5; Gov 1.

⁴ Tr. at 16; 25, 27.

has worked for her current employer since July 2003.⁵ From January 1988 to March 2002, she worked for another company. She lost her job due to corporate downsizing. When she departed, she received \$25,000 from the company.⁶ Aside from a few seasonal part-time jobs, Applicant was unemployed between March 2002 to July 2003.⁷

In May 2001, Applicant filed for Chapter 13 bankruptcy. Her case was dismissed in December 2001 for failure to make payments.⁸ In January 2002, she again filed for Chapter 13 bankruptcy. Her case was dismissed in September 2003 for failure to make payments.⁹ In September 2003, she filed for Chapter 13 bankruptcy. The bankruptcy was dismissed in June 2004 for failure to make payments.¹⁰

Applicant filed for bankruptcy because she could not pay the monthly bills with her income and the money her husband gave her each month. Her husband gave her \$1,000 a month to apply towards the household expenses.¹¹ Applicant admits that she incurred a lot of credit card debt. In a signed, sworn, statement, dated December 22, 2006, she states,

The consumer credit card debts were mine. I spoiled our son and our granddaughter and spent too much money on them. My income combined with the \$1,000 monthly allowance my spouse provided would not cover our monthly debts and obligations.¹²

Applicant filed for bankruptcy as a sole individual each time she filed. Her husband was abusive and she was afraid of him so she did not include his name on the bankruptcy petitions. His income was nonetheless used to determine the amount of monthly payments Applicant was required to make under the Chapter 13 plan. She states that she was unable to keep up with payments based on her income and the money her spouse gave her for monthly expenses.¹³

Schedule I, Current Income of Individual Debtors, in Applicant's Chapter 13 bankruptcy filed in 2003, indicates that Applicant's net monthly income was \$1,571. Her husband's net monthly income was \$1,083. They had a combined net monthly income of \$2,654. Schedule J, Current Expenditure of Individual Debtors, lists total monthly expenses of \$2,004, leaving \$650 left over

⁵ Tr. at 16-17.

⁶ Gov 2 at 8.

⁷ Tr. at 17-19.

⁸ Tr. at 29; Gov 2 at 1; Gov 3 at 1; Gov 5 at 2; Gov 6 at 2.

⁹ Tr. at 30; Gov 2 at 1; Gov 5 at 1; Gov 6 at 2.

¹⁰ Tr. at 32; Gov 2 at 1; Gov 3 at 1; Gov 5 at 1; Gov 6 at 2.

¹¹ Tr. at 31.

¹² Gov 2 at 5.

¹³ Tr. at 30; Gov 2.

after expenses.¹⁴ Applicant received \$1,000 from her husband to apply towards the monthly expenses. Combined with her income, she had approximately \$2,571 to pay the bills. After paying the monthly expenses, this would leave her approximately \$567 each month.

On July 9, 2004, Applicant completed a personal financial statement which listed her net monthly income as \$1,581. Her husband's net monthly income is listed as \$1,440. Their combined net monthly income was \$3,021.44. Their total monthly expenses were \$2,286, leaving a net remainder of \$785.¹⁵ This did not include payments to her creditors.

Shortly after the third Chapter 13 bankruptcy was dismissed in June 2004, Applicant's house was foreclosed and sold at auction to a realtor. She and her husband rented the house from the realtor until April 2006. The realtor notified them he intended to put the house on the market. Applicant left her husband on April 17, 2006. She decided to leave because her husband's abusive behavior was affecting her nine-year-old granddaughter.¹⁶ About two weeks later on May 2, 2006, Applicant's husband shot himself in the head. He died on May 5, 2006.¹⁷ The day before he shot himself, he changed the beneficiary on his life insurance policy and his retirement account to his granddaughters.¹⁸

Applicant retained a lawyer and filed a claim for payment of her husband's life insurance proceeds, and her husband's retirement system funds. She anticipates getting approximately \$15,000 in life insurance and \$42,000 from his retirement but her lawyers have advised her there is a possibility she may only get \$37,000.¹⁹ Her attorney indicates that a claim has been filed for the same funds by the grandchildren. It will take several months for the court to reach a decision.²⁰

On September 10, 2004, Applicant completed a public trust position application (SF 85-P).²¹ A subsequent background investigation revealed the following accounts were listed in her 2003 bankruptcy filing:²² a \$1,236 account (SOR ¶ 1.d); a \$1,581 debt owed to an insurance company (SOR ¶ 1.e); a \$4,300 delinquent account (SOR ¶ 1.f); a \$2,880 delinquent loan (SOR ¶ 1.g); a \$260 consumer loan account (SOR ¶ 1.h); a \$3,000 department store credit card account (SOR ¶ 1.i); a \$500 credit card account (SOR ¶ 1.j); a \$666 credit card account (SOR ¶ 1.k); a \$1,500 account (SOR ¶ 1.l); a \$762 telephone account (SOR ¶ 1.m); a \$10,000 delinquent student loan account

¹⁴ Gov 5 at 20-21.

¹⁵ Gov 5 at 6.

¹⁶ Tr. at 21, Gov 2.

¹⁷ AE A.

¹⁸ Tr. at 22; Gov 2.

¹⁹ Tr. at 23.

²⁰ AE D.

²¹ Gov 1.

²² Gov 4, Schedule F.

(SOR ¶ 1.n); a \$350 delinquent telephone account (SOR ¶ 1.o); a \$550 delinquent cell phone account (SOR ¶ 1.p); a \$467 delinquent charged off credit card account (SOR ¶ 1.r).²³

In addition to the debts listed in the bankruptcy, Applicant had a judgment entered against her for unpaid rent in December 2006 (SOR ¶ 1.q).²⁴ A credit report dated February 28, 2007,²⁵ revealed additional delinquent debts incurred after the last Chapter 13 bankruptcy was dismissed. The debts include a \$441 delinquent cell phone account placed for collection in July 2003 (SOR ¶ 1.s), a \$92 cell phone account charged off in 2005 (SOR ¶ 1.t); a \$964 cell phone account, placed for collection in April 2006 (SOR ¶ 1.u); a \$714 account placed for collection in August 2006 (SOR ¶ 1.v); a \$311 cell phone account, placed for collection in November 2006 (SOR ¶ 1.w); a \$531 account charged off in January 2006 (SOR ¶ 1.x); and a \$714 credit card account charged off in January 2006 (SOR ¶ 1.y).²⁶

The \$10,000 student loan account alleged in SOR ¶ 1.n is resolved. Applicant paid her student loan in full on December 29, 2005. The obligation for her husband's student loan was closed due to his death.²⁷ Applicant also provided proof that \$2,880 debt alleged in SOR ¶ 1.g was paid in full.²⁸

During the hearing, Applicant denied the debts alleged in SOR ¶¶ 1.d, 1.e, 1.j, 1.k, 1.l, 1.r, 1.u, 1.v, 1.x, and 1.y because she does not recognize them.²⁹ The debts alleged in SOR ¶¶ 1.d, 1.e, 1.j, 1.k, 1.l, and 1.r were listed included in her Chapter 13 bankruptcy that was filed in 2003.³⁰ She admits to owing the debts alleged in SOR ¶¶ 1.f and 1.s, but claims the balances are not that high.³¹ She claims the debts alleged in SOR ¶¶ 1.h, 1.m, 1.o and 1.t are paid in full.³² The debt alleged in SOR ¶ 1.p is a cell phone account she took out in her name for a son's friend. He never paid the bill.³³ She claims her former landlord has no intentions of collecting the \$2,661 judgment entered against

²³ *Id.* at 14 - 17.

²⁴ Tr. at 51-52; Gov 2 at 8.

²⁵ Gov 5.

²⁶ *Id.*

²⁷ AE B.

²⁸ AE C.

²⁹ Tr. at 34-35, 42-44, 53, 57-60.

³⁰ *See* Gov 4, Schedule F.

³¹ Tr. at 36, 54.

³² Tr. at 40, 45, 48, 55.

³³ Tr. at 49; Gov 2 at 7-8.

her for unpaid rent (SOR ¶ 1.q).³⁴ No additional documentation was provided to verify her assertions regarding the debts in this paragraph.

In 2005, Applicant's wages were garnished by the IRS. She forgot to include as income on her 2003 federal income tax return the \$25,000 severance pay she received when she was laid off. The balance due was approximately \$7,000 to \$8,000. Her wages were originally garnished \$250 per pay period. After her husband passed away, she requested the garnishment be reduced to \$25 per pay period. She claims to have paid \$3,847 towards this debt.³⁵

Applicant intends to start resolving her remaining delinquent accounts when the issues dealing with her late husband's life insurance policies and retirement accounts are resolved.³⁶ She admits that her credit is "a mess" at the moment.³⁷ She currently supports her grand-daughter and her grand-daughter's 11-year-old half brother. Both currently live with her. Her son lives with her periodically. He is unemployed and does not help with expenses. He intends to get a job at some point.³⁸

Applicant's current net monthly income is approximately \$1,777.³⁹ Her monthly expenses include rent: \$728; groceries: \$200; utilities: \$275; car: \$425; and medical expenses: \$135. Her IRS garnishment is approximately \$50 per month (\$25 per paycheck).⁴⁰ Her monthly expenses total approximately \$1,813. Her delinquent debt payments are not included in this figure.

Applicant has never attended financial counseling.⁴¹ She considered filing for bankruptcy under chapter 7 but claims her attorneys advised her against it.⁴² She has no other credit card accounts and is not aware of any other delinquent debts.⁴³ She did not provide information pertaining to her work performance.

POLICIES

³⁴ Tr. at 51-53.

³⁵ Tr. at 69-70; Gov 2 at 6 and 8.

³⁶ Tr. at 22, 25.

³⁷ Tr. at 24.

³⁸ Tr. at 60-61. 72-74.

³⁹ Tr. at 63.

⁴⁰ Tr. at 64-69.

⁴¹ Tr. at 69-70.

⁴² Tr. at 72.

⁴³ Tr. at 67, 79.

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.”⁴⁴ 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 guideline at issue in this case is:

Guideline F - Financial Considerations - 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.⁴⁵

Conditions that could raise a trustworthiness concern and may be disqualifying, as well as those which could mitigate security concerns pertaining to this adjudicative guideline, is 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.”⁴⁶ An administrative judge must apply the “whole person concept,” and consider and carefully weigh the available, reliable information about the person.⁴⁷ 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.⁴⁸

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

⁴⁴ *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).

⁴⁵ Revised Adjudicative Guidelines, ¶ 18.

⁴⁶ Directive, ¶ E2.2.1.

⁴⁷ *Id.*

⁴⁸ *Id.*

information.⁴⁹ Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts.⁵⁰ An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.”⁵¹ Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.⁵² 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, and Guideline E - Personal Conduct.

Based on all the evidence, Financial Considerations Disqualifying Conditions (FC DC) ¶ 19(a) (*inability or unwillingness to satisfy debts*), ¶ 19(c) (*a history of not meeting financial obligations*), and ¶ 19(e) (*consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio and/or other financial analysis*) apply to Applicant's case. Applicant has had difficulty meeting her financial obligations since 2001 when she filed her first bankruptcy. While she has made some progress, approximately \$21,680 in delinquent debts remain unresolved. Her monthly debts are currently higher than her monthly income. Her financial situation is poor. FC MC ¶ 19(e) applies because even though Applicant claims her husband only provided her a limited amount each month for expenses, it appears that it was sufficient to pay the monthly living expenses. A large part of her financial problems were caused due to excessive credit card expenses which she could not afford. She admits to spending too much money on her son and granddaughter.

Applicant has the opportunity to mitigate the trustworthiness concerns. Financial Considerations Mitigating Condition (FC MC) ¶ 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. Applicant currently has numerous unresolved delinquent accounts. She has had continuous financial problems over the past six years. Her monthly expenses are approximately \$36 more than her monthly income. Her financial situation remains precarious.

FC MC ¶ 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*) applies, in part. Applicant was unemployed for 16 months between March 2002 and July 2003. This adversely affected her financial situation. However, she received approximately \$25,000 in severance

⁴⁹ Directive, ¶ E3.1.14.

⁵⁰ Directive, ¶ E3.1.15.

⁵¹ ISCR Case No. 01-20700 at 3 (App. Bd. December 19, 2002).

⁵² Directive, ¶ E2.2.2.

pay when she left her previous employer which could have helped with the loss of income during that period. Her separation from her husband in May 2006, his suicide, and his decision to change the beneficiary on his life insurance and retirement accounts prior to his suicide is factor that is beyond her control. Although she is seeking to obtain some of the benefits through legal proceedings, the legal proceedings are pending. It is uncertain that any money received would improve her financial situation over the long term. Her irresponsible financial spending habits existed for several years prior to her husband's untimely death. She admits that she incurred a lot of credit card debt by spending more than she could afford. Her current expenses exceed her current income and she has not presented sufficient information as to the initial steps she is taking to manage her financial situation. Although Applicant experienced conditions that were beyond her control that impacted her financial situation, her track record of financial irresponsibility contributed to her financial situation since at least 2001. Her decision to use her credit card to purchase items for family members that she could not afford was within her control. For these reasons, FC MC ¶ 20(b) is given less weight.

FC MC ¶ 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*) does not apply. Applicant has not attended any formal financial counseling. She currently supports her 42-year-old son, her nine-year-old granddaughter and her granddaughter's 11-year-old half brother. Her monthly expenses exceed her monthly income. With the added burden of supporting an unemployed adult son and two young children, it does not appear that her financial problems will be resolved in the near future.

FC MC ¶ 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) applies with respect to SOR ¶¶ 1.g and 1.n. However, the remaining delinquent accounts remain unpaid. Applicant attempted to resolve her financial situation by filing for Chapter 13 bankruptcy on three occasions. Filing for bankruptcy is a legally permissible way to resolve one's accounts. She was unable to follow through with her repayment plans. Although Applicant intends to resolve her delinquent accounts if she succeeds in her claim filed against her late husband's estate, a promise to pay one's debts in the future is not sufficient to mitigate the trustworthiness concerns under financial considerations.

While it is acknowledged that Applicant has suffered a tremendous tragedy over the past year, her financial situation has been unstable for the past six years and is unlikely to improve in the future. Applicant has not met her burden of proof to mitigate the financial considerations trustworthiness concern. Guideline F is decided against Applicant.

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.

I have considered all the evidence and the "whole person" in evaluating Applicant's trustworthiness. Applicant did not provide information about her work performance. While her

financial situation was aggravated by some factors beyond her control, a lot of the delinquent debts were incurred due to a lack of discipline and budgeting. It is unlikely that Applicant's financial situation will improve in the future. It is not clearly consistent with the national interest to grant Applicant eligibility for assignment to sensitive duties. Eligibility is denied.

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:

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.g:	For Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	Against Applicant
Subparagraph 1.n:	For Applicant
Subparagraph 1.o:	Against Applicant
Subparagraph 1.p:	Against Applicant
Subparagraph 1.q:	Against Applicant
Subparagraph 1.r:	Against Applicant
Subparagraph 1.s:	Against Applicant
Subparagraph 1.t:	Against Applicant
Subparagraph 1.u:	Against Applicant
Subparagraph 1.v:	Against Applicant
Subparagraph 1.x:	Against Applicant
Subparagraph 1.y:	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. Eligibility is denied.

Erin C. Hogan
Administrative Judge