

KEYWORD: Financial

DIGEST: Applicant began drinking heavily around 1988 and continued to do so until March 7, 1999, when he stopped drinking. When drinking, he failed to file federal and state income taxes for a number of years in the 1990s. He also failed to pay other expenses. Although he has paid his overdue state income taxes, he has not paid his overdue federal income taxes. He recently filed for Chapter 13 bankruptcy protection and has just started this process. Because his federal income tax issues remain unresolved, Applicant has not mitigated the financial concerns under Guideline F. Eligibility is denied.

CASENO: 06-14765.h1

DATE: 07/20/2007

DATE: July 20, 2007

In Re:	)	
	)	
	)	
-----	)	ADP Case No. 06-14765
SSN: -----	)	
	)	
Applicant for Public Trust Position	)	
	)	

**DECISION OF ADMINISTRATIVE JUDGE  
MARY E. HENRY**

**APPEARANCES**

**FOR GOVERNMENT**

Richard Stevens, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

## **SYNOPSIS**

Applicant began drinking heavily around 1988 and continued to do so until March 7, 1999, when he stopped drinking. When drinking, he failed to file federal and state income taxes for a number of years in the 1990s. He also failed to pay other expenses. Although he has paid his overdue state income taxes, he has not paid his overdue federal income taxes. He recently filed for Chapter 13 bankruptcy protection and has just started this process. Because his federal income tax issues remain unresolved, Applicant has not mitigated the financial concerns under Guideline F. Eligibility is denied.

## **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").<sup>1</sup> On February 1, 2007 DOHA issued Applicant a Statement of Reasons (SOR) detailing the basis for its decision. The SOR, which is in essence the administrative complaint, alleged trustworthiness concerns 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. On March 5, 2007, Applicant submitted a notarized response to the allegations. He requested a hearing.

DOHA assigned this case to me on April 4, 2007, and issued a notice of hearing on May 17, 2007. At the hearing on June 4, 2007, Applicant waived his right to receive the notice of the hearing 15 days prior to the hearing. I conducted the hearing as scheduled.<sup>2</sup> The Government submitted seven exhibits (GX) which were marked and admitted into the record as GX 1-7, without objection. Applicant submitted six exhibits (App Ex), which were marked and admitted as App Ex A-F without objection. Applicant testified on his own behalf. The record was held open until June 25, 2007, to allow Applicant to submit further documentation. On that date, Applicant requested additional time to obtain his documentation, indicating that he had encountered difficulties getting some of the information requested. I granted his request, giving him until July 6, 2007 to submit his additional documentation. He timely submitted seven additional documents, which were marked and admitted as App Ex G-M, without objection. DOHA received the hearing transcript (Tr.) on June 21, 2007.

## **FINDINGS OF FACT**

---

<sup>1</sup> 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.

<sup>2</sup>Tr. at 11.

In his SOR response, Applicant admits subparagraphs 1.a, 1.b, and 1.f-1.m of the SOR. He denies the remaining allegations 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 52-year-old senior application system analyst for a Department of Defense contractor, seeks a position of public trust. He started working for the contractor in June 2002.<sup>3</sup>

Upon his high school graduation in 1973, Applicant enlisted in the U.S. Army. Three years later, he received an honorable discharge. He then attended college, receiving an Associate of Arts degree in accounting and data processing at the of age 23. He obtained his first job in the aerospace industry in June 1978. Over the next 30 years, he worked in private and public sector positions as a programmer and program analyst. In 1996, his government employer fired him because of a drinking problem. In 2001, his employer terminated his position in a reduction-in-force action. When he accepted his current position in 2002, he moved across the country. During his work career, he twice held a top secret security clearance.<sup>4</sup>

Applicant married his first wife in 1978. They separated 13 years later and subsequently divorced. He married his second wife in the 1990s and they later divorced. He married his current wife in December 2001. He has two children, ages 27 and 23, and two stepchildren, ages 17 and 14. His son and two stepchildren live with him. His son and stepson will leave for college or further educational training at the end of the summer.<sup>5</sup>

Applicant is a recovering alcoholic. In 1988 or 1989, his alcohol consumption increased significantly. For the next 10 years, he drank to excess on a daily basis. His drinking caused him to lose his family, home, and job of 10 years. His good financial rating plummeted. Between 1996 and March 1999, family or friends referred him for alcohol treatment. After each treatment program, he resumed his drinking. In March 1999, he admitted himself to an alcohol treatment center. He stopped drinking on March 7, 1999. He participated in outpatient treatment, and continues to attend alcoholic anonymous programs twice a week. In March 2007, he received a pin for 8 years of sobriety. He states that his life has improved greatly since he stopped drinking.<sup>6</sup>

During his period of heavy drinking, Applicant failed to pay his bills, He did not file his federal income tax returns for the years 1993, 1995, 1996, 1997, and 1998 (allegations 1.i through 1.m in the SOR). His estimated tax liability is over \$70,000, more than 50% of which is for fees, penalties and interest. He has not yet filed these tax returns, upon the advice of his tax attorney. He has not contacted the IRS about payment of these taxes, although his tax attorney has spoken with the IRS. He did attempt to secure money to pay the taxes through the equity in his house. The credit company denied his request, based on his credit history. He has not otherwise taken any action to resolve his

---

<sup>3</sup>GX 1 (Applicant's Questionnaire for a Position of Public Trust, dated August 24, 2004) at 1, 4.

<sup>4</sup>Tr. at 19, 41-43, 44-45, 51-53.

<sup>5</sup>*Id.* at 36, 49-50, 75-76, 82; GX 1, *supra* note 3, at 6

<sup>6</sup>App Ex B (Medical treatment records); App Ex D (Letter, dated May 15, 2007); Tr. at 20-21, 44, 46-48, 63-64, 70, 80.

tax debts. During the 1990s, he also failed to file his state income taxes, which resulted in state tax liens against him. He participated in a state tax amnesty program, and paid his outstanding state taxes. The state released the liens it had filed.<sup>7</sup>

In addition to his failure to file his tax returns, Applicant's credit reports indicate several unpaid debts. He denies the debt in allegations 1.c (\$303 placed for collection in 2000), 1.d. (\$2,747, which was reported to the collection agency in 1999), and 1.e (\$330, which was reported to the collection agency in 1999). He admitted owing a telephone bill of \$180 from 1998, and two medical bills totaling \$2,371 from 1999 (allegations 1.f through 1.h). He has not paid these debts. He has filed his taxes with the IRS since 1999, and has provided proof of his filings for all years, except 2001. His recent tax returns indicate that he owed additional taxes on his federal taxes. The record does not contain any evidence which reflects that these taxes were paid.<sup>8</sup>

Applicant filed a Chapter 13 bankruptcy petition in 1996 to stop the foreclosure on his house. He did not follow through with the actions required of him, and the court dismissed his bankruptcy petition. He filed a Chapter 13 bankruptcy petition on May 14, 2007. He listed all the debts identified in the SOR, including his federal tax liability. His largest debt is his federal tax debt, which comprises 95% of his bankruptcy debt. On the advice of his tax attorney, he waited to file for bankruptcy until his tax liability aged sufficiently to allow him to include his tax debt in his bankruptcy filing. His first bankruptcy creditor's meeting was held on May 31, 2007. In May 2007, he made his first interim monthly payment of \$100 to the bankruptcy trustee and he made his second payment on June 22, 2007. He will make these interim payments until his full monthly payment is determined.<sup>9</sup>

Applicant's gross monthly income is approximately \$5,726 and his net monthly income averages approximately \$3,000. His wife works, providing an additional net monthly income of \$1,355 for a total household net income of approximately \$4,355. His household expenses total approximately \$4,350, leaving no additional income for the payment of debt.<sup>10</sup>

Applicant's performance evaluations for the last three years indicate that he consistently met his employer's performance expectations and that his overall work performance steadily improved. His supervisor describes him as a respected and valued member of his work team, and as trustworthy and honest. His pastor and a co-worker describe him as trustworthy, reliable, friendly and honest. On June 15, 2007, Applicant signed a confidentiality agreement required by his employer. Should he reveal any information protected by privacy rights, he could be terminated immediately.<sup>11</sup>

---

<sup>7</sup>GX 2 (Applicant's attachments to government interrogatories) at 3-9; App Ex A (Applicant's Chapter 13 Bankruptcy Petition); App Ex K (Denial of equity loan, dated March 16, 2007); App Ex L (Additional documents related to amnesty program); Tr. at 21-22, 29-31, 32-34, 68-69.

<sup>8</sup>Applicant's response to the SOR, dated March 5, 2007; App Ex M (Form 1040 for the years 1999, 2000, 2002, 2003, 2004, 2005, and 2006); Tr. at 27-29, 32.

<sup>9</sup>App Ex A, *supra* note 7; App Ex I (Payments to Trustee); Tr. at 25-29, 38-39.

<sup>10</sup>App Ex G (Budget); App Ex H (Earnings statements for May and June 2007).

<sup>11</sup>App Ex C (Letter, dated June 1, 2007); App Ex E (Letter, dated May 31, 2007); App Ex F (Letter, dated May 21, 2007); App Ex J (Performance evaluations for 2004, 2005, and 2006 and confidentiality agreement).

Applicant's wife testified on his behalf. She testified he treats her nicely. She has not seen him drink and she manages the household bills. His 23-year-old son also testified on his behalf. He described his childhood memory of his father as always being drunk. Since his father stopped drinking, they have developed a good relationship.<sup>12</sup>

## POLICIES

The revised Adjudicative Guidelines set forth disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. An administrative judge need not view the revised adjudicative guidelines as inflexible ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, are intended to assist the administrative judge in reaching fair and impartial common sense decisions. Although the presence or absence of a particular condition or factor for or against a trustworthiness determination is not outcome determinative, the revised AG should be followed whenever a case can be measured against this policy guidance. In addition, each security clearance decision must be based on the relevant and material facts and circumstances, the whole-person concept, and the factors listed in the Directive. Specifically, these are: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (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 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.<sup>13</sup>

The sole purpose of a trustworthiness determination is to decide if it is clearly consistent with the national interest to grant eligibility for assignment to sensitive duties to an applicant.<sup>14</sup> The government has the burden of proving controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information.<sup>15</sup> The burden of proof is something less than a preponderance of the evidence.<sup>16</sup> Once the government has met its burden, the burden shifts to the applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.<sup>17</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>18</sup> 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.

---

<sup>12</sup>Tr. at 75-82.

<sup>13</sup>Directive, revised Adjudicative Guidelines (AG) ¶2(a)(1)-(9).

<sup>14</sup>ISCR Case No. 96-0277 at 2 (App. Bd., July 11, 1997).

<sup>15</sup>ISCR Case No. 97-0016 at 3 (App. Bd., December 31, 1997); Directive, Enclosure 3, ¶ E3.1.14.

<sup>16</sup>*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

<sup>17</sup>ISCR Case No. 94-1075 at 3-4 (App. Bd., August 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.

<sup>18</sup>ISCR Case No. 93-1390 at 7-8 (App. Bd. Decision and Reversal Order, January 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.

No one has a right to a security clearance,<sup>19</sup> and “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>20</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>21</sup> Section 7 of Executive Order 10865 specifically provides industrial security clearance decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” The decision to deny an individual a security clearance is not necessarily a determination as to the allegiance, loyalty, and patriotism of an applicant.<sup>22</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. Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.<sup>23</sup> 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 liens filed by the state government for unpaid taxes and unpaid debts, which applicant acknowledged. He also admitted that he did not file his federal income taxes for five years in the 1990s. Although he paid his state taxes, he has not paid his federal taxes or his old debts listed in his credit reports. Because of the age of these debts, their delinquent status, and the amount of the debt, Applicant showed an inability or unwillingness to pay his debts. Based on the evidence of record, the government established the applicability of DC ¶ 19 (a) *inability or unwillingness to satisfy debts* and DC ¶ 19 (c) *a history of not meeting financial obligations*.

MC ¶ 26 (a) *the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely recur and does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment* may have some application in this case. He filed his first bankruptcy petition to stop the foreclosure sale of his house more than 11 years ago, in 1996. Since

---

<sup>19</sup>*Egan*, 484 U.S. at 531.

<sup>20</sup>*Id.*

<sup>21</sup>*Id.*; Directive, revised AG ¶ 2(b).

<sup>22</sup>Executive Order No. 10865 § 7.

<sup>23</sup> Directive, revised AG ¶ 2(b).

this action is old and was done for the sole purpose of stopping the foreclosure sale of his house, it has little relevance to his current financial issues. Since the failure to file income taxes last occurred in 1998, it was long ago, although not infrequent. His tax liability issues arose because he is an alcoholic who drank to excess on a daily basis in the 1990s, and who placed his drinking ahead of his financial obligations. He stopped drinking on March 7, 1999. Since this time, he has slowly worked to repair his finances and other personal issues caused by his drinking.

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* has some applicability. His alcoholism was not a condition beyond his control or an unexpected medical problem. He knew that his drinking was creating many problems, including financial and employment, but he refused to accept he had a problem for a long time. In 2001, however, his employer's decision to lay him off in a reduction-in-force action, which had no relationship to his past drinking problems, impacted his ability to improve his finances for awhile.

Applicant never met with a financial counselor and significant back taxes are due. Thus, 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 no applicability.

MC ¶ 20 (d) *the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts* applies in part. Applicant's tax issues are significant. Recently, he filed for Chapter 13 Bankruptcy, which allows him to repay his debts under the protection of the bankruptcy court. He waited until now to file for bankruptcy because his tax attorney recommended that he allow his unfiled taxes to age. By so doing, he could include the taxes in his bankruptcy if he was current in his taxes. He also attempted to obtain an equity loan on his house to help pay his tax debt, but could not get approval because of his past credit history.

The creditors for the unpaid bills in allegations 1.b through 1.h of the SOR are barred from collecting these debts under the state in which he resides 3-year statute of limitations. *See* State Code. Ann. § 15-3-530.<sup>24</sup> Thus, he receives partial credit for debt resolution because these debts are no longer collectible. The State 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.

---

<sup>24</sup>*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 these delinquent debts, which equal only 5% of his unpaid debt, through the statute of limitations has not ended his potential vulnerability to improper financial inducements because his unpaid federal taxes make him still “financially overextended”. In recent years, he has not incurred excessive unpaid debt.

Although Applicant disputes three debts alleged in the SOR, he has not provided any evidence that he has formally disputed these debts with his creditors. Thus, MC ¶ 20 (e) *the individual has a reasonable basis to dispute he 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. Likewise, MC ¶ 20 (f) *the affluence resulted from a legal source of income* does not apply as there is no evidence of unusual income in this case.

### **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 his 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 performs his duties well and is respected by his co-workers and supervisors for his work ethic and integrity. He is to be praised for accepting that he is an alcoholic, for stopping his drinking, and for taking steps to improve his life, especially his personal relationships. Since doing so, he has slowly improved the quality of his life, including his financial management. Old debt has been resolved by operation of law. However, the failure to file his federal tax returns for five years and his failure to correct this conduct after he stopped drinking continues to raise serious concerns under the AG. While recognizing he followed legal advice on how to manage his tax problems, the fact remains that his federal income tax issues remain unresolved. He filed for bankruptcy protection as a means to resolve this issue. He is just beginning the bankruptcy process. Thus, he has not yet established a permanent payment plan and a track record for consistently complying with the terms of the payment plan. I have weighed the mitigating factors, his sobriety and accompanying change in behavior and attitude towards his responsibilities, including his finances, his recommendations against the seriousness of his failure to file his income tax returns for five years and the lack of any efforts to resolve this issue until recently. The seriousness of his conduct in regards to his tax issues outweighs the favorable evidence and mitigating factors. Applicant has not mitigated the government’s concerns.

### **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

Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For 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

**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. Eligibility is denied.

Mary E. Henry  
Administrative Judge