

KEYWORD: Financial

DIGEST: Applicant explained and mitigated her history of financial problems based on (1) her good-faith efforts to repay or otherwise resolve her debts, and (2) circumstances largely beyond her control (unemployment during 2001–2003) that contributed to her financial problems. Eligibility is granted.

CASENO: 06-15205.h1

DATE: 04/11/2007

DATE: April 11, 2007

In re:)	
)	
)	
-----)	ADP Case No. 06-15205
SSN: -----)	
)	
Applicant for ADP I/II/III Position)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
MICHAEL H. LEONARD**

APPEARANCES

FOR GOVERNMENT

Ray T. Blank Jr. Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant explained and mitigated her history of financial problems based on (1) her good-faith efforts to repay or otherwise resolve her debts, and (2) circumstances largely beyond her control (unemployment during 2001–2003) that contributed to her financial problems. Eligibility is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) reviewed Applicant's eligibility to occupy an information systems position designated as an ADP I, II, or III position to support a contract with the Defense Department. As a result of the review, the agency recommended Applicant's case be submitted to an administrative judge for a determination whether Applicant is eligible to occupy such a position.

Acting under Department of Defense Directive 5220.6, dated January 2, 1992, as amended (Directive), DOHA issued a statement of reasons (SOR) to Applicant on August 25, 2006. The SOR—which is equivalent to an administrative complaint—details the factual basis for the action and alleges a concern under Guideline F for financial considerations. Under Guideline F, the SOR alleges that Applicant has four delinquent debts for more than \$15,000.

Applicant timely replied to the SOR in writing on September 20, 2006. She admitted the indebtedness alleged in the SOR, and she elected to have her case decided on the written record in lieu of a hearing.

On December 21, 2006, the government submitted its written case consisting of all relevant and material information that could be adduced at a hearing. This so-called file of relevant material (FORM) was mailed to Applicant and it was received by her on January 16, 2007. Applicant's reply to the FORM is a 12-page multi-part submission dated February 7, 2007. Department counsel having no objections, it is admitted into the record as Exhibit A. The case was assigned to me March 13, 2007.

FINDINGS OF FACT

Applicant's admissions are incorporated herein as findings of fact, and I make the following findings of fact.

1. Applicant is a 55-year-old employee of a company that provides health-care services to the Defense Department. She has not married and has no children. Her job involves having access to unclassified information (for example, names, personal medical information, etc.).
2. In conjunction with her employment, Applicant completed a questionnaire for public trust positions (Standard Form 85P) in August 2004. In response to Question 22 about her financial record, she disclosed four credit card accounts that were then over 180-days delinquent. Also, she stated that she was unable to make payments due to unemployment.

3. Applicant has a history of financial problems, as evidenced by delinquent consumer debts reflected in credit reports from 2004 and 2006. Each of the four delinquent debts in the SOR is discussed below.

4. SOR subparagraph 1.a concerns a charged-off account for \$2,816. The 2004 credit report shows this bank credit card account was opened in October 1999. The account went into collection at some point and was then charged off by the creditor in October 2003. The December 2006 credit report shows a balance of \$2,995. This account remains unpaid.

5. SOR subparagraph 1.b concerns a \$75 collection account. Applicant presented documentary proof that she paid off the account in full in September 2006 (Exhibit A at 4).

6. SOR subparagraph 1.c concerns a \$6,877 collection account. The 2004 credit report shows this debt originated as a bank credit card account, it became seriously past due, and it was assigned to a firm for collection of a balance of \$5,539. The July 2006 credit report shows a balance of \$6,877, and the December 2006 credit report shows a balance of \$7,239. This account remains unpaid.

7. SOR subparagraph 1.d concerns a \$5,818 collection account. The 2004 credit report shows this bank credit card account was opened in May 2001. The account went into collection at some point and was then charged off by the creditor in the amount of \$6,977. The current creditor is a collection agency, and Applicant entered into a payment arrangement in January 2007 (Exhibit A at 6). The current balance of the account is \$10,450. She has made \$600 in payments, and the payment plan calls for her to make monthly payments of \$50 before the end of each month. If she defaults, the creditor will declare the entire balance due and proceed accordingly.

8. In addition to the four debts in the SOR, Applicant has resolved two other accounts. In February 2007, she paid \$156 to resolve a medical bill (Exhibit A at 3). In September 2006, she resolved a bank credit card account, although the amount is not reflected in the release-of-debt document (Exhibit A at 5). The 2004 credit report shows this account was opened in October 2001, and it had a balance of \$391 when it was charged off.

9. Applicant traces her financial problems to a period of unemployment during 2001–2003. In her February 2007 reply to the FORM, Applicant explained her unemployment and financial situation as follows:

I was employed at [company and place] in 2001 when I was laid off in their April reduction of personnel. Since that time I was actively seeking employment in the area. I had registered with several of the temporary staffing agencies and was sent on several assignments over the years 2001–2004. However I was not continually employed by any of the companies where I worked. I did try to keep up my payments on the credit cards until I literally had no money in April of 2002. What little I was making was going to my current living expenses. Several times over these years I was helped to pay my utilities and my rent through the charity of my church and [an organization]. I literally had nothing to put against these debts. Once I was employed by [the current health-care company] I have been working to get my current living expenses back on a regular payment basis. In February 2002 I began making

payments to [SOR subparagraph 1.d], which holds the account from [the bank]. I have paid off [SOR subparagraph 1.b] debt in September [2006] and the account [not alleged in the SOR] in September [2006]. I am also enrolled to take [a financial course]. I will be using my tax refunds to pay on the other accounts.

10. Applicant documented her history of unemployment by presenting a letter from a state agency (Exhibit A at 7). The letter reports Applicant received unemployment-insurance benefits of \$3,160, \$4,135, and \$1,286 (before taxes) for the years of 2001, 2002, and 2003. If she remains employed, she intends to continue to resolve the accounts, little by little.

POLICIES

This case involves an adjudication of Applicant's eligibility to occupy an ADP position, not an adjudication of Applicant's eligibility for a security clearance. There is a potential conflict with regard to the controlling regulatory authority in these cases. By memorandum, dated November 19, 2004, the Deputy Under Secretary of Defense for Counterintelligence and Security directed DOHA to utilize Department of Defense Directive 5220.6 to resolve contractor cases forwarded to it for a trustworthiness determination, to include those cases involving ADP I, II, and III positions. I understand the memorandum to say that ADP cases should be resolved under the Directive exclusively. The DOHA Appeal Board, however, has stated that in ADP cases we follow the procedures contained in the Directive, and we apply the adjudicative guidelines contained in Department of Defense Regulation 5200-2.R, dated January 1987.¹ I have elected not to resolve this potential conflict because the provisions of the Regulation and the Directive under Guideline F are substantially the same and any differences would not have a material effect on the outcome of the case.

CONCLUSIONS

Under Guideline F, a concern typically exists due to significant unpaid debts. 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, negligent, or careless in properly handling and safeguarding sensitive information.

Here, based on the record evidence as a whole, a concern is raised by significant unpaid debts. The evidence shows a history of not meeting financial obligations as well as an inability to pay debts. The charged-off and collection accounts are ample evidence of Applicant's derogatory financial history. As established above, she has paid off one \$75 debt and two debts not alleged in the SOR. She has a payment arrangement for one debt, which has a current balance of more than \$10,000. The other two debts remain unpaid with current balances of \$2,995 and \$7,239. In total, she owes more than \$20,000 for the three debts. These circumstances raise a concern about

¹ ADP Case No. 03-21205, 2005 DOHA LEXIS 289 (App. Bd. Dec. 23, 2005).

Applicant's suitability to occupy an information systems position designated as an ADP I, II, or III position.

I reviewed the mitigating conditions (MC) under the guideline and conclude she receives credit in mitigation. Each MC is summarized and discussed below.

The first MC—the behavior was not recent—does not apply. Although the accounts are somewhat dated, her obligations on these accounts are continuous and ongoing.

The second MC—it was an isolated incident—does not apply. The record evidence shows several unpaid debts, establishing a pattern of Applicant not meeting her financial obligations.

The third MC—the conditions that resulted in the behavior were largely beyond the person's control—applies in her favor. She was unemployed during 2001-2003, and her unemployment resulted in her using credit cards to finance living expenses. Clearly, her unemployment is a circumstance largely beyond her control that had a negative effect on her overall financial situation.

The fourth MC—the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control—does not apply. Although she explained that she had enrolled in a financial course, the evidence does not show that she completed the course, nor does it show the content of the course. Given these skimpy facts, I cannot conclude that she has received or is receiving financial counseling.

The fifth MC—the affluence resulted from a legal source—is not applicable here.

The sixth MC—the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts—applies in her favor. To resolve her indebtedness, she has done the following: (1) paid three accounts; (2) entered into a payment arrangement with one account; and (3) intends to pay off the remaining debts little by little. Taken together, her efforts are sufficient to fall within the meaning of good-faith effort.

I have also considered the record evidence in the context of the whole-person concept. Applicant is 55 years old and her financial history includes a substantial period of unemployment that contributed to her financial problems. She now has a decent job with a stable company in the health-care business. As evidenced by her reply to the FORM, she has made a mature, good-faith effort to resolve the accounts in the SOR as well as two accounts not in the SOR. Her intent to resolve the remaining unpaid debts is accepted as genuine given her documented efforts to resolve her financial problems.

After weighing the favorable and unfavorable evidence, I conclude Applicant has overcome the case against her. She has shown that she is serious about resolving her past financial problems and she is making progress. Although she has not presented a perfect case in mitigation by paying off all accounts alleged in the SOR,² she has provided sufficient information to explain and mitigate

² ISCR Case No. 02-25499 (Ap. Bd. Jun. 5, 2006) (Applicant was not required, as a matter of law, to establish that he had completely paid off his indebtedness).

the financial considerations concern. Accordingly, I conclude Applicant has established that it is in the interests of national security to grant her eligibility for an ADP I, II, or III position.

FORMAL FINDINGS

Here are my conclusions for each allegation in the SOR:

_____ SOR Paragraph 1–Guideline F:	For Applicant
Subparagraphs a–d:	For Applicant

DECISION

In light of all the facts and circumstances, it is clearly consistent with the interests of national security to grant or continue Applicant’s eligibility for an ADP I, II, or III position. Eligibility is granted.

Michael H. Leonard
Administrative Judge