

KEYWORD: Financial

DIGEST: Applicant has 12 unpaid, old debts. Eleven of the twelve Statement Of Reasons (SOR) debts are time-barred and not legally collectible. Four debts were not established and two debts are duplicates. Her debts occurred when she missed work following surgery and nonpayment of wages. She has worked for her employer for 18 years without any violations of company rules and policies. She pays her regular bills in a timely fashion, raises her godson, and complies with the law. She has mitigated the government's concerns under Guideline F. Eligibility for a public trust position is granted.

CASENO: 06-09302.h1

DATE: 04/24/2007

DATE: April 24, 2007

In re:	)	
	)	
	)	
-----	)	ADP Case No. 06-09302
SSN: -----	)	
	)	
Applicant for Trustworthiness Determination	)	

**DECISION OF ADMINISTRATIVE JUDGE  
MARY E. HENRY**

**APPEARANCES**

**FOR GOVERNMENT**

Ray T. Blank, Jr., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant has 12 unpaid, old debts. Eleven of the twelve Statement Of Reasons (SOR) debts are time-barred and not legally collectible. Four debts were not established and two debts are duplicates. Her debts occurred when she missed work following surgery and nonpayment of wages. She has worked for her employer for 18 years without any violations of company rules and policies. She pays her regular bills in a timely fashion, raises her godson, and complies with the law. She has mitigated the government's concerns under Guideline F. Eligibility for a public trust position is granted.

### **STATEMENT OF CASE**

On August 17, 2004, Applicant submitted an application for a position of public trust, an ADP I/II/III position. 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").<sup>1</sup> On August 31, 2006, DOHA issued Applicant a 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 dated September 26, 2006, Applicant responded to the SOR allegations and requested a hearing. DOHA assigned the case to me on December 21, 2006, and issued a notice of hearing on January 29, 2007. I conducted a hearing on February 15, 2007. The government submitted six exhibits (GE) which were marked and admitted into the record as GE 1-6 without objection. Applicant submitted three exhibits (App Ex), which were marked and admitted as App Ex A-C. Applicant testified on her own behalf. I held the record open until March 2, 2007, to allow Applicant to submit further documents, which she did. Applicant submitted five additional documents, which were marked and admitted without objection. Applicant also requested additional time to submit further documentation. I granted her request in an Order dated March 8, 2007, and held the record open until April 2, 2007. No additional documentation has been received. DOHA received the hearing transcript (Tr.) on March 9, 2007.

### **FINDINGS OF FACT**

In her SOR response, Applicant admitted to SOR allegations 1.a, 1.b, 1.g, 1.h, 1.j, and 1.l, under Guideline F. She denied any knowledge of the remaining allegations.<sup>2</sup> 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.

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<sup>1</sup> 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.

<sup>2</sup> Applicant's response to the SOR, dated September 26, 2006.

Applicant, a 47-year-old woman seeking a position of public trust, works as a claims associate for a Department of Defense contractor. She has worked for her employer for 18 years. She is single and is raising her godson, who is now 13 years old. She receives no child support from his parents. Her elderly, retired, and ill mother lives with her.<sup>3</sup>

Beginning in 1989, Applicant experienced several medical problems, which caused her to miss time from work and incur medical bills. Most recently, she underwent surgery in 2001 and again in 2002. She missed significant time from work after each surgery. She lost salary and incurred medical expenses not covered by her health insurance. Subsequent to her surgery in 2002, her doctor diagnosed diabetes. She also developed diabetic neuropathy, diverticulosis, and esophagitis. Her doctor prescribed six medications, including neurontin, a muscle relaxer, and glucophage, all of which she takes daily. She recently changed health care plans, which reduced her prescription drug costs from about \$300 a month to approximately \$180 a month, plus the \$40 monthly cost for diabetic testing strips.<sup>4</sup>

Applicant's gross monthly pay is \$2,334 plus occasional overtime. Her net monthly pay varies, but is approximately \$1,475. Her monthly expenses include \$400 for food, \$440 for utilities, \$120 for gasoline, \$125 for a loan, \$260 for medical expenses and prescriptions, and \$65 for miscellaneous expenses. Her total monthly expenses of \$1,410 leave about \$65 a month to pay her debts.<sup>5</sup>

A review of Applicant's credit reports dated October 21, 2004, April 14, 2006, and the SOR shows 12 unpaid debts totaling \$24,189.<sup>6</sup> The current status of these debts is as follows:<sup>7</sup>

SOR ¶	TYPE OF DEBT, DATE	AMOUNT	CURRENT STATUS
1.a	Medical bill (2002)	\$ 708.00	Unpaid (barred SL)
1.b.	Credit card (2002)	\$ 1,358.00	Unpaid (barred SL)
1.c.	Collection account (2002) (unidentified creditor)	\$ 1,383.00	Unpaid (barred SL), not established
1.d.	Collection account (2003) (unidentified creditor)	\$ 2,444.00	Unpaid (barred SL) not established
1.e.	telephone account (2003)	\$ 696.00 (originally \$342)	Unpaid, disputes

<sup>3</sup>GE 1(Application for position of public trust, dated August 17, 2004) at 1, 2, 5; Tr. at 18-20.

<sup>4</sup>Tr. at 21, 23-24, 36-45.

<sup>5</sup>App Ex H (Earnings and leave statements, dated March 2, 2007 and February 2, 2007); Tr. at 35-40.

<sup>6</sup>All SOR debts except 1.g are barred from collection by applicable statute of limitations (SL).

<sup>7</sup>GE 5 (Credit report, dated October 21, 2004); and GE 6 (Credit report, dated April 17, 2006).

1.f.	Collection account (2002) (unidentified creditor)	\$ 560.00	Unpaid same as allegation 1.c
1.g.	Car repossession (2005)	\$12,416.00	Unpaid
1.h.	Medical bill (2002)	\$ 25.00	Unpaid (barred SL)
1.i.	Medical bill (2003)	\$ 140.00	Unpaid (barred SL) not established
1.j.	Medical bill (March 2004)	\$ 1,176.00	Unpaid (barred SL)
1.k.	Medical bill (date unknown)	\$ 371.00	Unpaid <sup>8</sup>
1.l.	Collection account (2003)	\$ 2,912.00	Unpaid (barred SL), duplication of allegation 1.d <sup>9</sup>

After missing two car payments, Applicant called the creditor and requested that she be allowed to make small payments on her overdue balance. The creditor declined to accept her offer; instead the creditor demanded that she pay the full past due amount or her car would be repossessed. She could not pay the full overdue amount. She did not recognize many of the unidentified debts listed in the SOR. She contacted several financial counseling agencies by telephone, but has not retained a counseling service. Her credit reports reflect that she has paid other debt in a timely manner.<sup>10</sup>

Applicant's last three performance reviews consistently reflect that she performs her work at the "sometimes exceeds expectations" level. Her co-workers and friends describe her as friendly, dependable, trustworthy and a team player. During her 18 years of employment, she has never been disciplined for, nor has she violated, company rules and regulations regarding beneficiary privacy. She scrupulously follows the rules in the work place.<sup>11</sup>

## POLICIES

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 . . .

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<sup>8</sup>This debt is not listed on either credit report. *Id.*

<sup>9</sup>GE 6 indicates that this account was purchased by the creditor listed in allegation 1.d. The SOR debt amount listed for this account is incorrect, as neither credit report lists a second account with this creditor.

<sup>10</sup>GE 5, *supra* note 6; GE 6, *supra* note 6; Tr. at 27-29, 30-31.

<sup>11</sup>App Ex A (Letter, dated February 1, 2007); App Ex B (Undated letter); App Ex C (Undated letter); App Ex D (Performance evaluation, dated February 8, 2005); App Ex E (Performance evaluation, dated January 22, 2004); App Ex F (Performance evaluation, dated January 16, 2003).

that will give that person access to such information.”<sup>12</sup> 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 are:

Guideline F - Financial Considerations - An individual who is financially overextended is at risk of having to engage in illegal or unethical acts to generate funds to meet financial obligations. Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligation to protect classified or sensitive information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

Conditions that could raise a trustworthiness concern and may be disqualifying, as well as those which could mitigate security concerns pertaining to these adjudicative guidelines, are 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.<sup>13</sup> An administrative judge must apply the “whole person concept”, and consider and carefully weigh the available, reliable information about the person.<sup>14</sup> 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.<sup>15</sup>

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 information.<sup>16</sup> Thereafter, the applicant is responsible for presenting evidence to rebut, explain,

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<sup>12</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).

<sup>13</sup> Directive, ¶ E2.2.1.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> Directive, ¶ E3.1.14.

extenuate, or mitigate the facts.<sup>17</sup> An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.”<sup>18</sup> Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.<sup>19</sup> 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.

### **Financial Considerations**

Based on all the evidence, Financial Considerations Disqualifying Conditions (FC DC) E2.A6.1.2.1 (*A history of not meeting financial obligations*), and FC DC E2.A6.1.2.3 (*Inability or unwillingness to satisfy debts*) apply to Applicant’s case as to allegations 1.a, 1.b, 1.f, 1.g, 1.h, and 1.j. Based on the credit reports of record, I find 1.d. and 1.l are the same debt, the amount owed is \$2,444, and these FC DC apply to the allegation. Given the length of time these debts have existed, Applicant has a history of not paying her debts. The debts remain unpaid, therefore, she has either been unwilling or unable to pay these debts.

The government has not established its case as to allegations 1.c, 1.d., 1.f, 1.i, 1.k, and 1.l. Although she initially admitted the debts identified in these allegations, Applicant denied these debts at the hearing because she did not know to whom she owed this money. These allegations either do not identify the name of the creditor or simply list a credit collection agency, without identifying the underlying creditor. Thus, Applicant is not on notice as to whom she owes these debts and cannot make any inquiries to pay the debt. The debt identified in allegation 1.k is not listed on either credit report. The government has not established through its evidence that these debts belong to Applicant because the credit reports lack sufficient information to give Applicant notice as to whom she owes money.

I considered the Financial Considerations Mitigating Conditions (FC MC). FC MC E2.A6.1.3.1 (*The behavior was not recent*), and FC MC E2.A6.1.3.2 (*The behavior was isolated*) do not apply because Applicant has numerous, delinquent financial accounts which are several years old.

FC MC E2.A6.1.3.3 (*The conditions that resulted in the behavior were largely beyond the person’s control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce, or separation)*) applies. In 2001 and 2002, Applicant incurred financial losses

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<sup>17</sup> Directive, ¶ E3.1.15.

<sup>18</sup> ISCR Case No. 01-20700 at 3 (App. Bd. December 19, 2002).

<sup>19</sup> Directive, ¶ E2.2.2.

because of medical problems. She missed significant time from work while convalescing from surgery. She lost income as her absence was not fully covered by her accumulated leave and company leave policies. Although she had medical insurance, it did not pay all her medical expenses, leaving a portion of the bills for her to pay.

FC MC E2.A6.1.3.4 (*The person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or under control*) does not apply. Although Applicant contacted several financial counseling agencies, she did not retain a service and receive financial counseling.

FC MC E2.1.3.6 (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) is not applicable as Applicant has not made any effort to resolve her outstanding debt issues.

She does, however, receive some credit in the whole person analysis, *infra*, for the application of the 3-year South Carolina statute of limitations, which applies to all the SOR debts established by the government, except allegation 1.g. *See* S.C. Code. Ann. § 15-3-530.<sup>20</sup> The South Carolina Court of Appeals succinctly explained the societal and judicial value of application of the statute of limitations:

Statutes of limitations embody important public policy considerations in that they stimulate activity, punish negligence and promote repose by giving security and stability to human affairs. The cornerstone policy consideration underlying statutes of limitations is the laudable goal of law to promote and achieve finality in litigation. Significantly, statutes of limitations provide potential defendants with certainty that after a set period of time, they will not be ha[iled] into court to defend time-barred claims. Moreover, limitations periods discourage plaintiffs from sitting on their rights. Statutes of limitations are, indeed, fundamental to our judicial system.

*Carolina Marine Handling, Inc. v. Lasch*, 363 S.C. 169, 175-76, 609 S.E.2d 548, 552 (S.C. Ct. App. 2005) (internal quotation marks and citations omitted).

Elimination of most of her delinquent debt load through the statute of limitations has ended her potential vulnerability to improper financial inducements because she is no longer “financially overextended,” but it does not negate her past conduct in not paying her outstanding debts.

### **Whole Person Analysis**

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

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<sup>20</sup>*See* ISCR Case No. 04-07360 at 2 (App. Bd. Sept. 26, 2006) (stating partial credit was available under FCMC 6 for debts being resolved through garnishment).

merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

Applicant has worked for 18 years for her current employer, a Defense Department contractor. She has followed company rules and has not violated the privacy rights of the beneficiaries she serves. She performs her job well and is respected by her co-workers and friends. She undertook the responsibility of raising a godson 13 years ago. Applicant is a responsible individual, who has maintained the same employment for many years and who follows the general rules of society. She does not have a police record or problems with drugs or alcohol.

About six years ago, her medical problems became more severe and required surgery to resolve. She lost time from work, for which she received less than full pay. She also incurred medical debt, which she could not pay. Her current income level leaves little room for her to repay her old debts. She does keep current on her living expenses and has timely paid many of her bills in the past.

Except for the money still due on her car repossession, she has no debt for which she is legally responsible. She got behind in her car payments, not because she spent money frivolously or unwisely, but simply because her income level would not cover both her car payment and her unexpected medical expenses. She attempted to resolve the missed car payments, but the creditor refused to work with her. She did not avoid paying her bills; she simply had no extra money to pay these extra expenses. The absence of significant, new delinquent debt over in two years and a change in health plans to help pay her medical expenses are additional factors which evidence rehabilitation, positive behavior changes, and self-discipline in regards to her finances. The potential for pressure, coercion, exploitation, or duress is low because she is current on her recent debts, and has been steadily employed for the last 18 years. She is very conscious of her income limitations and has shown an ability to live within her monthly income. Unexpected losses in income or unexpected bills have a significant and immediate impact on her finances. Her attitude about her finances and her adherence to her budget support a determination of trustworthiness.

In sum, in the absence of unanticipated and unusual expenses, the likelihood of new debt problems is low. Although all of the SOR debts remain unpaid, there is little likelihood that this unpaid debt would present a security clearance problem as she is not legally liable for 11 of these debts under state law, four of which were not established as hers and two of which are duplicates of other identified debts. She is a long-term employee with a good performance record. She has not been disciplined for violation of patient privacy issues and there is little likelihood she would violate these privacy rights because of her existing debt problems. After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole person,<sup>21</sup> I conclude she has mitigated the trustworthiness concerns pertaining to financial considerations.

### **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:

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<sup>21</sup>See ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006).



SOR ¶ 1-Guideline F:  
Subparagraphs 2.a-1

FOR APPLICANT  
For Applicant

**DECISION**

In light of all of the evidence presented in this case, it is clearly consistent with the national interest to grant Applicant eligibility for assignment to sensitive duties. Eligibility is granted.

Mary E Henry  
Administrative Judge