

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant is 37 years old, divorced from her second husband, with two teenaged children. She works for a defense contractor in the health insurance business. She filed Chapter 7 bankruptcy in 1997 after her first marriage ended. She filed Chapter 7 bankruptcy in 2006 two years after her second marriage ended. She has delinquent debts of at least \$64,990 that she failed to disclose on her trustworthiness application, in addition to the filing of her 1997 bankruptcy petition. She did not mitigate the financial considerations and personal conduct trustworthiness concerns. Eligibility for an ADP I/II/III position is denied.

CASENO: 06-17157.h1

DATE: 05/29/2007

DATE: May 29, 2007

In re:	)	
	)	
	)	
-----	)	ADP Case No. 06-17157
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 37 years old, divorced from her second husband, with two teenaged children. She works for a defense contractor in the health insurance business. She filed Chapter 7 bankruptcy in 1997 after her first marriage ended. She filed Chapter 7 bankruptcy in 2006 two years after her second marriage ended. She has delinquent debts of at least \$64,990 that she failed to disclose on her trustworthiness application, in addition to the filing of her 1997 bankruptcy petition. She did not mitigate the financial considerations and personal conduct trustworthiness concerns. Eligibility for an ADP I/II/III position is denied.

## STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a position of trust for Applicant<sup>1</sup>. On October 30, 2006, DOHA issued a Statement of Reasons<sup>2</sup> (SOR) detailing the basis for its decision—trustworthiness concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of the Adjudicative Guidelines (AG) issued on December 29, 2005, and implemented by the Department of Defense effective September 1, 2006. The revised guidelines were provided to Applicant when the SOR was issued. Applicant answered the SOR in writing on November 22, 2006, and elected to have a hearing before an administrative judge. The case was assigned to me on February 27, 2007. On April 19, 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. DOHA received the hearing transcript (Tr.) on April 30, 2007.

## FINDINGS OF FACT

Applicant's admissions to specific 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 37 years old, divorced from her second husband, and the mother of two teenaged children. She is employed by a defense contractor as a medical reviewer. She has been employed in that job for over three years. She divorced her second husband because he molested her children. She filed a criminal complaint against him and he was convicted of the sexual offenses. He was sentenced to two consecutive five-year terms. He is on probation now and prohibited from having contact with Applicant's children. Applicant lives in a separate county from her former husband. Their divorce was final in 2004 and had been pending during the criminal proceedings since June 2001. They married in 1998. She married her first husband in 1989 and divorced him in 1995. (Tr. 21-24, 27, 35; Exhibits 1 and 2)

Applicant filed Chapter 7 bankruptcy in December 1997. Her debts, totaling an undisclosed amount, were discharged in bankruptcy in March 1998. In November 2006, Applicant filed Chapter 7 bankruptcy again. She claims all the debts listed in the SOR, totaling \$64,990.83, were included in the second bankruptcy. No order of discharge in bankruptcy was submitted into evidence. A comparison of the debts listed in the SOR and those noted in the 2006 Chapter 7 bankruptcy, shows Subparagraphs 1.e, 1.g, 1.h - 1.j, 1.l, 1.n, 1.r, 1.u, 1.w, 1.y, 1.bb, 1.dd, 1.ee, 1.gg - 1.jj, got notice of the bankruptcy stay order, or were listed in the Schedule F of the Bankruptcy Petition. The other SOR allegations are not specifically listed in Schedule F. The 2006 bankruptcy lists 38 debts totaling \$78,597.33 in delinquent debts, including secured and unsecured debts. The SOR tally is

---

<sup>1</sup>Adjudication 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).

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

\$64,990.83 in delinquent debts. Of those debts, two are for passing worthless checks to which charges she pled guilty (1.h and 1.k), three are for telephone services, and three are for utility services. The remaining debts are for credit card purchases and medical services. (Tr. 27, 31, 36, 61; Exhibits 3-5, B, Answer)

Applicant earns \$856 every two weeks. From that amount, \$261 is taken by court order for child support. Her children are now living with their father. They have had drug and disciplinary problems in school. Applicant's monthly income is \$1,160 and her monthly expenses are \$1,300. When she received child support her monthly income was \$2,400 and she could afford her apartment and a car while having custody of the children. She has a budget and sought financial counseling. She will have to lower her expenses by moving to a different apartment to keep within her budget. She does not have credit cards and disavows any intent to obtain any in the future. While married to her second husband their total income was about \$120,000, when many of the debts listed in the SOR were incurred. (Tr. 32, 42, 45, 49, 57, 58; Exhibits )

Applicant admitted all the debts listed in the SOR, except the following: 1.b. for a hospital bill of \$1,874 that was supposed to be in the 1997 bankruptcy; 1.f. for \$52 owed to a physician Applicant claims she never consulted; 1.l. for \$337 she does not recall but included it in the 2006 bankruptcy; 1.ff. for medical treatment in the amount of \$350.92 which was incurred by her brother's girlfriend pretending to be Applicant and which her brother is paying; and 1.jj. on which her wages are being garnished to satisfy the \$879 judgment. Also, Applicant's name was not on the mortgage her second husband had on the house he bought before their marriage, and on which the mortgagee foreclosed. (Tr. 36-44; Exhibit A)

Applicant completed a Questionnaire for Public Trust Position (SF-85P) on December 21, 2004, and re-signed it on March 28, 2005. On neither form, in answer to Question 22 (Financial Record), did she disclose any legal judgments against her or her 1997 bankruptcy, all of which occurred in the previous seven years. Nor did she disclose on either form that she was more than 180 days delinquent on any loan or financial obligation. She answered "no" to both parts of Question 22. She did have an outstanding 1999 judgment for \$3,060.94 (SOR subparagraph 1.c), and two judgments in 2002, one for \$8,063.30 (subparagraph 1.y) and \$325.30 (subparagraph 1.cc). Applicant claims the debts were her former husband's obligations that got transferred to her when he filed Chapter 7 bankruptcy. She also claims she thought the second form signed in March 2005, was merely to correct her middle initial. She certified on her SF-85P that her answers were true, complete, and correct. (Tr. 51; Exhibits 1-5, B)

## 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 guidelines 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.

**Guideline E: Personal Conduct:** The Concern: Conduct involving questionable judgment, lack of candor, dishonesty, 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.

## CONCLUSIONS

**Guideline F:** Applicant's multiple delinquent debts total at least \$64,990. The Chapter 7 bankruptcy currently pending shows debts of \$78,597.33. These debts go back to 1998, and were incurred after Applicant's first Chapter 7 bankruptcy in 1997. The Disqualifying Conditions (DC) which apply from the Directive are as follows: Applicant's financial situation shows an inability or unwillingness to satisfy debts (Para. 19.a); indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt (Para. 19.b); a history of not meeting financial obligations (Para. 19.c); deceptive or illegal financial practices such as check fraud to which she pled guilty (Para. 19.d); and consistent spending beyond her means which is indicated by excessive indebtedness, with significant negative cash flow and high debt to income ratio (Para. 19.e). Applicant meets all these criteria evidenced by the financial facts alleged and admitted.

The molestation of her children by her second husband, their divorce and her moves out of state to protect children may have aggravated some of her financial difficulties. The magnitude and age of her debts, without supporting documentation or other evidence to show the debts were actually her former husband's debts, are her responsibility. Applicant, after her first divorce, filed bankruptcy. Now, after her second divorce, she files bankruptcy again, substantiating that these financial difficulties were not beyond her control. While filing bankruptcy may be construed to be a good-faith effort to resolve debts, Applicant has not shown that she is discharged in bankruptcy. She appears to have filed the petition after the SOR was issued as a expedient way in which to manage her finances by riding herself of substantial debt she voluntarily incurred. Applicant's current financial situation, in which her expenses exceed her income demonstrate her problems continue and she may be in further financial difficulty in the future. Based on all these facts, I conclude no Mitigating Conditions (MC) apply.

**Guideline E:** Applicant did not disclose on her SF-85P any financial difficulties in the past seven years. Her 1997 Chapter 7 bankruptcy was within the seven year period required for disclosure, but Applicant revealed nothing about it. I do not believe her explanation why she failed to disclose them. She repeated the financial problems she experienced in her first marriage in her second marriage. The DC which applies is Para. 16.(a) involving 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, or determine trustworthiness.

Given two opportunities to provide complete information on the Sf-85P, in 2004 and again in 2005, Applicant did not provide a true picture for the Government of her financial situation. I conclude her explanation is not credible or persuasive.

### **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 E2.2.1. “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 ¶ E2.2.1. The magnitude of Applicant’s delinquent debts, the repeated pattern of them, and the subsequent bankruptcies, are serious actions. She was an adult when she incurred the debts, and had full knowledge of what she was doing. Even with the molestation of her children as a factor, her lack of attention to her financial situation is of serious concern. Her current income and expenses show there is a substantial likelihood of repetition of this type of spending. There is no evidence of rehabilitation or significant changes in her financial management demonstrating that similar problems will not recur in the future, given that they have occurred twice in her life. The burden of proof is on Applicant to show the MCs should apply to her. She failed in that burden. She has not established a track record of financial responsibility to assure the Government that similar problems will not recur in the future.

Therefore, I conclude the financial considerations trustworthiness concern against Applicant. I also conclude the personal conduct trustworthiness concern against Applicant. Lastly, the “whole person concept” I conclude against Applicant based on her history of over-spending and financial mismanagement.

### **FORMAL FINDINGS**

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

Paragraph 1. Guideline F:                   AGAINST APPLICANT

    Subparagraphs 1.a to 1.ii:           Against Applicant

    Subparagraph 1.jj:                   For Applicant

    Subparagraphs 1.kk to 1.ll:         Against Applicant

Paragraph 2. Guideline E:               AGAINST APPLICANT

Subparagraphs 2.a to 2.d: Against Applicant

**DECISION**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for assignment to sensitive duties. Her application for eligibility for an ADP I/II/III position is denied.

Philip S. Howe  
Administrative Judge