

KEYWORD: Financial

DIGEST: The Applicant’s past due debts are directly or indirectly attributed to an “unexpected medical emergency,” a heart attack and a subsequent stroke. However, she has offered little to show she has addressed any of her admitted past due debts. The Applicant’s excessive indebtedness has not been mitigated. A determination of trustworthiness and access to personal sensitive information is denied.

CASENO: 06-15492.h1

DATE: 03/15/2007

DATE: March 15, 2007

In Re:)	
)	
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SSN: -----)	ADP Case No. 06-15492
)	
Applicant for ADP I/II/III Position)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
RICHARD A. CEFOLA**

APPEARANCES

FOR GOVERNMENT

Ray T. Blank, Jr., Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant’s past due debts are directly or indirectly attributed to an “unexpected medical

emergency,” a heart attack and a subsequent stroke. However, she has offered little to show she has addressed any of her admitted past due debts. The Applicant’s excessive indebtedness has not been mitigated. A determination of trustworthiness and access to personal sensitive information is denied.

STATEMENT OF THE CASE

On April 9, 1993, the Composite Health Care Systems Program Office (CHCSPO), the Defense Office of Hearings and Appeals (DOHA), and the Assistant Secretary of Defense for Command, Control, Communications and Intelligence (ASD C3I) entered into a memorandum of agreement for DOHA to provide trustworthiness determinations for contractor personnel employed in Information Systems Positions as defined in DoD Regulation 5200.2R, Personnel Security Program (Regulation), dated January of 1987.

On August 7, 2006, DOHA, pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a determination of trustworthiness, suitability, and eligibility for the Applicant to hold a sensitive Systems Position (ADP-I/II/III).

Applicant filed an Answer to the SOR on September 7, 2006, in which she elected to have this case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) on January 29, 2007. Applicant was instructed to submit objections or information in rebuttal, extenuation or mitigation within 30 days of receipt of the FORM. Applicant received her copy on February 9, 2007, and Applicant's Reply was received on February 15, 2007.

The case was received by the undersigned for resolution on March 8, 2007. The Applicant admits the underlying factual basis of the allegations, except for the debts noted in subparagraphs 1.g., 1.j., 1.o. and 1.p.

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the File of Relevant Material and Applicant's Response. The Applicant is 53 years of age, and is employed by a defense contractor who seeks an ADP-I/II/III position on behalf of the Applicant. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional Findings of Fact.

Guideline F - Financial Considerations

The Applicant, a single mother with two children, suffered a heart attack and a subsequent stroke in the 2002~2003 time frame; and as a result, incurred considerable financial difficulties (Reply).

1.a.~1.f., 1.h., 1.i., and 1.k.~1.n. The Applicant admits, as is corroborated by January 2007 credit report (CR) (Item 7), more than \$22,000 in past due debts. She further avers "I have begun paying on some of my bills," but has offered little to support this averment (Reply).

1.j. 1.o., and 1.p. According to the most recent CR, the Applicant is indebted to three additional creditors in the amount of about \$30,000 (Item 7 at pages 2 and 3). Although she denies these allegations, she has offered little in support of her contention; and as such, I find these subparagraphs against the Applicant.

1.g. The Applicant denies a \$3,693 past due debt to “Pinnacle,” an account placed in collection by “Wachovia.” As this alleged debt does not appear on the most recent CR, I find this subparagraph for the Applicant.

POLICIES

Enclosure 2 and Section E.2.2. of the 1992 Directive set forth both policy factors, and conditions that could raise or mitigate a security concern. Furthermore, as set forth in the Directive, each clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy in enclosure 2, including as appropriate:

- a. Nature, extent, and seriousness of the conduct, and surrounding circumstances.
- b. Frequency and recency of the conduct.
- c. Age and maturity of the applicant.
- d. Motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequence involved.
- e. Absence or presence of rehabilitation.
- f. Probability that circumstances or conduct will continue or recur in the future.”

The Administrative Judge, however, can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence that is speculative or conjectural in nature.

The Government must make out a case under Guideline F (Financial Considerations), which establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between an applicant's adverse conduct and her ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct is unlikely to be repeated, and that the Applicant is presently qualifies for access to classified information.

CONCLUSIONS

The Applicant’s has a plethora of past due debts. Under Financial Considerations, the first and the third disqualifying conditions are applicable as the Applicant had a “history of not meeting [her] financial obligations,” and there was an “[i]nability or unwillingness to satisfy [her] debts.” However, the Applicant’s financial difficulties can be attributed to circumstances “largely beyond . . . [her] control (e.g., . . . unexpected medical emergency . . .).” The third mitigating condition is therefore applicable. However, the Applicant has done little, other than her representations in her Reply, to address what are, for the most part, admitted past due debts. Mitigation is not shown. Guideline F is found against the Applicant.

Considering all the evidence, the Applicant has not rebutted the Government's case regarding her Financial Considerations. The Applicant has thus not met the mitigating conditions of Guideline F, and of Section E.2.2. of the Directive. Accordingly, she has not met her ultimate burden of persuasion under Guideline F.

FORMAL FINDINGS

Formal Findings required by paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: AGAINST THE APPLICANT

- a. Against the Applicant.
- b. Against the Applicant.
- c. Against the Applicant.
- d. Against the Applicant.
- e. Against the Applicant.
- f. Against the Applicant.
- g. For the Applicant.
- h. Against the Applicant.
- i. Against the Applicant.
- j. Against the Applicant.
- k. Against the Applicant.
- l. Against the Applicant.
- m. Against the Applicant.
- n. Against the Applicant.
- o. Against the Applicant.
- p. Against the Applicant.

Factual support and reasons for the foregoing are set forth in **FINDINGS OF FACT** and **CONCLUSIONS**, supra.

DECISION

In light of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to make or continue a determination of trustworthiness, suitability and eligibility for the Applicant to hold an ADP-I/II/III.

Richard A. Cefola
Administrative Judge