

KEYWORD: Financial

DIGEST: Applicant received a Chapter 7 bankruptcy discharge in 1999. Shortly afterwards, she was unemployed for almost 20 months, and she became financially responsible for her terminally ill mother and medically disabled son. Nevertheless, she paid off a large debt reaffirmed after her bankruptcy, paid off her mother's medical expenses and her son's car loan, and resolved or disputed several other debts. Trustworthiness concerns based on financial considerations are mitigated. Eligibility for assignment to sensitive positions is granted.

CASENO: 06-14094.h1

DATE: 05/23/2007

DATE: May 23, 2007

In re:	)	
	)	
-----	)	
SSN: -----	)	ADP Case No. 06-14094
	)	
Applicant for Trustworthiness Determination	)	

**DECISION OF ADMINISTRATIVE JUDGE  
LEROY F. FOREMAN**

**APPEARANCES**

**FOR GOVERNMENT**

Stephanie C. Hess, Esq., Department Counsel

**FOR APPLICANT**

*Pro se*

**SYNOPSIS**

Applicant received a Chapter 7 bankruptcy discharge in 1999. Shortly afterwards, she was unemployed for almost 20 months, and she became financially responsible for her terminally ill mother and medically disabled son. Nevertheless, she paid off a large debt reaffirmed after her bankruptcy, paid off her mother's medical expenses and her son's car loan, and resolved or disputed several other debts. Trustworthiness concerns based on financial considerations are mitigated. Eligibility for assignment to sensitive positions is granted.

## STATEMENT OF THE CASE

On August 17, 2006, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its preliminary decision to deny Applicant a favorable trustworthiness determination. This action was taken under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive), and Department of Defense Regulation 5200.2-R, *Personnel Security Program* (Jan. 1987), as amended and modified (Regulation). The SOR alleged security concerns raised under Guideline F (Financial Considerations) of the Regulation.

Applicant answered the SOR in writing on September 26, 2006 and elected to have a hearing before an administrative judge. The case was assigned to me on March 9, 2007, and heard on April 18, 2007, as scheduled. I kept the record open until May 3, 2007, to enable Applicant to submit additional documentary evidence. I received her evidence on May 3, 2007, and admitted it as Applicant's Exhibit (AX) M. DOHA received the hearing transcript (Tr.) on April 27, 2007.

## FINDINGS OF FACT

Applicant's admissions in her answer to the SOR and at the hearing are incorporated into my findings of fact. I make the following findings:

Applicant is a 55-year-old administrative assistant employed by a defense contractor. She is a high school graduate with some college credits but no degree. She has worked for her current employer since March 2004.

Applicant's annual performance appraisal for the period ending in March 2005 rated her "exceptional" for two performance objectives, "commendable" for one, and "satisfactory" for two. She was selected as "2<sup>nd</sup> Quarter Employee of the Quarter" in July 2005. For the period ending in February 2006, she was "exceptional" for two objectives, "commendable" for two, and "satisfactory" for one (Answer to SOR). For the most recent period ending in February 2007, she was "exceptional" for one performance objective, "commendable" for two, and "satisfactory" for two (AX J).

Applicant served on active duty in the U.S. Air Force Reserve from September 1981 to January 1982. She received a security clearance during her military service (Government Exhibit (GX) 1 at 6; AX E).

Applicant was involved in a car accident in 1994 and unable to work for about six months. She was involved in another accident in 1999 and unable to work for about three months. Her insurance payments and disability pay were less than her financial obligations, causing her to fall behind on her car payment and several credit card balances (GX 2 at 2-3).

Applicant filed for Chapter 7 bankruptcy in July 1999 and received a discharge in November 1999. She had about \$33,222 in assets and \$41,728 in liabilities, including credit card debts incurred during a marriage that ended in divorce. Her bankruptcy filing reflects 13 credit card accounts, of which five were joint and eight were in Applicant's name only (GX 4 at 37-41). She reaffirmed a \$16,709 debt for a 1998 automobile and the a \$766 debt on two cemetery plots worth about \$1,900. All other debts were discharged. This bankruptcy is alleged in SOR ¶ 1.a.

Shortly after Applicant's bankruptcy discharge, her mother became seriously ill and required full-time care. Applicant and her sister moved in with their mother to care for her. Applicant lost her job in February 2001 and began living on her credit cards. She also began paying her son's car loan when he was medically disabled from working (GX 2 at 4). She was unemployed until December 2002. At some time in 2002, she placed her mother in a nursing home, and assumed responsibility for sharing the expenses with her sister. The total bill for the nursing home was around \$2,000 (Tr. 57). Her mother died in May 2002 (Answer to SOR at 3).

Applicant has disputed the three medical bills alleged in SOR ¶¶ 1.b, 1.c, and 1.i, on the ground that they should have been paid under her previous employer's medical insurance (AX A at 17-18; Tr. 48-51). She resolved the medical bill alleged in SOR ¶ 1.j (AX A at 17; Tr. 48-49). She resolved the credit card debt alleged twice in SOR ¶¶ 1.g and 1.h (AX M at 7; Tr. 47). She has determined that the debts alleged in SOR ¶¶ 1.d and 1.e are the same debt, but she has been unable to resolve that debt and the credit card debt alleged in SOR ¶ 1.f, because the collection agencies will not accept partial payments (Tr. 50, 52, 60).

In March 2005, Applicant executed a personal financial statement reflecting net monthly income of \$1,595, expenses of \$1,265, debt payments of \$492, and a monthly shortfall of about \$162 (GX 2 at 16). She currently earns about \$32,000 per year, about \$5,200 more than when she executed her personal financial statement. She lives with her sister and they split the rent of \$895. She has paid off her son's car and her own car loan that she reaffirmed after her bankruptcy. She recently borrowed about \$3,500 for essential repairs on her car. As of the date of the hearing, the balance on this loan was about \$3,200. Applicant paid \$150 on the nursing home bill in March 2007, leaving a balance of only about \$192. Each month she has a remainder of about \$260 before buying food and gasoline (Tr. 55-58). She has virtually no savings, but contributes about 3 percent of her pay to her retirement account (Tr. 59). If she could negotiate a payment plan with her remaining two creditors, she estimates she would be able to pay about \$50 a month (Tr. 60).

Applicant has inquired about consumer credit counseling through her employee's assistance program. She recognizes she may need professional assistance to negotiate payments plans for her two unresolved debts, but she had not yet contacted anyone as of the date of the hearing (Tr. 60-61).

The evidence regarding the debts alleged in the SOR is summarized in the table below.

<b>SOR</b>	<b>Debt</b>	<b>Amount</b>	<b>Status</b>	<b>Record</b>
1.b	Medical	\$185	Disputed	GX 3 at 1; AX M; Tr. 51
1.c	Medical	\$266	Disputed	GX 3 at 1; AX A at 18; Tr. 51
1.d	Credit card	\$2,697	Charged off; same debt as SOR ¶ 1.e	GX 2 at 10; GX 3 at 2
1.e	Credit card	\$3,970	Collection account opened Oct 2002, based on same debt as SOR ¶ 1.d; attempting to negotiate payment plan	GX 3 at 2; Tr. 52
1.f	Credit card	\$9,010	Collection account opened Nov 2002; attempting to negotiate payment plan	GX 3 at 3; AX A at 3
1.g	Credit card	\$1,131	Resolved	AX M at 7
1.h	Credit card	\$1,563	Same debt as SOR ¶ 1.g	Tr. 47
1.i	Medical	\$175	Disputed	AX A at 17; Tr. 48-49
1.j	Medical	\$359	Paid	GX 3 at 1; AX A at 17; Tr. 49

### **POLICIES**

The adjudicative guidelines set out in the Regulation are used to make ADP trustworthiness determinations. Department of Defense contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination may be made. Regulation ¶ C8.2.1.

Positions designated as ADP I and ADP II are classified as “sensitive positions.” Regulation ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3. “The standard that must be met for . . . assignment to sensitive duties 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.” Regulation ¶ C6.1.1.1. Appendix 8 of the Regulation sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline.

“The adjudicative process is an examination of a sufficient period of a person’s life to make an affirmative determination that the person is an acceptable security risk.” Regulation Appendix

8 at 132. Each eligibility determination must be a fair, impartial, and commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Regulation. 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 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 pertinent 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. *Id.*

In security clearance cases, the government must initially present substantial evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information. Directive ¶ E3.1.14. "Substantial evidence" is "more than a scintilla but less than a preponderance." *See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive ¶ E2.2.2. These same burdens of proof apply to trustworthiness determinations for ADP positions.

## CONCLUSIONS

### **Guideline F (Financial Considerations)**

Under this guideline, "[a]n individual who is financially overextended is at risk of having to engage in illegal acts to generate funds." Regulation, Appendix 8 at 144. A person who fails or refuses to pay long-standing debts or is financially irresponsible may also be irresponsible or careless in his or her duty to protect sensitive information.

Two disqualifying conditions (DC) under this guideline could raise a security concern and may be disqualifying in this case. DC 1 applies where an applicant has a history of not meeting his or her financial obligations. *Id.* DC 3 applies where an applicant has exhibited inability or unwillingness to satisfy debts. *Id.* Both conditions are raised in this case.

Since the government produced substantial evidence to raise DC 1 and DC 3, the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts. *Id.* An applicant has the burden of proving a mitigating condition, and the burden of disproving it is never shifted to the government. *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

A security concern based on financial problems can be mitigated by showing the delinquent debts were not recent (MC 1) or they were isolated incidents (MC 2). Regulation, Appendix 8 at 144. Applicant had multiple delinquent debts, two of which are not yet resolved. I conclude MC 1 and MC 2 are not established.

Security concerns arising from financial problems can be mitigated by showing they are the result of conditions “largely beyond the person’s control” (MC 3). *Id.* Even if Applicant’s financial difficulties initially arose due to circumstances beyond her control, it is appropriate to consider whether she acted in a reasonable manner when dealing with her financial difficulties. ISCR Case No. 02-02116 at 4 (App. Bd. Sep. 25, 2003).

Applicant has encountered numerous adverse conditions beyond her control, all of which contributed substantially to her financial problems. She was injured in two car accidents in 1994 and 1999 and was unable to work. She was divorced and faced with reduced income and jointly-incurred debts. She was unemployed from February 2001 until December 2002. At the same time, she assumed responsibility for her mother’s nursing home expenses. Her son became medically disabled, and she assumed responsibility for his car payments so that he could have transportation. She reacted to these adversities by seeking gainful employment, living frugally, and attempting to compromise or settle her debts. I conclude MC 3 is established.

A mitigating condition (MC 4) applies when an applicant “has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control.” Regulation, Appendix 8 at 144. MC 4 is not established because Applicant had not yet sought financial counseling as of the date of the hearing.

A security concern arising from financial problems can be mitigated by showing a good-faith effort to resolve debts (MC 6). *Id.* The concept of good faith “requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.” ISCR Case No. 99-0201, 1999 WL 1442346 at \*4 (App. Bd. Oct. 12, 1999).

Applicant has diligently tried to resolve the debts arising after her 1999 bankruptcy. She paid off the car loan reaffirmed after her bankruptcy. She assumed responsibility for her mother’s medical expenses, and she has paid off all but \$192 of the nursing home bill. She assumed responsibility for her son’s car payment after he was disabled, and she has paid off that debt. She has disputed three medical debts (SOR ¶¶ 1.b, 1.c, and 1.i). She resolved one credit card debt (SOR ¶¶ 1.g and 1.h) and one medical debt (SOR ¶ 1.j). She has repeatedly tried to reach a compromise with the creditors in SOR ¶¶ 1.e and 1.f. Despite her limited income, she has made considerable progress. She has progressed in her job and received pay raises. As a matter of law, she is not required to show she has paid every debt in its original full amount. *See* ISCR Case No. 04-10671 at 3 (App. Bd. May 1, 2006). I conclude MC 6 is established.

### **Whole Person Analysis**

In addition to considering the specific disqualifying and mitigating conditions under each guideline, I have also considered the general adjudicative guidelines in the Regulation. I have considered: (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 or recurrence. Regulation Appendix 8 at 132.

Applicant's financial problems have been serious and long-standing, but she has overcome most of them. She was very candid, sincere, and credible at the hearing. She has lived frugally and responsibly, but has been beset with repeated financial setbacks beyond her control. She is a mature, responsible woman who is well-regarded by her supervisors. She is strong-willed and determined to resolve the two remaining debts. Rehabilitation is not an issue because financial indiscipline has not been the cause of her problems. She has not succumbed to pressure, coercion, exploitation, or duress since 1999, even though she has been struggling financially. Her vulnerability to financial pressure may soon be further reduced by the Florida statute of limitations, if it has not already run. *See Florida Statutes § 95.11* (five-year limitation for most contracts; four-year "catch-all" limitation). While reliance on a statute of limitations is not necessarily a "good faith effort" to resolve a debt, it is relevant because it makes the debt unenforceable, leaving a debtor no longer vulnerable to coercion or temptation to engage in illegal conduct to generate funds. *See ISCR Case No. 99-9020 at 6 n.12* (App. Bd. Jun. 4, 2001). Applicant's financial track record strongly indicates she will continue to act responsibly.

After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the trustworthiness concerns based on based on financial considerations. Accordingly, I conclude she has carried her burden of showing that it is clearly consistent with the interests of national security to grant her a favorable trustworthiness determination.

### **FORMAL FINDINGS**

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline F: FOR APPLICANT

Subparagraphs 1.a-1.j 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 eligibility for assignment to sensitive duties. Eligibility is granted.

LeRoy F. Foreman  
Administrative Judge