

KEYWORD: Financial

DIGEST: Applicant's financial irresponsibility renders her an unsuitable candidate for an information systems position. Trustworthiness determination denied.

CASENO: 06-11767.h1

DATE: 03/30/2007

DATE: March 30, 2007

In Re:)	
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)	
-----)	ADP Case No. 06-11767
SSN: -----)	
)	
Applicant for Trustworthiness Determination)	

**DECISION OF ADMINISTRATIVE JUDGE
JOHN GRATTAN METZ, JR**

APPEARANCES

FOR GOVERNMENT

Jeff A. Nagel, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

____ Applicant's financial irresponsibility renders her an unsuitable candidate for an information systems position. Trustworthiness determination denied.

STATEMENT OF THE CASE

On 9 April 1993, the Composite Health Care System Program Office (CHCSPO), the Defense Office of Hearings and Appeals (DOHA), and the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence (ASD C³I) entered into a memorandum of agreement for DOHA to conduct trustworthiness determinations for contractor personnel employed in Information Systems Positions as defined in DoD Regulation 5200.2-R, *Personnel Security Program* (Regulation), dated January 1987.

Applicant appeals the 31 August 2006 DOHA Statement of Reasons (SOR) recommending denial of her trustworthiness determination because of financial considerations.¹ Applicant answered the SOR 13 October 2006, and requested a decision on the record. On 8 February 2007, she responded to DOHA's 25 January 2007 File of Relevant Material (FORM). The record closed on 12 February 2007, when Department Counsel indicated no objection to the response. DOHA assigned the case to me 22 March 2007.

FINDINGS OF FACT

Applicant admitted the allegations of the SOR. Accordingly, I incorporate those admissions as findings of fact. She is a 38-year-old senior field representative for a medical contractor, and seeks access to sensitive patient information. She has not previously had a trustworthiness determination.

Applicant has a history of financial problems dating back to September 1996, when she bounced a check that remains unpaid. The SOR alleges 23 debts, totaling over \$40,000, falling past due between September 1996 and January 2006. Except for a city utility account that fell past due in January 2006, all her past due accounts fell delinquent before May 2004. Of the 23 past due accounts alleged in the SOR, 18 are for less than \$450, 12 of those are for less than \$200, and three of those are for less than \$100. Yet, none have been paid.

Applicant's delinquent accounts are varied, and include a delinquent automobile loan, five medical accounts, four local-government-run utility accounts, and six bounced checks. The bounced checks include checks for necessities (groceries) and checks for luxuries (pizza [twice], and having her nails done).

Applicant reported financial difficulties on her November 2003 application for public trust position (Item 5), which she later updated in October and December 2004, but provided few specifics because she had not seen a copy of her credit report. In her June 2005 sworn statement (Item 7), Applicant acknowledged six debts totaling nearly \$11,000 that she intended to pay or reach repayment schedules for. She listed 10 debts that she disputed. She attributed the delinquent accounts to lowered income as a result of injuries to her husband on an unspecified date. However, a personal financial statement (PFS) completed at the same time as her statement showed positive cash flow of over \$2,400 per month—including net income from her husband of \$2,100 per month. The PFS included no payments on her outstanding debts. Further, notwithstanding the positive cash flow, her

¹Required by Executive Order 10865 and Department of Defense Directive 5220.6, as amended (Directive).

answers to DOHA interrogatories (Item 6) in January 2006, showed no payments on any of the accounts.

Applicant's response to the FORM stated that she and her husband filed a Chapter 13 Wage Earner Petition in December 2006 (confirmed by Item 9), and had made their first payment. However, she provided no documentation of the claimed payment, of which debts were to be paid, or which were to be discharged without payment. For the first time she claimed that her finances were adversely affected by a two-year period of unemployment between March 1998 and March 2000, when she stayed home after the birth of her second child.

There is no evidence that Applicant is receiving credit counseling or other training to help her avoid financial problems in the future. There is no character evidence in the record.

POLICIES AND BURDEN OF PROOF

The Directive, Enclosure 2 lists adjudicative guidelines to be considered in evaluating an Applicant's suitability for a trustworthiness determination. Administrative Judges must assess both disqualifying and mitigating conditions under each adjudicative issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3. of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed whenever a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guideline is Guideline F (Financial Considerations).

Trustworthiness determinations resolve whether it is clearly consistent with the national interest to grant or continue an Applicant's request for access to sensitive information. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to sensitive information. Applicant must then refute, extenuate, or mitigate the government's case. Because no one has a right to a trustworthiness determination, the Applicant bears a heavy burden of persuasion.

Persons with access to sensitive information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government.²

CONCLUSIONS

²See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

The government established a case for disqualification under Guideline F by demonstrating over 10 years of financial irresponsibility by Applicant. She did not mitigate the trustworthiness concerns. She admitted over \$40,000 of delinquent debt, accumulated between September 1996 and January 2006.³ Many of the debts were so small that it is simply irresponsible for Applicant to have not satisfied them before now, regardless of how they came to be delinquent.

Applicant meets none of the mitigating factors for financial considerations. Her financial difficulties are both recent⁴ and not isolated;⁵ indeed they appear to be ongoing. Her husband's health issues might be considered a circumstance beyond her control,⁶ but not knowing when his injuries occurred makes it difficult to give this any significant weight. Further, her financial problems also include consequences of choices she has made in the past, for example voluntary unemployment for two years—during which time five accounts alleged in the SOR became delinquent. In addition, several of the debts are for purchases that were frivolous. Beyond her financial irresponsibility in accumulating debt, she has been irresponsible in handling her debt after her finances improved. She had substantial positive monthly cash flow in June 2005, yet satisfied no delinquent accounts. There is no evidence that she has sought credit counseling or otherwise brought the problem under control.⁷ While her Chapter 13 Wage Earner Plan filing in December 2006 offers some possibility of financial improvement, she has provided no information to gauge how extensive that relief might be, to show she has the means to meet the five years of payments, or to substantiate lifestyle changes that might demonstrate that she will be able to avoid financial difficulties in the future.⁸ I conclude Guideline F against Applicant.

FORMAL FINDINGS

Paragraph 1. Guideline F: **AGAINST APPLICANT**

Subparagraph a:	Against Applicant
Subparagraph b:	Against Applicant
Subparagraph c:	Against Applicant
Subparagraph d:	Against Applicant
Subparagraph e:	Against Applicant
Subparagraph f:	Against Applicant
Subparagraph g:	Against Applicant

³E2.A6.1.2.1 A history of not meeting financial obligations; E2.A6.1.2.3 Inability or unwillingness to satisfy debts;

⁴E2.A6.1.3.1 The behavior was not recent;

⁵E2.A6.1.3.2 It was an isolated incident;

⁶E2.A6.1.3.3 The conditions that resulted in the behavior were largely beyond the person's control. . .;

⁷E2.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;

⁸E2.A6.1.3.6 The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Subparagraph h: Against Applicant
Subparagraph i: Against Applicant
Subparagraph j: Against Applicant
Subparagraph k: Against Applicant
Subparagraph l: Against Applicant
Subparagraph m: Against Applicant
Subparagraph n: Against Applicant
Subparagraph o: Against Applicant
Subparagraph p: Against Applicant
Subparagraph q: Against Applicant
Subparagraph r: Against Applicant
Subparagraph s: Against Applicant
Subparagraph t: Against Applicant
Subparagraph u: Against Applicant
Subparagraph v: Against Applicant
Subparagraph w: Against 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 or continue a designation of trustworthiness, suitability, and eligibility for Applicant to hold a sensitive Information Systems Position. Trustworthiness determination denied.

**John G. Metz, Jr.
Administrative Judge**