

KEYWORD: Financial

DIGEST: Applicant was discharged through a 1999 Chapter 7 bankruptcy petition of debts left over from a failed business. Since then, she has accrued about \$11,000 in delinquent debt through 15 unpaid accounts and an unpaid tax bill. She has insufficient resources to pay or resolve her debts, has taken no action to do so. Nor has she demonstrated financial management skills that would prevent similar problems in the future. Accordingly, she has failed to mitigate the trustworthiness concerns about her finances. Eligibility for an ADP I/II/III position is denied.

CASENO: 06-12107.h1

DATE: 05/21/2007

DATE: May 21, 2007

_____)	
In re:)	
)	
-----)	ADP Case No. 06-12107
SSN: -----)	
)	
Applicant for ADP I/II/III Position)	
_____)	

**DECISION OF ADMINISTRATIVE JUDGE
MATTHEW E. MALONE**

APPEARANCES

FOR GOVERNMENT

Jennifer Goldstein, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant was discharged through a 1999 Chapter 7 bankruptcy petition of debts left over from a failed business. Since then, she has accrued about \$11,000 in delinquent debt through 15 unpaid accounts and an unpaid tax bill. She has insufficient resources to pay or resolve her debts, has taken no action to do so. Nor has she demonstrated financial management skills that would prevent similar problems in the future. Accordingly, she has failed to mitigate the trustworthiness concerns about her finances. Eligibility for an ADP I/II/III position is denied.

STATEMENT OF THE CASE

On December 20, 2004, Applicant submitted a Public Trust Position Application (SF 85P). After reviewing the results of the ensuing background investigation, Defense Office of Hearings and Appeals (DOHA) adjudicators were unable to make a preliminary affirmative finding¹ that it is clearly consistent with the national interest to grant Applicant a position of trust. On August 31, 2006, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts that raise trustworthiness concerns addressed in the Directive under Guideline F (financial considerations).

Applicant timely responded to the SOR, and requested a hearing. The case was assigned to me on November 16, 2006, and I convened a hearing on January 11, 2007, at which the parties appeared as scheduled. The government offered 12 exhibits, all of which were admitted without objection (Gx. 1 - 12). Applicant testified and introduced one exhibit (Ax. A), which was admitted without objection. DOHA received the transcript (Tr.) on January 22, 2007.

FINDINGS OF FACT

The government alleged in SOR ¶ 1 that Applicant was discharged of her debts through a Chapter 7 bankruptcy petition in October 1999 (SOR ¶ 1.a); she owes \$8,051 for 15 unpaid debts consisting of delinquent credit cards, an unpaid medical bill, unpaid telephone accounts, and a bounced check, between August 2000 and July 2006 (SOR ¶¶ 1.b - 1.m, 1.o - 1.q); and she owes \$2,600 to the Internal Revenue Service (IRS) for an unpaid tax bill from May 2005 (SOR ¶ 1.n). Applicant admitted all of the allegations except for SOR ¶¶ 1.e, 1.f, 1.j, and 1.n. As to ¶ 1.n, she asserts that she has entered into a repayment plan with the IRS. I interpret this to be an admission of the alleged debt.

Applicant's admissions are incorporated herein as facts. After a thorough review of the transcript and exhibits, I make the following findings of additional relevant fact:

Applicant is 51 years old and has worked since August 2004, first through a temporary agency and later as a permanent hire, for a health care and medical insurance company contracted to manage medical insurance claims and information for TRICARE, the Department of Defense (DoD) medical insurance system for military personnel and their families. She was unemployed from December 2002 until December 2003, but received disability benefits until October 2003. Applicant worked as a customer service representative through all of 2002, but was on disability between July 2001 and January 2002. Between August 1999 and July 2001, she was gainfully employed except for the four-month period between November 2000 and March 2001, when she suffered an on-the-job injury and could not work.²

¹ Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.

² Gx. 1.

After being injured in a car accident, she was again out of work and on disability from March 2006 until early June 2006, but did not return to full-time work until early July 2006.³ Applicant was also on medical leave from September 2006 and January 2, 2007.⁴

Applicant has been married twice. She has two grown children from her first marriage, which began in 1973 and ended in divorce in 1989. She re-married in 1991, but she and her husband separated in 1997. Their divorce was not finalized until June 2004.⁵

From November 1988 until August 1999, Applicant ran her own child daycare business from her home.⁶ Many of the children she cared for were either disabled or infants, sometimes prematurely born with drugs in their systems. In the last year of her business, Applicant could not keep up with all of the state regulatory and licensing requirements. The stress of trying to care for special needs children eventually proved too much, especially after her second husband left in 1997.⁷ She abandoned the business, her house, and most of her financial obligations related thereto, and filed for a Chapter 7 bankruptcy petition in June 1999, declaring \$157,626 in debts against \$132,840 in assets. In October 1999, Applicant was discharged of her debts (SOR ¶ 1.a).⁸

Between 1999 and 2006, Applicant incurred a variety of unpaid debts.⁹ She is delinquent on five credit card accounts (SOR ¶¶ 1.b, 1.d, 1.f, 1.g, and 1.h), five cell phone or telephone accounts (SOR ¶¶ 1.c, 1.j, 1.k, 1.m, and 1.o), a medical account (SOR ¶ 1.i), a bounced check (SOR ¶ 1.e), and two other commercial accounts (SOR ¶¶ 1.p and 1.q). Applicant also owes the IRS \$2,600 for unpaid taxes (SOR ¶ 1.n), but testified that she entered into a repayment plan in July 2005. She had to suspend payment in March 2006, when she was out of work for medical reasons.¹⁰

In 2006, Applicant sought debt repayment help from a credit counseling service, but the monthly payment they recommended was at least \$200 more than she could afford. When a government investigator interviewed Applicant during her background investigation in May 2005, Applicant submitted a personal financial statement (PFS) that showed she had a positive net monthly cash flow, excluding payments to any of the debts listed in the SOR, of \$142.¹¹

³ Gx. 2.

⁴ Tr., 52 - 53.

⁵ Tr., 47, 76.

⁶ Gx. 1.

⁷ Gx. 4; Tr., 45 - 47.

⁸ Gx. 7, Gx. 8.

⁹ Gx. 4, 5, 9, 10, 11.

¹⁰ Tr., 65 - 66.

¹¹ Gx. 3.

Applicant enjoys her work. Between May 2005 and January 2006, she received numerous positive comments from customers about her helpfulness and expertise in handling their concerns and requests.¹²

POLICIES AND BURDEN OF PROOF

The Directive sets forth adjudicative guidelines¹³ to be considered in evaluating an applicant's suitability for access to sensitive information.¹⁴ Each trustworthiness determination must reflect consideration of both disqualifying conditions and mitigating conditions¹⁵ under each adjudicative issue applicable to the facts and circumstances of each case. Each determination must also reflect a fair and impartial common sense consideration of all available relevant and material information,¹⁶ and it must reflect the adjudication process outlined in the Directive at Section E2.2.1.¹⁷ The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed

¹² Ax. A.

¹³ Directive, Enclosure 2.

¹⁴ A memorandum from Carol A. Haave, Deputy Under Secretary of Defense for Counterintelligence and Security to DOHA Director, *Adjudication of Trustworthiness Cases* (Nov. 19, 2004), directed that adjudication of trustworthiness cases for ADP I, II, and III positions be resolved using the provisions of the Directive rather than, as originally drafted, DoD Regulation 5200.2-R, *DoD Personnel Security Program*, as amended (Regulation). Positions designated as ADP I or ADP II are classified as sensitive positions in section AP10.2.1 of the Regulation. ADP III positions are nonsensitive positions. (Regulation, AP10.2.3.1) By virtue of the aforementioned memorandum, however, even though they are nonsensitive positions, ADP III cases are treated in the same way and adjudicated under the same guidelines and procedures as ADP I and II cases.

¹⁵ The November 19, 2004, memorandum did not specify whether the guidelines contained in the Directive or the Regulation should be used in ADP cases. Appendix 8 of the Regulation sets forth essentially the same adjudicative policy, as well as the disqualifying conditions and mitigating conditions associated with each guideline, as is contained in Enclosure 2 of the Directive. DoD contractor personnel, such as this Applicant, are afforded the adjudication procedures contained in the Directive. Because it appears Applicant was given along with the SOR the adjudicative materials from the Directive, I have referred to the factors contained in the Directive rather than the Regulation in reaching this decision.

¹⁶ Directive, 6.3.

¹⁷ "The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination. In evaluating the relevance of an individual's conduct, the adjudicator should consider the following factors:

- E2.2.1.1. The nature, extent, and seriousness of the conduct;
- E2.2.1.2. The circumstances surrounding the conduct, to include knowledgeable participation;
- E2.2.1.3. The frequency and recency of the conduct;
- E2.2.1.4. The individual's age and maturity at the time of the conduct;
- E2.2.1.5. The voluntariness of participation;
- E2.2.1.6. The presence or absence of rehabilitation and other pertinent behavioral changes;
- E2.2.1.7. The motivation for the conduct;
- E2.2.1.8. The potential for pressure, coercion, exploitation, or duress; and
- E2.2.1.9. The likelihood of continuation or recurrence;"

whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to sensitive information.

_____ Trustworthiness determinations are intended solely to resolve whether it is clearly consistent with the interests of national security¹⁸ for an applicant to receive or continue to have access to sensitive information. The government bears the initial burden of producing admissible information on which it based the preliminary decision against the applicant. Additionally, the government must be able to prove controverted facts alleged in the SOR. If the government meets its burden, the burden then shifts to the applicant to refute, extenuate or mitigate the government's case. As with security clearances, no one has a "right" to such access.¹⁹ Thus, an applicant bears a heavy burden of persuasion. Access to sensitive information is a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest in ensuring each applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect sensitive information pertaining to the national interests as his or her own. Resolution of any reasonable doubt about an applicant's suitability for a public trust position should be resolved in favor of the government.²⁰

CONCLUSIONS

Financial Considerations. Under Guideline F, an applicant who is financially overextended through delinquent debt and poor personal financial management may be at risk of engaging in illegal acts to generate funds to resolve her fiscal difficulties.²¹ In 1999, Applicant received relief through Chapter 7 bankruptcy from debts that went unpaid when she abandoned her business. Since then, she has incurred at least 16 other delinquent debts, some as recent as 2006. Aside from entering into a repayment agreement with the IRS to repay the debt listed in SOR ¶ 1.n, she has not acted to pay or otherwise resolve her obligations. Nor has Applicant shown she is fully informed about the full extent of her indebtedness or is able to manage her finances so as to avoid additional unpaid debts in the future. These facts warrant consideration of Guideline F disqualifying condition (DC) 1²² and DC 3.²³

By contrast, available information shows over the past seven years Applicant has experienced several medical problems and other unforeseen events that could have caused her delinquent debts, but certainly have hindered her ability to stay employed and repay some of them. Accordingly,

¹⁸ Regulation, C6.1.1.1.

¹⁹ *Department of the Navy v. Egan*, 484 U.S. 518, at 528, 531(1988).

²⁰ *See Egan*; Directive, E2.2.2.

²¹ Directive, E2.A6.1.1.

²² Directive, E2.A6.1.2.1. A history of not meeting financial obligations;

²³ Directive, E2.A6.1.2.3. Inability or unwillingness to satisfy debts;

Guideline F mitigating condition 3²⁴ must be considered. However, this is the only mitigating condition that applies. Applicant's financial problems are recent, they are not isolated, and Applicant has not made a good-faith effort to repay or otherwise resolve her debts. Although she contacted a credit counseling service, she did not follow through with their recommendations or pursue any other organized approach to her debts. The conditions still exist that have resulted in her poor financial condition.

Any benefit Applicant receives from MC 3 is attenuated by the fact her debts have arisen even when she was working. Based on all of the available information, it appears she is in debt primarily because she does not manage her money in a prudent manner. The Directive allows for a balancing of Applicant's poor financial health against the circumstances that have prevented her from resolving her debts. Nonetheless, even if the applicant is without fault in accruing the debt, circumstances may still present an unacceptable risk to the government. On the facts presented here, it is probable Applicant would have neglected her finances even if she had not been ill, injured, or unemployed. I conclude Applicant has failed to mitigate the security concerns under Guideline F presented by available information about her finances.

Whole Person. I have also considered the adjudicative process factors collectively referred to as the "whole person" concept.²⁵ A fair and commonsense assessment²⁶ of Applicant's financial problems, taken in the context of all of the information before me shows that reasonable doubts persist about her ability to protect sensitive by exercising the requisite good judgment and discretion expected of one in whom the government entrusts its interests. Absent substantial information to mitigate these doubts, which Applicant failed to provide, I cannot conclude she has otherwise overcome the government's case.

FORMAL FINDINGS

Formal findings regarding each SOR allegation are as follows:

Paragraph 1, Guideline F (Financial):	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

²⁴ Directive, 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 a death, divorce or separation).

²⁵ See note 17, supra.

²⁶ Directive, E2.2.3.

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

DECISION

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant a position of public trust.

Matthew E. Malone
Administrative Judge