

KEYWORD: Financial

DIGEST: Applicant is a 33-year-old employee of a federal contractor. She had 23 unpaid debts. In 1998, she developed chronic hypertension during a pregnancy, and suffered a stroke after her child was born the following year. Her high blood pressure has continued, requiring numerous hospitalizations, and only in the past six months have the doctors found medication that appears to control her hypertension. She sought credit counseling. She attempted to follow a budget that included debt reduction, but could not afford it. She tried to work a second job but her doctors asked her to quit because of her tenuous health situation. Using the “whole person” concept, she successfully mitigated the security concerns under Guideline F (financial considerations). Applicant’s eligibility for assignment to a sensitive position is granted.

CASENO: 06-12765.h1

DATE: 05/22/2007

DATE: May 22, 2007

In re:)	
)	
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SSN: -----)	ADP Case No. 06-12765
)	
Applicant for ADP I/II/III Position)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
CHRISTOPHER GRAHAM**

APPEARANCES

FOR GOVERNMENT
Francisco Mendez, Esq., Department Counsel

FOR APPLICANT
Pro Se

SYNOPSIS

Applicant is a 33-year-old employee of a federal contractor. She had 23 unpaid debts. In 1998, she developed chronic hypertension during a pregnancy, and suffered a stroke after her child was born the following year. Her high blood pressure has continued, requiring numerous hospitalizations, and only in the past six months have the doctors found medication that appears to control her hypertension. She sought credit counseling. She attempted to follow a budget that included debt reduction, but could not afford it. She tried to work a second job but her doctors asked her to quit because of her tenuous health situation. Using the “whole person” concept, she successfully mitigated the security concerns under Guideline F (financial considerations). Applicant’s eligibility for assignment to a sensitive position is granted.

STATEMENT OF THE CASE

On September 23, 2004, Applicant submitted a Public Trust Position Application (SF 85P). The Defense Office of Hearings and Appeals (DOHA) declined to grant the application under Department of Defense Regulation 5200.2-R, *Personnel Security Program*, (Jan. 1987), as amended and modified (the Regulation), and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended, modified, and revised (the Directive). DOHA issued a Statement of Reasons (SOR) on August 2, 2006, detailing the basis for its decision – security concerns raised under Guideline F (Financial Considerations) of the Directive. New adjudicative guidelines were issued August 30, 2006. Because the SOR was issued prior to September 1, 2006, DOHA policy requires that this case proceed under the old guidelines. Applicant answered the SOR in writing on September 20, 2006, and elected to have a hearing before an administrative judge. The case was assigned to me on December 15, 2006. The Notice of Hearing was issued on December 20, 2006. I convened a hearing on January 22, 2006, to consider whether Applicant is qualified for a favorable eligibility determination.

The government moved to amend the opening paragraph of the SOR, by striking the language “*paragraph 3-614, Department of Defense Regulation 5200.2-R and paragraph 2.4.*” The government provided no legal basis for changing the guidelines, and I found there was none. The motion to amend the SOR was denied. The government offered six exhibits, marked as exhibits 1-6. Applicant offered seven exhibits, marked as exhibits A-G. I left the record open until February 2, 2007, to allow Applicant the time to submit documentation for the record. At Applicant’s request and without objection by department counsel, I extended that date to February 12, 2007. On January 26, 2007 and February 12, 2007, Applicant faxed additional documents to department counsel, marked as Applicant’s Exhibits H and I. The Government had no objection. Exhibits H and I are admitted. DOHA received the hearing transcript (Tr.) on January 31, 2006.

FINDINGS OF FACT

Applicant admitted all of the allegations contained in SOR subparagraph 1.a. through 1.y. Her admissions are incorporated herein as findings of fact. I make the following additional findings of fact.

Applicant is a 33-year-old enrollment representative employed by a federal contractor.¹ She is single, has one seven-year-old child living with her, has a high school diploma and one year of college credits, has not served in the military, and is seeking a renewal of eligibility for assignment to an ADP I/II/III position.²

As of May 23, 2006, Applicant had the following debts:³

¹Government Exhibit 1 (Public Trust Position Application (SF 85P), dated September 23, 2004) at 1-2.

²*Id.* at 2-7.

³Item 5 (Credit Bureau Report, dated May 23, 2006) at 1-3.

SOR ¶	DEBTOR	AMOUNT	CURRENT STATUS
1.a.	Bankruptcy	\$20,540	Discharged in November 2000 ⁴
1.b.	Bad check	\$98	Unpaid ⁵
1.c.	Collection account	\$837	Unpaid
1.d.	Charged off	\$1,034	Unpaid
1.e.	Collection account	\$471	Unpaid
1.f.	Collection account	\$332	Unpaid
1.g.	Telephone service	\$129	Unpaid
1.h.	Bad check	\$139	Unpaid
1.i.	Collection account	\$1,950	Unpaid
1.j.	Judgment	\$531	Unpaid
1.k.	Bad check	\$37	Unpaid
1.l.	Credit card	\$488	Unpaid
1.m.	Credit card	\$461	Unpaid
1.n.	Collection account	\$140	Unpaid
1.o.	Collection account	\$350	Unpaid
1.p.	Cell phone	\$473	Unpaid
1.q.	Judgment	\$841	Unpaid
1.r.	Bad check	\$129	Unpaid
1.s.	Credit union	\$82	Unpaid
1.t.	Delinquent medical	\$537	Unpaid
1.u.	Collection account	\$473	Unpaid
1.v.	Collection account	\$416	Unpaid
1.w.	Bad check	\$540	Unpaid
1.x.	Cable television	\$1,383	Unpaid

⁴Applicant's Exhibit M (Settlement Agreement, dated February 16, 2006) at 2.

⁵Current Status of SOR ¶¶ 1.b. through 1.x. are all Tr. at 25.

1.y.	Credit union	\$213	Duplicate of 1.s.; balance due: \$82 ⁶
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Not reflected in the SOR is a car loan of \$11,000 made by her sister, which Applicant cosigned. The sister is now making the monthly payments.⁷

In the 2000 bankruptcy case, Applicant had about \$20,000 of debt discharged. Approximately \$14,000 of that was for a repossessed car, about \$1,500 was credit card debt, and the remaining \$4,000 debt was her apartment rent.⁸

In 1998, Applicant was pregnant, and during the fifth month of her pregnancy, was hospitalized for nearly 2 weeks with severe hypertension. Since that time, she has been hospitalized up to two weeks at a time for that condition, in efforts to find appropriate medications to control her blood pressure. She currently takes four medications for high blood pressure. She has been seen by many specialists and she has been diagnosed with chronic hypertension. Her current medication that she has taken for the past six months seems to be working.⁹ She suffered a stroke in 1999, after her child was born. Residual effects from the stroke affect her left side and left hip which makes it difficult for her to stand up from a sitting position.¹⁰ Her physician has advised her to only work one job due to stress.¹¹ She sees her primary physician and a neurologist once a month.¹² Her doctors advised her that her condition was not severe enough to qualify for social security disability benefits.¹³

In August 2006, Applicant met with a credit counseling service and established a personal debt management program.¹⁴ She has been unable to make payments toward this program because her expenses exceed her income by approximately \$500 per month. Even with her car payment being completed in the next two months, reducing her payments by \$257 per month, she still is in a deficit position.¹⁵ Her family is helping her meet her monthly expenses.¹⁶

⁶Applicant's Answer, dated September 20, 2006, at 2; Tr. at 24.

⁷*Id.* at 36.

⁸Tr. at 20.

⁹*Id.* at 29.

¹⁰*Id.* at 29-30.

¹¹*Id.* at 30.

¹²*Id.* at 31.

¹³*Id.* at 32.

¹⁴*Id.* at 34-35; Applicant's Exhibit B (Debt Management Program, dated August 2006) at 1.

¹⁵Tr. at 37-38.

¹⁶*Id.*

For Christmas 2006, she spent about \$100. Her car is a 2001 model which she bought used. Recent unexpected car maintenance included the purchase of two new tires, for which her aunt paid.¹⁷ She had applied for higher paying jobs but she was handicapped because of her financial situation.¹⁸ Her expenditures are not indicative of an extravagant lifestyle.¹⁹ On February 11, 2007, Applicant made the decision to file a Chapter 13 bankruptcy petition.²⁰ The record was then closed.

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.²¹ Applicants are eligible for an ADP I/II/III position if there is a finding that an applicant demonstrates sufficient trustworthiness to be eligible for a position of trust.”²²

DoD Regulation 5200.2-R sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the trustworthiness of an applicant, the administrative judge must also assess the adjudicative process factors: nature and seriousness of the conduct and surrounding circumstances; frequency and recency of the conduct; age of the Applicant; motivation of the applicant, and the extent to which the conduct was negligent, wilful, voluntary, or undertaken with knowledge of the consequences involved; absence or presence of rehabilitation; and probability that the circumstances or conduct will continue or recur in the future.²³

DoD contractor personnel are afforded the right to the procedures contained in DoD Directive 5220.6 before any final unfavorable determination may be made.²⁴ In trustworthiness determination cases, the Government initially must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible to occupy an ADP position.²⁵ Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or

¹⁷*Id.* at 32-33.

¹⁸*Id.* at 33-34.

¹⁹Applicant’s Exhibit A (Applicant’s Budget and Expenditures, dated January 1, 2007) at 1-3; Applicant’s Exhibit B (Applicant’s Personal Debt Management Program, dated August 15, 2006) at 1-2.

²⁰Applicant’s Exhibit I (Applicant’s Letter to Administrative Judge, dated February 11, 2007) at 3.

²¹*Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).

²²DoD Regulation 5200.2-R, ¶ C2.1.1.

²³Regulation, Appendix 8, at 132.

²⁴Regulation ¶ C8.2.1.

²⁵Directive, ¶ E3.1.14.

mitigate the facts.²⁶ In security clearance cases, an applicant has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.²⁷ Any doubt about granting access will be resolved in favor of the national security.²⁸ The same rules apply to trustworthiness determinations for access to sensitive positions.

The scope of an administrative judge's decision is limited. Nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism.²⁹

CONCLUSIONS

The concern under Guideline F is that an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Unexplained affluence is often linked to proceeds from financially profitable criminal acts.

The available information demonstrates Applicant has a history of not meeting her financial obligations. She has been delinquent in payments on 23 accounts. She had a previous bankruptcy in 2000. Financial Considerations Disqualifying Conditions (FC DC) 1 (*A history of not meeting financial obligations*) and FC DC 3 (*Inability or unwillingness to satisfy debts*) are both applicable.

Various conditions can mitigate the trustworthiness concerns arising from financial difficulties. Financial Considerations Mitigating Condition (FC 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)*) is applicable in this case. Applicant's problems commenced during her 1998 pregnancy when she developed severe hypertension. After her child was born in 1999, she suffered a stroke which left her mildly disabled on her left side, causing difficulty in moving from a sitting to a standing position. She has had numerous hospitalizations for short periods of time (as much as two weeks) in efforts to find appropriate medications that will control her blood pressure. She had considered working a second job to meet her expenses but her doctors cautioned her to remain with one employer because they felt the additional stress caused by a second job would be detrimental to her health. Her physicians, however, believe that her disability is of insufficient severity to qualify her for Social Security disability benefits.

Another mitigating condition is FC MC 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.*) Applicant worked with a credit counseling service and attempted to prepare a budget that would allow her to initiate debt retirement. However, she was unable to meet these payments

²⁶Directive, ¶ E3.1.15.

²⁷ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002)

²⁸Directive ¶ E2.2.2.

²⁹Executive Order 10865, § 7.

because of a lack of income. While she met the first part of the mitigating condition, she has not shown that her problem is being resolved or is under control. Therefore, this mitigating condition is inapplicable.

Finally, FC MC 6 (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve bad debts.*) is not applicable. While Applicant may have initiated an effort to repay creditors by filing a Chapter 13 Wage Earner bankruptcy petition, there is insufficient evidence because Applicant only expressed her intent to file in a statement submitted at the time the record closed.

Whole Person Analysis

The adjudicative process is an examination of a sufficient period of a person's life to make a determination whether or not a person is eligible for an ADP I/II/III position. All of the information contained in the case file about the person, past and present, favorable and unfavorable, must be considered in making a determination. In evaluating Applicant's case, in addition to the disqualifying and mitigating conditions, I also considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests.³⁰ I considered her age (33), her education, her employment, her medical condition, and what might be the cause of her financial problems. I concluded that her financial condition is as a result of her continuing health problems. I also find she is capable of maintaining, over a long period of time, a stable, conscientious relationship with the U.S. government, as she has in the past. I observed Applicant during the hearing, and especially during her testimony. I find her testimony to be believable and find her to be a sincere and credible witness, because she answered questions directly, completely, and honestly. Her financial history does not indicate an extravagant lifestyle. She is not a spendthrift. Given time I believe she will pay her debts. This record raises no reasonable and persistent doubts about Applicant's ability to protect sensitive information and to exercise the requisite good judgment and discretion expected of one in whom the government entrusts its interests. I conclude Guideline F for Applicant. Applicant is qualified for a favorable eligibility determination.

FORMAL FINDINGS

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1. Guideline F:	FOR APPLICANT
Subparagraph 1.a.	For Applicant
Subparagraph 1.b.	For Applicant
Subparagraph 1.c.	For Applicant
Subparagraph 1.d.	For Applicant

³⁰*Id.*

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
Subparagraph 1.k.	For Applicant
Subparagraph 1.l.	For Applicant
Subparagraph 1.m.	For Applicant
Subparagraph 1.n.	For Applicant
Subparagraph 1.o.	For Applicant
Subparagraph 1.p.	For Applicant
Subparagraph 1.q.	For Applicant
Subparagraph 1.r.	For Applicant
Subparagraph 1.s.	For Applicant
Subparagraph 1.t.	For Applicant
Subparagraph 1.u.	For Applicant
Subparagraph 1.v.	For Applicant
Subparagraph 1.w.	For Applicant
Subparagraph 1.x.	For Applicant
Subparagraph 1.y.	For Applicant

DECISION

In light of all of the circumstances in this case, it is clearly consistent with the interests of national security to grant Applicant’s eligibility for assignment to an ADP I/II/III position. Eligibility is granted.

Christopher Graham
Administrative Judge