

KEYWORD: Financial

DIGEST: Applicant is 54 years old, married with children. He is a retired Air Force veteran. He suffered financial difficulties due to job losses, reduced income, and lack of sufficient education. He had several delinquent debts resulting from his experiences. He has now repaid those debts, and is working to obtain payoff information on the last debt. He mitigated the financial considerations trustworthiness concerns. Eligibility for an ADP I/II/III position is granted.

CASENO: 06-16189.h1

DATE: 07/17/2007

DATE: July 17, 2007

In re:)	
)	
)	
-----)	ADP Case No. 06-16189
SSN: -----)	
)	
Applicant for ADP I/II/III Position)	

**DECISION OF ADMINISTRATIVE JUDGE
PHILIP S. HOWE**

APPEARANCES

FOR GOVERNMENT

D. Michael Lyles, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 54 years old, married with children. He is a retired Air Force veteran. He suffered financial difficulties due to job losses, reduced income, and lack of sufficient education. He had several delinquent debts resulting from his experiences. He has now repaid those debts, and is working to obtain payoff information on the last debt. He mitigated the financial considerations trustworthiness concerns. Eligibility for an ADP I/II/III position is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a position of trust for Applicant¹. On November 29, 2006, DOHA issued a Statement of Reasons² (SOR) detailing the basis for its decision—trustworthiness concerns raised under Guideline F (Financial Considerations) of the revised Adjudicative Guidelines of the Directive issued on December 29, 2005, and implemented by the Department of Defense, effective September 1, 2006. Applicant answered the SOR in writing on January 19, 2007, and elected to have a hearing before an administrative judge. The case was assigned to me on May 2, 2007. On June 6, 2007, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a trustworthiness determination for Applicant. The Government and the Applicant submitted exhibits that were admitted into evidence. Applicant submitted additional exhibits within the two weeks allowed at the hearing, marked Exhibits H to M, which I admitted into the record without objection from the Government. DOHA received the hearing transcript (Tr.) on June 25, 2007.

FINDINGS OF FACT

Applicant's admissions to the SOR allegations are incorporated as findings of fact. After a complete and thorough review of the evidence in the record, and full consideration of that evidence, I make the following additional findings of fact:

Applicant is 54 years old, married, and has two children. He works for a defense contractor in the health care benefits business. He retired from the Air Force in 1992 and receives a monthly pension. After his military retirement, he had three civilian jobs, all of which ended in layoffs not due to any fault of Applicant. When laid off from work, Applicant obtained part-time or temporary work to support his family. As a result of the layoffs, Applicant and his wife filed Chapter 7 bankruptcy in November 1997. His debts were discharged in bankruptcy in March 1998 (SOR ¶1.a.). (Tr. 34, 36, 38, 51, 52, 73-76; Exhibits 1, 2-4)

Applicant obtained a college degree in health care management in 2000. He took out student loans to pay for that degree. He is now repaying those loans at \$150 per month. With that degree, he was able to obtain employment in the job he now has. His income is approximately \$49,000 annually. (Tr. 36, 38, 52; Exhibit 1)

Applicant moved to his present location in June 2004. He could not sell his house at his prior location until October 2004, thereby causing him to spend money on the mortgage and rent in his new location for six months. His wife, a nurse, was injured on the job in 2005 and not able to work for four months. She currently commutes to another city for a nursing job, working on a contractual basis. She started that job in June 2007, after not working since February 2007, for medical reasons

¹Adjudication of trustworthiness cases for ADP I, II, and III positions are resolved using the provisions of DoD Directive 5220.6 (Directive), pursuant to the memorandum from Carol A. Haave, Deputy Under Secretary of Defense for Counterintelligence and Security to DOHA Director, *Adjudication of Trustworthiness Cases* (Nov. 19, 2004).

²Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and the Directive.

and a layoff. Her income dropped from \$68,000 to \$48,000 annually after her move from their former state of residence. (Tr. 34, 36-41, 44, 67; Exhibits I, J)

Applicant incurred several debts that were not repaid in a timely manner. They have now been repaid using the \$5,000 profit from his house sale, and an inheritance his wife received from her late mother. Applicant pays cash for any purchases now, and uses two debit cards linked to his bank accounts for the payment of debts and current purchases. He also has a contract with a credit counselor. (Tr. 39, 41, 42, 50, 58, 59)

Applicant owed \$193 for a water bill at his previous residence that he sold in October 2004 (SOR ¶1.b). The attorney handling the real estate closing was supposed to pay that debt from the sale proceeds. That debt was paid February 1, 2002. (Tr. 24, 52, 53, 68-70; Exhibits E, 2-4)

Applicant owed \$188 on a cable television debt (SOR ¶1.c). That debt was paid by check on June 5, 2007, in the amount of \$290. (Tr. 24; Exhibit D, Answer)

Applicant owed \$2,886 to a creditor (SOR ¶1.d). This debt was paid in full on or before March 26, 2007. (Tr. 22; Exhibits C, 2-4)

Applicant owed a bank \$216 (SOR ¶1.e). Applicant paid a settlement amount of \$179.57 in May or June 2007. That debt is now paid in full. (Tr. 18; Exhibits A, 2-4)

Applicant owed another bank \$579 (SOR ¶1.f). That debt was paid by deduction from Applicant's bank account in April 2007, in the amount of \$625.29. (Tr. 20, 54, 55, 64; Exhibits B, L, 2-4)

Applicant owed a creditor \$9,381 on a repossessed car (SOR ¶1.g). Applicant's son had the car and was supposed to make the payments, but did not. Applicant's wife paid \$2,000 on the account, but the car was repossessed anyway in February 2007. Applicant has not been contacted by the creditor for any balance owed, but he will contact the creditor to verify any amount owed and arrange a payment plan. He hired an attorney to help him obtain information from the creditor to resolve this debt. (Tr. 27-32, 34, 38, 65, 71, 72; Exhibits B, O, P, 2-4, Answer)

Applicant owes \$9,348 on his student loans (SOR ¶1.h). He is now paying \$150 monthly on that debt. This loan was in forbearance mode from May 7, 2006, to May 6, 2007. (Tr. 32, 34, 60, 75; Exhibits 2-4, Answer)

Applicant owes \$786 to a furniture company (SOR ¶1.i). He paid that debt in two installments, first \$500 in January 2007, then \$285.87 from another bank account in February 2007. The debt is fully paid. (Tr. 25, 26, 53, 64; Exhibits F,G, K, 2-4, Answer)

Applicant did not know of these unpaid debts because his wife managed the household money. She has done this since they were married. She did not tell him about their financial shortfalls because she was embarrassed about it. She did not want him to worry about it as he worked to support the family. She now pays the student loan and car loan payments by a direct pay arrangement from Applicant's military retirement pay. They have a budget now that they use showing a positive cash flow of income over expenses. Her explanation is credible, sincere, and

persuasive about Applicant's lack of knowledge of the unpaid bills. (Tr. 42, 44-49, 58, 73-76; Exhibit H)

POLICIES

As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information with Industry* § 2 (Feb. 20, 1960). By direction of the Under Secretary of Defense for Counterintelligence and Security, adjudications of cases forwarded to DOHA by the Defense Security Service or the Office of Personnel Management (OPM) for a trustworthiness determination shall be conducted under the provisions of the Directive. Eligibility for a position of trust is predicated upon the applicant meeting the guidelines contained in the Directive and a finding it is clearly consistent with the national interest to do so. See Directive ¶ 2.3. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his trustworthiness determination." See Directive ¶ E3.1.15

The adjudication process is based on the whole person concept. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline that must be carefully considered in making the overall common sense determination required. The decision to deny an individual eligibility to occupy a position of trust is not necessarily a determination as to the loyalty of the applicant. See Exec. Or. 10865 § 7. 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 such a determination.

In evaluating the trustworthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. Those assessments include: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (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 pertinent 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 (See Directive, Section E2.2.1. of Enclosure 2). Because each case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible to occupy a position of trust. The Directive presumes a nexus or rational connection

between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's trustworthiness suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996). All that is required is proof of facts and circumstances that indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at **6-8 (App. Bd. 2001). Once the Government has established a *prima facie* case by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. See Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that is clearly consistent with the national interest to grant or continue his trustworthiness determination. ISCR Case No. 01-20700 at 3 (App. Bd. 2002). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive ¶ E2.2.2

Based upon a consideration of the evidence as a whole, I find the following adjudicative guideline most pertinent to an evaluation of the facts of this case:

Guideline F: Financial Considerations: The Concern: 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 could 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.

"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 the person to sensitive duties is clearly consistent with the interests of national security." (Regulation ¶ C6.1.1.1) Appendix 8 of the Regulation sets forth the adjudicative policy, as well as the disqualifying conditions (DC) and mitigating conditions (MC) associated with each guideline. DoD contractor personnel are afforded the adjudication procedures contained in the Directive. (Regulation ¶ C8.2.1)

CONCLUSIONS

Guideline F: Applicant's delinquent debts totaled \$23,577. He filed Chapter 7 bankruptcy in November 1997 because of his unpaid and delinquent debts that had accumulated to that time. Applicant has a difficult time managing his money in the context of his low-paying jobs and frequent layoffs in the 1990s after he retired from the Air Force. The disqualifying conditions applicable are Financial Considerations Disqualifying Condition ¶19.a. (inability or unwillingness to satisfy debts), and ¶19.c. (a history of not meeting financial obligations).

Applicant suffered several job losses after his retirement from the Air Force. He kept working at whatever job he could find to support his family. After his Chapter 7 bankruptcy, Applicant got a college degree and now has a better paying job. He had further financial difficulties moving to the location of his current job in that he could not sell his former residence promptly and

had to pay that mortgage and his rent in his new location. Now, with that house sold, he applied his net gain from the sale to his debt repayments. His wife contributed her inheritance to paying the debts. They have a plan for repaying debts, and the only one not currently being addressed is the auto loan, on which they are working to contact the creditor and arrange payment. The Financial Considerations Mitigating Conditions applicable are ¶20.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), and ¶20.d (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts). Applicant has taken responsible and good-faith efforts to control his spending and repay his debts.

Whole Person Analysis “The adjudicative process is an examination of a sufficient period of a person’s life to make an affirmative determination that the person is eligible for a” trustworthiness decision. Directive ¶2. “Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.” *Id.* In evaluating Applicant’s case, I have considered the adjudicative process factors listed in the Directive ¶2.

Applicant’s financial difficulties extend back into the 1990s. They were serious, but caused by external employment circumstances. He had three jobs he lost through corporate layoffs. He kept working to support his family at any job he could find. He got more education to better prepare himself for the marketplace. His wife kept the family finances and did not share the information about their recent financial situation with him to prevent him from worrying about it as he strived to find employment and support the family. He was, therefore, not fully knowledgeable about the current status of his delinquent debts. The financial problems are past, not recent or current, because he has a higher income now and his wife is working again after her 2004 injuries healed. There are behavioral changes, in that Applicant pays cash or uses a debit card for all purchases. He and his wife undertook to use the net gain on their house sale and her inheritance to pay their debts instead of spending it on other purchases, thereby acting responsibly. There is no likelihood of a recurrence of their previous financial situation based on their budget and present incomes, and therefore, no potential for pressure, coercion, exploitation, or duress. Lastly, I conclude Applicant is very credible in his explanations of his past financial difficulty and his efforts to repay his debts.

I conclude the Financial Considerations trustworthiness concern for Applicant. I also conclude the “whole person concept” evaluation for Applicant.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline F: FOR APPLICANT

Subparagraph 1.a. to 1.i.:

For Applicant

DECISION

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for assignment to sensitive duties. His application for eligibility for an ADP I/II/III position is granted.

Philip S. Howe
Administrative Judge