

KEYWORD: Financial

DIGEST: Applicant is an employee of a defense contractor seeking eligibility for an ADP level I/II/III position. She has two delinquent credit card debts with the same creditor. She attempted to pay collection agencies, but could not reach a satisfactory agreement. She now has an agreement with the original credit card company, and has started making payments as agreed. Applicant has mitigated eligibility concerns based on her finances. Eligibility is granted.

CASENO: 06-10014.h1

DATE: 06/21/2007

DATE: June 21, 2007

In Re:	)	
	)	
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SSN: -----	)	ADP Case No. 06-10014
	)	
Applicant for ADP I/II/III Position	)	

**DECISION OF ADMINISTRATIVE JUDGE  
THOMAS M. CREAN**

**APPEARANCES**

**FOR GOVERNMENT**

Ray T. Blank, Jr., Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

\_\_\_\_\_ Applicant is an employee of a defense contractor seeking eligibility for an ADP level I/II/III position. She has two delinquent credit card debts with the same creditor. She attempted to pay collection agencies, but could not reach a satisfactory agreement. She now has an agreement with the original credit card company, and has started making payments as agreed. Applicant has mitigated eligibility concerns based on her finances. Eligibility is granted.

### **STATEMENT OF THE CASE**

On August 23, 2006, the Defense Office of Hearing and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to deny Applicant eligibility for an information systems position designated ADP I/II/III. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive). Applicant acknowledged receipt of the SOR on August 29, 2006. The SOR alleges eligibility concerns under Guideline F (Financial Considerations), of the Directive.

Applicant answered the SOR in writing on October 9, 2006. She admitted both allegations under Guideline F, but denied the eligibility concern. She provided an explanation for her delinquent debts. She elected to have the matter decided on the written record in lieu of a hearing.

Department Counsel submitted the Government's written case on March 20, 2007. Applicant received a complete file of relevant material (FORM) on March 23, 2007, and was provided the opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. She timely responded with additional information. On May 23, 2007, Department Counsel responded that there was no objection to consideration of the additional material. The case was assigned to me on May 29, 2007.

### **FINDINGS OF FACT**

Applicant is a 58-year-old employee of a defense contractor. She has worked for this employer for over seven years. She is married with two grown children. She submitted a questionnaire for a public trust position on August 18, 2004.<sup>1</sup>

Credit reports of October 9, 2004,<sup>2</sup> May 2, 2006,<sup>3</sup> and August 15, 2006,<sup>4</sup> and Applicant's own admission, shows she has two delinquent credit card accounts with the same creditor for \$5,758, and

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<sup>1</sup>Item 4.

<sup>2</sup>Item 7.

<sup>3</sup>Item 8.

<sup>4</sup>Item 9.

\$6,780, totaling \$12,538. All of her other active and open debts are either closed or paid as agreed.

Applicant incurred the delinquent credit card debts starting in 2003 when she and her husband were having marital difficulties. They lived in the same house but her husband ceased providing financial support for the family. Applicant also experienced medical problems which would incapacitate her at times. Her condition was later diagnosed as sleep apnea. These two problems caused her to be depressed. Constant inquiries and telephone calls from the credit company also added to her depression. As a result of her condition and realizing her credit with the credit card company was already ruined, she stopped making payment on the two credit cards. She continued to make payments on her other accounts keeping them current. Applicant was not using the two credit cards, but the balances were increasing because of interest, penalties, and late fees.<sup>5</sup>

Applicant attempted to pay the delinquent debts starting in mid-2006. She contacted the credit card company and learned the account had been transferred to a collection agency. The collection agency told her they would only accept a lump sum payment of 70% of the debt to settle and close the account. She contacted the credit card company and was informed the account was transferred to another collection agency. She sought advise from a credit assistance agency but was advised they could not assist her since the account was in collection. She informed the credit counselors of the problems she had paying the collection agency. They advised her to send the new collection agency a payment arrangement letter with a check for the first payment. If the collection agency cashed the check, they would be agreeing to the proposed payment arrangement. She sent the letter, the check was cashed, and she continued to send checks bi-weekly for payment from September 2006 to April 2007.

In April 2007, she requested from the collection agency a letter confirming her payments. They told her they received only one payment. Applicant had the cancelled checks she sent for payment, and forwarded them with her response to the FORM to establish that payments were made. The credit agency told her they would no longer handle her account and would return the file to the original credit card company. The credit card company credited her with all payments. The credit card company agreed to a payment plan, and Applicant has made regular payments on this plan.<sup>6</sup>

Applicant has an excellent work record. She received recognition for suggesting improvements to the claims processing system. Her work performance ratings have been “Exceeds Expectations.” She presented letters from family, friends, and co-workers attesting to her work performance, honesty, and reliability.<sup>7</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>5</sup>Item 2, (Response to SOR, dated October 9, 2006); Response to FORM, undated (received April 30, 2007).

<sup>6</sup>See, Response to FORM, undated (received April 30, 2007), with attachments.

<sup>7</sup>*Id.*

that will give that person access to such information.”<sup>8</sup> To be eligible to occupy an information systems position designated ADP I/II/III, an applicant must meet the guidelines contained in the Regulation. The standard that must be met 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.<sup>9</sup>

The Regulation sets out the adjudicative guidelines for making trustworthiness determinations. The adjudicative guideline at issue in this case is:

Guideline F - Financial Considerations: A security concern exists for an individual who is financially irresponsible. An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligations to protect classified 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 security concern and may be disqualifying, as well as those which would mitigate security concerns, pertaining to the adjudicative guideline are set forth and discussed in the conclusions section 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. An administrative judge must apply the “whole person concept,” and consider and carefully weigh the available, reliable information about the person. An administrative judge should consider: (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 applicant’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 of recurrence.<sup>10</sup>

DoD contractor personnel are afforded the rights to the procedures contained in the DoD Directive before any final unfavorable access determination may be made.<sup>11</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 a public trust position.<sup>12</sup> Thereafter,

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<sup>8</sup>*Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>9</sup>Regulation ¶ C6.1.1.1.

<sup>10</sup>DoD 5200.2-R, Appendix 8.

<sup>11</sup>DoD 5200.2-R, ¶ C8.2.1.

<sup>12</sup>Directive ¶ E3.1.14.

Applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts.<sup>13</sup> An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue her eligibility.”<sup>14</sup> “[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability.”<sup>15</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>16</sup> Each eligibility decision must be fair, impartial, and a commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Regulation, Appendix 8. A person granted eligibility for an information systems position enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants eligibility to occupy an information systems position designated ADP I/II/III. The decision to deny an individual eligibility for the position is not necessarily a determination as to the loyalty of the applicant.<sup>17</sup> It is merely an indication that the applicant has not met the strict guidelines have established for issuing such eligibility.

## CONCLUSIONS

I carefully considered all of the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

Applicant’s delinquent debts reported by credit reports and admitted by Applicant brings the matter within Financial Considerations Disqualifying Conditions (FC MC) E2.A6.1.2.1 (*a history of not meeting financial obligations*), and FC DC E2.A6.1.2.3 (*an inability or unwillingness to satisfy debts*). Applicant accumulated delinquent debt because she did not make required payments on two credit card debts. I conclude the above disqualifying conditions have been established.

I considered Financial Consideration Mitigating Conditions (FC MC) E2.A6.1.3.1 (*The behavior was not recent*), and FC MC E2.A6.1.3.2 (*It was an isolated incident*). Applicant has not satisfied the debts, and only recently started to make payments on the debts . Even though the debts are with the same credit card company, the debts are for two different credit cards. The debts are not recent and not isolated, since they are long standing, not paid, and from two sources. The mitigating conditions do not apply.

Applicant incurred the delinquent debt because of marital problems and a medical condition raising 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*

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<sup>13</sup>ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15.

<sup>14</sup>ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

<sup>15</sup>ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993))

<sup>16</sup>*Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.

<sup>17</sup>*See* Exec. Or. 10865 § 7.

*death, divorce, or separation*). Applicant and her husband had marital problems that caused him to stop contributing to the family's needs. However, it was within her control to require her husband to provide for his family or make changes in the family requirements because of the marital problem and the husband's lack of support. While her sleep apnea is a valid medical condition, it did not affect her ability to pay all of her debts. It was her decision not to pay the delinquent credit card debts. Her marital and medical problems were not sufficient to mitigate the eligibility concerns.

I considered FC MC E2.A6.1.3.6 (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*). For this mitigating condition to apply, there must be an "ability" to repay the debts, the "desire" to repay, and "evidence" of a good-faith effort to repay. A systematic, concrete method of handling debts is needed. Applicant is paying all of her debts as agreed except two credit card debts. She attempted to start a payment plan with the collection agencies but they were not cooperative. She made payments to one collection agency but they did not acknowledge she made payments even though she had cancelled checks to prove payment. She now has an agreed payment plan with the original credit card agency and is making payments on that plan. Appellant developed a systematic, concrete plan to pay her past-due obligations. Her other debts are current and being paid on time. Appellant has the ability to pay the debts, has shown a strong desire to pay them, and has made a good effort to pay them. Her finances are stable. She is living within her means and not incurring additional debts. Appellant has a concrete plan to overcome her financial problems, and she is not a security risk. Appellant has established her good-faith efforts to resolve her debts, and has mitigated security concerns based on her financial situation. I conclude under the circumstances Appellant has shown a good-faith effort to repay her past due obligations.

I carefully considered all of the circumstances in light of the "whole person" concept. I conclude Applicant is eligible for a position of public trust.

### **FORMAL FINDINGS**

Formal findings for or against Applicant on the allegations in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraph 1.a.:	For Applicant
Subparagraph 1.b.:	For Applicant

### **DECISION**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national security to grant or continue eligibility for assignment to sensitive duties for Applicant. Eligibility is granted.

Thomas M. Crean  
Administrative Judge