

SYNOPSIS

Applicant has significant old and unpaid debts. Her estranged husband is addicted to painkillers and cocaine. About five years ago, he began systemically taking her income to pay for his drug addict. They separated in March 2003, but are not divorced because his whereabouts are unknown. His actions left little money to pay bills. Her income pays her monthly expenses, but does not provide her with money to repay her old debts, most of which are time barred from collection. She currently helps care for her elderly father. She is current in her bills and has not acquired more unpaid debt in more than two years. She has maintained steady employment for eight years. She has mitigated the government's financial concerns. Eligibility for a position of trust is granted.

STATEMENT OF CASE

On August 24, 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 why it could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue eligibility for a public trust position. Specifically, the SOR, which is in essence the administrative complaint, alleged security concerns arising 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.

In a sworn statement dated December 19, 2006, Applicant responded to the SOR allegations and requested a hearing. DOHA assigned this case to me on February 8, 2007, and issued a notice of hearing on March 2, 2007. At the hearing on March 21, 2007, Applicant waived her right to receive the notice of the hearing 15 days prior to the hearing date. I conducted the hearing as scheduled.² The government submitted five exhibits (GE) which were marked and admitted into the record as GE 1-5, without objection. Applicant submitted 17 exhibits (App Ex), which were marked and admitted as App Ex A-Q, without objection. Applicant testified on her own behalf. I held the record open until April 11, 2007 for the submission of additional evidence. Applicant timely submitted five additional exhibits, which are marked and admitted as App Ex R-V, without objection. DOHA received the hearing transcript (Tr.) on April 10, 2007.

FINDINGS OF FACT

¹ This 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.

²Tr. at 11.

In her SOR response, Applicant admits to all the SOR allegations under Guideline F, but denies the overall concern.³ 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 38-year-old woman and high school graduate, works as a claims associate for a Department of Defense contractor, and seeks a position of public trust. She has worked for her employer for more than eight years.⁴

In July 1995, at age 26, Applicant married a man 12 years her senior. In 1996, her husband sustained an on-the-job injury to his shoulder. His employer lacked workers compensation insurance, leaving them to pay the bills. Her husband stopped working and began disappearing from home two-four days a week. He always told her some reason for his absence. She eventually learned that he was addicted to cocaine. She also realized that he had started writing and signing checks with her name.⁵

In 1998, Applicant transferred jobs and moved with her husband to another city. Her husband entered a drug rehabilitation program, which she funded, and he completed eight months later. In 2002, her husband began disappearing from home for days at a time. When she returned home after attending an out-of-town seminar, she discovered that her husband had taken all the money out of their joint checking account, leaving her with no funds to pay bills. In the house, she found evidence of cocaine use and documents from his doctors. After reviewing these documents, she realized that he was addicted to pain pills and that he was most likely using cocaine again.⁶

On April 28, 2003, the State Solicitor for the county where Applicant lived notified her husband that he had been accepted into a Pre-Trial Intervention program, which included random drug testing. Her husband paid the participation fee of \$250, but did not complete the program. She decided not to pay for a second drug treatment program and to end her marriage. She moved home 30 days later, after her employer granted her request for a transfer. She has not seen her husband since she left him in May 2003. She last had contact with him in December 2003. She does not know where he is, and cannot divorce him.⁷

During her marriage, her estranged husband opened joint checking accounts, then depleted all the funds in the accounts. She finally opened an account in her name and had her paycheck deposited in the account. Once she did this, he no longer used her earnings to pay for his drug habit.⁸

³Applicant's response to the SOR, dated December 19, 2006.

⁴GE 1 (Applicant's Questionnaire for a Position of Public Trust) at 1, 3.

⁵*Id.*; Tr. at 43-46.

⁶App Ex E (Medical progress note on husband, dated April 25, 2003) at 1; Tr. at 46-47.

⁷App Ex D (Letter, dated April 28, 2003) at 1-3; App Ex E, *supra* note 6; Tr. at 42, 51.

⁸Tr. at 54-56.

In 2004, Applicant earned \$27,772. In 2005, her income totaled \$28,686. However, in 2006, she earned only \$19,677 because she took time from work to care for her sick, elderly father, following two brain surgeries. She continues to provide care for him, using the provisions of the Family and Medical Leave Act to account for her unpaid and unscheduled absences from work.⁹

When she works full-time, she earns approximately \$2,300.00 in gross monthly income, and her net monthly income is approximately \$1,617.00. Her monthly expenses total approximately \$1,625, including repairs to her old car. With her income, she can pay her bills. She does not use credit cards for purchases, only her debt card when cash is available. In the last three months, her monthly income has been significantly less than normal because of the time she has missed from work while caring for her father. Her parents have been assisting her with payment of her bills.¹⁰

The SOR lists 19 delinquent and unpaid debts, totaling \$27,145. All of these debts are more than three years old, except the \$1,620 bank overdraft debt in allegation 1.j, the \$258 personal loan in allegation 1.l and the \$1,100 credit card debt in allegation 1.p. Applicant established that until 2001, she regularly and timely paid on her credit debt. When her estranged husband took all the financial assets to pay for his restarted drug habit, she lacked sufficient funds to pay all the bills. She paid the essentials, such as rent, utilities and food, when she could. She asked her estranged husband to sign over to her a car titled in both names. He refused and requested that she give the car to him. She declined because she did not want him driving a car with her name on the title when he may be on drugs and could cause harm to others for which she would be responsible. She requested the noteholder to take the car on a voluntary repossession, but it could not do so because her husband needed to sign the title. The noteholder involuntarily repossessed the car, after she told them where to find it.¹¹

Applicant has not paid any of her delinquent debts nor has she made any arrangements to pay these debts because she lacks the payment funds. She recently participated in an employer sponsored program on ways to resolve and control debt. She is considering filing bankruptcy to eliminate her older debts.¹²

Applicant's former employer states that "Her unsurpassed customer service expertise coupled with her precise bookkeeping skills quickly made her a valued asset." She would not question Applicant's integrity and would rehire her at any time. Applicant lives a simple life and does not want to change it. She drives a 14-year-old car.¹³

⁹App Ex R (Applicant's federal tax return for 2004); App Ex S (Applicant's federal tax return for 2005); App Ex T (Applicant's federal tax return for 2006); Tr. at 57, 60.

¹⁰App Ex U (Applicant's wage and earnings statements from December 22, 2006 through March 30, 2007); GE 2 (Applicant's answers to interrogatories, dated September 6, 2006) at 9; Tr. at 65.

¹¹SOR at 1-3; GE 3 (Credit report, dated October 14, 2004); GE 4 (Credit report, dated June 14, 2006); GE 5 (Credit report, dated February 7, 2007); App Ex. H through M (Copies of payments on credit accounts in 2001); Tr. at 46-53.

¹²App Ex V (Confirmation on credit counseling class) at 1; Tr. at 62, 64, 73.

¹³App Ex B (Letter, dated December 20, 2006); App. Ex. A (letter, dated August 20, 2003); Tr. at 43-44.

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.”¹⁴ In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information and determining trustworthiness within the executive branch.

To be eligible for a security clearance or access to sensitive information, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. The adjudicative guideline at issue in this case are:

Guideline F - Financial Considerations - An individual who is financially overextended is at risk of having to engage in illegal or unethical acts to generate funds to meet financial obligations. Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligation to protect classified or sensitive information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

Conditions that could raise a trustworthiness concern and may be disqualifying, as well as those which could mitigate security concerns pertaining to this adjudicative guideline, are set forth and discussed in the conclusions 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.¹⁵ An administrative judge must apply the “whole person concept,” and consider and carefully weigh the available, reliable information about the person.¹⁶ An administrative judge should consider the following factors: (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.¹⁷

¹⁴ *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).

¹⁵ Directive, ¶ E2.2.1.

¹⁶ *Id.*

¹⁷ *Id.*

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.¹⁸ Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts.¹⁹ An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.”²⁰ Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.²¹ 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 numerous old, unpaid debts. Because of the age of these debts and their delinquent status, Applicant showed an inability or unwillingness to pay her debts. Based on the evidence of record, the government established the applicability of Disqualifying condition (DC) ¶ 19 (a) *inability or unwillingness to satisfy debts* and DC ¶ 19 (c) *a history of not meeting financial obligations*.

Applicant left her husband in May 2003. She last contacted him in December 2003. Since then, she has not been in contact with her estranged husband and does not know where he is. She has no intent to continue her relationship with him, and would divorce him if she could locate him. Because she wanted to stop his theft of her earnings, she opened a checking account in her name only, and directed that her paycheck be sent to this account. By so doing, she denied her estranged husband access to her money. She does not use credit cards anymore. She limits herself to using her debt card to pay for her purchases. Mitigating Condition (MC) ¶ 20(a) *the behavior . . . occurred under such circumstances that it is unlikely to reoccur and does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment* applies because her estranged husband can no longer use her earnings to fund his drug habit. She can, and does, pay her monthly bills.

One year after her marriage, Applicant’s husband sustained an injury. He managed the pain with cocaine. Although he successfully completed a drug rehabilitation program in 1998, within four

¹⁸ Directive, ¶ E3.1.14.

¹⁹ Directive, ¶ E3.1.15.

²⁰ ISCR Case No. 01-20700 at 3 (App. Bd. December 19, 2002).

²¹ Directive, ¶ E2.2.2.

years, Applicant's husband had become addicted to pain killers and had started using cocaine again. To support his habits, he stole all the household money, leaving no money to pay bills. His continual theft of household income made it impossible for her to pay all their bills. She paid what and when she could. After a year of his behavior, Applicant left him. More recently, she has assumed significant responsibility for the care of her elderly father after brain surgery, which has required her to take unpaid leave from work. 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* applies. The evidence reflects that she acted responsibly under the circumstances.

Recently, Applicant enrolled in a credit counseling course sponsored by her employer to learn how to resolve these credit problems. She is looking into bankruptcy. Since she has not actually filed for bankruptcy, this fact is entitled to little weight. MC ¶ 20 (c) *the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control* has some applicability.

Applicant has not paid any of her debts and has not made any effort to develop a payment plan with her creditor. MC ¶ 20 (d) *the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts* does not apply.

In her response, Applicant disputes the debts alleged in paragraphs 1.e, 1.f, 1.j, and 1.r of the SOR. She has not provided documentation that she formally disputed these debts with the credit reporting agencies. Thus, 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* does not apply.²²

She does, however, receive some credit in the whole person analysis, *infra*, for the application of the 3-year State statute of limitations, which applies to SOR allegations 1.a - 1.I, 1.k, 1.m, 1.n, 1.q, and 1.r, which are primarily credit card debts, unpaid personal loans, and telephone bills. *See* State Code. Ann. § 15-3-530.²³ The 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.

²²The remaining financial considerations mitigating condition set forth in AG 20 (f) does not apply in this case.

²³*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).

Carolina Marine Handling, Inc. v. Lasch, 609 S.E.2d 548, 552 (Ct. App. 2005) (internal quotation marks and citations omitted).

Elimination of 90% of her delinquent debt through the statute of limitations has ended her potential vulnerability to improper financial inducements to pay these debts because she is no longer “financially overextended”, but it does not negate her past conduct in not paying her outstanding debts.

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 her 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.

Applicant married a man who developed a cocaine habit and later became dependent on pain killers. For a number of years, she paid her bills. She also financed a drug rehabilitation program for her estranged husband. However, in 2002, he returned to his drug use and began severely depleting the funds in their joint banking accounts to pay for his drug habits. She managed to pay some basic living expenses, but could not pay many of her now delinquent bills. She allowed a car to be repossessed before she would permit her estranged husband to have it because she feared the harm he could cause should he drive while high on drugs, a very likely occurrence. She left him because she realized he would not resolve his drug problem, and did not want to be a part of the problems created as a result of his addiction. She ended her relationship with him almost four years ago. Since then, the number of delinquent debts have declined. For the last two and one-half years, she has paid her current bills and lived within her financial means. She cares for her elderly father, using unpaid leave under the Family and Medical Leave Act. Her work ethic, skills and integrity are supported by her continuous employment and the statement of her former employer. Her estranged husband’s drug habits created serious financial problems for her. These problems will not occur in the future because he is out of her life and will not be allowed back into her life. She lives quietly and simply, and has no desire to change her lifestyle. Although she has not paid her debts, there is very little likelihood that she will engage in illegal acts to generate funds, particularly since she did not compromise her employer’s sensitive information during her time of severe financial distress to pay her bills after her husband deleted the bank accounts. After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole person,²⁴ I conclude she has mitigated the trustworthiness concerns pertaining to her finances.

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:

²⁴See ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006).

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

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