

KEYWORD: Financial

DIGEST: Applicant incurred delinquent debt during both of his marriages. He believed his two oldest debts belonged to his first wife because she created the debts. His largest unpaid debt occurred because he could not pay the car payment and the extensive car repair bills on the same car. He lives within his financial means and voluntarily pays child support for his daughter and stepson. His overall work record in the military and with his employer reflects that he is reliable and trustworthy. He has mitigated the government's concerns about his trustworthiness. Eligibility is granted.

CASENO: 06-12861

DATE: 05/30/2007

DATE: May 30, 2007

In re:)	
)	
)	
-----)	ADP Case No. 06-12861
SSN: -----)	
)	
Applicant for Public Trust Position)	
)	

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

APPEARANCES

FOR GOVERNMENT

Richard Stevens, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant incurred delinquent debt during both of his marriages. He believed his two oldest debts belonged to his first wife because she created the debts. His largest unpaid debt occurred because he could not pay the car payment and the extensive car repair bills on the same car. He lives within his financial means and voluntarily pays child support for his daughter and stepson. His overall work record in the military and with his employer reflects that he is reliable and trustworthy. He has mitigated the government's concerns about his trustworthiness. Eligibility is granted.

STATEMENT OF CASE

On August 23, 2004, Applicant submitted an application for a position of public trust, an ADP I/II/III position. 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").¹ On October 24, 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) of the revised Adjudicative Guidelines (AG) issued on December 29, 2005 and implemented by the Department of Defense, effective September 1, 2006. 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 December 28, 2006, Applicant submitted a notarized response to the allegations. He requested a hearing.²

DOHA assigned this case to me on March 7, 2007, and issued a notice of hearing on March 16, 2007. At the hearing on April 11, 2007, Applicant indicated that he received the notice of the hearing 15 days prior to the hearing.³ I conducted the hearing as scheduled. The government submitted seven exhibits (GE), which were marked and admitted into the record as GE 1-7 without objection. Applicant testified on his own behalf. I held the record open for Applicant to submit documents in support of mitigation, which he did. Applicant submitted four exhibits (App Ex), which were marked and admitted into the record as App Ex A-D without objection. DOHA received the hearing transcript (Tr.) on April 24, 2007.

FINDINGS OF FACT

¹This 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.

²On December 14, 2006, DOHA terminated the adjudication of Applicant's request for a trustworthiness determination because he failed to submit answers to the interrogatories propounded to him on October 24, 2006. Applicant responded on December 28, 2006, indicating that he submitted his answers, but not by certified mail, and provided documentation in support of his assertion. On January 8, 2007, DOHA reinstated the processing of his eligibility determination. I note that Applicant answered interrogatories in August 2006. *See* GE 3.

³Tr. at 8.

In his SOR response, Applicant admits to the allegations in subparagraphs 1.a through 1.c, and 1.f under Guideline F of the SOR, but denies the remaining allegations.⁴ 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 33-year-old man employed as a desktop support analyst with a Department of Defense contractor, seeks a position of public trust. He joined in the United States Army in 1992. The Army stationed him in Germany for two years, which included six months in Bosnia. He also served in Kuwait for six months. He received the Army Achievement Medal, two Good Conduct Medals and several other ribbons and medals.⁵

In 1997, he married his first wife, who had a son from a prior relationship. Shortly after their marriage, he opened a line of credit at the base credit union where he was stationed. His wife used the credit line, although he has no idea what purchases his wife made. Problems developed in their relationship because his wife did not like living where he had been stationed and wanted to return home. He received an honorable discharge from the Army in early 1999 and they returned home. His wife gave birth to a daughter in April 1999, who died three weeks later. He separated from his wife around the same time and has not had any further contact with her. He divorced her in 2000.⁶

In 2001, Applicant married his second wife. She had a son, now age 9, when they married. Their daughter is now 6 years old. In the summer of 2003 or 2004, an investigator met with him to discuss his ex-wife's criminal conduct. The investigator informed Applicant that his ex-wife had been writing bad checks under several different names, including his last name. In July 2004, he notified the credit reporting agencies about the possibility of a theft of his identify. The credit reports do not reflect any unusual entries subsequent to this notification.⁷

Applicant met with a security clearance investigator in March 2005 and reviewed his credit issues as indicated in the September 29, 2004 credit report. At this time, he denied the two oldest debts (1999) set forth in allegations 1.d and 1.e on the grounds the debts became his first wife's responsibility upon their divorce. He does not have a separation agreement, which allocates these debts to his first wife. This credit report reflects that he disputed the debt set forth in allegation 1.e, which does not appear on his 2006 credit report.⁸

Applicant acknowledged the car repossession debt, explaining that after he purchased a two-year-old car, he began to experience mechanical problems. He spent \$4,000 on repairs, but the car

⁴Applicant's response to the SOR, dated December 28, 2006.

⁵GE 1 (Applicant's Application for a Position of Public Trust, dated August 23, 2004) at 1, 7; GE 2 (Certificate of Release or Discharge from Active Duty, undated); Tr. at 14-15, 24-25.

⁶GE 1, *supra* note 5, at 7; GE 2, *supra* note 5; Tr. at 15, 18, 26-30.

⁷GE 4 (Applicant's signed and sworn statement, dated March 8, 2005) at 2; GE 5 (Credit report, dated September 29, 2004) at 2, 6; Tr. at 15, 30-31.

⁸GE 4, *supra* note 7, at 2-3; GE 5, *supra* note 7, at 5; Applicant's response to SOR, *supra* note 4; Tr. at 19-20, 32-33.

required more repairs. Based on his mechanic's opinion that the car had been involved in an accident, he requested the car dealership's help. When it refused to work with him on the problem, he told the car note holder to take the car, which it did. He had paid more than two years on the loan. He does not know if the car was sold after it was repossessed. The note holder requested him to pay this more than \$14,000 debt in a few large installments. He lacked the funds to do so. He has not contacted the note holder to work out a monthly payment plan.⁹

Applicant incurred the remaining debts alleged during his second marriage. Although he testified that he gave his wife the money to pay the cell phone bill of \$133 and the telephone bill of \$448, she did not pay the bill. He also testified that he paid the credit card debt in full on several occasions, but his wife continued to "run up the bill". These bills are not paid.¹⁰

Applicant and his second wife separated in 2006. His gross monthly income totals \$3,869 plus overtime, and his net monthly pay totals \$2,975 plus overtime. He voluntarily pays \$700 a month in child support for his daughter and stepson because, in his words, he has a moral responsibility. His other monthly expenses total approximately \$1,875. His net remainder to pay debt totals approximately \$400. Since the hearing, he obtained a loan against his 401k account to repay the debts listed in allegations 1.b. 1.c. and 1.e. Outside of the debts listed in the SOR, his most recent credit report reflects that he does not live beyond his financial means and that he does not use credit in excess.¹¹

Applicant's employer rates his work performance as "fully meets expectations". His work duties in desktop support involve loading software programs on computer systems and personal computer repair. He does not have access to sensitive information or information protected under the Privacy Act.¹²

POLICIES

The revised Adjudicative Guidelines set forth disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. An administrative judge need not view the revised adjudicative guidelines as inflexible ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, are intended to assist the administrative judge in reaching fair and impartial common sense decisions. Although the presence or absence of a particular condition or factor for or against a trustworthiness determination is not outcome determinative, the revised AG should be followed whenever a case can be measured against this policy guidance. In addition, each security clearance decision must be based on the relevant and material facts and circumstances, the whole-person concept, and the factors listed in the Directive. Specifically, these are: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the

⁹ Applicant's response to SOR, *supra* note 4; GE 4, *supra* note 7, at 3-4; Tr. at 20-23, 35-37.

¹⁰Tr. at 18-19, 32.

¹¹App Ex B (Verification of loan approval); App Ex D (Earnings statements, dated April 13, 2007 and April 27, 2007); Tr. at 15-18, 31.

¹²App Ex C (Performance evaluations for 2003 and 2004, plus an undated performance evaluation); Tr. at 39-40.

conduct; (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 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.¹³

The sole purpose of a trustworthiness determination is to decide if it is clearly consistent with the national interest to grant eligibility for assignment to sensitive duties to an applicant.¹⁴ The government has the burden of proving controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information.¹⁵ The burden of proof is something less than a preponderance of the evidence.¹⁶ Once the government has met its burden, the burden shifts to the applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.¹⁷ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.¹⁸ Conditions that could raise a trustworthiness concern and may be disqualifying, as well as those which could mitigate security concerns pertaining to these adjudicative guidelines, are set forth and discussed in the conclusions below.

No one has a right to a security clearance,¹⁹ and “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”²⁰ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.²¹ Section 7 of Executive Order 10865 specifically provides industrial security clearance decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” The decision to deny an individual a security clearance is not necessarily a determination as to the allegiance, loyalty, and patriotism of an applicant.²² It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. Any doubt as to whether access to classified information is clearly consistent with national security will

¹³Directive, revised Adjudicative Guidelines (AG) ¶2(a)(1)-(9).

¹⁴ISCR Case No. 96-0277 at 2 (App. Bd., July 11, 1997).

¹⁵ISCR Case No. 97-0016 at 3 (App. Bd., December 31, 1997); Directive, Enclosure 3, ¶ E3.1.14.

¹⁶*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

¹⁷ISCR Case No. 94-1075 at 3-4 (App. Bd., August 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.

¹⁸ISCR Case No. 93-1390 at 7-8 (App. Bd. Decision and Reversal Order, January 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.

¹⁹*Egan*, 484 U.S. at 531.

²⁰*Id.*

²¹*Id.*; Directive, revised AG ¶ 2(b).

²²Executive Order No. 10865 § 7.

be resolved in favor of the national security.²³ The same rules apply to trustworthiness determinations for access to sensitive positions.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. The government has established a *prima facie* case for disqualification under Guideline F - Financial Considerations.

Financial Considerations

Under Guideline F, the “failure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.” (AG ¶ 18) The credit reports reflect old, delinquent debts, one of which Applicant acknowledged. He incurred his two oldest debts during his first marriage, and the remaining debts during his second marriage. Because of the age of these debts and their delinquent status, Applicant showed an inability or unwillingness to pay his debts. Based on the evidence of record, the government established the applicability of DC ¶ 19(a) *inability or unwillingness to satisfy debts* and DC ¶ 19(c) *a history of not meeting financial obligations*.

Applicant’s largest debt relates to the repossession of a car he purchased in 2001. Although he made monthly payments for over two years, he decided to return the car subsequent to spending \$4,000 in repairs, and after learning that the car had been involved in a wreck and would most likely continue to require costly repairs. He could not obtain any relief from the seller of the car and could not afford to continue paying for extensive repairs and make the monthly car payment. Thus, MC ¶ 26(b) *the conditions that resulted in the financial problem were largely beyond the person’s control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances* has some application because he saw his decision to return the car as the way to resolve his mounting expenses.²⁴

Applicant has not met with a financial counselor; however, subsequent to the hearing, he applied for a loan against his 401k account, which has been approved. He stated he intended to use this money to pay the three small debts of \$133, \$122 and \$1,052. He also indicates that he contacted two other creditors, but has not made any arrangements to pay these debts. MC ¶ 20(d) *the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts* has some application. While he is not required to be debt free, he must manage his income and expenditures in a reasonable and prudent manner. At this time, he pays his monthly expenses and has some residual income each month to meet unexpected expenses. He obtained a loan to pay some of his debt, but has

²³ Directive, revised AG ¶ 2(b).

²⁴ 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).

not provided proof that the payments have been made. A promise to pay in the future is not sufficient to mitigate the financial considerations concern or evidence of a good faith effort to repay debt. However, the fact that he obtained a loan against his 401K account to pay three small debts is some evidence of his intent.

Applicant denied owing the debts alleged in paragraphs 1.d through 1.e of the SOR. His 2004 credit report reflects that he challenged the validity of the \$122 debt in allegation 1.e, which does not appear on his more recent credit report. MC ¶ 20(e) *the individual has a reasonable basis to dispute the legitimacy of the past-due 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 resolve the issue* has some applicability.²⁵

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 his 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.

The creditors for the unpaid bills, including a credit card, two cell phone bills and a personal loan, in allegations 1.b through 1.e of the SOR, are barred from collecting these debts under his state's 3-year statute of limitations. *See* State Code. Ann. § 15-3-530.²⁶ Thus, he receives partial credit for resolution 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[le]d 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 partially ended his potential vulnerability to improper financial inducements because he is no longer "financially

²⁵The remaining financial considerations mitigating condition set forth in AG 20(f) does not apply in this case.

²⁶p.7, n. 21.

overextended”. Applicant did not know about the unpaid bills from his first marriage because he mistakenly believed that the debt transferred to his first wife when they divorced. He has always acknowledged that he owes the debt from when his car was repossessed. The car note holder has not indicated a willingness to work with Applicant towards the resolution of his debt; rather it requested a few large payments from him, which he cannot make. His failure to resolve this debt in the manner requested by the note holder does not reflect irresponsibility. He lives within his monthly income and has not incurred excessive unpaid debt outside of the car loan in the last three or four years.

Applicant timely pays his rent and utilities. He voluntarily assumed responsibility for paying child support not only for his daughter, but also for a stepson because he recognizes his obligation to take care of these children. Even though several of his debts are barred by the statute of limitations, by obtaining a loan to pay these debts, he has indicated his willingness to assume responsibility for these debts, although he has not actually paid the debts.

Applicant performs his duties well and is a reliable employee. I have weighed the mitigating factors, the reasons for his debts and his failure to pay them, his recent efforts to assume responsibility for some of the old debts, his attitude towards his child support responsibilities, his military record, and his work ethic against his failure to resolve his old debts earlier and his reluctance to initiate a payment plan with the car note holder. I find that the overwhelming weight of the evidence indicates that he is a person of integrity, who is trustworthy. He would not act in a manner which would harm his employer or the government. There is little likelihood he can or would violate the privacy rights of his employer’s clientele.

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:

SOR ¶ 1-Guideline F:
Subparagraphs a-f:

FOR APPLICANT
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