

DATE: October 18, 2007

In re:

SSN: -----

Applicant for Trustworthiness Determination

ADP Case No. 06-11765

**DECISION OF ADMINISTRATIVE JUDGE
PAUL J. MASON**

APPEARANCES

FOR GOVERNMENT

Richard A. Stevens, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Though Applicant receives some mitigation for filing two Chapter 13 petitions in 2003 and 2004, and making several payments under each petition, the mitigation is substantially reduced by the eventual dismissal of both petitions. Without current evidence in explanation, extenuation, or mitigation of her ongoing indebtedness, Applicant has failed to meet her burden of showing she is eligible for assignment to a sensitive position. Application for a public trust position is denied.

STATEMENT OF CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a

security clearance for Applicant. On November 3, 2006, under Executive Order 10865 and Department of Defense Directive 5200.6, reissued with revised adjudicative guidelines (AG) on September 1, 2006, DOHA issued a Statement of Reasons (SOR) detailing the reasons for its trustworthiness concerns raised under the financial considerations guideline (Guideline F) of the Directive. In her answer dated December 4, 2006, Applicant requested a decision be made on the record in lieu of a hearing. A copy of the Government's File of Relevant Material (FORM, the Government's evidence in support of the SOR) was sent to Applicant on July 11, 2007. Applicant received the FORM on July 19, 2007. Applicant's response to the FORM, was due by August 18, 2007. No response was received. The case was assigned to me for decision on September 26, 2007.

FINDINGS OF FACT

Applicant admitted all 23 allegations under the financial considerations guideline. Other than her admissions, she provided no supplemental explanations for the debts in her answer to the SOR. She declined to provide a response to the FORM.

Applicant is 34 years old, married, and has two children. After spending four years in the United States Navy (USN) between 1992 and 1996, she was employed as a customer service manager for three years. Following a two-year period of unemployment, she was hired by her current employer (a defense contractor) in September 2002 to work in the technical support division. She provided no information about the type of work she performs or her job performance.

The credit bureau report in Item 7 reflects Applicant made several payments under both Chapter 13 Bankruptcy plans¹ identified in subparagraphs 1.a. and 1.b. of the SOR. However, both plans were dismissed due to non-compliance (failure to make payments) with both plans.

Subparagraph 1.c. lists an account (\$226.00) the original creditor transferred to a collection agency in January 2006. A telephone company transferred an account valued at \$102.00 (1.d.) to a collection agency in May 2003. Although she claimed she tried to contact this creditor to determine the actual amount of the delinquency, she provided no evidence to support her investigatory efforts.

The credit card account (1.e.) of \$1,008.00 was charged off in February 2002. Applicant owes an online education program \$2,382.00 (1.f.) that was charged off in January 2006. A mortgage company holds an \$8,724.00 mortgage that was foreclosed in March 2006. Applicant also owes a government educational loan organization \$38,164.00 (1.h.) that was charged off in September 2005. The record reflects that although the account is currently delinquent, she has made several regular payments.

Applicant's car was repossessed in January 2004 (1.i.) when she stopped monthly payments on a \$15,168.00 auto installment loan.

A delinquent credit card debt of \$870.00 was charged off in May 2005. A collection debt of \$152.00 (1.k.) was charged off in August 2006, while a telephone debt of \$500.00 (1.l.) was also

¹ The subparagraph 1.a. plan petition included total assets of \$172,575.00 and total liabilities of \$225,921.00. The second petition comprised \$130,450.00 in total assets and \$226,421.00 in total liabilities.

charged off the same month. A credit card debt (1.m.) of \$425.00, and a credit card debt of \$306.00 (1.n.) has not been paid. A telephone debt of \$800.00 has likewise, not been paid.

Applicant owes two collection companies \$157.00 and \$630.00 respectively (1.p., 1.q.) for debts that have not been paid. Applicant owes the collection agency in 1.r. (\$675), and the collection agency in 1.s. (\$114.00) for past due debts.

Applicant owes a hospital \$1,400.00 (1.t.) for medical expenses. The department store account (1.u.) of \$858.00 has not been paid. Neither has another telephone account (1.v., \$700.00) or an auto loan company account (1.w.) in the amount of \$8,000.00. All of the listed accounts became delinquent between 2002 and 2006. In addition to the listed debts, Applicant disclosed in Item 6 (answers to interrogatories dated August 17, 2006) she pays the Internal Revenue Service (IRS) \$694.00 a month. She did not furnish an explanation for the monthly payment.

POLICIES

Enclosure 2 of the Directive sets forth guidelines containing disqualifying conditions (DC) and mitigating conditions (MC) that should be given binding consideration in making security clearance determinations. These conditions must be considered in every case along with the general factors of the whole person concept. However, the conditions are not automatically determinative of the decision in any case nor can they supersede the Administrative Judge's reliance on his own common sense.

Burden of Proof

Initially, the government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualifies, or may disqualify, the applicant from being eligible for access to classified information. *See Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988) “[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.” ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *See Egan*, 481 U.S. at 531; *see* Directive E2.2.2.

Financial Considerations (FC)

Inability to pay bills in a timely fashion may lead to acts of poor judgment while trying to generate funds.

CONCLUSIONS

The failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control and/or poor judgment while also raising security concerns about a person's reliability, trustworthiness, and ability to safeguard classified information. Applicant filed two Chapter 13 petitions in 2003 and 2004 with total liabilities totaling more than \$225,000.00. Both were dismissed. While Applicant did not specifically identify the reason for the dismissals of both plans, the credit bureau reports in Items 7 through 10 indicate she stopped making the mandatory payments. The SOR lists 23 past due accounts totaling approximately \$81,360.00. These accounts became delinquent between 2002 and 2006. FC disqualifying conditions (DC) 19.a. (*inability or unwillingness to satisfy debts*) and 19.c. (*a history of not meeting financial obligations*) apply. Though the two unsuccessful Chapter 13 petitions establish a bona fide effort by Applicant to repay her debts in 2003 and 2004, the lack of any recent effort to repay her debts definitively indicates she is unable to resolve her debt problems at the present time.

As noted in Policies, an applicant bears the ultimate burden of persuasion in furnishing evidence that falls within the mitigating conditions (MC) of the FC guideline. FC MC 20.a. (*the behavior happened so long ago, was so infrequent, or occurred under such circumstances that is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment*) does not apply to these circumstances as two failed Chapter 13 plans in 2003 and 2004, together with Applicant's current indebtedness continue to inflict a negative impact on her trustworthiness and judgment.

Applicant provided no explanation for her current fiscal problems. Her security clearance application indicates she was unemployed for a significant period of time between 2000 and 2002. Since the record clearly shows Applicant was experiencing financial problems in 2002, it is fair to conclude she never recovered from her unemployment status, an unfortunate event that justifies some mitigation and extenuation under FC MC 20.b. (*the conditions that resulted in the financial problems were largely beyond the person's control, and the individual acted responsibly under the circumstances*).

The other three potentially relevant conditions are inapplicable as Applicant has provided no evidence to justify their implementation. FC MC 20.c. (*the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control*) is not applicable. Applicant cannot maintain payments under the Chapter 13 petition, and has no plan to resolve these overdue debts. Though she has made a few payments to one or two creditors, those payments occurred some time ago without recent evidence towards resolution of these debts. FC MC 20.d. (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolved debts*) does not apply.

Finally, FC MC 20.e. (*the individual has a reasonable basis to dispute the legitimacy of the past -due in debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolved the issue*) does not apply as there is no indication Applicant disputes any of the debts. Subparagraphs 1.a. through 1.w. are found against Applicant.

The limited mitigation and extenuation Applicant receives under FC MC 20.b. is insufficient

to successfully overcome the extensive indebtedness listed in the SOR or warrant a different outcome when the debts are examined in the context of the whole person concept.

FORMAL FINDINGS

Paragraph 1 (Financial Considerations, Guideline F): AGAINST THE APPLICANT

Subparagraph 1.a.		Against the Applicant.
Subparagraph 1.b.	.	Against the Applicant.
Subparagraph 1.c.	.	Against the Applicant.
Subparagraph 1.d.		Against the Applicant.
Subparagraph 1.e.		Against the Applicant.
Subparagraph 1.f.		Against the Applicant.
Subparagraph 1.g.		Against the Applicant.
Subparagraph 1.h.		Against the Applicant.
Subparagraph 1.i.		Against the Applicant.
Subparagraph 1.j.		Against the Applicant.
Subparagraph 1.k.		Against the Applicant.
Subparagraph 1.l.		Against the Applicant.
Subparagraph 1.m.		Against the Applicant.
Subparagraph 1.n.		Against the Applicant.
Subparagraph 1.o.		Against the Applicant.
Subparagraph 1.p.		Against the Applicant.
Subparagraph 1.q.		Against the Applicant.
Subparagraph 1.r.		Against the Applicant.
Subparagraph 1.s.		Against the Applicant.
Subparagraph 1.t.		Against the Applicant.
Subparagraph 1.u.		Against the Applicant.
Subparagraph 1.v.		Against the Applicant.
Subparagraph 1.w.		Against the Applicant.

DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for assignment to sensitive duties. Application for a public trust position is denied.

Paul J. Mason
Administrative Judge