

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant incurred significant, unpaid debt as a teenager and young man. The creditors to whom he owes most of his unpaid debts are barred from collecting their money under the state statute of limitations. He has matured and learned to better manage his finances. He lives within his financial means and has not incurred additional new, unpaid debts. He did not intentionally falsify his answers on his questionnaire for a position of public trust. He has mitigated the government's concerns under Guidelines E and F. Eligibility is granted.

CASENO: 06-11624.h1

DATE: 06/30/2007

DATE: June 30, 2007

In re:	)	
	)	
	)	
-----	)	ADP Case No. 06-11624
SSN: -----	)	
	)	
Applicant for ADP I/II/III Position	)	

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

**APPEARANCES**

**FOR GOVERNMENT**

Richard Stevens, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant incurred significant, unpaid debt as a teenager and young man. The creditors to whom he owes most of his unpaid debts are barred from collecting their money under the state statute of limitations. He has matured and learned to better manage his finances. He lives within his financial means and has not incurred additional new, unpaid debts. He did not intentionally falsify his answers on his questionnaire for a position of public trust. He has mitigated the government's concerns under Guidelines E and F. Eligibility is granted.

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### **STATEMENT OF CASE**

On August 25, 2004, Applicant signed and completed an application for a position of public trust, an ADP I/II/III position, which he resigned on October 4, 2004 and submitted. 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 17, 2006, DOHA issued Applicant a Statement of Reasons (SOR) detailing the basis for its decision. The SOR, which is in essence the administrative complaint, alleged trustworthiness concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). DOHA recommended the case be referred to an administrative judge to determine whether eligibility for a position of trust should be granted, continued, denied, or revoked. On October 16, 2006, Applicant submitted a notarized response to the allegations. He requested a hearing.

DOHA assigned this case to me on April 18, 2007, and issued a notice of hearing on May 17, 2007. Since Applicant received the hearing notice on May 23, 2007, which was less than 15 days before the hearing scheduled for June 5, 2007, Applicant waived his right to receive the notice of the hearing 15 days prior to the hearing. I conducted the hearing as scheduled.<sup>2</sup> The government submitted six exhibits (GE) which were marked and admitted into the record as GE 1-6, without objection. Applicant submitted seven exhibits (App Ex), which were marked and admitted as App Ex A-G, without objection. Applicant testified on his own behalf. I held the record open for Applicant to submit additional evidence, which he did not do. DOHA received the hearing transcript (Tr.) on June 21, 2007.

### **FINDINGS OF FACT**

In his SOR response, Applicant admits to the SOR allegations in subparagraphs 1.a, 1.b, 1.e, and 1.g-1.j under Guideline F. He admits to Guideline E allegation 2.a with an explanation, which is deemed a denial of intentional falsification. He denies all of the remaining allegations under

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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>Tr. at 1, 8.

Guideline F.<sup>3</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.

Applicant, a 28-year-old accounting technician working for a Department of Defense contractor, seeks a position of public trust. He started his employment with the contractor in January 2002.<sup>4</sup>

Applicant graduated high school and attended the state university for one year. In February 1999, he enlisted in the United States Army. During the two and one-half years he served in the Army, he received counterintelligence training and obtained other college credits. He held a top secret clearance. The Army awarded him two Army Achievement Medals, two NATO Medals for Service, an Army Commendation Medal, and several certificates of appreciation or achievements. The Army honorably discharged him because of a disability in October 2001. The Veterans Administration (VA) determined that he has a 30% service connected disability due to migraine headaches. Upon his discharge from the military, Applicant worked temporary jobs until he obtained his current job. Applicant is married and has a 4-year-old daughter.<sup>5</sup>

A review of Appellant’s credit reports dated October 13, 2004, May 9, 2006, March 28, 2007, and the SOR shows 10 unpaid debts totaling \$15,816.<sup>6</sup> The current status of these debts is as follows:

SOR ¶	Account/ Amount	Status	Evidence
1.a.	Credit card \$11,603	Unpaid, Statute of Limitations	
1.b.	Store account \$160	Unpaid, Statute of Limitations	
1.c.	Credit card \$285	Not listed in credit reports; Statute of Limitations	GE 4, GE 5, GE 6.
1.d.	Rental account \$1,035	Disputed; Statute of Limitations	App Ex A
1.e.	Collection account \$1,027	Unpaid, Statute of Limitations; Disputed, then admitted	GE 5, p. 2; GE 6, p 2; Tr. at 42.

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<sup>3</sup>Applicant’s response to the SOR, date stamped October 16, 2006 at 1–3.

<sup>4</sup>GE 1 (Applicant’s Questionnaire for Public Trust Position, dated August 25, 2004) at 1, 3; Tr. at 16, 22.

<sup>5</sup>GE 2 (Applicant’s answers to interrogatories) at 6; App Ex C (Certificate of Release or Discharge From Active Duty) at 1; App Ex D (Certificate of Clearance, dated Oct. 12, 1999); App Ex E and F (Documentation on the Army Achievement Medals); App Ex G (Documentation on additional military service and awards, college course work); Tr. at 16-22, 49-50.

<sup>6</sup>GE 4 (Credit report, dated October 13, 2004); GE 5 (Credit report, dated May 9, 2006); GE 6 (Credit report, dated March 28, 2007).

1.f.	Store account	\$423	Believes paid in 2003	Response to SOR; Tr. at 42-43.
1.g.	Phone account	\$876	Unpaid; Statute of Limitations; Disputed	GE 6, p. 3
1.h.	Cell phone	\$120	Unpaid, Statute of Limitations	
1.i.	Cable bill	\$210	Unpaid, disputed, Statute of Limitations	GE 5, p 1-2; GE 6
1.j.	Medical bill	\$77	Unpaid	Tr. at 46-47.

In March 2001, Applicant and his girlfriend, who is now his wife, signed an apartment lease for 6 months. They renewed the lease on October 1, 2001 for another 6 months at a rent of \$544 a month. On April 1, 2002, they became month-to-month tenants. Because of vandalism problems in the apartment complex, they gave their notice to vacate around April 5, 2002. They directed their deposit of approximately \$400 be used to pay any remaining rent. The apartment complex then sent them an eviction notice. They moved on April 15, 2002. On April 18, 2002, the apartment complex sent him a bill for \$1,035.92. The bill reflected a monthly rent of \$619 and a month to month fee of \$75, amounts not shown on the renewal lease. The apartment complex determined Applicant owed \$330 for rent from April 5, 2002 through May 5, 2002 and a \$40 month-to-month fee, plus \$75 for miscellaneous, unspecified damages, \$105 for a late fee, and \$486 for a reletting fee. The bill did not reflect how the security deposit was applied. The apartment complex noted that no rent had been paid for April 2002, which conflicts with their rent payment request for the month of April 5, 2002 through May 5, 2002; that the unit was dirty; and that if the bill was not paid in 10 days, a file would be sent to collections. The apartment complex never filed a law suit; however, upon receipt of the eviction notice, Applicant wrote to a local judge about his problems with the apartment complex and sent a copy to the apartment complex. No court action took place nor is the eviction notice part of the record.<sup>7</sup>

As young adults, Applicant and his wife purchased furniture with a credit card. The largest unpaid debt in the SOR is for this furniture. He estimated the total debt at \$6006, not \$11,603 balance reflect in the credit reports. The additional charges may represent fees and interests accrued over time on this cancelled credit card. He acknowledged the unpaid bill in allegation 1.b. He paid much of the indebtedness he incurred with this creditor, but didn't fully pay the bill because he needed the money to pay other expenses. His credit reports reflect that he disputed the debts in allegations 1.e, 1.g. and 1.i, although he admitted owing the unpaid debt at the hearing.<sup>8</sup>

He denies the debt in allegation 1.c., which is a military credit card. None of the credit reports of record show a debt in this amount; rather the reports reflect a zero balance in his military credit

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<sup>7</sup>App Ex A (Renewal rental agreement dated October 1, 2001, collection bill dated April 18, 2002, and rental application dated March 4, 2001); App Ex B (Letter dated April 11, 2002); Tr. at 27-28, 36-40. GE 6 reflects unpaid rent at a second apartment complex, which is not alleged in the SOR. Applicant denied any other unpaid rent and does not recognize this debt. Tr. at 53-55.

<sup>8</sup>GE 5, *supra* note 6, at 2; GE 6, *supra* note 6, at 2; Tr. at 22-25, 42-43, 51-53.

card account. The government appropriated his 2006 tax refund as payment towards this debt. He also denies the allegation in 1.f, stating that he paid this account through a collection agency, he had hired to help resolve his debt issues. For 8 months, he made monthly payments to the agency for the purpose of resolving the debts in allegations 1.e and 1.f. He has not provided any evidence to show payment or an agreement with a collection agency.<sup>9</sup>

Applicant's gross monthly salary in 2005 totaled \$1,908 and his net monthly income totaled \$1,622. His monthly expenses in 2005 totaled \$1,421, leaving \$201 for repayment of debt. At the hearing, he advised that he now receives \$420 a month in disability benefits from the VA. He timely pays his current bills and has not incurred additional new, unpaid debts. He and his wife recently purchased a house.<sup>10</sup>

When Applicant completed his SF-85P on the afternoon of August 25, 2004 at work, he answered "no" to question 22b, which asked if he "was now over 180 days delinquent on any loan or financial obligation?" In his response to the SOR, he stated he thought the question asked for debts not listed on form (this form is unidentified). At the hearing, he acknowledged that he knew he had debts when he completed the form. He may have been careless and he did not think his debts were serious.<sup>11</sup>

At the hearing and in his 2005 written statement, Applicant asserted that he concentrated on paying his wife's debts first. He further stated that when her debts were paid, he would start paying his debts. He has provided no documentary evidence which shows that he paid her debts. Likewise, the record contains no evidence of his current work performance.<sup>12</sup>

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## **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."<sup>13</sup> In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for determining trustworthiness within the executive branch.

To be eligible for a trustworthiness determination, 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. Conditions that could raise a trustworthiness concern and may be disqualifying, as well as those

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<sup>9</sup>SOR response, *supra* note 3; Tr. at 26, 42-43, 51-53.

<sup>10</sup>GE 3 (Applicant's statement, dated June 10, 2005), at 11; GE 5, *supra* note 6; GE 6, *supra* note 6; Tr. at 51.

<sup>11</sup>GE 1, *supra* note 4, at 7; Tr. at 57-58, 59-61.

<sup>12</sup>GE 3, *supra* note 10, at 3; Tr. at 25-26.

<sup>13</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).

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 trustworthiness determination.<sup>14</sup> An administrative judge must apply the “whole person concept,” and consider and carefully weigh the available, reliable information about the person.<sup>15</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>16</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>17</sup> Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts.<sup>18</sup> An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant eligibility for a position of public trust.”<sup>19</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>20</sup> The same rules apply to trustworthiness determinations for access to sensitive positions.

## CONCLUSIONS

### **Financial Considerations**

The government has established its case under Guideline F. Applicant incurred significant, unpaid debt as a teenager and in his early twenties. Because of his income, he lacked the ability to make the monthly payments on his numerous credit cards. He still has outstanding bills from this conduct. 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.

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<sup>14</sup> Directive, ¶ E2.2.1.

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

<sup>16</sup> *Id.*

<sup>17</sup> Directive, ¶ E3.1.14.

<sup>18</sup> Directive, ¶ E3.1.15.

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

<sup>20</sup> Directive, ¶ E2.2.2.

I considered all the Financial Considerations Mitigating Conditions (FC MC), and conclude that FC MC E2.A6.1.3.1 (*The behavior was not recent*), FC MC E2.A6.1.3.2. (*It was an isolated incident*), FC MC E2.A6.1.3.3. (*The conditions that resulted in the behavior were largely beyond the person's control*), and FC MC E2.A6.1.3.6. (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) do not apply because the debts remain unpaid, are not recent, and are not the result of events or behavior beyond his control. Applicant has not made any efforts to resolve these debts.

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 is under control*) applies in part. As a very young adult, Applicant obtained credit to purchase items for which he did not have cash. With everyday living expenses, he got behind in his payments, and eventually stopped making payments on some of his debt. Other debts he regularly and timely paid. He challenged several debts listed on his credit report because he did not believe he owed the debts. Of the debts challenged, his evidence establishes that the debt he is alleged to owe for back rent in 2002 may not be legitimate because the notification of monies due and owing from the apartment complex conflicts with the rent monies due as set out in the renewal lease. In addition, since the apartment complex purposely chose not to pursue its legal right, but to harm Applicant's credit, a serious question arises about the legitimacy of many of the charges in this bill. He contacted a financial consultant and made payments designated to repay his overdue store account, which is not reflected in his credit report.

The creditors for the unpaid bills in allegations 1.a, 1.b, 1.d, 1.e, 1.g, and 1.h of the SOR are barred from collecting these debts under the state 3-year statute of limitations. *See* State Code. Ann. § 15-3-530.<sup>21</sup> Thus, he receives partial credit for resolution of most of his debt. The State 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[led] 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*, 609 S.E.2d 548, 552 (Ct. App. 2005) (internal quotation marks and citations omitted).

Elimination of these delinquent debts through the statute of limitations has ended his potential vulnerability to improper financial inducements because he is no longer “financially overextended”, but it does not negate his past conduct in not paying his outstanding debts. As a young person, Applicant got into financial trouble with credit. He over extended himself. He has matured since then. He has learned to better manage his finances. He pays his bills on time and recently purchased a house.

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<sup>21</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).

## Personal Conduct

The Applicant has denied the government's allegation of falsification under Guideline E, subparagraph 2.a of the SOR. The government has established that Applicant's answer to Question 22b is inaccurate regarding a material fact, the existence of overdue debts. For Personal Conduct Disqualifying Conditions (PC DC) E2.A5.1.2.2. (*The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire...*) and PC DC E2.A5.1.2.3. (*Deliberately providing false or misleading information concerning relevant and material matters to an investigator...*) to apply, Applicant must have deliberately falsified his answer.<sup>22</sup> At the hearing, Applicant acknowledged that he knew he had old debts when he answered Question 22b. He also credibly testified that he was not concerned about losing his job when he answered this question and that he was probably careless. He could offer no other reason for his answer. His admission that he knew he had unpaid debts when he completed his questionnaire is not, by itself, sufficient to establish he intended to deliberately deceive the government about his debts. He does not deny his long-term debt problems nor did he in his responses. His failure to provide immediate information on his debts was the result of sloppiness when completing his security clearance application. While he should have taken more care, his carelessness does not equal intentional falsification. When the investigator questioned him about his debt, he willingly discussed and specifically outlined his financial problems. Because he has been forthcoming about his debts, I find he did not deliberately fail to provide this information when he completed his security clearance application. Guideline E is found in favor of Applicant.

## 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 her 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.

Applicant served honorably for two and one-half years in the Army. He received several medals for his actions and service during this time. He held a top secret clearance without incident. As a young adult, he carelessly managed his money by using credit to purchase items he could not purchase with cash. He overextended his finances and could not meet the monthly payments on his debts. He has since developed better spending habits and lives within his financial means. He has not incurred significant new, unpaid debt.

I have weighed the mitigating factors, the reasons for Applicant's debts, his current family situation, his present financial situation, his steady employment, and his excellent performance in the Army against his unpaid debt. I find that the weight of the evidence indicates that he is a person who

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<sup>22</sup>In his response to the SOR, Applicant admitted he falsified his answer to Question 22b, but then qualified his admission, stating that he thought the question was for any debts not listed on that form (an unidentified form). In light of his qualified answer, his answer to the allegation in subparagraph 2.a. is deemed a denial.



is trustworthy. He would not act in a manner which would harm his employer or the government. There is little likelihood he would violate the privacy rights he has agreed to protect because of his existing debt problems. I conclude he has mitigated the trustworthiness concerns pertaining to financial considerations. The personal conduct concern is not substantiated.

**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 (Financial Considerations):	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.I:	For Applicant
Subparagraph 1.j:	For Applicant
Paragraph 2, Guideline E (Personal Conduct):	FOR APPLICANT
Subparagraph 2.a:	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