

KEYWORD: Financial

DIGEST: Applicant is a 53-year-old employee of a defense contractor who has incurred significant debt as a result of ill health, unemployment, divorce, and two separate legal custody issues. He filed for bankruptcy in 2002 and the bankruptcy court discharged the indebtedness in November 2002. He incurred debt after the bankruptcy. More recently his salary and available income have improved. He has always paid his rent and is current on his bills. He has made good faith efforts to resolve the debt. His continuing efforts to resolve his past financial obligations have sufficiently mitigated the trustworthiness concerns raised under financial considerations. Applicant's eligibility for a trustworthiness position is granted.

CASENO: 06-16417.h1

DATE: 02/28/2007

DATE: February 28, 2007

In re:)	
)	
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SSN: -----)	ADP Case No. 06-16417
)	
Applicant for ADP I/II/III Position)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
NOREEN A. LYNCH**

APPEARANCES

FOR GOVERNMENT

Nicole Noel, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 53-year-old employee of a defense contractor who has incurred significant debt as a result of ill health, unemployment, divorce, and two separate legal custody issues. He filed for

bankruptcy in 2002 and the bankruptcy court discharged the indebtedness in November 2002. He incurred debt after the bankruptcy. More recently his salary and available income have improved. He has always paid his rent and is current on his bills. He has made good faith efforts to resolve the debt. His continuing efforts to resolve his past financial obligations have sufficiently mitigated the trustworthiness concerns raised under financial considerations. Applicant's eligibility for a trustworthiness position is granted.

STATEMENT OF THE CASE

On December 18, 2005, Applicant submitted an application for a position of public trust, an ADP I/II/III position. The Defense Office of Hearings and Appeals (DOHA) declined to grant the application under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended (the "Directive").¹ On August 24, 2006, DOHA issued Applicant a Statement of Reasons (SOR) detailing the basis for its decision. The SOR, which is in essence the administrative complaint, alleged security concerns under Guideline F, Financial Considerations. On October 6, 2006, Applicant responded to the SOR allegations and requested a hearing.

The case was assigned to me on January 3, 2007.² A notice of hearing was issued on January 11, 2007, scheduling the hearing for January 30, 2007. The hearing was conducted as scheduled. The government submitted four exhibits that were marked as Government Exhibits (GE) 1-5. The exhibits were admitted into the record without objection. Applicant submitted five exhibits which were marked and admitted into evidence as Applicant Exhibits (AE) A-E. The exhibits were admitted without objection. Applicant testified in his own behalf. At Applicant's request, I left the record open for additional submissions. Applicant timely filed three documents for post hearing submission. The documents are marked AE F, G, and H. Department Counsel had no objection to the admission of the documents. DOHA received the hearing transcript (Tr.) on February 7, 2007.

FINDINGS OF FACT

Applicant admitted, with explanation, allegations, 1.a, 1.b, 1.c, 1.d, 1.g, 1.i, in his SOR response under Guideline F.³ He denied the other allegations, because he has paid some of them and had no knowledge of "unknown medical provider accounts" listed in the SOR. The admissions are incorporated as findings of fact. After a complete review of the evidence in the record and upon due consideration, I make the following additional findings of fact:

¹This action is taken under Executive Order 10865, dated February 20, 1960, as amended; and Memorandum from the Deputy Under Secretary of Defense Counterintelligence and Security, titled "Adjudication of Trustworthiness Cases," dated November 19, 2004.

²The case was originally assigned to another administrative judge in October 2006. Applicant's November hearing was cancelled due to his illness at that time. The case was assigned to me because of caseload considerations.

³Applicant's Answer to SOR, dated September 25, 2006) at 1-2.

Applicant is a married, 53-year-old team specialist of a defense contractor, seeking a position of public trust.⁴ After graduating from high school in 1971, he attended a community college, receiving an Associate of Arts degree in 1973. Due to his poor health, he was not eligible to enlist in the military.⁵ In 1976, Applicant married. However, in 1983, he divorced. His second marriage lasted from 1985 until 1996. In 1985, Applicant engaged in a lengthy custody battle for his daughter. This created approximately \$100,000 in legal expenses for Applicant. He managed to support his family during this time. Applicant married for the third time in 1998. He has 13 children, with two dependent children at home.⁶ He has been with his current employer for almost seven years, receiving various promotions.⁷ His performance evaluation rated him as “exceeding expectations.”⁸

Applicant had no financial difficulties prior to 1998. He was current on his bills. However, in September 1998, he was in an automobile accident. He damaged his back and has permanent arthritis spurs. He has medication for the pain.⁹ This resulted in unemployment for about three months. He started to fall behind in his accounts. He attempted to make minimum monthly payments but was living paycheck to paycheck. At the same time his wife lost her job. He accrued more debt and lost potential income. Shortly after returning to work Applicant was again unemployed. He worked at low paying jobs and part time work to support his family. The financial delinquencies continued.¹⁰

In 1999, Applicant started working for his current employer. He receives an hourly wage.¹¹ He and his wife, at that time, however, took custody of his wife’s grandchild. The child’s father was in jail and the mother was selling drugs, could not provide for the baby. Applicant and his wife spent two years in legal proceedings to become the legal guardians. This cost them approximately \$5,000 in legal fees. As well as loss of pay due to absence from work for many court proceedings but they felt they had no choice.¹² Applicant’s health also continued to decline. He suffers from a low immune system which subjects him to illness.

Applicant contracted meningitis in late 1999. He has suffered from pneumonia and has severe allergies. His treating physician confirms his multiple respiratory infections and severe irritable bowel syndrome, which has caused prolonged absence from work, and some loss of pay.¹³

⁴GE 1 (Public Trust Application), dated December 18, 2005 at 1-5.

⁵Tr. 26

⁶Tr. 36.

⁷AE D (Annual Performance Evaluations), dated 2000 to 2007 at 1-5.

⁸*Id.*

⁹Tr. 26.

¹⁰GE 2 (Affidavit and Personal Financial Statement), dated October 2, 2004 at 1-9.

¹¹AE E (Pay record), dated 2001-2007.

¹²Tr. 29.

¹³AE F (Letter from physician, dated February 15, 2007); Tr. 58.

In 2002, Applicant filed for chapter 7 bankruptcy, and the bankruptcy court discharged the indebtedness in November 2002.¹⁴ He will not consider another bankruptcy proceeding.

On December 18, 2005, Applicant completed a Public Trust Position Application SF 85-P.¹⁵ Applicant's work history prior to his current employment was, as noted above, uneven. He produced evidence at the hearing confirming that his income with his current employer has varied widely over the past years due to illness.¹⁶ His recent illness has caused further delay in paying on his delinquent accounts.¹⁷ Applicant was on temporary disability last year, at the recommendation of his doctor. At one point his doctor suggested permanent disability, but Applicant asked for modifications and restrictions at work instead.

Applicant's debts in SOR include two judgments which have been satisfied.¹⁸ A judgment for one property management company was listed three times. Applicant's testimony was credible concerning the property management judgment. The owner of the property released him from the unpaid rent and security deposit. The owner expressly told Applicant that the property management company did not have the owner's consent to file the judgment. A collection account in the amount of \$8,773 has a zero balance.¹⁹ A charged off account in the amount of \$178 is paid in full. Applicant is paying another debt of \$1,209 on a regular basis.²⁰

Applicant provided information about the origin of the debts. He lived frugally and none of the debts were due to excessive spending. Several unpaid accounts, totaling less than \$400 are to medical institutions.²¹ He acknowledges that the lengthy custody battles put his debts, other than living expenses on the back burner. He has selected the most important debts and made an effort to resolve them. The one large debt remaining is due to the voluntary repossession of a used automobile in 2004.²² He had been making payments on the vehicle, but the vehicle was constantly breaking down. It was under a warranty, but the dealer did not honor the warranty. Applicant told them to come and pick up the car.²³

¹⁴GE 5 (Bankruptcy Petition and Discharge), dated November 2002 at 1-57.

¹⁵GE *supra* note 6, at 1-5.

¹⁶AE E *supra* note 11.

¹⁷Tr. 23, 24.

¹⁸AE B (Ledger card for collection company), dated November 21, 2006.

¹⁹AE A (Journal voucher for a federal credit union), dated October 13, 2006.

²⁰AE C (Account summary), dated December 2006.

²¹Tr. 69.

²²Tr. 68.

²³*Id.*

Applicant's remaining debts are as follows: \$6,495 balance on an auto loan (voluntary repossession) in 2004; \$50 medical account in collection in 2003; \$200 medical account in collection in 2003; \$75 medical account in collection in 2003; \$50 medical account in collection in 2004; and \$1,014 delinquent account in 2004.²⁴ His total debt is approximately \$16,000.²⁵

Applicant has a net monthly income of \$1,800. His wife earns approximately \$1,500 a month. After reported expenses, he has a small net remainder.²⁶ He has retirement savings. His wife budgets and manages the bills. They are current on their rent and car note. Applicant's alleged debt in the SOR was \$32,000. He has established with sufficient documentation that today the total debt has been significantly reduced.²⁷

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."²⁸ In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information and determining trustworthiness within the executive branch.

To be eligible for a security clearance or access to sensitive information, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. The adjudicative guideline at issue in this case is:

Guideline F - Financial Considerations - 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.

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

²⁴Tr. 101, 102.

²⁵Tr. 103.

²⁶Tr. 76.

²⁷Applicant's Answer to SOR, dated October 2006.

²⁸ *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).

“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.”²⁹ An administrative judge must apply the “whole person concept,” and consider and carefully weigh the available, reliable information about the person.³⁰ 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.³¹

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.³² Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts.³³ An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.”³⁴ Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.³⁵ The same rules apply to trustworthiness determinations for access to sensitive positions.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. The government has established a *prima facie* case for disqualification under Guideline F - Financial Considerations.

Financial Considerations

Based on all the evidence, Financial Considerations Disqualifying Conditions (FC DC) E2.A6.1.2.1 (*A history of not meeting financial obligations*), and FC DC E2.A6.1.2.3 (*Inability or unwillingness to satisfy debts*) apply to Applicant's case. Applicant has experienced difficulty meeting his financial obligations since 1999. He filed for bankruptcy in 2002, and his indebtedness was discharged by the bankruptcy court. This is a legally permissible mean of dealing with delinquent debt. Currently, he has delinquent debts with an approximate total balance of \$16,000.

²⁹ Directive, ¶ E2.2.1.

³⁰ *Id.*

³¹ *Id.*

³² Directive, ¶ E3.1.14.

³³ Directive, ¶ E3.1.15.

³⁴ ISCR Case No. 01-20700 at 3 (App. Bd. December 19, 2002).

³⁵ Directive, ¶ E2.2.2.

I considered the Financial Considerations Mitigating Conditions (FC MC). Applicant's numerous delinquent debts remain outstanding. Therefore, I cannot apply FC MC E2.A6.1.3.1 (*The behavior was not recent*), nor FC MC E2.A6.1.3.2 (*The behavior was isolated*) because he still carries a significant amount of delinquent debt.

FC MC E2.A6.1.3.3 (*The conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce, or separation)*) applies. Applicant had periods of illness and temporary disability, and provided evidence as to the effect on his finances. Moreover, his divorce and subsequent lengthy custody proceedings created a significant amount of debt. Applicant provided evidence to support this mitigating condition. Applicant's uneven pay history, ill health, divorce and custody issues are sufficient for mitigation in this case.

FC MC E2.A6.1.3.4 (*The person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or under control*) partially applies. Applicant has satisfied several judgments and paid some accounts. He has taken steps to resolve these debts. The record is devoid of any information concerning financial counseling.

FC MC E2.1.3.6 (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) is applicable. Applicant has shown that he established a record of steady payments or financial stability when he was working. He made attempts to resolve the delinquent accounts, and continues to do so. He and his wife are both employed. I conclude that he made a good-faith effort to resolve his debts.

Whole Person

In all adjudications, the protection of our national security is the paramount concern. The objective of the trustworthy determination process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for assignment to sensitive duties. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I have considered all the evidence and the "whole person" in evaluating Applicant's trustworthiness. Applicant is a married man with children and dependents at the current time. His debt resulted from unemployment and illness. He has a good work history. In this case, Applicant presented sufficient evidence of extenuation and mitigation to warrant a favorable decision. He has acknowledged a willingness to accept responsibility for his overdue accounts and has reduced his delinquent debt. Applicant has met his burden. Based on the evidence in the record, it is clearly consistent with the national interest to grant Applicant eligibility for assignment to sensitive duties. Eligibility is granted.

FORMAL FINDINGS

Formal Findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1. Guideline F:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	For Applicant
Subparagraph 1.l:	For Applicant
Subparagraph 1.m:	For Applicant
Subparagraph 1.n:	For Applicant

DECISION

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national interest to grant Applicant’s request for a determination of trustworthiness and eligibility for assignment to sensitive duties. Eligibility is granted.

Noreen A. Lynch
Administrative Judge