

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant is 32 years old and has worked for a medical contractor for the federal government since 2004. He is married, but separated since 2004. He has one biological child and a stepchild. As a joint owner on accounts with his wife they incurred significant delinquent debts that remain unpaid. He recently contracted with an agency to consolidate his debts, but no actual plan had been instituted and no payments had been made. On his trustworthiness application Applicant failed to list that he had any debts over 180 days, despite some of his debts going to collection in 1999, 2000 and 2003. His explanation was not credible. Applicant failed to mitigate the trustworthiness concerns under Guidelines F and E. Eligibility is denied.

CASENO: 06-17370.h1

DATE: 04/24/2007

DATE: April 24, 2007

In re:)	
)	
)	
-----)	ADP Case No. 06-17370
SSN: -----)	
)	
Applicant for Public Trust Position)	

**DECISION OF ADMINISTRATIVE JUDGE
CAROL G. RICCIARDELLO**

APPEARANCES

FOR GOVERNMENT

Braden Murphy, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 32 years old and has worked for a medical contractor for the federal government since 2004. He is married, but separated since 2004. He has one biological child and a stepchild. As a joint owner on accounts with his wife they incurred significant delinquent debts that remain unpaid. He recently contracted with an agency to consolidate his debts, but no actual plan had been instituted and no payments had been made. On his trustworthiness application Applicant failed to list that he had any debts over 180 days, despite some of his debts going to collection in 1999, 2000 and 2003. His explanation was not credible. Applicant failed to mitigate the trustworthiness concerns under Guidelines F and E. Eligibility is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue an ADP I/II/III position for Applicant. As required by Department of Defense Regulation 5200.2-R (Jan. 1987), as amended (Regulation), and Department of Defense Directive 5220.6 ¶ E3.1.2 (Jan. 2, 1992), as amended (Directive), DOHA issued a Statement of Reasons (SOR) on December 14, 2006. It detailed the basis for its decision—security concerns raised under Guideline F (financial considerations) and Guideline E (personal conduct) of the revised Adjudicative Guidelines (AG) issued on December 29, 2005, and implemented by the Department of Defense effective September 1, 2006. Applicant answered the SOR in writing on January 30, 2007, and elected to have a hearing before an administrative judge. The case was assigned to me on February 18, 2007. With the consent of the parties, I convened a hearing on March 20, 2007, to consider whether it is clearly consistent with the interests of national security to grant or continue Applicant’s eligibility to occupy an ADP I/II/III position. DOHA received the hearing transcript (Tr.) on March 30, 2007.

FINDINGS OF FACT

Applicant is 32 years old and has worked as a health care finder for a medical contractor for the federal government for approximately 18 months. He married in 1999, and has been separated from his wife since April 2004. He has one biological child and a stepchild. He pays child support of \$396 a month through garnishment. Applicant completed the 10th grade and then earned his General Equivalency Diploma. He has approximately two years of college credits.

Applicant admitted in his answer to the SOR that he owed all of the debts listed.¹ He wanted to wait until he consolidated his debts before he started making any payments.² He stated that the debts were those of his wife and his mother and he was the joint account holder. He stated none of the debts were actually incurred by him. However, he also stated that he did receive letters from creditors, many for debts that had been forwarded to collection companies, requesting payment on the debts and offering settlement agreements. He was not sure about the offers and did not know whether they were legitimate so he did not respond or contact them.³ He did not know who some of the creditors were, but made no attempt to respond to their letters or contact them on his own.⁴ Applicant stated the debt listed in SOR ¶ 1.c was an account in his name that he let his mother use and he thought she was paying the account. He has not received reimbursement from his mother to resolve the debt.⁵ The account in SOR ¶ 1.f, is for a vehicle he and his wife purchased jointly. When

¹Answer; Tr. 36.

²Tr. 36.

³Tr. 37-38.

⁴*Id.*

⁵Tr. 40.

they separated, she was to make the payments.⁶ She defaulted on the debt and the vehicle was repossessed. He stated he did not know she was not making the payments. However, he did acknowledge that he was aware the vehicle was repossessed, but stated it was not until sometime later.⁷

The debt listed in SOR ¶ 1.e is for medical services that Applicant stated should have been paid by his insurance. He has not followed up with the insurance company to resolve this debt.⁸ The debt in SOR ¶ 1.b was for telephone services that was sent to collection in August 2000. Applicant stated this was his wife's debt.⁹ This debt went to collection while Applicant was still living with his wife and he concurs that the account was in his name. The debts in SOR ¶¶ 1.a, 1.d and 1.g are all credit card debts. Applicant has not made any payments on any of his debts.¹⁰

In January 2007 Applicant entered an agreement with a credit counseling service to consolidate his debt.¹¹ Prior to then he had not taken any action on his delinquent debts.¹² He owes credit counseling service a fee to start the service. He expects he will complete payment to the service later in the month. He has not completed paying the fee. He stated the service has sent letters to creditors in an attempt to verify the debts and potentially seek a settlement.¹³ No documentation was presented to confirm that any action by the service has been taken. Applicant has not contacted any of the creditors on his own because he was hoping to consolidate his debt. This has not yet been accomplished.

Applicant completed a Questionnaire for Public Trust Position (SF 85P) on October 10, 2005. In response to Question 22b which inquired whether he was now 180 days delinquent on any loan or financial obligation, he answered "No." Applicant admitted SOR ¶ 2.a in his answer. At his hearing, he first admitted he was aware of his delinquent debts.¹⁴ Later he contradicted his answer and stated he was unaware he had any debts over 180 days delinquent when he filled out the SF 85P.¹⁵ Applicant stated all the debts were his wife's or his mother's and he believed they had been

⁶Tr. 43-46.

⁷Tr. 46-47.

⁸Tr. 42.

⁹Tr. 39

¹⁰Tr. 38.

¹¹Tr. 22-25; Answer; A copy of the service agreement was provided. Applicant stated the date on the agreement is incorrect and should reflect January 5, 2007, and not 2006.

¹²Tr. 50.

¹³*Id.*; No documentation was provided to verify if letters were sent and to which creditors.

¹⁴Tr. 51-52.

¹⁵Tr. 52-60.

making all the payments so he did not believe he had any delinquent debt.¹⁶ Applicant admitted to receiving offers from collection companies regarding delinquent debt, but stated he did not know “whether to trust them or not.”¹⁷ Applicant later testified “There was doubt in my mind, but I wasn’t guaranteed for a fact” that when he filled out his public trust questionnaire that he had debts over 180 days. Later, again he testified he did not know he had debts over 180 days delinquent because his wife and mother were using his credit and he thought they were paying the bills.¹⁸ I find Applicant’s testimony inconsistent, unbelievable and not credible. He stated the debts were held jointly and at least some of the debts went to collection while he was still living with his wife. He had joint accounts with his spouse, he allowed his mother to use his credit card, and he was aware a jointly held vehicle had been repossessed. Claiming he did not trust letters received from collection agencies is not reasonable when he knew he had joints accounts and did nothing at the time to find out if these were viable claims. It is not reasonable to believe he was totally unaware of any of his delinquent debt or that he was not responsible for debts in his name. I find Applicant intentionally and deliberately failed to list his delinquent debts.

In answers to interrogatories Applicant acknowledged he has minimal money left after paying expenses and child support payments to resolve his debts.¹⁹ Applicant stated “as the man” he would put his name on accounts.²⁰ He also stated that if the debt was in his name he would take the initiative to resolve it. He did not provide any documentation to show debts were not in his name. Applicant stated he believed the Office of Personnel Management Investigator was going to provide him advice on how to repay his debts and fix his credit. He was not told by the investigator that he was a financial advisor, but instead told him the purpose of the interview.²¹ It was merely Applicant’s impression that the interviewer was trying to help him.²²

POLICIES

¹⁶Tr. 57-60.

¹⁷Tr. 59.

¹⁸Tr. 92.

¹⁹GE 4 p. 3.

²⁰Tr. 91.

²¹Tr. 65-66.

²²Tr. 66-68.

The adjudicative guidelines set out in the Regulation are used to make ADP trustworthiness determinations. Department of Defense contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination may be made.²³

An individual may not be assigned to perform sensitive duties unless a competent security authority determines it is clearly consistent with the interests of national security to do so.²⁴ Positions designated as ADP I or ADP II are classified as sensitive positions.²⁵ ADP III positions are “nonsensitive positions.”²⁶ However, DOHA has been directed to apply the due process provisions of the Directive for all trustworthiness determinations under ADP I, II, and including ADP III positions by a memorandum from the Deputy Undersecretary of Defense (Counterintelligence and Security) dated November 19, 2004. Thus, even though ADP III positions are nonsensitive, they are treated in the same way and adjudicated under the same guidelines and procedures as ADP I and II cases.

“The standard that must be met for ...assignment to sensitive duties is that, based on all available information, the person’s loyalty, reliability, and trustworthiness are such that ...assigning the person to sensitive duties is clearly consistent with the interests of national security.”²⁷ Department of Defense contractor personnel are afforded the adjudicative procedures contained in the Directive.²⁸

“The adjudicative process is an examination of a sufficient period of a person’s life to make an affirmative determination that the person is an acceptable security risk.”²⁹ Each eligibility determination must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Regulation. Specifically these are: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the individual’s age and maturity at the time of the conduct; the voluntariness of participation; the presence or absence of rehabilitation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; and the likelihood of continuation or recurrence. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

²³Regulation ¶ C8.2.1.

²⁴Regulation ¶ C2.1.2.

²⁵Regulation ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3.

²⁶Regulation ¶ C3.1.2.2.

²⁷Regulation ¶C6.1.1.1.

²⁸Regulation ¶ C8.2.1.

²⁹Regulation Appendix 8 at 132.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.³⁰ The government has the burden of proving controverted facts.³¹ The burden of proof is something less than a preponderance of evidence.³² Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.³³ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.³⁴ These same burdens of proof apply to trustworthiness determinations for ADP positions.

No one has a right to a security clearance³⁵ and “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”³⁶ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.³⁷ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.³⁸ 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 clearance.

Based upon consideration of all the evidence, I find the following adjudicative guidelines most pertinent to the evaluation of the facts in this case:

Guideline F-Financial Considerations are a concern because 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.

Guideline E-Personal Conduct is a concern because 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

³⁰ISCR Case No. 96-0277 at 2 (App. Bd. Jul. 11, 1997).

³¹ISCR Case No. 97-0016 at 3 (App. Bd. Dec. 31, 1997); Directive, Enclosure 3, ¶ E3.1.14.

³²*Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

³³ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.

³⁴ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.

³⁵*Egan*, 484 U.S. at 531.

³⁶*Id.*

³⁷*Id.*; Directive, Enclosure 2, ¶ E2.2.2.

³⁸Executive Order 10865 § 7.

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

Based on all the evidence, Financial Considerations Disqualifying Condition (FC DC) 19 (a) (*inability or unwillingness to satisfy debts*) and FC DC 19 (c) (*a history of not meeting financial obligations*), apply in this case. Applicant has delinquent debts starting in 1999 that he failed to pay. He admitted he owes the debts and it remains delinquent.

I have considered all the Financial Considerations Mitigating Conditions (FC MC), and especially considered FC MC 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*), FC MC 20 (b) (*the conditions that resulted in the financial problem 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*), FC MC 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*), FC MC 20 (d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*), FC MC 20 (e) (*the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue*).

The numerous debts remain unpaid so they are recent and not infrequent. Therefore, FC MC 20 (a) does not apply. Applicant had credit cards and accounts that he held jointly with his wife. He is equally responsible for the debts that he cosigned for as a joint owner. He ignored the debts despite receiving notices from creditors and collection agencies. On one hand he wants to say he was unaware that the debts were delinquent, yet he was receiving notices as to their delinquency and claiming he did not trust the notices. He and his wife are separated now, but were not separated when most of the debt was incurred and later sent to collection. He did not act responsibly in contacting his wife, mother or the companies to inquire as to their validity. Instead he ignored the debts. Applicant's financial problems are not the result of conditions that were beyond his control. He had ample opportunity to contact the creditors, at least as early as he became aware that the accounts went to collection. His explanation that he did not trust the letters would only be plausible if he actually contacted the companies that sent to the letters to confirm the information. I find FC MC 20 (b) does not apply.

Applicant recently contacted a credit counseling company to help consolidate his delinquent debts. This action was taken after he received the SOR. He is still making payments on the contract to this company to begin action, however, to date no actual plan has been initiated or payments made. At this point it is too early to determine if Applicant has fulfilled his contractual commitment with the agency or has made consistent payments toward his debt. I find although Applicant has entered an agreement it is premature to find there is clear indication that his problems are being resolved. Therefore, I find FC MC 20 (c) does not apply. At this juncture, Applicant has not made a good faith effort to resolve his debt. He has merely acknowledged his obligations. Hence, FC MC 20 (d) does

not apply. His effort to contact a credit counseling agency came after he received the SOR and no payments have yet been made. Applicant admitted the debts in the SOR. He admitted he was the joint owner on the debts. He is equally responsible for the debts with his wife. He did not provide any evidence to show why he should not be held responsible. He admits he was “the man” and put his name on the accounts. There is no evidence of fraud or deception, but rather a lack of responsibility in monitoring what he put his name on and his obligations with regard to it. I find FC MC 20 (e) does not apply.

Based on all the evidence, Personal Conduct Disqualifying Condition (PC DC) 16 (a) (*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, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*) applies. Applicant intentionally failed to list his delinquent debts on his public trust questionnaire. His explanations for failing to do so were not believable. Applicant’s inconsistent testimony leads me to believe he was aware that he had delinquent debts that were over 180 days. He knew he had joint accounts for credit cards with his wife and a vehicle that they owned jointly was repossessed. He gave his mother his credit card to use, but never followed up on her paying the bill. It is obvious that he knew he had the debts, but felt he should not have to pay for them even though he was the joint owner, because his wife incurred the charges. However, he never provided anything to show that she was the only one with access to the account or made charges. Applicant took on the obligation to repay debts that he held jointly. No evidence was presented to show the expenses incurred were exclusively his wife’s or that he took his name off the account or that he never used the credit card.

I have considered all of the Personal Conduct Mitigating Conditions (PC MC) and especially considered PC MC 17 (a) (*the individual made prompt, good faith efforts to correct the omission, concealment, or falsification before being confronted with the facts*) and PC MC 17 (e) (*the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation or duress*). I find neither apply. Applicant did not promptly provide the correct information on his security clearance. I find his testimony for his failure to answer the question on the trustworthiness questionnaire was not believable and not credible. Applicant did not provide any evidence or reassurance that he has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation or duress. Despite the evidence presented, Applicant continued to deny he was aware he had any delinquent debts over 180 days even when at least two of the debts were placed for collection in 1999, 2000, and 2003, and the fact that he was receiving settlement offers from creditors.

The Whole Person

In all adjudications, the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. 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 considered all of the evidence and the “whole person” in evaluating the case. Applicant is a young man who has significant debt. Most of the debt was incurred while he was living with his wife. He was the joint owner on credit cards and other accounts, but failed to follow-up on their status. He recently contracted with a credit counseling agency to consolidate his debt, but this occurred subsequently to receiving the SOR. He has not made any payments on his delinquent debts. Applicant was not credible in claiming he did not know he had delinquent debt. Therefore, I am persuaded by the totality of the evidence in this case, that it is not clearly consistent with the national interest to grant Applicant’s eligibility for an ADP I/II/III position. Accordingly, Guidelines F and E are decided against Applicant.

FORMAL FINDINGS

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

Paragraph 1. Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Paragraph 2. Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

DECISION

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

Carol G. Ricciardello
Administrative Judge