

KEYWORD: Financial

DIGEST: While he has limited income, Applicant documented no actions to resolve any of his debts to twelve creditors for over \$16,000. With this history of not paying his bills and his failure to develop a plan to resolve them, Applicant failed to mitigate the government's concerns under Guideline F. Eligibility for trustworthiness is denied.

CASENO: 06-14374.h1

DATE: 08/30/2007

DATE: August 30, 2007

In Re:)	
)	
-----)	
SSN: -----)	ADP Case No. 06-14374
)	
Applicant for Public Trust Position)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
KATHRYN MOEN BRAEMAN**

APPEARANCES

FOR GOVERNMENT

Nichole Noel, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

While he has limited income, Applicant documented no actions to resolve any of his debts

to twelve creditors for over \$16,000. With this history of not paying his bills and his failure to develop a plan to resolve them, Applicant failed to mitigate the government's concerns under Guideline F. Eligibility for trustworthiness is denied.

STATEMENT OF CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant's application for a public trust position under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended (the "Directive").¹ On December 29, 2006, DOHA issued Applicant a Statement of Reasons (SOR) detailing the basis for its decision based on the revised ("new") Adjudicative Guidelines² issued on December 29, 2005, and implemented by the Department of Defense, effective September 1, 2006. The SOR alleged security concerns under Guideline F (Financial Considerations). On February 12, 2007, Applicant responded to the SOR allegations and requested a hearing.

DOHA assigned this case to me on March 28, 2007. The Notice of Hearing issued on March 30, 2007, set the date for April 18, 2007. Applicant received it on April 2, 2007, which gave him 15 days notice of the hearing. At the hearing, conducted as scheduled, the government submitted five exhibits (Exhibits 1-5), which were admitted into the record without objection. Applicant submitted no exhibits, but testified on his own behalf. The record was held open for two weeks until May 2, 2007, (TR 53, 61-62) to allow Applicant to submit further documents, which he failed to do. DOHA received the hearing transcript (TR) on April 27, 2007.

FINDINGS OF FACT

In the SOR response, Applicant admitted³ to SOR allegations 1.a., 1.b., 1.c, 1.d, 1.e., 1.f., 1.g., 1.h., 1.i., 1.k, and 1.l under Guideline F, but denied 1.j. under Guideline F. 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 26-year-old man, seeks a position of public trust. He has worked in enrollment and data entry for a Department of Defense contractor for almost two years. He was unemployed for two months in 2005 and previously worked as an entertainer, as a loan officer, and as a collector for a credit corporation and for collection services. He is a high school graduate. He is not married.

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.

² Applicant did receive a copy of the DoD Directive 5220.6 which was sent with his Statement of Reasons (SOR).

³ Response to SOR, dated February 12, 2007.

(Exhibit 1, Public Trust Position Application; TR 24-27; 32-35)

Financial Considerations

Applicant explained his financial problems began in October 2001 when he totaled his car and lost his job as he had no transportation. However, he did not declare this unemployment in his security form under his employment history. As he did not have gap insurance, he also owed for the car. In addition, he had to finance another vehicle to get to work. (TR 16-17; 27-31) He stated he incurred more debt when he was in a relationship with his girlfriend for two years. (TR 17)

On his initial application Applicant documented that he had 180-day delinquencies to a health club incurred in July 2000 and a credit card debt. (Exhibit 1) He claimed he did not know he had so many debts until he received his credit reports. (TR 20) A review of Applicant’s credit reports from July 2005 (Exhibit 3), June 2006 (Exhibit 4), March 2007 (Exhibit 5) as well as his admissions to the SOR show twelve unpaid debts totaling over \$16,000. In his answers to Interrogatories submitted in November 2006, he stated he disputed one debt and disputed a fine of \$101 for parking tickets to a university where he visited the campus, but had not attended. The income he earns just covers his expenses of \$1,430. He stated he was unable to make any payments on his debts as he needed “to get my finances in order” to resolve the matters. While in November 2006 he stated he planned to pay off the small debts with his tax return, he provided no evidence he did so. (Exhibit 2) The current status of these debts is as follows:

SOR ¶	TYPE OF DEBT (date)	AMOUNT	CURRENT STATUS
1.a	Collection account for a health club loan. (2004)	\$ 3,946.00	Unpaid; he believes this debt is the same as 1.l, but he provided no documentation to establish they were the same debt. (TR 20; 51-53)
1.b.	Jewelry store. (2000)	\$ 724.00	Unpaid. (TR 54-55)
1.c	Collection account in regard to a vehicle. (2004)	\$ 2,468.00	Unpaid. (TR 47-49; 55-56)
1.d	Collection account for a vehicle. (2000)	\$ 1,007.00	Unpaid. (TR 47-49; 56)
1.e	Credit card charged off. (2001)	\$ 268.00	Unpaid. (TR 56-57)
1.f	Collection account. (2006)	\$ 2,460.00	Unpaid. (TR 57)
1.g	Collection account for cell phone. (2006)	\$ 852.00	Unpaid. (TR 58)

1.h	Collection account from hospital. (2006)	\$ 484.00	Unpaid; he believed insurance should have paid this expense. (TR 23-24)
1.i	Collection account. (2003)	\$ 470.00	Unpaid. (TR 58-59)
1.j	Parking debt to university. (2006)	\$ 101.00	Unpaid. While he disputed this debt as he never received a parking ticket, he has not contested the ticket. (Answer; Exhibits 2, 3, 4; TR 21, 44-47)
1.k	Collection account for library bill. (2006)	\$ 80.00	Unpaid. (TR 59)
1.l	Collection account for credit card. (2006)	\$ 3, 447.00	Unpaid; While he believes this debt is the same as 1.a., he provided no documentation. (TR 20; 59-60)

Initially, he believed he could handle his arrangements with each debtor himself but has not done so as he has not had the financial resources to offer a settlement. Applicant would like to consult a credit counseling agency to “square away” his credit and go over each account, but he has not done so. (TR 21-22; 37-39) He has paperwork from various creditors but “personally can’t sort it out.” He does not know how to go about it. (TR 49-50) He has discussed his financial problems with his mother, but his only asset is his vehicle. (TR 39-41)

Applicant moved home with his parents in May 2006 to reduce expenses. (TR 23) He pays his mother \$300 per month rent. He has paid for his vehicle. He testified his only expense is for his cell phone of \$50 and insurance of \$90. He currently makes \$12.50 per hour and earns \$816 every two weeks. (TR 41-44)

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.”⁴ 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

⁴ *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).

sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. 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.

"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.⁵ An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person.⁶ 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.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, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the 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 Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.¹¹ The same rules apply to trustworthiness determinations for access to sensitive positions.

CONCLUSIONS

Financial Considerations

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

⁵ Directive, ¶ E2.2.1.

⁶ *Id.*

⁷ *Id.*

⁸ Directive, ¶ E3.1.14.

⁹ Directive, ¶ E3.1.15.

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

¹¹ Directive, ¶ E2.2.2.

irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

I have carefully considered all the facts in evidence and the legal standards. The government established a *prima facie* case for disqualification under Guideline F, Financial Considerations. Based on all the evidence, AG ¶ 19(a), (*inability or unwillingness to satisfy debts*) and ¶ 19(c), (*a history of not meeting financial obligations*) apply to Applicant's case. Applicant has many unpaid, delinquent debts and did not demonstrate any effort to resolve them.

With the government's case established, the burden shifted to Applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him. I considered the Financial Considerations Mitigating Conditions (MC) but none apply sufficiently to mitigate concerns. He still carries a significant amount of outstanding delinquent debts for a variety of bills which he incurred over several years. AG ¶ 20(b) (*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)*) applies in part due to his 2001 accident. However, AG ¶ 20 (a), (*the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment*) does not apply as Applicant has had over six years to address these debts and has taken no documented steps other than to reduce his expenses by moving home in 2006 to save on rent. Although he initially stated an intent to use his income tax refund, Applicant did not to so even to pay any of the small debts he acknowledges.

Most significantly, he does not meet AG ¶ 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*). When unable to address his debt personally or with his mother's help, Applicant failed to contact a credit counseling agency to help settle his credit problems or to challenge any of the debts listed on the credit report. Also, he did not establish that he pays his current bills timely or that he has not incurred any significant new delinquent debt.

Because of these failures of proof, Applicant has not demonstrated he has met AG ¶ 20(d), (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*). While he has a position with only a modest income, his promise to pay in the future is not sufficient to mitigate the financial considerations concern. For example, in November 2006, Applicant had promised to use a tax return to pay some of the smaller debts, but in April 2007 he did not show that he had done so. He entered into no payment plans with any creditor or demonstrated he had made even one payment. Thus, he has not established he continually and timely makes any payments. He has limited expenses, but has not allocated any of his resources to resolve this persistent issue of unpaid his 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 their 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. Ironically, he was worked in the past as a debt collector, but did not tap any of that expertise to resolve his own financial problems. Applicant's lengthy history of failing to meet his financial obligations, and inability or unwillingness to satisfy his debts raises serious trustworthiness concerns. At 26 years old, he is sufficiently mature to be fully responsible for his conduct. Given his limited income, he had to make choices about how to use his limited resources. But all of the 12 SOR debts remain unpaid.

After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole person,¹² I conclude he has failed to mitigate the trustworthiness concerns pertaining to financial considerations.

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:	AGAINST APPLICANT
Subparagraphs a-1:	Against Applicant

DECISION

In light of all of the evidence presented in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for assignment to sensitive duties for a public trust position. Eligibility is denied.

Kathryn Moen Braeman
Administrative Judge

¹²See ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006).