

KEYWORD: Financial

DIGEST: During the past seven years, Applicant has accumulated numerous delinquent debts, including two resulting from automobile repossessions. She presented no evidence that any debts were resolved and no evidence of a plan for resolving them. Trustworthiness concerns based on financial considerations are not mitigated. Eligibility is denied.

CASENO: 06-09243.h1

DATE: 04/11/2007

DATE: April 11, 2007

In re:)	
)	
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SSN: -----)	ADP Case No. 06-09243
)	
Applicant for ADP I/II/III Position)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
LEROY F. FOREMAN**

APPEARANCES

FOR GOVERNMENT

Ray T. Blank, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

During the past seven years, Applicant has accumulated numerous delinquent debts, including two resulting from automobile repossessions. She presented no evidence that any debts

were resolved and no evidence of a plan for resolving them. Trustworthiness concerns based on financial considerations are not mitigated. Eligibility is denied.

STATEMENT OF THE CASE

On June 12, 2006, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its preliminary decision to deny Applicant eligibility for assignment to an ADP I/II/III position. This action was taken Executive Order 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive), and Department of Defense Regulation 5200.2-R, *Personnel Security Program* (Jan. 1987), as amended and modified (Regulation).

The SOR alleged trustworthiness concerns raised under Guideline F (Financial Considerations) of the Regulation. Applicant answered the SOR in writing on August 29, 2006, and elected to have the case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on January 25, 2007. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant received the FORM on February 6, 2007, but did not respond. The case was assigned to me on March 28, 2007.

FINDINGS OF FACT

Applicant is a 31-year-old claims associate for a defense contractor. She has worked for her current employer since September 1996. She is unmarried and has two children, ages four and 13. She has never held a security clearance or been found eligible for sensitive positions.

The SOR alleges seven delinquent debts totaling more than \$26,000. Applicant has admitted all the debts. (FORM Item 2). The two largest debts were attributable to car repossessions. The debt of \$2,992 alleged in SOR ¶ 1.a occurred when her car was wrecked, but the insurance was insufficient to pay off the balance due on the loan, and it was repossessed in 2002. The debt of \$20,741 alleged in SOR ¶ 1.f occurred when she purchased a car in March 2004 but could not afford the payments. It was repossessed in September 2004. The remaining delinquent debts are for jewelry (\$1,190) (SOR ¶ 1.b), two medical bills for \$104 and \$80 (SOR ¶¶ 1.c and 1.d), a telephone bill of \$707 (SOR ¶ 1.e), and a delinquent credit card account with a balance of \$669 (SOR ¶ 1.f). (FORM Item 5 at 1-2; FORM Items 6, 7, and 8.)

In June 2005, Applicant provided a security investigator with a personal financial statement showing monthly net income of \$1,939, monthly expenses of \$806, monthly debt payments of \$1,243, and a net monthly shortfall of \$109. Her two largest expenses were a mortgage payment of \$423 and a car payment of \$450. (FORM Item 5 at 4.) Her monthly shortfall is alleged in SOR ¶ 1.h. Applicant has submitted no evidence of payment, attempted payment, or a plan for resolving the debts.

POLICIES

The adjudicative guidelines set out in Department of Defense Regulation 5200.2R, *Personnel Security Program* (Jan. 1987), as amended and modified (Regulation), are used to make ADP trustworthiness determinations. Department of Defense contractor personnel are afforded the right to the procedures contained in DOD Directive 5220.6 before any final unfavorable trustworthiness determination may be made. Regulation ¶ C8.2.1.

Positions designated as ADP I and ADP II are classified as “sensitive positions.” Regulation ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3. “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 personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline.

“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.” Regulation Appendix 8. Each eligibility determination must be a fair, impartial, and commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Regulation.

In security clearance cases, the Government must initially present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information. Directive ¶ E3.1.14. Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 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. These same burdens of proof apply to trustworthiness determinations for ADP positions.

CONCLUSIONS

Guideline F—Financial Considerations

Under this guideline, “[a]n individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.” Regulation Appendix 8 at 144. A person who fails or refuses to pay long-standing debts or is financially irresponsible may also be irresponsible or careless in his or her duty to protect sensitive information. Two disqualifying conditions (DC) under this guideline could raise a trustworthiness concern and may be disqualifying in this case. DC 1 applies where an applicant has a history of not meeting his or her financial obligations. *Id.* DC 3 applies where an applicant has exhibited inability or unwillingness to satisfy debts. *Id.*

Since the government produced substantial evidence to raise DC 1 and DC 3, the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts. Directive

¶ E3.1.15. Applicant has the burden of proving a mitigating condition, and the burden of disproving it is never shifted to the government. *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

A trustworthiness concern based on financial problems can be mitigated by showing the delinquent debts were not recent (MC 1) or were isolated incidents (MC 2). Regulation Appendix 8 at 144. Applicant has multiple delinquent debts that remain unresolved. I conclude MC 1 and MC 2 are not established.

Trustworthiness concerns arising from financial problems can be mitigated by showing they are the result of conditions “largely beyond the person’s control” (MC 3). *Id.* Even if Applicant’s financial difficulties initially arose due to circumstances beyond her control, it is appropriate to consider whether she acted in a reasonable manner when dealing with her financial difficulties. ISCR Case No. 02-02116 at 4 (App. Bd. Sep. 25, 2003). The total loss of her car in 2002 was a circumstance beyond her control, but Applicant presented no evidence of reasonable efforts to resolve or compromise the debt that resulted from the insurance shortfall. I conclude MC 3 is not established.

A mitigating condition (MC 4) applies when an applicant “has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control.” Regulation Appendix 8 at 144. MC 4 is not established because Applicant has not sought financial counseling.

A trustworthiness concern arising from financial problems can be mitigated by showing a good-faith effort to resolve debts (MC 6). *Id.* The concept of good faith “requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.” ISCR Case No. 99-0201, 1999 WL 1442346 at *4 (App. Bd. Oct. 12, 1999). Applicant presented no evidence of any effort to resolve the debts alleged in the SOR. I conclude MC 6 is not established.

Whole Person Analysis

In addition to the specific disqualifying and mitigating conditions under Guideline F, I have considered: (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. Regulation Appendix 8 at 132.

Applicant is a mature woman who has been employed since graduating from high school, and has worked for her current employer for more than 10 years. Her delinquent debts have remained unresolved for many years, and she has presented no evidence of a plan to resolve them.

After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the trustworthiness concerns based on based on financial considerations. Accordingly, I conclude she

has not carried her burden of showing that it is clearly consistent with the interests of national security to grant her eligibility for assignment to an ADP I/II/III position.

FORMAL FINDINGS

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

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraphs 1.a-1.h: Against Applicant

DECISION

In light of all of the circumstances in this case, it is not clearly consistent with national security to grant Applicant eligibility for an ADP I/II/III position. Eligibility is denied.

LeRoy F. Foreman
Administrative Judge