

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant is 49 years old and has worked for a medical contractor for the federal government for two and half years. She has seventeen delinquent debts that remain unpaid. Many of the debts are years old. Applicant has not made a good faith attempt to resolve her debts. On her public trust questionnaire she failed to divulge the extent of her delinquent debts. Applicant failed to mitigate trustworthiness concerns raised under Guideline F, financial considerations, and Guideline E, personal conduct. Eligibility is denied.

CASENO: 06-16111.h1

DATE: 05/07/2007

DATE: May 7, 2007

In re:	)	
	)	
-----	)	
SSN: -----	)	ADP Case No. 06-16111
	)	
Applicant for Public Trust Position	)	
	)	

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

**APPEARANCES**

**FOR GOVERNMENT**

John B. Glendon, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is 49 years old and has worked for a medical contractor for the federal government for two and half years. She has seventeen delinquent debts that remain unpaid. Many of the debts

are years old. Applicant has not made a good faith attempt to resolve her debts. On her public trust questionnaire she failed to divulge the extent of her delinquent debts. Applicant failed to mitigate trustworthiness concerns raised under Guideline F, financial considerations, and Guideline E, personal conduct. 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 Directive 5220.6 ¶ E3.1.2 (Jan. 2, 1992), as amended (Directive), DOHA issued a Statement of Reasons (SOR) on December 29, 2006, detailing the basis for its decision—concerns raised under Guideline F (financial considerations) and Guideline E (personal conduct) of the revised Adjudicative Guidelines issued on December 29, 2005, and implemented by the Department of Defense effective September 1, 2006.

Applicant answered the SOR in writing on February 16, 2007, and elected to have a hearing before an administrative judge. The case was assigned to me on February 13, 2007. With the consent of the parties, I convened a hearing on April 17, 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. Department Counsel offered five exhibits that were marked GE 1-5 and admitted without objections. Applicant offered two exhibits that were marked AE A and B and were admitted without objections. The record was left open so Applicant could provide additional documents. She did so timely and the document was marked as AE C and admitted without objections. DOHA received the hearing transcript (Tr.) on April 27, 2007.

## FINDINGS OF FACT

Applicant is 49 years old and has worked for a medical contractor for the federal government for approximately two and half years. She is not married and has a child who lives with the father and for whom she pays child support. Prior to this period she worked as a medical officer supervisor from May 2002 to October 2004. She lived in a different state for several years prior to then. She has had two periods of unemployment since 1996.<sup>1</sup> One period was for two months when she moved to a different state in 2001, and the other was for two months prior to accepting employment with her present employer. She has earned an associate's degree in applied science.

Applicant has numerous unpaid delinquent debts. They are listed below with their present status and pertinent information.

Applicant sent a form letter to her creditors on October 24<sup>th</sup> and 25<sup>th</sup>, 2006.<sup>2</sup> In the letter she advises the creditor that she is attempting to develop a realistic repayment plan. In each letter she makes a proposal to pay a nominal amount on the account or in some letters makes no proposal at all and leaves that part of the form blank. She asks that they respond in writing and advises them if she does not hear from them within two weeks she will assume the offer is accepted and she will start paying the proposed amount. She advises them not to call her at work or at home. On some of the letters she provides a handwritten address, on others she does not provide any address or means to contact her. Applicant did not provide any evidence that once the two weeks had expired that she started to make payments on the accounts.

---

<sup>1</sup>Tr. 35-36

<sup>2</sup>GE 2. Throughout the decision this letter will be referred to as the "form letter."

SOR 1. a is a phone bill she did not pay when she moved.<sup>3</sup> It was sent to collection in December 2000. She claimed she sent a small payment in November 2006. She did not provide documentation. She mailed the form letter in October 2006, but has not received a response. She continues to receive statements from the collection company that has taken over the debt.<sup>4</sup>

SOR 1. b is for a credit card that went to collection in October 2001. Other than sending the form letter she has not taken any action on the account and it remains unpaid.<sup>5</sup>

SOR 1.c is a medical debt that was incurred for an air ambulance that was needed when Applicant and her daughter were in a car accident in 1999.<sup>6</sup> She received a monetary settlement from the insurance company to pay her medical bills.<sup>7</sup> The settlement was a total of \$16,000. Of that, \$10,000 went to her daughter and the remaining \$6,000 was to be used for Applicant's medical bills.<sup>8</sup> Applicant did not use the money to pay her medical bills and the debt remains delinquent. She stated she used the money to care for her mother.<sup>9</sup> She is attempting to include this debt in a debt consolidation plan, but the plan is still being devised. Applicant's testimony about this debt was very evasive and not forthcoming. She originally stated she was unaware she owed this debt until she was confronted by an investigator,<sup>10</sup> but she clearly stated later in her testimony that she received an insurance settlement check to pay the bill, but chose to use it for other purposes. I find Applicant intentionally was misleading in her testimony.

SOR 1.d is a debt for a broken lease. Applicant's lease ran from September 2001 to August 2002. She left after four months because her mother was ill and she decided to move in with her and help her. She forfeited her one month's rent security deposit and owed rent for the remaining seven months.<sup>11</sup> Applicant did not contact the creditor prior to October 2006 when she sent the form letter.<sup>12</sup> No payments have been made on this debt.

---

<sup>3</sup>Tr. 38.

<sup>4</sup>Tr. 39

<sup>5</sup>Tr. 40.

<sup>6</sup>Tr. 41.

<sup>7</sup>Tr. 47.

<sup>8</sup>Tr. 45-48.

<sup>9</sup>Tr. 48.

<sup>10</sup>Tr. 43.

<sup>11</sup>Tr. 49-51.

<sup>12</sup>Tr. 52.

The debt in SOR 1.e, Applicant denies. She stated she did not recognize the creditor. She stated she attempted to find the creditor on the internet. She did not use the contact number that is listed on the credit report.<sup>13</sup> She also sent this creditor the form letter. It remains unpaid.

SOR 1.f is a medical debt. Applicant stated she was unfamiliar with the creditor. She did not contact the creditor prior to sending her form letter. The account was placed for collection in September 2004. The debt remains unpaid.

SOR 1.g is a magazine catalog creditor. Applicant ordered merchandise in November 2004. No payment was ever made on this account. She stated she did not have the money to pay this creditor, but thought she did when she made the purchase.<sup>14</sup>

SOR 1.h is a credit card debt. The account was opened in July 2005.<sup>15</sup> The credit limit was \$500 and she maximized the limit in the first month.<sup>16</sup> Applicant does not recall what she bought. The last activity on the account was one month after it was opened. She does not recall if she made any payments on the account, but did not think she did.<sup>17</sup> She sent this creditor the form letter.

SOR 1.i is a credit card account. Applicant could not recall the exact year she opened the account, but thought it was in the last two to three years.<sup>18</sup> The account was sent to collection in September 2005. She believed she may have made several \$30 payments over a six month period.<sup>19</sup> She sent them the form letter, but has not made any other payments nor did she make any other contact with them prior to her form letter.<sup>20</sup>

SOR 1.j was a personal loan that she obtained in July 2005, and it was placed in collection in October 2005.<sup>21</sup> Applicant never repaid the creditor.

---

<sup>13</sup>Tr. 53-55.

<sup>14</sup>Tr. 60.

<sup>15</sup>Tr. 61.

<sup>16</sup>Tr. 62.

<sup>17</sup>Tr. 62.

<sup>18</sup>Tr. 64.

<sup>19</sup>*Id.*

<sup>20</sup>Tr. 65.

<sup>21</sup>Tr. 66.

SOR 1.k and 1.l are medical debts she was responsible to pay. She never did. Applicant stated she intended on including the debt in SOR 1.l in a repayment plan with a debt consolidator.<sup>22</sup> The plan has not been accepted by the creditor.<sup>23</sup>

SOR 1.m is a telephone bill that was incurred in 2005 and remains unpaid.<sup>24</sup> Her service was discontinued due to her failure to pay the bill.

SOR 1.n is a debt that Applicant did not recognize and she is not sure who is the original creditor, but admitted the debt.<sup>25</sup> It remains unpaid.

SOR 1.o is a medical debt for emergency room services incurred in 2005. Applicant agrees she owes it and the debt remains unpaid.<sup>26</sup>

Applicant is unsure of the original creditor in SOR 1.p and has not pursued it. It remains unpaid.<sup>27</sup>

SOR 1.q is a credit card debt that is in collection status. Applicant believes the account was opened in the last two to three years. After she opened the account she did not make any payments on it.<sup>28</sup>

Applicant broke her lease and incurred additional expenses when her mother became ill and she returned home to assist her.<sup>29</sup> She lived with her mother and assisted with her mother's living expenses. This occurred from approximately 2002-2003. Applicant went through a child custody dispute in 2002, and pays child support through garnishment to the father of the child.

Applicant was receiving back child support from 1996-2006 from the father of her oldest child, who was born with a disability and has been deceased since 1996.<sup>30</sup> She received the support through a garnishment order to the father's employer. The support was for \$200 a month. She no longer receives the support, but believes she is owed more money.

---

<sup>22</sup>Tr. 70.

<sup>23</sup>Tr. 71.

<sup>24</sup>Tr. 74.

<sup>25</sup>Tr. 75.

<sup>26</sup>*Id.*

<sup>27</sup>Tr. 76.

<sup>28</sup>Tr. 77.

<sup>29</sup>Tr. 59.

<sup>30</sup>Tr. 82-84.

Applicant owes \$22,000 in student loans. She attended school from 1991-1993. She made some monthly payments in 1994, but stopped for a period of time.<sup>31</sup> She could not provide the specifics of when she made payments, when she stopped, and when and if she resumed.<sup>32</sup> She has not made any payments in at least the last five years, but really could not pinpoint when she last made a payment.<sup>33</sup> She stated in the last six months that she consolidated her student loans and will start paying \$153 in July.<sup>34</sup> Her student loan debt was the only one she listed on her public trust questionnaire submitted on November 28, 2004, that required her to list if she had any debts over 180 days delinquent. She did not list any of her other delinquent debts. Applicant claimed she misunderstood the question and thought she only had to provide information on delinquent loans. She also stated it did not occur to her to list her other debts.<sup>35</sup> She stated she did not know she was filling out a public trust questionnaire. She stated “I just thought it was a credit background check, like a lot of employers do.”<sup>36</sup> She stated she did not know that the information would be used for a background investigation.<sup>37</sup> I find her testimony was not credible.

Applicant’s monthly net income is approximately \$1,550. Applicant provided a list of her monthly expenses which totaled at a minimum \$1,510. She lives with a friend and does not pay rent. She has three other debts that are not part of the SOR, one is for an apartment she broke the lease on and owes approximately \$6,000,<sup>38</sup> one is a phone bill for \$207, and another is an electric bill for \$142.<sup>39</sup> She has not paid these bills. She also has a credit card she opened in November or December of 2006. She owes approximately \$300, but it is not delinquent.<sup>40</sup>

Applicant contacted a debt consolidation company on April 5, 2007.<sup>41</sup> She stated she coordinated with them to propose a payment plan that included the debts listed in SOR 1.1 and 1.c,

---

<sup>31</sup>Tr. 84-87.

<sup>32</sup>Tr. 87-88.

<sup>33</sup>Tr. 88.

<sup>34</sup>Tr. 89.

<sup>35</sup>Tr. 96, 99.

<sup>36</sup>Tr. 97.

<sup>37</sup>Tr. 97.

<sup>38</sup>Tr. 80-81. The debts for the broken lease is listed in GE 5 at page 2. Another debt also listed in GE 5 was for medical services. The broken lease debt is for her failure to pay her rent for two months and she left before she was evicted. The rent was for \$625 per month. The lease was from May 2006 to April 2007. She moved out in October 2006. She could not identify the other debt for \$57. Neither debt has been paid. I have not considered the debts for disqualifying purposes, but have considered them when analyzing the “whole person” and Applicant’s ability and willingness to repay her delinquent debts.

<sup>39</sup>Tr. 105-107. These debts are not considered for disqualifying purposes, but are considered when analyzing the “whole person” and Applicant’s financial history.

<sup>40</sup>Tr. 102-103.

<sup>41</sup>Tr. 108.

but does not know if they have contacted these creditors nor is there any confirmation that the creditors agree to a plan.<sup>42</sup> Applicant's proposal is to pay \$143 a month to the debt consolidation company for these two debts. She has made one payment to the consolidation company, but does not know if any payments have been made to the two listed creditors.

Currently, based on Applicant's details of her monthly living expenses, she spends close to what she earns. She does not have enough money to make the payments in her payment plan and she will increase that shortfall in July when she must start repaying her student loans. No information was provided on how Applicant intends on meeting her monthly payments in her proposed payment plan and student loan payment. None of her other debts are included in the proposed plan nor is she making any payments on them.

Applicant provided a character letter from a coworker who believe Applicant has the "utmost respect" for the policies of her company. Her coworker stated, "[s]he has always demonstrated integrity and trustworthiness whether it is with co-workers, beneficiaries or providers."<sup>43</sup> She is considered an asset.

## POLICIES

The adjudicative guidelines 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.

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>44</sup> Positions designated as ADP I or ADP II are classified as sensitive positions.<sup>45</sup> ADP III positions are "nonsensitive positions."<sup>46</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

---

<sup>42</sup>Tr.108-109.

<sup>43</sup>AE A.

<sup>44</sup>Department of Defense Regulation 5200.2-R (Regulation) ¶ C2.1.2.

<sup>45</sup>Regulation ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3.

<sup>46</sup>Regulation ¶ C3.1.2.2.

the person to sensitive duties is clearly consistent with the interests of national security.”<sup>47</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>48</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>49</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, extend, 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 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>50</sup> The government has the burden of proving controverted facts.<sup>51</sup> The burden of proof is something less than a preponderance of evidence.<sup>52</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>53</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>54</sup> These same burdens of proof apply to trustworthiness determinations for ADP positions.

No one has a right to a security clearance<sup>55</sup> and “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>56</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved

---

<sup>47</sup>Regulation ¶C6.1.1.1.

<sup>48</sup>Regulation ¶ C8.2.1.

<sup>49</sup>Regulation Appendix 8 at 132.

<sup>50</sup>ISCR Case No. 96-0277 at 2 (App. Bd. Jul. 11, 1997).

<sup>51</sup>ISCR Case No. 97-0016 at 3 (App. Bd. Dec. 31, 1997); Directive, Enclosure 3, ¶ E3.1.14.

<sup>52</sup>*Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

<sup>53</sup>ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.

<sup>54</sup>ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.

<sup>55</sup>*Egan*, 484 U.S. at 531.

<sup>56</sup>*Id.*

in favor of protecting such sensitive information.<sup>57</sup> The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.<sup>58</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.

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

## CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

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

Financial Considerations are a security 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.

Guideline E-Personal Conduct is a concern because conduct involving questionable judgment, lack of candor, dishonest, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Based on all the evidence, Financial Considerations Disqualifying Condition (FC DC) 19(a) (*inability or unwillingness to satisfy debts*) and FC DC 19(c) (*a history of not meeting financial obligations*), apply in this case. Applicant has many debts that have been delinquent for years with no action toward paying them. In October 2006, she sent a form letter to many of them, but did not follow up on her proposal.

I have considered all 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*

---

<sup>57</sup>*Id.*; Directive, Enclosure 2, ¶ E2.2.2.

<sup>58</sup>Executive Order 10865 § 7.

*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), and FC MC 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts).*

Applicant has many delinquent debts. She has taken little or no action to resolve these debts. She continues to use credit cards. Based on her income and the amount of debts she has it is unlikely she will make significant progress to resolve the debts. In October 2006, she sent form letters to her creditors. She never followed up with them. She said if she did not hear from them within two weeks she would start repaying the debt at the amount she proposed. She did not offer any evidence that she began paying any of these debts. She did contact a debt consolidation company shortly before her hearing to work out a consolidation repayment plan. This plan only included two debts, had not been approved by the creditors, and she made only one payment. She was not aware if the creditors had even been paid. I find FC 20(a) does not apply.

Applicant had some intervening events in her life that were beyond her control. She was in a car accident, her mother became ill and she assisted her, and she was in a custody dispute over her daughter. She did receive a financial settlement to repay her medical debts from her car accident, but she did not use the money to do so. This condition was within her control. She broke her lease and went to live with her mother and help her with expenses. Applicant could have handled this more responsibly, but did not. Her custody dispute was unforeseeable. Under the circumstances these events were beyond her control. I find FC MC 20(b) applies.

Applicant sought debt consolidation counseling in early April 2007, shortly before her hearing. She also sent a form letter to creditors advising them of her intentions regarding her delinquent debts. Applicant did little else in the past seven years regarding repaying her debts. She was provided settlement money to repay her hospital bills, but did not use it for that purpose. She opened credit card accounts, bought merchandise and then shortly thereafter let the account go unpaid. She has broken more than one lease, leaving unpaid rent, utilities, and phone bills, without resolving them. She has not taken the time on some debts to find out who the creditor is and contact them in a responsible manner. She continues to make irresponsible financial decisions. Her form letter is a weak attempt at best to resolve her debts and is years too late. Applicant continues her pattern of acquiring debts and not repaying them. I find there is no indication that Applicant's financial problems are being resolved. She has a pattern of not paying her bills and continued to do so as evidenced by her recent delinquent debts that are not part of the SOR. Applicant continues to make irresponsible financial decisions and has failed to show she is making a legitimate good faith effort to repay her creditors and resolve her delinquent debts. Therefore, I find FC MC 20(c) and (d) do not apply.

Based on all the evidence, Personal Conduct Disqualifying Condition (PC DC) 16(a) (*deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*) applies. Applicant intentionally failed to list all of her debts on her public trust questionnaire. Applicant's explanation and testimony for why she did



Subparagraph 2.a:

Against 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