

KEYWORD: Financial

DIGEST: Applicant is a highly regarded customer service representative for a defense contractor who accumulated a number of delinquent debts during a brief period of unemployment, ensuing surgery and tightened finances associated with her shortage of funds. With barely enough income to support her child and herself, she has made little progress in paying her old acknowledged debts, many of which are apparently barred by applicable statutes of limitation. While she claims debt counseling in her FORM submission, she failed to document or explain the counseling and repayment efforts she has committed to. Although she is regarded as reliable and trustworthy by her friends and colleagues, it is too soon to determine whether she will be able to make any material progress in addressing her delinquent debts. Eligibility for an ADP I/II/III position is denied.

CASENO: 06-16882.h1

DATE: 04/20/2007

DATE: April 20, 2007

In re:)	
)	
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SSN: -----)	ADP Case No. 06-16882
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
ROGER C. WESLEY**

APPEARANCES

FOR GOVERNMENT

Ray T. Blank, Jr., Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a highly regarded customer service representative for a defense contractor who accumulated a number of delinquent debts during a brief period of unemployment, ensuing surgery and tightened finances associated with her shortage of funds. With barely enough income to support her child and herself, she has made little progress in paying her old acknowledged debts, many of which are apparently barred by applicable statutes of limitation. While she claims debt counseling in her FORM submission, she failed to document or explain the counseling and repayment efforts she has committed to. Although she is regarded as reliable and trustworthy by her friends and colleagues, it is too soon to determine whether she will be able to make any material progress in addressing her delinquent debts. Eligibility for an ADP I/II/III position is denied.

STATEMENT OF THE CASE

On August 17, 2006, the Defense Office of Hearings and Appeals (DOHA), pursuant to Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to Applicant, which detailed reasons why DOHA could not make the preliminary affirmative determination of Applicant's eligibility for occupying an ADP I/II/III position, and recommended referral to an administrative judge to determine whether a trustworthiness determination clearance should be granted, continued, denied or revoked.

Applicant responded to the SOR on September 25, 2006, and elected to have her case decided on the basis of the written record. Applicant received the File of Relevant Material (FORM) on December 28, 2006. Applicant submitted information in response to the FORM within the 30 days afforded her to provide supplemental documentation regarding the issues. Included in the packet of information provided by Applicant were a cover letter of January 10, 2007, certificates of recognition and training and two character references. The case was assigned to me February 23, 2007.

PROCEDURAL ISSUES

The SOR relies on DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified. Because the procedural rules of the Directive provide no express coverage of ADP trustworthiness determinations, the substantive guidelines of Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program* (Regulation), dated January 1987, as amended, will control.¹ From a practical standpoint, though, it makes no difference which set of financial guidelines apply to the

¹ ADP III positions are not characterized as sensitive ones in DoD 5200.2-R (Appendix 10). To make ADP III positions subject to trustworthiness determinations, the Deputy Under Secretary of Defense approved use of the procedures in DoD Directive 5220.6 to resolve referred ADP III contractor cases for trustworthiness determinations. To apply the Directive's substantive guidelines to ADP III cases would require at least some covered nexus in the Directive itself, which neither Executive Order 10865 nor the procedural guidance in the Directive addresses. While not a perfect blend of procedural/substantive guidance, the combining of the Directive's procedures with the substantive guidelines in DoD 5200.2-R provides the best available framework under the circumstances for ensuring due process to ADP III applicants seeking trustworthiness determinations.

covered allegations. For there are no material differences in the treatment of financial considerations between the guidelines in the Directive and those in the Regulation.

SUMMARY OF PLEADINGS

Under Guideline F, Applicant is alleged to have incurred numerous delinquent debts: She is alleged to have incurred five delinquent debts altogether (with several placed in collection in 2002 and before), which exceed \$27,000.00 in total. For her response to the SOR, Applicant admitted her debt-related allegations, and provided explanations. She claimed payment of the debt covered by creditor 1.a and her intention to contact the remaining creditors covered in the SOR.

FINDINGS OF FACT

_____ Applicant is a 30-year-old customer service representative of a defense contractor who seeks a trustworthiness determination. The allegations covered in the SOR and admitted to by Applicant are incorporated herein by reference and adopted as relevant and material findings. Additional findings follow.

Between 1999 and 2006 Applicant accumulated delinquent debts with five creditors. Altogether, she accrued over \$27,000.00 in debts which were either placed in collection or charged off. She claims she paid the debt covered by creditor 1.a of the SOR but provides no documentation verify her payment of the \$186.00 debt. This debt is no longer listed in either of her latest credit reports (*see* items 6 and 7) and is credited with being discharged.

Applicant furnished no payment documentation regarding any of her remaining five debts covered in the SOR. Of these listed debts, the largest is a deficiency balance in the amount of \$19,783.00 that resulted from a foreclosure of a mobile home that Appellant had purchased in October 1998 (one month after the birth of her son). At that time, she was employed by a mortgage company and enjoyed good credit. But after four years of employment with this mortgage company (1997-2000), she lost her job and was out of work for a couple of months. With a young son to care for, and earnings shortfalls attributable to her period of unemployment and surgery in 2000, she encountered difficulties paying her bills and decided to sell the mobile home. Her sale efforts included add placements in her local newspaper and requests for sales assistance with the company she purchased the home. She claims she was hampered in finding prospective buyers by the location of the trailer (on rental property).

After months of unsuccessful efforts to sell the home, Applicant called the company holding the loan again and asked for sales assistance. She was furnished no marketing assistance from the company, and before she could find a buyer, the company repossessed the trailer. After foreclosing on the trailer, the company, in turn, demanded over \$19,000.00 to cover the deficiency on the loan balance. Without the means to cover this loan balance, Applicant ignored the demand and permitted the statute of limitations governing this debt to run.

Besides the deficiency balance with Portfolio on her mobile home repossession, Applicant accrued delinquent debts with AFNI (\$80.00), Credreapp (\$4,364.00), and Receivables Management

Corporation (\$2,615.00). She tried contacting these creditors about payments in May and June of 2005 and did make arrangements with one of the delinquent creditors to pay off the debt in \$110.00 monthly installments. After struggling with these payments for several months, she found that she could not continue making them any longer and remain timely with her current creditors. So, she ceased making payments with this creditor and suspended payment efforts with her other delinquent creditors as well. With her family obligations and limited resources, Applicant found her repayment efforts with her older creditors to be too overwhelming to know where to begin.

Recently, Applicant initiated credit counseling and cites her counseling with an identified credit counseling firm. It is difficult to gauge what progress she is making with her counseling firm, since she doesn't provide any material documentation of her counseling efforts.

Applicant is credited with completing a number of training courses with a local medical technical college and has received numerous certificates acknowledging her outstanding performance in 2003 and 2004. She is highly regarded by her managers and colleagues who have worked with her.

POLICIES

_____ On April 9, 1993, the Composite Health Care Program Office (CHCSPO), the Defense Office of Hearing and Appeals (DOHA), and the Assistant Secretary of Defense for Command, Control, Communication and Intelligence (ASDC31), entered into a Memorandum of Agreement (MOA), which gave DOHA responsibility to provide trustworthiness determinations for contractor personnel working on unclassified Information Systems Positions as defined in DoD Regulation 5200.2-R.

_____ The Adjudicative Guidelines covered in both DoD Directive 5220.6 and DoD Regulation 5200.2-R list Guidelines to be considered by judges in the decision making process covering DOHA cases. These Guidelines require the judge to consider all of the "Conditions that could raise a trustworthiness concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating Conditions," if any, before deciding whether or not a trustworthiness determination should be granted, continued or denied. The Guidelines do not require the judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, judges must take into account the pertinent considerations for making a whole person assessment of the individual seeking a trustworthiness determination. In determining whether the applicant qualifies for a sensitive position under the trustworthiness standards of DoD 5200.2-R, the applicant must be provided the due procedural protections contained in the Directive.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

Financial Considerations

The Concern: An individual who is financially overextended is at risk at having to engage in illegal acts to generate funds. Unexplained influence is often linked to proceeds from financially profitable criminal acts.

Burden of Proof

By virtue of the precepts framed by the Directive, a decision to grant or continue an Applicant's application for a trustworthiness determination may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires Administrative Judges to make a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for an ADP I/II/III position depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the Judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted fact[s] alleged in the Statement of Reasons and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain an ADP I/II/III position. The required showing of material bearing, however, does not require the Government to affirmatively demonstrate that the applicant has actually abused a trust relationship before it can deny or revoke a trustworthiness determination. Rather, consideration must take account of cognizable risks that an applicant may deliberately or inadvertently fail to adhere to principles of trust.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the evidentiary burden shifts to the applicant to establish his or her trustworthiness through evidence of refutation, extenuation or mitigation of the Government's case.

CONCLUSIONS

Applicant is a highly regarded customer service representative for a defense contractor who accumulated a number of delinquent debts during periods of financial set backs primarily attributable to her brief loss of employment in 2000. With the limited resources available to her, she has not been able to sustain any repayment programs on her major debts without jeopardizing her current obligations, which include caring for her nine-year old son. To be sure, most of her old debts (including the deficiency balance on a repossessed mobile home) appear to be barred by controlling statutes of limitation in her state of residence (South Carolina). Still, she acknowledges most of the listed debts and has recently explored debt counseling arrangements with uncertain results.

Security concerns are raised under the financial considerations guideline of the Adjudicative Guidelines where the individual applicant is so financially overextended that he or she is at risk of having to engage in illegal acts to generate funds. Applicant's accumulation of delinquent debts, which heretofore she has not been in a position to address, warrant the application of two of the disqualifying conditions (DC) of the Adjudicative Guidelines for financial considerations: DC 1 (*a history of not meeting financial obligations*) and DC 3 (*inability or unwillingness to satisfy debts*).

Extenuating circumstances are associated with Applicant's loss of employment and ensuing surgery in 2000, and added child rearing obligations. MC 3 of the financial considerations guideline (*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) is clearly applicable to Applicant's situation.

Because of the limited income available to Applicant over the past six years, Applicant has not heretofore been in a position to address most of her old debts. Several of Applicant's listed debts were charged off before 2002. The remaining debts (save for one) have been placed in collection: one (creditor 1.b) since May 2004, another (creditor 1.c) since February 2001, a third debt (creditor 1.d) since October 2002, and a fourth debt (creditor 1.e) since May 2002. None of Applicant's listed debts reflect any collection action by the individual creditors involved. Based on this record, all of Applicant's debts appear to be barred from collection by the pertinent statute of limitation in South Carolina for debts. *See* S.C. Code Ann. Sec. 15-3-530. While statutes of limitation in general are considered important policy tools for discouraging plaintiffs from pursuing stale claims and promoting finality in litigation, they have never been equated with good-faith efforts to repay overdue creditors. *See, e.g.,* ISCR Case No. 02-30304, at 3 (App. Bd. April 2004) (quoting ISCR Case No. 99-9020, at 5-6 (App. Bd. June 2001)).

Applicant does not assert relevant statutes of limitation in South Carolina in her defense. She cited her continuing counseling efforts with a debt counseling firm but provides no documentation to corroborate and explain the extent of her counseling efforts. Without a formal plan of repayment from her counseling firm, it is not possible at this time to predict what progress Applicant can realistically be expected to mount in addressing her outstanding debts. Whatever the problems Applicant has encountered in working out a repayment arrangement with her counseling firm and receiving counseling from the same firm, she has not articulated them sufficiently to permit assessments of her current repayment efforts.

Without some type of documented repayment stream with her creditors, or at the very least an executed debt consolidation repayment/counseling plan to reinforce her repayment commitments, she may not yet claim good faith mitigation benefits. MC 6 of the guidelines for financial considerations (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) can have no application for Applicant in this case. Her failure to document any received counseling with the debt counseling firm she has been corresponding with precludes her reliance on MC 4 (*the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control*) of the guidelines as well.

Holding a favorable trustworthiness determination involves the exercise of important fiducial responsibilities, among which is the expectancy of consistent trust and candor. Financial stability in a person cleared to access information covered by privacy rights is required precisely to inspire trust and confidence in the holder of the trustworthiness determination.

Applicant's acknowledging her debts incurred during extenuating circumstances and exploring debt consolidation with financial counselors to address her debts reflect responsibility and an encouraging beginning for her. She failed to document or explain the nature and extent of her debt counseling efforts, however, and at this time, she is not demonstrably committed to a repayment program that is likely to generate tangible results in the foreseeable future.

Taking into account all of the extenuating facts and circumstances surrounding Applicant's debt accumulations, the positive judgment and trustworthiness impressions she has made on her

friends and colleagues, her educational achievements, her solid performance evaluation, and her still incomplete repayment initiatives she is able to document at this time, Applicant fails to mitigate trustworthiness concerns related to her debts. Unfavorable conclusions warrant with respect to the allegations covered by the financial considerations guideline.

In reaching my decision, I have considered the evidence as a whole, including each of the factors enumerated in the preamble of Appendix 8 of DoD Regulation 5200.2-R.

FORMAL FINDINGS

In reviewing the allegations of the SOR in the context of the findings of fact, conclusions and guidelines listed above, this Administrative Judge makes the following formal findings:

FINANCIAL CONSIDERATIONS:	AGAINST APPLICANT
Sub-para. 1.a:	FOR APPLICANT
Sub-para. 1.b:	AGAINST APPLICANT
Sub-para. 1.c:	AGAINST APPLICANT
Sub-para. 1.d:	AGAINST APPLICANT
Sub-para. 1.e:	AGAINST APPLICANT

DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant’s eligibility for a public trust position. Eligibility for an ADP I/II/III position is denied.

Roger C. Wesley
Administrative Judge

