

KEYWORD: Financial

DIGEST: Applicant is 63 years old and has worked for a medical contractor for the federal government since 2004. She has numerous delinquent debts, mostly from credit cards. She is waiting for some of these debts to drop from her credit report. She has not paid most of the debts alleged in the SOR. Although she has had some difficulties in her life, she has failed to be fiscally responsible. Applicant failed to mitigate the trustworthiness concerns raised under financial considerations. Eligibility is denied.

CASENO: 06-14637.h1

DATE: 04/24/2007

DATE: April 24, 2007

In re:	)	
	)	
	)	
-----	)	ADP Case No. 06-14637
SSN: -----	)	
	)	
Applicant for Public Trust Position	)	
	)	

**DECISION OF ADMINISTRATIVE JUDGE  
CAROL G. RICCIARDELLO**

**APPEARANCES**

**FOR GOVERNMENT**

Braden Murphy, Esq., Department Counsel

**FOR APPLICANT**

Pro Se

**SYNOPSIS**

Applicant is 63 years old and has worked for a medical contractor for the federal government since 2004. She has numerous delinquent debts, mostly from credit cards. She is waiting for some of these debts to drop from her credit report. She has not paid most of the debts alleged in the SOR. Although she has had some difficulties in her life, she has failed to be fiscally responsible. Applicant failed to mitigate the trustworthiness concerns raised under financial considerations. Eligibility is denied.

## STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue an ADP I/II/III position for Applicant. As required by Department of Defense Regulation 5200.2-R (Jan. 1987), as amended (Regulation), and Department of Defense Directive 5220.6 ¶ E3.1.2 (Jan. 2, 1992), as amended (Directive), DOHA issued a Statement of Reasons (SOR) on November 1, 2006. It detailed the basis for its decision—security concerns raised 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. Applicant answered the SOR in writing on December 12, 2006, and elected to have a hearing before an administrative judge. The case was assigned to me on January 18, 2007. With the consent of the parties, I convened a hearing on March 20, 2007, to consider whether it is clearly consistent with the interests of national security to grant or continue Applicant’s eligibility to occupy an ADP I/II/III position. DOHA received the hearing transcript (Tr.) on March 30, 2007.

## FINDINGS OF FACT

Applicant is 63 years old and has worked for a medical contractor with the federal government as a case manager since October 2004. She has a degree in nursing and has been working in the health care business since 1965. She divorced sometime in the early 1980s and raised her four children on her own. Her children are grown and are ages 38, 36, 32, and 31 years old. Her youngest child moved out of her house two years ago. She has seven grandchildren. Her 15 year old grandson has lived with her since he was approximately three years old. She receives no child support for him from either of his parents.

Applicant has numerous delinquent debts that are not paid. She admitted she owed the debts listed in SOR ¶¶ 1.b, 1.c, 1.f, 1.h, 1, j, 1.k, 1.l, 1.n, 1.o, and 1.p. She denied in her answer that she owed the debts listed in SOR ¶¶ 1.a, 1.d, 1.e, 1.g, 1.i, 1.m, 1.q, and 1. r. Department Counsel proffered that the government had no evidence on SOR¶¶ 1. q and 1. r.

Applicant disputes the debt in SOR ¶ 1.a.<sup>1</sup> She stated she contracted with the creditor sometime in 1982 or 1983 to buy her house for one dollar, when she was unable to make the mortgage payments. They had a written contract for the sale of the house. She stated the creditor was to sell her the home back for market value when she was financially able. This was an oral contract for the real estate. In approximately 2002, she attempted to buy the house back, but the creditor would only sell it to her for above market value. She stated she had been paying double rent for twenty years. Applicant received notice that the creditor was suing her in court. She moved out of the house. A judgment was obtained against Applicant and she never contacted the creditor to satisfy the judgment. Applicant’s brother, an attorney, was handling the matter for her. Her brother is now deceased and Applicant does not know how the judgment was obtained. She never contacted the creditor to discuss paying the judgment and she never contested the judgment. She sent a letter to

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<sup>1</sup>Tr. 26-40. All of the information about this transaction is included within these pages of the transcript.

the creditor asking him to remove the judgment from her credit report. The letter provided is unsigned and undated.<sup>2</sup> No other documentation was provided regarding this transaction and debt.

Applicant admits she owes the debt listed in SOR ¶ 1.b to the IRS for taxes due in 1999. There was a mistake on her taxes and she had to return a refund she received. She has paid down this debt and owes approximately \$1,200.<sup>3</sup> She admits the debt in SOR ¶ 1.c and stated she was going to pay it, but had not made any payments toward the debt.<sup>4</sup> This is a credit card debt. The debts in SOR ¶¶ 1.d, 1.e., 1.f, 1.h, 1.j, 1.k, 1.o, and 1.p are credit card debts. The debt in SOR ¶ 1.g is for a computer she purchased and fell behind in the payments.<sup>5</sup> She has not repaid this debt. Applicant has not made payments on any of these debts. She has no knowledge of the debt in SOR ¶ 1.i, but is not disputing it.<sup>6</sup> The debt in SOR ¶ 1.m is for a pay day loan she obtained in 2003. She has not repaid this debt.<sup>7</sup> The debt in SOR ¶ 1.n was a loan that she has not repaid. She had been told by a consumer credit service that some of her debts were over seven years old and they would drop off her credit report. She does not intend on repaying these debts. She stated she did not have enough money to set up repayment plans with her creditors through the consumer credit company.<sup>8</sup> She received settlement offers from the collection companies for debts SOR ¶ 1. h and 1.l, but did not accept the agreement.

After Applicant's husband left her, she took care of her four children. During this time, she received credit cards in the mail and used them. She has been in debt since the 1980s. She admits she has never been able get out of debts since then and it is difficult for her to repay her delinquent debt because she cares for her grandson and is now helping her daughter, who was recently diagnosed with breast cancer. She assists her by paying some of her prescription expenses.<sup>9</sup> She stated she has a plan to pay off her debts with a budget, but did not provide a copy.<sup>10</sup> She has \$400 left at the end of the month after paying expenses. Much of that is going to help her daughter. Applicant is under a great deal of stress, trying to raise her grandson and help out her daughter. She made poor financial decisions and she relied on debts dropping off her credit report as a way to not repay them. Applicant stated she intends on repaying her delinquent debts. She plans to retire in a year and a half and she claimed she had a plan to resolve her debt, but did not provide the specifics. She contributes to a 401k retirement plan monthly and has accumulated savings of approximately \$2,000.

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<sup>2</sup>AE C.

<sup>3</sup>Tr. 21, 44-47; AE G.

<sup>4</sup>Tr.49

<sup>5</sup>Tr. 52-53.

<sup>6</sup>Tr. 58-60.

<sup>7</sup>Tr 66.

<sup>8</sup>Tr. 70.

<sup>9</sup>Tr.75.

<sup>10</sup>84-86.

## 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.<sup>11</sup>

An individual may not be assigned to perform sensitive duties unless a competent security authority determines it is clearly consistent with the interests of national security to do so.<sup>12</sup> Positions designated as ADP I or ADP II are classified as sensitive positions.<sup>13</sup> ADP III positions are “nonsensitive positions.”<sup>14</sup> However, DOHA has been directed to apply the due process provisions of the Directive for all trustworthiness determinations under ADP I, II, and including ADP III positions by a memorandum from the Deputy Undersecretary of Defense (Counterintelligence and Security) dated November 19, 2004. Thus, even though ADP III positions are nonsensitive, they are treated in the same way and adjudicated under the same guidelines and procedures as ADP I and II cases.

“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.”<sup>15</sup> Appendix 8 of the Regulation sets forth adjudicative policy, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. Department of Defense contractor personnel are afforded the adjudicative procedures contained in the Directive.<sup>16</sup>

“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.”<sup>17</sup> Each eligibility determination must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Regulation. Specifically these are: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the individual’s age and maturity at the time of the conduct; the voluntariness of participation; the presence or absence of rehabilitation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; and the likelihood of continuation or recurrence. Although the presence or absence of a particular condition

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<sup>11</sup>Regulation ¶ C8.2.1.

<sup>12</sup>Regulation ¶ C2.1.2.

<sup>13</sup>Regulation ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3.

<sup>14</sup>Regulation ¶ C3.1.2.2.

<sup>15</sup>Regulation ¶C6.1.1.1.

<sup>16</sup>Regulation ¶ C8.2.1.

<sup>17</sup>Regulation Appendix 8 at 132.

or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.<sup>18</sup> The government has the burden of proving controverted facts.<sup>19</sup> The burden of proof is something less than a preponderance of evidence.<sup>20</sup> Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.<sup>21</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>22</sup> These same burdens of proof apply to trustworthiness determinations for ADP positions.

No one has a right to a security clearance<sup>23</sup> and “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>24</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.<sup>25</sup> The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.<sup>26</sup> 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.

Based upon consideration of all the evidence, I find the following adjudicative guideline most pertinent to the evaluation of the facts in this case:

Guideline F- Financial Considerations are a concern because 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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

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<sup>18</sup>ISCR Case No. 96-0277 at 2 (App. Bd. Jul. 11, 1997).

<sup>19</sup>ISCR Case No. 97-0016 at 3 (App. Bd. Dec. 31, 1997); Directive, Enclosure 3, ¶ E3.1.14.

<sup>20</sup>*Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

<sup>21</sup>ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.

<sup>22</sup>ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.

<sup>23</sup>*Egan*, 484 U.S. at 531.

<sup>24</sup>*Id.*

<sup>25</sup>*Id.*; Directive, Enclosure 2, ¶ E2.2.2.

<sup>26</sup>Executive Order 10865 § 7.

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

## CONCLUSIONS

I have carefully considered all of the facts in evidence and the legal standards.

Based on all the evidence, Financial Considerations Disqualifying Condition (FC DC) 19. (a) (*inability or unwillingness to satisfy debts*) FC DC 19 (c) (*a history of not meeting financial obligations*), and FC DC 19 (d) (*consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to income ratio, and/or other financial analysis*) apply in this case. Applicant has been in debt since the 1980s and has many debts she is unwilling and unable to pay. She has decided not to pay some debts and to let the seven year statute of limitation run so they will no longer be on her credit report. She irresponsibly used credit cards and failed to pay them. She does not have a realistic plan or budget to repay her delinquent debts.

I have considered all of the Financial Considerations Mitigating Conditions (FC MC), and especially considered FC MC 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*), FC MC 20 (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*), FC MC 20 (c) (*the person received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control*), FC MC 20 (d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*), and FC 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*).

Applicant's debts are recent and remain unpaid. She has made minimal effort to repay them. She has a long history of indebtedness. FC MC 20 (a) does not apply. Applicant ran into financial problems when she divorced in the 1980's and was caring for her children. These conditions were beyond her control. Her children are now all grown and in their thirties. It has been more than 20 years since her divorce. She cares for her grandson. She recently began helping her ill daughter. These actions are admirable, but were not the primary cause of her financial situation. Her financial problems have been ongoing for many years, with little progress towards resolution. Although she states she intends to pay her debts, she did not provide a plan to do so. She made a poor financial decision regarding her house, but that is just one of many debts. She has decided to not repay certain debts. I find FC MC 20 (b) does not apply.

Applicant sought the assistance of a debt consolidator, but could not meet the payments. She has not sought any other financial counseling. There are no indications that her financial problems are being resolved or under control. I find FC MC 20 (c) does not apply. She is repaying her debt to

the IRS, but there are no indications that she has a realistic plan on resolving her other debts. Hence, FC MC 20 (d) does not apply. Applicant disputes the judgment against her regarding her real estate transaction, but has not provided any documentation to substantiate she is not responsible. It is not reasonable to believe that after selling her house for one dollar she would be able to buy it back twenty years later based on an oral promise. Therefore, I find FC MC 20 (e) does not apply.

### **The Whole Person**

In all adjudications, the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. 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.

I considered the whole person in evaluating the case. I considered all of the evidence presented in the case. I have considered Applicant’s divorce and responsibility in raising her children on her own caused her financial hardships. That she is caring for her grandson and provides assistance to her daughter. Applicant has had many years to work on repaying her overdue debts, but has chosen to ignore them and wait for them to be removed from her credit report. She does not have a realistic or viable plan resolving her debts. Applicant has demonstrated a lack of good judgment and reliability over many years in how she handled her finances. Therefore, I am persuaded by the totality of the evidence in this case, that it is clearly not consistent with the national interest to grant Applicant a security clearance. Accordingly, Guideline F is decided against Applicant.

### **FORMAL FINDINGS**

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

Paragraph 1. Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	Against Applicant



Subparagraph 1.n:	Against Applicant
Subparagraph 1.o:	Against Applicant
Subparagraph 1.p:	Against Applicant
Subparagraph 1.q:	For Applicant
Subparagraph 1.r:	For Applicant

**DECISION**

In light of all of the circumstances in this case, it is not clearly consistent with the interests of national security to grant or continue Applicant's eligibility for an ADP I/II/III position. Eligibility is denied.

Carol G. Ricciardello  
Administrative Judge