

KEYWORD: Financial

DIGEST: Applicant has had financial problems since she separated from her first husband. A November 2001 bankruptcy filing listing liabilities of \$36,723.47 was dismissed in October 2002 because of foreclosure proceedings on her mobile home. Financial considerations concerns are not mitigated where she owes more than \$40,000 in delinquent debt and has not yet shown that she can live within her means. It is not clearly consistent with the national interest to grant her a position of public trust.

CASENO: 06-11364.h1

DATE: 04/17/2007

DATE: April 17, 2007

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| In re: |) | |
| |) | |
| |) | |
| ----- |) | ADP Case No. 06-11364 |
| SSN: ----- |) | |
| |) | |
| Applicant for ADP I/II/III Position |) | |
| |) | |

**DECISION OF ADMINISTRATIVE JUDGE
ELIZABETH M. MATCHINSKI**

APPEARANCES

FOR GOVERNMENT

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

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has had financial problems since she separated from her first husband. A November 2001 bankruptcy filing listing liabilities of \$36,723.47 was dismissed in October 2002 because of foreclosure proceedings on her mobile home. Financial considerations concerns are not mitigated where she owes more than \$40,000 in delinquent debt and has not yet shown that she can live within her means. It is not clearly consistent with the national interest to grant her a position of public trust.

STATEMENT OF THE CASE

On August 26, 2004, 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 Regulation 5200.2-R, *Personnel Security Program*, dated January 1987, as amended and modified (“Regulation”), and Department of Defense Directive 5220.6 (Directive), *Defense Industrial Personnel Security Clearance Review Program*, dated January 1992, as amended and modified (“Directive”).¹ In a Statement of Reasons (SOR), undated, DOHA proposed to deny or revoke access to a sensitive position for Applicant because of conduct alleged under Guideline F (financial considerations) of the adjudicative guidelines. Applicant answered the SOR on August 22, 2006, and elected to have a decision on the written record without a hearing.

The government submitted a File of Relevant Material (FORM) on January 31, 2007, consisting of 11 exhibits (Items 1-11). On February 1, 2007, DOHA forwarded a copy of the FORM to Applicant and instructed her to respond within 30 days of receipt. Applicant submitted her rebuttal, which was notarized on March 7, 2007, and included documentation of a wage garnishment for her student loan debt. On March 14, 2007, Department Counsel did not object to her response. The case was assigned to me on March 22, 2007, to consider whether it is clearly consistent with the national interest to grant Applicant a position of trust.

FINDINGS OF FACT

DOHA alleged Applicant owes \$43,706 in delinquent debt (¶¶ 1.a through 1.i), and that a Chapter 13 bankruptcy filing with liabilities of \$36,723.47 and assets of \$35,104 was dismissed in October 2002 (¶ 1.j). Applicant admitted the debts alleged in ¶¶ 1.a, 1.b, 1.d, 1.g, 1.h, and 1.i, as well as the bankruptcy filing (¶ 1.j). She explained that the debts listed in her Chapter 13 petition included medical bills (¶¶ 1.d and 1.i), car debt (¶ 1.h), and a mortgage debt (¶ 1.g) for which she remained responsible, even though she had given the house to her ex-husband in their divorce. She denied owing the \$2,437 in ¶ 1.c as she did not recognize the original creditor, the \$70 in ¶ 1.e, as she thought it had been paid, and the \$5,037 in ¶ 1.f as the car had been sold and she was told she owed “\$1,000 and something.”

Applicant’s admissions to delinquent debt and to the bankruptcy filing and dismissal are incorporated as findings of fact. After a thorough review of the documents before me for consideration, I make the following additional findings:

Applicant is a 33-year-old offsite claims processor/adjuster for a TRICARE support contractor. She has been employed by the contractor since September 1996. While working full-time, she pursued an associate’s degree in business from 1998 to 2002.

¹By memorandum from the Deputy Under Secretary of Defense (Counterintelligence and Security) dated November 19, 2004, DOHA was authorized to utilize the procedures of DoD Directive 5220.6 to resolve contractor cases forwarded to it by the Defense Security Service (DSS) or the Office of Personnel Management (OPM) for trustworthiness determination, including those involving ADP-I, ADP-II, and ADP-III positions. Applicant’s trustworthiness is adjudicated under the revised adjudicative guidelines set forth in Appendix 8 of Department of Defense Regulation 5200.2-R, *Personnel Security Program*, dated January 1987, as amended and modified (“Regulation”).

In 2001, Applicant and her first husband separated. He did not pay court-ordered child support for their two children, then ages two and seven. Child support was initially set at \$150 per week but was later reduced to \$56 per week. Applicant struggled financially. She and her ex-husband fell behind \$3,600 in payments on the mobile home they had jointly purchased in January 1995, and the lender repossessed the mobile home in May 2001. In November 2001, she filed a Chapter 13 bankruptcy petition. Of the \$36,723 in listed total liabilities, \$26,000 was for the mobile home valued at \$28,169 (¶ 1.g). She also owed secured loans of \$1,454.08 for a computer, \$1,098 for furniture, and \$3,549.20 for a 1994 model-year van with a market value of \$1,935. All but \$400 of the unsecured claims of \$4,622.19 was for student loans incurred more than seven years before the bankruptcy filing. Based on a reported monthly net remainder of \$195.25, Applicant planned to pay \$155 each month under the Chapter 13 bankruptcy. The bankruptcy was dismissed in October 2002 before its scheduled completion.

A check of Applicant's credit on October 28, 2003, revealed several outstanding debts: a \$1,928 past due balance for her computer (¶ 1.c); the involuntary repossession of the mobile home with a balance due of \$26,211 (¶ 1.g); a \$73 debt in collection (not alleged); \$8,240 past due on an individual installment loan in collection (¶ 1.h);² a \$79 debt in collection (not alleged); a \$6,365 balance for an automobile repossessed in 2001 (¶ 1.f); an \$88 satellite dish television debt in collection since May 2003 (not alleged); 13 medical debts in collection totaling \$2,051 (\$377 of it alleged in ¶ 1.i); three cellular phone debts totaling \$866 (\$359 of it alleged in ¶ 1.d); and a \$305 debt balance owed a specialty merchant (not alleged). Also reported was a defaulted student loan of \$2,000 taken out in March 1994 (not alleged). Another student loan of \$5,500 was in deferred status.

On December 12, 2003, Applicant was interviewed by a special investigator for the Office of Personnel Management (OPM). She attributed her bankruptcy filing in 2001 to her divorce and ex-husband's failure to pay child support, and claimed to have paid \$200 per month for about six months under the plan before her bankruptcy was dismissed. Applicant acknowledged continuing financial struggles but asserted she was current in her bills. Applicant did not dispute the computer debt (¶ 1.c), the mobile home debt (¶ 1.g), two car loan debts (¶¶ 1.h and 1.f), the \$73 balance owed on a personal loan (not alleged), a delinquent phone bill of \$79 (not alleged), or the defaulted student loan debt. She also did not dispute the accounts in collection with the exception of some cellular phone debts and the specialty merchant debt that had been listed in the collection section of her credit report. Applicant denied her credit problems could be a source of blackmail or coercion and expressed her intent to pay off the debts that were not included in the bankruptcy as soon as she was financially able. On December 16, 2003, Applicant provided a personal financial statement in which she estimated a monthly net remainder of \$56.28 after payment of her \$525 monthly mortgage obligation and living expenses.

Applicant was reinterviewed on March 1, 2004, about her financial delinquencies. She explained her Chapter 13 bankruptcy was dismissed after payments totaling about \$700 when the judge learned of the foreclosure of the mobile home she had shared with her ex-husband. Applicant indicated she was working to clean up her credit, was "renting to own" the home she was living in, and was making payments on some of her medical accounts, including the \$1,348 placed in collection by a hospital. She disputed owing \$26,221 for the mobile home, claiming it was her ex-

²Also listed was a joint auto loan debt of \$8,682 in collection. It is likely the debt in ¶ 1.h, which was separately listed as a collection account with \$8,240 past due.

husband's debt, as well as the \$8,240 car loan because the vehicle had been stolen. Applicant related she had paid the \$88 satellite television debt as well as several medical debts in collection totaling \$1,669. She acknowledged still owing on her student loans, on which she claimed to have started repayment in March 2004, the car loan in ¶ 1.f, and a \$315 wireless phone balance (not alleged).

On August 26, 2004, Applicant executed a Questionnaire for Public Trust Positions (SF 85P) for her duties as an "offsite CA II" with the TRICARE contractor. She listed her bankruptcy filing and its dismissal in response to question 22a. "In the last 7 years, have you, or a company over which you exercised some control, filed for bankruptcy, been declared bankrupt, been subject to a tax lien, or had legal judgment rendered against you for a debt?" but responded negatively to question 22b concerning whether she was over 180 days delinquent on any loan or financial obligation.

A check of Applicant's credit on October 9, 2004, indicated she was disputing the \$2,100 past due balance reportedly owed for the computer (¶ 1.c). Applicant was past due \$40 on a credit card balance of \$377 (¶ 1.a), had made no progress toward repaying her other debts, including the mortgage loan for her repossessed mobile home (¶ 1.g), or her delinquent car loans with their reported balances of \$8,240 (¶ 1.h) and \$5,037 (¶ 1.f, \$6,365 in 2003 credit check). She reportedly owed medical collection balances totaling \$868 (\$377 of it alleged in ¶1.i). A \$108 medical collection debt was being disputed by Applicant. A cellular telephone debt of \$333 was reported as having been paid in April 2004.

A May 15, 2006, check of her credit revealed recent charged off debt. Two revolving charge accounts opened in 2004 had been charged off, for \$426 in June 2004 (¶ 1.a) and for \$539 in October 2004 (¶ 1.b). Also in October 2004, another creditor had placed a \$70 past due balance for collection (¶ 1.e).

As of August 2006, Applicant had remarried. When she answered the SOR, she disputed the \$5,037 debt balance of ¶ 1.f, contending it was instead about \$1,000, and the debt for the computer, as she claimed to not recognize the assignee. She failed to provide any documentation showing she was not responsible for those debts. She admitted owing on the loan for the mobile home as the creditor refused to acknowledge that she had given the home to her ex-husband in the divorce and her name had been on the loan. Applicant also did not deny owing the \$8,240 car loan balance (¶ 1.h) for the vehicle that had been stolen.

On August 1, 2006, the U.S. government issued a wage garnishment order to collect \$14,223.03 in delinquent student loan debt. Her wages have since been garnished at the rate of \$110.20 per pay period (every other week). On February 2, 2007, the U.S. government intercepted her federal income tax refund of \$2,294 and applied it to her student loan debt. On February 14, 2007, \$221 of her \$246 state tax refund was applied toward her student loans. As of late February, Applicant had reduced her student loan obligation by about \$4,168.

As of January 2007, a credit bureau reported unpaid medical collection debts totaling about \$2,436, including the debt in ¶ 1.i and \$1,729 placed since November 2005, and other past due balances of about \$38,000 (\$426 on ¶ 1.a, \$539 on ¶ 1.b, \$2,569 on ¶ 1.c, \$367 for the wireless phone, \$74 on ¶ 1.e, \$476 for telephone services, \$5,037 on ¶ 1.f, \$29,000 on ¶ 1.e). The debt in ¶ 1.h was not listed. Applicant was reportedly \$525 past due on a mortgage loan of \$47,000 taken out

in February 2006. A new telephone services debt of \$120 had been placed for collection in August 2006.

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 that will give that person access to such information. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). To be eligible for assignment to sensitive duties, an applicant must meet the security guidelines set forth in the Regulation. "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.

DoD contractor personnel are afforded the right to the procedures contained in DoD Directive 5220.6 before any final unfavorable access determination may be made. Regulation ¶ C8.2.1. Appendix 8 of the Regulation sets forth the adjudicative guidelines, as well as the specific factors disqualifying and mitigating conditions for determining eligibility for access to classified information and assignment to sensitive duties. In evaluating the trustworthiness of an applicant, the administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person in light of the adjudicative process factors: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the individual's age and maturity at the time of the conduct; the voluntariness of participation; the presence or absence of rehabilitation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; and the likelihood of continuation or recurrence. Regulation AP8.

CONCLUSIONS

Guideline F—Financial Considerations

Under Guideline F, an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Regulation AP8. Applicant struggled financially following her divorce, and filed for bankruptcy under the wage earner plan in November 2001. She made some payments (disparately reported by her to be as little as \$700 and as much as \$1,200) but the bankruptcy was dismissed in October 2002 before all of her creditors had been paid. As of her filing of her SF 85P in August 2004, she was legally liable for approximately \$42,500 in delinquent debt, not including the student loans. Her record of financial problems raises concerns under DC (1) *A history of not meeting financial obligations* and DC (3) *Inability or unwillingness to satisfy debts*.

With the exception of the car loan in ¶ 1.h, which she stopped paying for in or before 1998 apparently because the vehicle was stolen, her problems began around the time of her marital separation in 2001. Mitigating condition (MC) (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 extenuation of her incurring much of the debt alleged and failure to repay it before her interviews with the OPM investigator. While she had a positive monthly remainder as of December 2003, \$56.28 is an insignificant amount for a single parent with two minor children.

However, even if debt is incurred by circumstances beyond one's control, financial pressures may be such to present a significant risk. To her credit, Applicant had paid some of her outstanding medical debts in collection (MC (6) *The individual initiated a good faith effort to repay overdue creditors or otherwise resolve debts*), although some of the debts she claims she satisfied are still being reported as unpaid by at least one credit bureau. Applicant's student loans were being repaid through wage garnishment, albeit pursuant to court order. Yet, despite her remarriage and some lifting of the financial burden ("I have marriage again and with my husband help am able to take care of my children more than in the past. With the help of their grandparents it has taken some of the loaded [sic] off me."), Applicant owes delinquent debt in excess of \$40,000, not counting the student loans. Even if collection is not pursued of the charged-off repossessed mobile home debt, there is little guarantee that she will be able to get out of financial difficulty in the near future. As reflected in her credit report of January 2007, she was \$525 past due in her mortgage. Since November 2005, \$1,729 in medical debt and \$120 for telephone services had been newly placed for collection. Her credit report of January 2007 does not substantiate her claimed satisfaction of the debt in ¶ 1.e, or that she owes only \$1,000 rather than \$5,037 on the car loan in ¶ 1.f. Applicant has not yet displayed the good personal financial judgment that must be demanded of those persons in a position of public trust.

Whole Person Analysis

"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," or as applied to trustworthiness cases, a position of trust. AP8. Applicant has had very serious financial problems since 2001 (*The nature, extent, and seriousness of the conduct*). Very recent efforts to address her student loans were prompted by court-ordered wage garnishment action (*The presence or absence of rehabilitation and other pertinent behavioral changes*). A favorable change in her financial habits is not shown where she has fallen behind in her mortgage and has not paid medical debts of as little as \$26.

FORMAL FINDINGS

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

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| 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 |

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| Subparagraph 1.g: | Against Applicant |
| Subparagraph 1.h: | Against Applicant |
| Subparagraph 1.i: | Against Applicant |
| Subparagraph 1.j: | Against Applicant |

DECISION

In light of all of the circumstances in this case, it is not clearly consistent with the national interest to grant Applicant a position of trust.

Elizabeth M. Matchinski
Administrative Judge