

KEYWORD: Financial

DIGEST: Applicant’s approximately \$10,000 in unresolved debt has grown from her having to rely only on her income to support her two children ages ten and eight as well her decision to support her boyfriend for seven years while he has been unemployed. While she has performed well in her position for two years, she has only paid two debts out of ten. She states she plans to pay the other debts, but failed to develop a payment plan or challenge the debts with the remaining creditors. Consequently, she failed to mitigate the government’s concerns under Guideline F. Eligibility for trustworthiness is denied.

CASENO: 06-17307.h1

DATE: 07/23/2007

DATE: July 23, 2007

In Re:)	
)	
)	
-----)	ADP Case No. 06-17307
SSN: -----)	
)	
Applicant for Public Trust Position)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
KATHRYN MOEN BRAEMAN**

APPEARANCES

FOR GOVERNMENT

Candace Le’i, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's approximately \$10,000 in unresolved debt has grown from her having to rely only on her income to support her two children ages ten and eight as well her decision to support her boyfriend for seven years while he has been unemployed. While she has performed well in her position for two years, she has only paid two debts out of ten. She states she plans to pay the other debts, but failed to develop a payment plan or challenge the debts with the remaining creditors. Consequently, she failed to mitigate the government's concerns under Guideline F. Eligibility for trustworthiness is denied.

STATEMENT OF CASE

On November 14, 2006, the Defense Office of Hearings and Appeals (DOHA) declined to grant the application for a position of public trust under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended (the "Directive").¹ Consequently, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision and alleged security concerns under Guideline F (Financial Considerations) in paragraph 1. In her notarized Answer dated December 9, 2006, Applicant responded to the SOR allegations and denied paragraph 1 but admitted all of the allegations in subparagraphs 1.a. through 1.j., and requested a hearing.

On January 26, 2007, Department Counsel noted the case was ready to proceed. The matter was assigned to another judge on February 2, 2007. Subsequently, a Notice of Hearing, issued on February 22, 2007, set the matter for March 8, 2007, at a location near where Applicant works and lives. The case was re-assigned to me on March 5, 2007, because of the unavailability of the previous judge.

At the hearing on March 8, 2007, Applicant waived her right to 15 days notice of the hearing, which was conducted as scheduled. (TR 7) The government submitted six exhibits which were marked and admitted into the record as Exhibits 1-6 without objection. (TR 16-18) Applicant submitted three exhibits which were marked and admitted into the record as Exhibits A-C without objection. (TR 19-20) She testified on her own behalf. The record was held open for two weeks until March 22, 2007, to allow Applicant to submit further documents. (TR 59-62; 69; 81) She submitted additional documents by March 22, 2007, which were marked and admitted as Exhibits D through F on March 23, 2007, as Department Counsel stated she had no objection. The record closed on March 23, 2007. DOHA received the hearing transcript (TR.) on March 19, 2007.

FINDINGS OF FACT

In her SOR response, Applicant admitted to all specific SOR allegations, but denied paragraph 1 under Guideline F. Applicant's admissions are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings

¹ This action was 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.

of fact.

Applicant, a 26-year-old woman seeking a position of public trust, has worked as an intake representative claims associate for a Department of Defense contractor for two years since March 2005. (Exhibit 1; Exhibit D)

Applicant has technical college training as a “medical biller” which she received in May 2004. (Exhibit 1)

Financial Considerations

She has never married, but has a boyfriend and two children ages ten and eight whom she supports without any child support from their fathers. (Exhibit 1; TR 15; 35; 68) Applicant explained that she has been on her own since she was 14 years old and moved in with her first boyfriend who was 16 and his family. She later moved to another city at age 17 to live with her current boyfriend when she was pregnant; she began to have financial problems at that time in 1999. She learned that her father’s insurance would not cover the birth of her son, and she was too young to apply for county assistance. (TR 20-21; 34) Her current boyfriend for nine years does not work; she supports him as he has been unemployed for seven years. (TR 36-37; 55; 64-67; 68) For example, when he could not pay the gas bill, she had it switched to her name but had to pay off his debt in December 2006 in order to have the account transferred. (TR 46) She also recently chose to pay towards another credit card debt that took her focus off paying the debts itemized in the SOR. (Exhibit 4; TR 57-58)

A review of Applicant’s credit reports dated April 21, 2005, August 18, 2006, January 12, 2007, her response to the Interrogatories, and her Answer to the SOR show 10 unpaid debts totaling approximately \$10,000. (Exhibits 2, 4, 5, 6) The current status of these debts is as follows:

SOR ¶	TYPE OF DEBT (date)	AMOUNT	CURRENT STATUS
1.a	Collection account for towing in March 2004	\$ 1,307.00	Unpaid; in February 2007 she made arrangements to pay \$150 per month with post-dated checks. In March 2007 she paid this \$1,662 debt in full and had a zero balance. (TR 23, 37-38, 44; Exhibits A, E)
1.b.	Collection account for cable from 2005	\$ 304.00	Unpaid as she stated the cable company could not find the account; however, the debt is still reflected on her 2007 credit report. She has not asked that it be removed. (TR 27-28; 42-44)

1.c	Collection account for debt delinquent since 2001	\$ 71.00	Applicant paid this account in February 2007. (Exhibit B; TR 24, 28; 44-45)
1.d	Collection account for cable from 2003	\$ 491.00	Unpaid as the cable company could not find the account; however, the debt is still reflected on her 2007 credit report and she has not asked that it be removed. (TR 28-29; 42-44)
1.e	Collection account for broadband in 2001	\$ 166.00	Unpaid. She explained she was mistaken when she stated in her Answers to the Interrogatories that she had "made payment arrangements" for this debt. (Exhibit 2; TR 29)
1.f	Collection account from library from 2002	\$ 292.00	Unpaid; she has the books, but has not returned them as she was "being lazy." (TR 30)
1.g	Collection account from 2000	\$ 3,530	Account was charged off in September 2000; Applicant made a phone call to the hospital to learn the status, but the bill remains unpaid. They advised she still owes just \$731 and \$407.50; but she provided no documentation on how this debt was reduced. (TR 22-24; 30-31, 47-51)
1.h	Collection account from fire department	\$ 593.00	Unpaid; she does not know why she owes this money and has not investigated. (TR 31; 51-52)
1.i	Collection account for telephone	\$2,939.00	Unpaid for land line telephone bill. (TR 32)

1.j	Collection account from towing	\$ 550.00	Unpaid; she believes this bill is a duplicate of 1.a.; however she conceded that it might be another debt as she had two different account numbers and two bills. (TR 33; 39-41)
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Applicant’s monthly pay is \$2,100. (TR 25) Her monthly expenses total \$2,099 including \$685 for rent, \$50 for electricity, \$50 for gas, \$59 for telephone, \$400 for groceries; \$160 for gasoline, \$200 for car insurance; \$60 for a credit card payment; \$185 for a car payment, and \$150 for one debt payment, \$100 for clothing. She has another credit card to cover dental expenses for her children where she owes \$800 and is paying \$25 per month. (Exhibit C; TR 25-26; 37-38) The 2007 credit report showed another debt for \$560; however, she disputed that debt. (Exhibit 4; TR 52-53) She has been trying to pay her debts one at a time but they have her “emotionally frustrated.” (TR 54) She intended to try to contest certain debts, but has not done so. (TR 55)

In November 2006 after she received the SOR, Applicant called a credit counseling agency to help resolve her credit problems, but was advised she would be better off paying each debt on her own as that would help raise her credit score. She has not explored bankruptcy or developed a plan to pay her remaining overdue bills. (TR 26; 34; 56-57)

References and Evaluation

Applicant submitted numerous references for her co-workers stating that she is a hard worker and gets along well with everyone at work. She was also assessed as being honest and polite. Her lead supervisor stated she holds Applicant in ‘high regard as she is always polite, punctual and pleasant.’ She is efficient and valued as an employee. (Exhibit D)

Her March 2007 evaluation documents stated that she achieved her goals which is a mid-range evaluation. (Exhibit F)

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.”² 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

² *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).

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 guidelines at issue in this case are:

Guideline F - Financial Considerations

18. **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 can 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.

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.

"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.³ An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person.⁴ 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.⁵

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.⁶ Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts.⁷ An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."⁸ Any doubt

³ Directive, ¶ E2.2.1.

⁴ *Id.*

⁵ *Id.*

⁶ Directive, ¶ E3.1.14.

⁷ Directive, ¶ E3.1.15.

⁸ ISCR Case No. 01-20700 at 3 (App. Bd. December 19, 2002).

as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.⁹ The same rules apply to trustworthiness determinations for access to sensitive positions. (Exhibit 3)

CONCLUSIONS

Financial Considerations

After carefully considered all the facts in evidence and the legal standards, I conclude the government established a *prima facie* case for disqualification under Guideline F, Financial Considerations. 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 can raise questions about an individual's reliability or trustworthiness. Based on all the evidence, Financial Considerations Disqualifying Conditions (FC DC) 19(a) *Inability or unwillingness to satisfy debts*) and 19(c) *A history of not meeting financial obligations*) apply to Applicant's case. Applicant has many unpaid, delinquent debts documented by her credit reports dated April 21, 2005, August 18, 2006, January 12, 2007, her response to the Interrogatories, and her Answer to the SOR. The 10 debts alleged total approximately \$10,000. While she recently paid two creditors, she has not made an effort or developed a plan to resolve the remaining eight debts. While she was advised by a credit counseling service to approach her debts on a one by one basis, she has such limited funds that she has made only limited progress. In February 2007 she resolved only one small debt from 2001 (SOR 1.c.) and in March 2007 she paid one large debt for towing her car from 2004 (SOR 1.a.). Another debt for towing her car (1.j) remains unresolved as well as debts to a cable company, telephone companies, the hospital where her son was born, and even the library for unpaid fines and books which she concedes she was "too lazy" to return.

While I carefully considered the Financial Considerations Mitigating Conditions (MC), I conclude MC 20(a)¹⁰ does not apply as her financial problems have persisted and are not limited to a period "long ago." Neither are they "infrequent." She still carries a significant amount of outstanding delinquent debts for a variety of bills incurred over several years. Applicant has only paid one small debt and one larger debt out of the ten she acknowledged.

Neither does 20 (c)¹¹ apply. Although Applicant contacted a credit counseling agency to help resolve her credit problems after she got the SOR, she did not work out any arrangements with this agency to either challenge or resolve the debts listed on her credit report. While her plan is to pay a bill one by one, she does not have a timetable or a plan for how she will do so to resolve these significant delinquent debts which she admits have persisted since 1999.

⁹ Directive, ¶ E2.2.2.

¹⁰ AG ¶ 20 (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment.

¹¹ AG ¶ 20(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control.

She did show that under MC 20(b)¹² there were conditions that resulted in financial problems that were largely beyond her control. She had substantial responsibilities as a young woman when she became a mother to two children as a teenager. To her credit she has supported both children without any child support. On the other hand, she has also chosen to support her boyfriend, who is the father of her son and whom she has known for nine years, even though he has been unemployed for seven years, so he has not worked to provide any income or support for his son. Indeed, she testified that one reason she could not pay the debts alleged in the SOR was that she had to pay one of his debts. That conduct does not seem reasonable under the circumstances as there is no evidence that he has a disability or any other reason for not working to contribute to the family income.

Finally, the Applicant has only begun to take the first steps on the path to show a good-faith effort to resolve these debts as only two out of ten have been paid. So 20.d., the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts, is applicable only in part to two allegations, 1.a. and 1.c. A promise to pay in the future is not sufficient to mitigate the financial considerations concern or evidence of a good faith effort to repay debt. She entered into a payment plan with one creditor in February 2005 with post-dated checks and then documented she paid off the debt in March 2007, but did not explain how she found those resources on her limited income. Overall she failed to establish that she has changed her financial practices and now makes timely all her payments.¹³

Neither did she not establish that she had challenged any of the remaining debts even though

¹² AG ¶ 20(b) 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) and the individual acted responsibly under the circumstances.

¹³The Board has previously explained what constitutes a "good faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of Financial Considerations Mitigating Condition 6, an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term 'good-faith.' However, the Board has indicated that the concept of good-faith 'requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.'

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)). In ISCR Case No. 99-9020 at 6 (App. Bd. Dec. 1, 1999), the Appeal Board specifically addressed application of the statute of limitations, stating a "person who decides not to honor his or her debts may be able to avoid paying those debts until they are legally uncollectible because the statute of limitations has run. Reliance on the running of a statute of limitations would be a legally permissible course of action. However, it would not demonstrate a good-faith effort to resolve one's debts that would fall under the meaning of Financial Considerations Mitigating Condition 6." See ISCR Case No. 03-10880 (App. Bd. June 24, 2005); ISCR Case No. 01-09691 (App. Bd. Mar. 27, 2003) (stating an applicant must do more than merely cite the statute of limitations to obtain the full benefit of FC MC 6). See also ISCR Case No. 01-09691 at 3 (App. Bd. Mar. 27, 2003) ("[E]ven if a delinquent debt is legally unenforceable under state law, the federal government is entitled to consider the facts and circumstances surrounding an applicant's conduct in incurring and failing to satisfy the debt in a timely manner."); ISCR Case No. 98-0349 at 2-3 (App. Bd. Feb. 3, 1999) (even though an applicant's delinquent debts were not legally collectible because of the statute of limitations, that fact did not preclude the Administrative Judge from considering the applicant's failure to resolve the delinquent debts before the statute of limitations ran). Cf. ISCR Case No. 01-04425 at 3-4 (App. Bd. May 17, 2002) (adverse Guideline F conclusions possible where applicant chose not to pay her delinquent debts, waited until her creditors ceased trying to collect those delinquent debts, and they were eventually dropped from her credit report.).

she was not certain about the status of some of the debts, such as to a county fire department. Neither did she provide any evidence she returned the overdue books to the library as she had testified she planned to do to mitigate concerns over a large library debt. While some debts might be barred by a state statute of limitations, she provided no evidence that any of them fell within that statute.

Whole Person Analysis

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. As noted above, Applicant's lengthy history of failing to meet her financial obligations, and inability or unwillingness to satisfy her debts raises serious trustworthiness concerns. She is 26 years old and now sufficiently mature to be fully responsible for her conduct. Although in a relationship for nine years, she has chosen to assume full responsibility for all household living expenses for her and his debts.. Given her limited income, she had to make choices about how to use her limited resources. She does pay her living expenses; however, she did not establish she pays those debts timely. While in 2006 she sought help to resolve her debt through credit counseling, she did not pursue that avenue. Neither has she demonstrated that she has a budget and lives within it. She failed to provide strong evidence of rehabilitation, positive behavior changes, and self-discipline in regards to her finances. While she has been steadily employed for the last two years and is favorably regarded at work, that positive record is insufficient to establish a case in mitigating in light of her slowness or inability to resolve the majority of her long-standing debts.

In sum, the likelihood of new debt problems is probable given her limited resources. Financial concerns remain as Applicant has only stated an intent to resolve her delinquent debts, but failed to develop or present a timetable for a payment plan. After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole person,¹⁴ I conclude she has failed to mitigate the trustworthiness concerns pertaining to financial considerations.

FORMAL FINDINGS

After reviewing the allegations of the SOR in the context of the Adjudicative Guidelines in Enclosure 2 and the factors set forth under the Adjudicative Process section, I make the following formal findings, as required by Section E3.1.25 of Enclosure 3 of the Directive:

SOR1 Guideline F:

AGAINST APPLICANT

¹⁴See ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006).

Subparagraph 1.a.:	For Applicant
Subparagraph 1.b.:	Against Applicant
Subparagraph 1.c.:	For Applicant
Subparagraph 1.d.:	Against Applicant
Subparagraph 1.e.:	Against Applicant
Subparagraph 1.f.:	Against Applicant
Subparagraph 1.g.:	Against Applicant
Subparagraph 1.h.:	Against Applicant
Subparagraph 1.i.:	Against Applicant
Subparagraph 1.j.:	Against Applicant

DECISION

In light of all of the evidence presented in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for assignment to sensitive duties. Eligibility is denied.

Kathryn M. Braeman
Administrative Judge