

KEYWORD: Financial

DIGEST: Applicant has a history of financial problems, to include unpaid civil judgements and criminal charges of forging checks and writing bad or worthless checks. He has just begun the process of cleaning up his financial house, which includes about \$30,000 in delinquent student loans. Time will tell if he is able to do so. Eligibility is denied.

CASENO: 06-15515.h1

DATE: 04/11/2007

DATE: April 11, 2007

In re:	)	
	)	
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SSN: -----	)	ADP Case No. 06-15515
	)	
Applicant for Public Trust Position	)	
	)	

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

**APPEARANCES**

**FOR GOVERNMENT**

D. Michael Lyles, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant has a history of financial problems, to include unpaid civil judgements and criminal charges of forging checks and writing bad or worthless checks. He has just begun the

process of cleaning up his financial house, which includes about \$30,000 in delinquent student loans. Time will tell if he is able to do so. Eligibility is denied.

### **STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) reviewed Applicant's eligibility to occupy an automated data processing (ADP) position designated as an ADP I, II, or III position to support a contract with the Defense Department.<sup>1</sup> 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 September 22, 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 17 delinquent debts for more than \$40,000.

In addition to the Directive, this case is brought under the revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information approved by the President on December 29, 2005. The revised guidelines were then modified by the Defense Department, effective September 1, 2006. They supersede or replace the guidelines published in Enclosure 2 to the Directive and Appendix 8 to DoD Regulation 5200.2-R, and they apply to all adjudications and other determinations where an SOR has been issued on September 1, 2006, or thereafter.<sup>2</sup> They apply to this case because (1) the SOR is dated September 22, 2006, and (2) this case qualifies as an other determination. Both the Directive and the Regulation are pending formal amendment. A copy of the revised guidelines was provided to Applicant along with the SOR.

Applicant timely replied to the SOR in writing on October 11, 2006. Subsequently, in December 2006, he indicated he did not wish to have a hearing.

On January 25, 2007, 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 him on January 31, 2007. Applicant's reply to the FORM is a three-page letter dated February 26, 2007. Department counsel having no objections, it is admitted into the record as Exhibit A. The case was assigned to me March 13, 2007.

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<sup>1</sup> 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 involving ADP I, II, and III positions.

<sup>2</sup> See Memorandum from the Under Secretary of Defense for Intelligence, dated August 30, 2006, Subject: Implementation of Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (December 29, 2005).

## FINDINGS OF FACT

In response to the SOR, Applicant denied the indebtedness alleged in subparagraphs 1.d, 1.e, 1.g, 1.h, 1.i, and 1.l. He admitted the indebtedness in the other 11 subparagraphs, although he claimed the debt in 1.k was the same as the debt in 1.j. His admissions are incorporated herein as findings of fact. And I make the following findings of fact.

1. Applicant is a 27-year-old customer service representative for a health-care company that provides services to the Defense Department. He has worked in this job since December 2004. His job involves having access to unclassified information (for example, names, personal medical information, etc.).

2. In conjunction with his employment, Applicant completed a questionnaire for public trust positions (Standard Form 85P) in December 2004. In response to Question 20 about his police record, he disclosed, among other things, a bad check/forgery offense in 2000. In response to Question 22 about his financial record, he disclosed two accounts, a student loan and a credit card, that were then over 180-days delinquent.

3. Applicant has a history of financial problems. As part of the background investigation, a credit report was obtained in July 2005. The public record section of the report revealed one unpaid civil judgment for \$51. The trade section of the report revealed two student loans for a total of more than \$30,000 where the creditor could not locate the consumer. The remaining five accounts in the trade section were all collection accounts. And the collections section of the report revealed three accounts in a collection status. An additional credit report was obtained in August 2006, and this report further revealed or confirmed Applicant's unfavorable financial history. For example, it revealed two unpaid civil judgments for \$51 and \$42 and several collection accounts.

4. The SOR alleges that Applicant is indebted to multiple creditors for nearly \$40,000 in total. The total includes about \$30,000 for the two student loans as set forth in subparagraphs 1.j and 1.k. Applicant has provided written responses about his indebtedness, to include his initial reply to the SOR, his December 2006 reply, and answers to interrogatories. In doing so, he has asserted that he has taken various actions. But other than his assertions, he has not provided any documentary evidence establishing proof of payment, proof of settlement, proof of a repayment agreement, or proof of some step taken to dispute or resolve the debts in question. For example, such proof might include court records (satisfaction of judgments), receipts, copies of cancelled checks, account statements, bank statements, and correspondence (by mail or e-mail) verifying the status of delinquent accounts or repayment agreements with creditors.

5. Concerning the debts he denies, the available evidence establishes the SOR allegations. For example, subparagraphs 1.d and 1.e, concern unpaid civil judgments for \$42 and \$51, respectively. These unpaid judgments are established by the August 2006 credit report, and they appear to be judgments taken against Applicant by a property management company. Applicant has not provided information to refute these judgments.

6. Subparagraph 1.g concerns a \$146 collection account initially owed to a utility company. It is established by the 2005 and 2006 credit reports. Applicant has not provided information to refute this debt.

7. Subparagraphs 1.h, 1.i, and 1.l concern collection accounts for \$50, \$47, and \$40, respectively. In his reply to the SOR, Applicant denied the debts and explained that because he served time in jail (due to forgery or bad check charges) instead of paying the debts and that the debts should be cleared on that basis. In his reply to the FORM, Applicant acknowledged that he still owes these debts.

8. Subparagraphs 1.j and 1.k allege two delinquent student loans for a total of more than \$30,000. In his reply to the SOR, he claimed this involved a single account. The 2005 credit report reveals two student loan accounts with different account numbers, different balances, different past-due amounts, and different dates associated with opening the accounts. Given these circumstances, I find these allegations involve two student loans. In addition, he acknowledged in his reply to the FORM that he found the paperwork on his student loans and he owes around \$30,000. He expects to start making payments in June 2007.

9. Beyond the debts in the SOR, Applicant disclosed in his reply to the FORM that he has tax problems. He contacted the IRS about his taxes for tax year 2004. If his appeal is unsuccessful, he expects to start making payments in June 2007. He has filed returns with the IRS for 2005 and 2006, and payment for 2006 was to be made in February 2007. He is waiting for refunds from the state for tax years 2005 and 2006 so he can pay his federal taxes for 2005.

10. Applicant believes he has arrived at a budget (which he did not submit) to pay off his debts or start to pay by the end of 2007. With his current job and the support of his girlfriend, he believes he can get control of his debts. He knows he is responsible for resolving his financial problems and believes he is now at a point in his life where he is able to do so.

### **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. Applicant has a history of financial problems. He has delinquent consumer debts plus delinquent student loans for about \$30,000. His financial problems include a forgery charge when he forged two checks of a former roommate as well as writing some bad or worthless checks. In addition, as volunteered by Applicant, he has tax problems with the IRS. It appears he owed the IRS for tax years 2004, 2005, and 2006 when he replied to the FORM. Viewing the record evidence as a whole, the following the disqualifying conditions (DC) under Guideline F apply: (1) inability or unwillingness to satisfy debts; (2) a history of not meeting financial obligations; and (3) deceptive or illegal financial practices as evidenced by the forgery and bad check offenses. I have not applied the DC concerning failure to file annual federal income tax returns because Applicant indicated he has now filed his federal and state tax returns. To sum up, the record evidence shows a pattern of financial immaturity and irresponsibility over a period of years.

I reviewed the mitigating conditions under the guideline and conclude none apply. He has not presented sufficient evidence to mitigate the financial considerations concern. In particular, the record evidence is insufficient to establish that he has made a good-faith effort to pay or otherwise resolve his indebtedness. I reach this conclusion primarily because Applicant has not documented the actions (to include payments) he claims he has taken to address his financial problems. In addition to the lack of documentation, time will tell if he will follow through and take the necessary steps to clean up his financial house.

At this point, Applicant's history of financial problems—which includes forgery of checks and passing bad checks as well as \$30,000 in delinquent student loans—militates against granting him eligibility for an ADP position. Accordingly, I conclude that Applicant failed to establish it is in the interests of national security to grant him eligibility for an ADP I, II, or III position. In reaching this conclusion, I also considered Applicant's case under the whole-person concept and my whole-person analysis does not support a favorable outcome for Applicant.

### **FORMAL FINDINGS**

Here are my conclusions for each allegation in the SOR:

_____ SOR Paragraph 1–Guideline F:	Against Applicant
Subparagraphs a–q :	Against Applicant

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### **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, or III position. Eligibility is denied.

Michael H. Leonard  
Administrative Judge