

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant mitigated financial security concerns from debts related to consolidation bank loans from a former bank employer. Her debts were mitigated by unemployment, under-employment and hospitalization over an extended period, which was beyond her control. Her financial situation has improved due to her present full time employment and court ordered child support payments from her former husband. She is in a position to continue and increase the re-payments to the bank and there is little likelihood of recurrence of the problem. Her omission of information relating to delinquent debt on her public trust application was not deliberate with intent to deceive. Clearance is granted.

CASENO: 06-16378.h1

DATE: 03/30/2007

DATE: March 30, 2007

In Re:)	
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-----)	ADP Case No. 06-16378
SSN: -----)	
)	
Applicant for ADP I/II/III Position)	

**DECISION OF ADMINISTRATIVE JUDGE
CHARLES D. ABLARD**

APPEARANCES

FOR GOVERNMENT

Eric H. Borgstrom, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

_____Applicant mitigated financial security concerns from debts related to consolidation bank loans from a former bank employer. Her debts were mitigated by unemployment, under-employment and hospitalization over an extended period, which was beyond her control. Her financial situation has improved due to her present full time employment and court ordered child support payments from her former husband. She is in a position to continue and increase the re-payments to the bank and there is little likelihood of recurrence of the problem. Her omission of information relating to delinquent debt on her public trust application was not deliberate with intent to deceive. Clearance is granted.

STATEMENT OF CASE

_____On August 30, 2006, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to 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 trustworthiness determination for an ADP clearance for Applicant. DOHA recommended the case be referred to an administrative judge to determine whether such a clearance should be granted, continued, denied, or revoked.

On September 21, 2006, Applicant responded to the SOR allegations, and requested a hearing. The matter was assigned to another judge on October 24, 2006, and assigned to me on December 15, 2006. A notice of hearing was issued on January 18, 2007, for a hearing on February 6, 2007, and held that day. The government offered three exhibits and Applicant offered eight into evidence and all were accepted. The record was left open for until March 9, 2007, for submission by the Applicant of additional material. The transcript was received on February 14, 2007. One submission consisting of eleven documents was made on March 2, 2007, and admitted in evidence without objection.

FINDINGS OF FACT

_____Applicant admitted two of the three allegations relating to delinquent debts with explanatory information for all. She denied the single allegation relating to falsification of financial information on her application for a security clearance (SF 86). She appended two documents to her answer. After a complete review of the record, I make the following additional findings of fact:

Applicant is a 46-year-old customer service representative for a defense contractor health provider and has held this position since September 2005. She has a responsible position working with medical information for military personnel and is highly regarded by her employer (Exhs. E, F, and G). Her work involves making telephone calls to military personnel and their families regarding claims against insurance companies and health service providers. She takes great pride in her work and especially so since her father served 20 years in the military. She has worked for her present employer since September, 2005.

Before her present employment she worked for several years as a customer representative and cashier for several employers. From July 2001 until the end of January 2002 she worked in a bank where she was employed as a part time bank teller while holding another part time job. During that period she was offered full time 40 hours a week employment at an hourly rate as a teller filling a full time position of another employee, who had family medical problems. She quit her other part time job to work full time at the bank.

During the period of her bank employment in 2001, Applicant made a consolidation loan with her employer in the amount of \$20,000. This is the principal delinquent debt alleged (SOR 1.b.). A second easy access loan was taken for \$2,000 and subsequently reduced to \$1,800 (SOR 1.c.). Payments were to be made to the bank of \$294 each month, which was to be disbursed to creditors (Exh H Post submission). These payments were used on December 10, 2001, to pay the debt of \$816 alleged in SOR 1.a. (Exh. D Post submission). Subsequently, her hours of work were cut to between seven and eleven per week because of personnel changes. She could not keep up the payments and was laid off in July 2002 because the bank could not have an employee who was in default on a loan to them. She was again working with only part time employment.

The bank filed suit to collect, resulting in a hearing and an agreement in 2002 to pay \$100 per month to settle the account. Some payments were made over the next two years and the bank appears to have been flexible in collecting. She had a serious automobile accident in February 2005 that resulted in surgery in October 2005 shortly after she began her new job. She was unable to work until January 2006. Although she was paid disability insurance during convalescence, she could not make the bank payments on a regular basis, and so advised the bank. They agreed to defer payments until she resumed her work

The agreement with the bank was re-confirmed on February 26, 2007, (Exh. C Post submission). She has made payments since the new agreement was reached. Since obtaining her present full time position her annual salary, after recent promotions, is almost \$29,000 (Exh. L Post submission). She intends to pay more than the required minimum, and her income level indicates that is now possible.

Applicant has one child, a daughter who is in college. She recently was awarded a judgment against her former husband for child support arrears in the amount of \$19,000 which she can collect. She is active as a missionary in her church whose bishop vouched for her good character (Exh. J Supplemental submission).

_____ Applicant failed to report delinquent debts at Question 20 of her Public Trust Position Application (SF 85 P) submitted September 21, 2005. This question asked if she was over 180 days delinquent on any loan or financial obligation. She knew the SOR 1.a. debt had been paid and believed that her agreement for payments to the bank meant that she was not delinquent on the two bank loans.

POLICIES

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). In Executive Order 12968, *Access to Classified Information*, § 3.1(b) (August 4, 1995), the President provided that eligibility for access to classified information shall be granted only to United States citizens “whose personal and professional history affirmatively indicates loyalty to

the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information.”

To be eligible for assignment to sensitive duties, an applicant must meet the security guidelines contained in DoD 5200.2-R. “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.” DoD 5200.2-R, ¶ C6.1.1.1. Appendix 8 of the Regulation sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline.

“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 security clearance.” DoD 5200.2-R, Appendix 8. An administrative judge must apply the “whole person concept,” and consider and carefully weigh the available, reliable information about the person. *Id.* An administrative judge should consider the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (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. *Id.*

DoD contractor personnel are afforded the right to the procedures contained in DoD Directive 5220.6 before any final unfavorable access determination may be made. DoD 5200.2-R, ¶ C8.2.1. Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information. Directive, ¶ E3.1.14. Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. Directive, ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 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.

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. Exec. Ord. 10865, § 7.

It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate adjudicative factors, I conclude the following with respect to all allegations set forth in the SOR:

Applicant's delinquent debts cited in the SOR prompted the allegation of security concern under Guideline F since an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. (E2.A6.1.1.) Conditions that could raise a security concern and may be disqualifying include a history of not meeting financial obligations (E2.A6.1.2.1.) and evidence of inability or unwillingness to satisfy debts. (E2.A6.1.2.3.)

Mitigating Conditions (MC) might include the fact that the conditions that resulted in the behavior were largely beyond the person's control (E2.A6.1.3.3.), and the person has initiated a good faith effort to repay overdue creditors or otherwise resolve debts. (E2.A6.1.3.6.). There is sufficient evidence that the debts resulted from conditions beyond her control because of her employment changes at the bank where she had the loan, compounded last year by her accident and hospitalization. She now has sufficient income from her salary and child support that she can pay the loan to the bank and the likelihood of a recurrence of the problem is minimal. While the bank loan helped her out of the immediate problems she had in 2001, the reduction in employment and the loss of that job complicated her financial recovery.

Applicant's failure to report her financial delinquencies at Questions 20 on her SF 85 P raises issues under Guideline E that might indicate questionable judgment, unreliability, and unwillingness to comply with rules and regulations and could indicate that the person may not properly safeguard classified information (E2.A5.1.1.). Specifically, the deliberate omission, concealment, or falsification of relevant and material facts from a trustworthiness application could raise a security concern and be disqualifying. (E2.A5.1.2.2.) Applicant's explanation of the circumstances of the loans from the bank and her understanding of the state of her debts in relation to those loans was credible and thus, I cannot conclude that it was deliberate omission as the guideline requires.

In all adjudications the protection of our national security is of paramount concern. Persons who have access to classified information have an overriding responsibility for the security concerns of the nation. The objective of the security clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information. The "whole person" concept recognizes we should view a person by the totality of their acts and omissions. Each case must be judged on its own merits taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

Applicant impressed me at the hearing as a proud person who is hard-working. Her delinquent debts accumulated largely as a result of checkered history of employment for an

extended period resulting in a loss of control of her finances. She took out two bank loans from her employer in an effort to resolve those issues but then had her employment cut and then terminated by the lender bank. She is a responsible parent with significant responsibilities, who now has a good job where she is a valued employee. There is a strong likelihood of success in effective management of her finances.

After considering all the evidence in its totality, and as an integrated whole to focus on the whole person of Applicant, I conclude in favor of the grant of a security clearance.

FORMAL FINDINGS

Formal findings as required by the Directive (Par. E3.1.25) are as follows:

_____ Paragraph 1. Guideline F:	FOR APPLICANT
Subparagraph 1.a.:	For Applicant
Subparagraph 1.b.:	For Applicant
_____ Subparagraph 1.c.:	For Applicant
Paragraph 2. Guideline E	FOR APPLICANT
Subparagraph 2.a.:	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 or renew a trustworthy determination for Applicant. Clearance is granted.

Charles D. Ablard
Administrative Judge