

KEYWORD: Financial

DIGEST: Applicant has a history of financial problems, which includes a delinquent student loan. She did not present sufficient evidence to mitigate the financial considerations concern. Eligibility is denied.

CASENO: 06-17326.h1

DATE: 04/30/2007

DATE: April 30, 2007

In re:	)	
	)	
	)	
-----	)	ADP Case No. 06-17326
SSN: -----	)	
	)	
Applicant for Trustworthiness Determination	)	
	)	

**DECISION OF ADMINISTRATIVE JUDGE  
MICHAEL H. LEONARD**

**APPEARANCES**

**FOR GOVERNMENT**

James F. Duffy, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant has a history of financial problems, which includes a delinquent student loan. She did not present sufficient evidence to mitigate the financial considerations concern. Eligibility is denied.

## **STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) reviewed Applicant's eligibility to occupy an information systems position designated as an ADP I, II, or III position to support a contract with the Defense Department. As a result of the review, the agency recommended Applicant's case be submitted to an administrative judge for a determination whether Applicant is eligible to occupy such a position. Acting under Department of Defense Directive 5220.6, dated January 2, 1992, as amended (Directive), DOHA issued a statement of reasons (SOR) on August 28, 2006. The SOR—which is equivalent to an administrative complaint—detailed the factual basis for the action and alleged trustworthiness concerns under Guideline F for financial considerations. Applicant answered the SOR on November 20, 2006, and requested a hearing.

The case was assigned to me January 16, 2007. A notice of hearing was issued scheduling the case for March 6, 2007. The hearing took place as scheduled. DOHA received the hearing transcript March 28, 2006.

I left the record open until March 16, 2007, to allow Applicant to submit additional documentary evidence. She did so, and those matters were forwarded to me by department counsel who voiced no objections to the post-hearing exhibits, which are admitted as follows: (1) Exhibit C—Applicant's e-mail, dated March 15, 2007; (2) Exhibit D—credit card statements from 1999–2000; (3) Exhibit E—department store credit card statements from 1999–2000; (4) Exhibit F—charge card statements from 2000–2001; (5) Exhibit G—college student loan account statements; (6) Exhibit H—employee awards, recognitions, and an evaluation; (7) Exhibit I—auto credit letter and lien release; and (8) Exhibit J—federal student loan documents.

## **FINDINGS OF FACT**

In response to the SOR, Applicant admitted the delinquent indebtedness alleged in subparagraphs 1.a through 1.j. Her admissions are incorporated herein as findings of fact. I make the following findings of fact set forth below in numbered paragraphs.

1. Applicant is a 31-year-old customer-service representative for a company that provides health-care services to the Defense Department. She has worked for this company since March 2005. She started as an appointment specialist and was promoted to her current position. The performance of her work duties has been good (Exhibit H). She currently earns \$10.54 per hour. She married in September 2004, but has been separated for about the last two years. She is uncertain of her husband's whereabouts. She has no children. She lives with her mother and they share living expenses. In conjunction with her employment, she completed a public-trust position application in April 2005 (Exhibit 1).

2. Applicant has a history of financial problems, as evidenced by delinquent debts reflected in credit reports (Exhibits 2 and 3). The SOR alleges that she has ten delinquent debts for more than \$16,000 in total. In summary, Applicant does not dispute that the debts are hers, she agrees that she owes the debts, and that they are currently unpaid (R. 26). Each debt is briefly discussed below.
3. SOR subparagraph 1.a concerns a \$89 collection account. This debt stems from a bank checking account. This debt is unpaid.
4. SOR subparagraph 1.b concerns a \$84 collection account. This debt stems from a bank checking account. It is unpaid.
5. SOR subparagraph 1.c concerns a \$945 collection account. This debt stems from a telephone account. It is unpaid.
6. SOR subparagraph 1.d concerns a \$1,117 charged-off account. This debt stems from a credit card account. Applicant believes this debt is a combination of two accounts from the same credit card company (R. 31–32). It is unpaid.
7. SOR subparagraph 1.e concerns a \$462 collection account. This debt stems from a department store credit card. Applicant made payments on this account in the past (Exhibit E). It is unpaid.
8. SOR subparagraph 1.f is a \$1,383 collection account. This debt stems from a charge card account. Applicant made payments on this account in the past (Exhibit F). It is unpaid.
9. SOR subparagraph 1.g is a \$5,100 collection account. Applicant is uncertain of the origin of this debt (R. 34–35). It is unpaid.
10. SOR subparagraph 1.h is a \$353 collection account. This debt stems from a utility or electrical bill. It is unpaid.
11. SOR subparagraph 1.i is a \$1,794 collection account. This debt stems from a credit card account. Applicant made payments on this account in the past (Exhibit D). It is unpaid.
12. SOR subparagraph 1.j is a \$5,514 collection account. This debt stems from a student loan Applicant obtained from an educational institution. It was placed for collection in about July 2002 (Exhibit 2 at 2). Applicant presented several documents on this student loan account (Exhibit G). As of November 1, 2002, she owed a total of \$5,582 with a payment of \$242.28 due (Exhibit G at 1). By 2005, the balance had increased to more than \$6,000 and she was making \$50 payments on the account to a collection agency (Exhibit G at 2–5). By February 2006, the collection agency was attempting to collect the balance of \$6,388 in full (Exhibit G at 7). Documents from two other collection agencies indicate the balance had increased to about \$10,000 or more by August 2006 (Exhibit G at 8–10). But the documents refer to different balances due and different file and account numbers. Therefore, I do not rely on this information, and find that Applicant owed approximately \$6,388 on this student loan as of February 2006. It remains delinquent and Applicant is not making payments on this loan.

13. In addition to the student loan in subparagraph 1.j, Applicant has obtained federal student loans in 1994, 1995, 1996, 1997, 1999, and 2006 (Exhibit J at 3). The loans from 1994, 1995, 1996, 1997, and 1999 do not have outstanding balances. The two loans from 2006 have outstanding balances. One loan from 2006 has a balance of \$1,650, and payments are set to begin in June 2007 (Exhibit A). The other loan from 2006, which appears to be a consolidation loan, has a total balance of about \$20,978 (Exhibit B). Applicant made an installment payment in September 2006 for \$34.15. The payment was on time and in full. She was scheduled to make another installment payment of \$172.49 on March 17, 2007. This loan is in good standing as there is no amount past due and late fees have not been assessed to date.

14. In addition to the debts discussed above, Applicant has paid other financial obligations. For example, she took a car loan for \$8,640 in 2000 and paid it off in full as of October 2005 (Exhibit I). She now has another car and is making loan payments of \$274 per month, and the loan is current. She is current with her car insurance and she also pays for her mother's car insurance. She does not have a checking account or savings account. She cashes her check at pay day and pays her bills with money orders or cash.

15. Other than making payments on student loans and her current living expenses, Applicant does not believe it is feasible for her to make payments on the debts in the SOR (R. 25). She intends to pursue bankruptcy and has saved about \$1,100 for legal fees so she can start the process. She understands that the bankruptcy attorney has recommended that she pursue a Chapter 7 bankruptcy (50–51). She would like to divorce her husband, but does not currently have the money to pay for it. Applicant traces her financial problems to 1999 when her parents separated and eventually divorced. Applicant detailed the various troubles and chain-of-events in her response to the SOR and those matters are incorporated herein by reference. Due to these circumstances, Applicant has struggled with her finances for many years. She acknowledged her responsibility for her debts and she has been forthcoming with her employer about her financial problems.

## POLICIES

This case involves an adjudication of Applicant's eligibility to occupy an ADP position, not an adjudication of Applicant's eligibility for a security clearance. There is some uncertainty regarding the rules that apply to ADP cases. In 2004, the Deputy Under Secretary of Defense for Counterintelligence and Security directed DOHA to utilize Defense Department Directive 5220.6 to resolve contractor cases forwarded to it for a trustworthiness determination, to include those cases involving ADP I, II, and III positions.<sup>1</sup> But in 2005, the DOHA Appeal Board stated that in deciding ADP cases, we follow the procedures contained in the Directive, and we apply the adjudicative guidelines contained in Department of Defense Regulation 5200-2.R, dated January 1987.<sup>2</sup> Both the Directive and the Regulation set forth disqualifying conditions (DC) and mitigating conditions (MC) associated with each guideline. Concerning any differences between the Directive and the Regulation, I note that the provisions of each under Guideline F are substantially the same.

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<sup>1</sup> See Memorandum from the Deputy Under Secretary of Defense for Counterintelligence and Security, dated November 19, 2004, Subject: Adjudication of Trustworthiness Cases.

<sup>2</sup> ADP Case No. 03-21205, 2005 DOHA LEXIS 289 (App. Bd. Dec. 23, 2005).

Therefore, I elect not to decide this legal issue because any differences in the guidelines would not have a material effect on the outcome of the case.

## CONCLUSIONS

Under Guideline F, a concern typically exists for two different types of situations—significant unpaid debts or unexplained affluence. 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. Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding sensitive information.

Here, based on the record evidence as a whole, a concern is raised by significant unpaid debts and a history of not meeting financial obligations, of which there is ample evidence. Indeed, Applicant does not dispute that she has more than \$16,000 in delinquent debt, to include a student loan. These circumstances raise a bonafide concern about Applicant's trustworthiness to occupy an information systems position designated as an ADP I, II, or III position.

I reviewed the mitigating conditions (MC) under the guideline and conclude she receives some credit in mitigation. Each MC is briefly summarized and discussed below.

The first MC—the behavior was not recent—does not apply. Her financial problems are ongoing and not in the distant past.

The second MC—it was an isolated incident—does not apply. The record evidence shows multiple unpaid debts, establishing a pattern of Applicant not meeting her financial obligations.

The third MC—the conditions that resulted in the behavior were largely beyond the person's control—applies in her favor. As detailed in her response to the SOR, her parents' separation and divorce that resulted in her helping her mother, her father's health problem, and her separation are all circumstances largely beyond her control that had a negative effect on her overall financial situation.

The fourth MC—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—does not apply. Applicant has not received counseling from a trained financial or credit counselor, nor are there signs that her financial problems are resolved or under control.

The fifth MC—the affluence resulted from a legal source—is not applicable here.

The sixth MC—the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts—does not apply. All the debts in the SOR remain delinquent and outstanding. Although she has made efforts to pay her financial obligations in the past (for example, the car loan in 2005), her efforts, when viewed in light of all the facts and circumstances, are not sufficient to qualify within the meaning of the MC. Her efforts, while laudable, are not enough to show a substantial improvement to her overall financial situation.

I have also considered this case in light of the whole-person concept. Applicant is 31 years old and mature enough to make prudent decisions about her personal finances. She has a history of financial problems that includes circumstances largely beyond her control that contributed to her financial problems. Concerning the indebtedness in the SOR, she concedes that it is not feasible for her to make payments. She is pursuing a Chapter 7 bankruptcy to obtain relief from her consumer debt (students loans can not be discharged in bankruptcy), but she has just been able to save the money for the legal fees and is yet to file a case in bankruptcy court. The delinquent student loan in SOR subparagraph 1.j is most troubling because it is an obligation that should have a high priority for Applicant to repay. In addition, Applicant has two other student loans. Payments on these loans will stretch her limited means even thinner, which suggests that her financial problems are likely to continue or recur.

After weighing the favorable and unfavorable evidence, I conclude Applicant has not overcome the trustworthiness concern. She has shown that she is a good and decent person who is trying to do the right thing. But her history of financial problems, coupled with her precarious current financial situation, militate against a favorable decision. Although I believe she is serious about resolving her financial problems, she has not, at this time, provided sufficient information to mitigate the financial considerations concern. Accordingly, I conclude Applicant has not established that it is in the interests of national security to grant her eligibility for an ADP I, II, or III position.

### **FORMAL FINDINGS**

Here are my conclusions for each allegation in the SOR:

_____ SOR Paragraph 1–Guideline F:	Against Applicant
Subparagraphs a–j:	Against Applicant

### **DECISION**

In light of all the facts and circumstances, it is not clearly consistent with the interests of national security to grant or continue Applicant’s eligibility for an ADP I, II, or III position. Eligibility is denied.

Michael H. Leonard  
Administrative Judge