

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant is 49 years old and employed by a defense contractor as a systems analyst. She has delinquent debt totaling over \$54,000. The largest debt is for \$42,000 for the remainder on a repossessed mobile home. She presented no information concerning payments or attempts to pay the delinquent debts. She listed only one debt as past due over 180 days in response to a question on her position of public trust application. Applicant has not mitigated security concerns for financial considerations and personal conduct. Eligibility is denied.

CASENO: 06-13121.h1

DATE: 04/27/2007

DATE: April 27, 2007

In Re:)	
)	
)	
-----)	ADP Case No. 06-13121
SSN: -----)	
)	
Applicant for ADP I/II/III Position)	

**DECISION OF ADMINISTRATIVE JUDGE
THOMAS M. CREAN**

APPEARANCES

FOR GOVERNMENT

Ray T. Blank, Jr., Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 49 years old and employed by a defense contractor as a systems analyst. She has delinquent debt totaling over \$54,000. The largest debt is for \$42,000 for the remainder on a repossessed mobile home. She presented no information concerning payments or attempts to pay the delinquent debts. She listed only one debt as past due over 180 days in response to a question on her position of public trust application. Applicant has not mitigated security concerns for financial considerations and personal conduct. Eligibility is denied.

STATEMENT OF THE CASE

On August 1, 2006, the Defense Office of Hearing and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to deny an application for a position of public trust for Applicant. The action was taken under Department of Defense Regulation 5200.2-R, *Personnel Security Program* (January 1987), as amended (Regulation), and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive). Applicant acknowledged receipt of the SOR in an undated response received at DOHA on August 11, 2006. The SOR alleges security concerns under Guideline F (Financial Considerations), and Guideline E (Personal Conduct) of the Regulation.

Applicant answered the SOR in writing on August 25, 2006, admitting all of the factual allegations under Guideline F, but denying the security concern for financial considerations, and admitting the factual allegation under Guideline E, but denying the security concern for personal conduct. She elected to have the matter decided on the written record in lieu of a hearing.

Department Counsel submitted the Government's written case on January 10, 2007. Applicant received a complete file of relevant material (FORM) on January 17, 2007, and was provided the opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. She did not provide any further information. The case was assigned to me on March 22, 2007.

FINDINGS OF FACT

Applicant is 49 years old and employed by a defense contractor as a systems analyst. As a condition of her employment, Applicant submitted a Questionnaire for Public Trust Positions, Standard Form 85P, on August 19, 2004.¹ In response to question 22b asking if she was now over 180 days delinquent on any loan or financial obligation, Applicant responded "yes" listing one debt on a vehicle. Subsequent investigation shows Applicant had 20 delinquent debts, some of which were more than 180 days past due, for a total debt of \$54,274.93. Applicant admitted all of these debts.²

¹Item 4.

²Item 2.

The largest single debt of \$42,455 was for the remainder from the repossession of a mobile home. There were 16 accounts placed for collection totaling \$4,031. Half of the debts were for less than \$100. The debts include unpaid medical bills, unpaid retail accounts, a cable company bill, and unpaid utility bills. The debts go back to 1999 and have not been paid. One debt was for an automobile loan charged off for \$5,973. A judgment was entered against Applicant in December

2004, for an unpaid medical bill in the amount of \$1,591.93. The judgment has not been satisfied. There was one debt past due for \$224 to a financial institution creditor.³

Fifteen of the debts were placed for collection from January 1999 to October 2003, more than 180 days prior to Applicant's completion of the SF 85P in August 2004. The automobile loan Applicant listed on the SF 85P was included in this list having been charged off in October 2003. This was the only debt listed on the application as past due more than 180 days. Applicant did not present information concerning how the debts were accumulated or payments on the debts or even attempts to pay the debts.

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."⁴ To be eligible to occupy an Information Systems Position designated ADP II/III, an applicant must meet the security guidelines contained in the Regulation. The standard that must be met is that based on all available information, the person's loyalty, reliability, and trustworthiness are such that assigning the person to sensitive duties is clearly consistent with the interests of national security.⁵

The Regulation sets out the adjudicative guidelines for making trustworthiness determinations. Appendix 8 of the Regulations sets forth adjudicative guidelines for determining trustworthiness, and lists the disqualifying conditions and mitigating conditions for each guideline. The adjudicative guidelines at issue in this case are:

Guideline F - Financial Considerations: A security concern exists for an individual who is financially irresponsible. An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

³Item 5, (credit report, dated October 8, 2004); Item 6, (credit report, dated June 3, 2006); Item 7, (credit report, dated January 10, 2007).

⁴*Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁵Regulation ¶ C6.1.1.1.

Guideline E - Personal Conduct: A security concern exists for conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations. Any of these characteristics in a person could indicate that the person may not properly safeguard classified information.

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, pertaining to the adjudicative guidelines are set forth and discussed in the conclusions section below.

The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance. An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. An administrative judge should consider: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the applicant's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation of recurrence.⁶

DoD contractor personnel are afforded the rights to the procedures contained in the DoD Directive before any final unfavorable access determination may be made.⁷ Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the Applicant from being eligible for access to classified information.⁸ Thereafter, Applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts.⁹ An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."¹⁰ "[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."¹¹ "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security."¹² Each clearance decision must be fair, impartial, and a commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Regulation, Appendix 8. A

⁶DoD 5200.2-R, Appendix 8.

⁷DoD 5200.2-R, ¶ C8.2.1.

⁸Directive ¶ E3.1.14.

⁹ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15.

¹⁰ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

¹¹ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993))

¹²*Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.

person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant.¹³ It is merely an indication that the applicant has not met the strict guidelines have established for issuing a clearance.

CONCLUSIONS

I carefully considered all of the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

Applicant's delinquent debts reported by credit reports and admitted by Applicant brings the matter within Financial Considerations Disqualifying Conditions E2.A6.1.2.1 (*a history of not meeting financial obligations*), and E2.A6.1.2.3 (*an inability or unwillingness to satisfy debts*). Applicant provides no explanation how or why the debts were accumulated. I conclude the above disqualifying conditions have been established.

I considered Financial Consideration Mitigating Conditions E2.A6.1.3.1 (*The behavior was not recent*), and E2.A6.1.3.2 (*It was an isolated incident*). Applicant has not satisfied the debts so the debts are current. The debts range from unpaid medical bills, to utility and retail bills. The debts are not recent and not isolated, since they are long standing, not paid, and from various sources. The mitigating conditions do not apply.

I considered all of the other Financial Considerations Mitigating Condition and determine none apply. Applicant presented no information concerning her actions to pay her debts. There is no evidence of any condition beyond her control that caused her indebtedness so MC 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)*) does not apply. Applicant did not present any information on any financial counseling she sought or received so MC E2.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*) does not apply. Applicant presented no information concerning any attempt to repay any of the debts so MC E2.A6.1.3.6 (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) does not apply. Applicant admitted to the debts and took no action to pay or resolve them. Applicant presented no information raising any other mitigating condition, so she has failed to carry her burden to establish mitigation for her debts. I conclude Applicant has not mitigated the security concerns for financial considerations.

Applicant's failure to list on her public trust application all debts past due over 180 days brings the matter under Personal Conduct Disqualifying Condition E2.A5.1.2.2 (*the deliberate omission, concealment, or falsification of relevant and material facts from the personal security questionnaire, personal history statement, or similar form used to conduct investigations . . . determine security clearance eligibility or trustworthiness*). Applicant admitted she knew about the debts, but answered the financial question incorrectly. Since she knew of the debt, her false answer was deliberate and misleading. I find Applicant deliberately failed to provide correct information in

¹³See Exec. Or. 10865 § 7.

response to question 22b on the public trust position application.

I carefully considered all of the circumstances in light of the “whole person” concept. I conclude Applicant is not eligible for a position of public trust.

FORMAL FINDINGS

Formal findings for or against Applicant on the allegations in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a. thru 1.t.:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a.:	Against Applicant

DECISION

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national security to grant or continue eligibility for assignment to sensitive duties for Applicant. Eligibility is denied.

Thomas M. Crean
Administrative Judge