



Applicant lost her job in November 2000, which impacted her ability to pay her bills. She got behind in her bill payments. She obtained her current position in June 2001. Because of her limited income, she repays her old, delinquent debts one at a time. She has repaid and successfully challenged about one-third of her past due debts. Another approximately 40% of her debts may be barred under the state statute of limitations. She has successfully mitigated the government's concerns about her finances under guideline F. Eligibility is granted.

### **STATEMENT OF CASE**

On August 24, 2004, Applicant submitted an application for a position of public trust, an ADP I/II/III position. The Defense Office of Hearings and Appeals (DOHA) declined to grant the application under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended (the "Directive").<sup>1</sup> On January 3, 2007, DOHA issued Applicant a Statement of Reasons (SOR) detailing the basis for its decision. The SOR, which is in essence the administrative complaint, alleged trustworthiness concerns under Guideline F (Financial Considerations) of the revised Adjudicative Guidelines (AG) issued on December 29, 2005, and implemented by the Department of Defense, effective September 1, 2006. DOHA recommended the case be referred to an administrative judge to determine whether eligibility for a position of trust should be granted, continued, denied, or revoked. On January 22, 2007, Applicant submitted a notarized response to the allegations. She requested a hearing.

DOHA assigned this case to me on March 7, 2007, and issued a notice of hearing on May 17, 2007. At the hearing on June 6, 2007, the Department Counsel, on behalf of the government, filed a motion to amend the SOR to correct the date of issuance of the SOR. The SOR reflected an issuance date of January 3, 2006 instead of January 3, 2007. Applicant did not object. I granted the motion and the SOR issuance date is amended to reflect January 3, 2007. The government submitted six exhibits (GE) which were marked and admitted into the record as GE 1-6, without objection. Applicant submitted five exhibits (App Ex), which were marked and admitted as App Ex A-E, without objection. Applicant testified on her own behalf. I held the record open for the Applicant to submit additional evidence, which she timely did. She submitted six additional documents, which are marked and admitted as App Ex F-K, without objection. DOHA received the hearing transcript (Tr.) on June 25, 2007.

### **FINDINGS OF FACT**

In her SOR response, Applicant admits all the allegations, except subparagraph 1.d, under Guideline F in the SOR. She denies the allegation in subparagraph 1.d of the SOR.<sup>2</sup> Applicant's

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<sup>1</sup> 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.

<sup>2</sup> Applicant's response to the SOR, filed January 22, 2007.

admissions are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant, a 44-year-old woman employed as a document control clerk in the mail room of a Department of Defense contractor, seeks a position of public trust. The contractor hired her six years ago.<sup>3</sup>

Applicant graduated from high school and attended technical school for one year. She is the single mother of five daughters, between the ages of 15 and 28. Her sixth daughter died at birth in November 2000. Two daughters still live at home, with one attending college. She currently lives with her mother, who is being treated for cancer. She and her siblings take turns caring for her mother. She is to be married soon.<sup>4</sup>

In November 2000, Applicant's then employer laid her off in a reduction in force. She started her current position in June 2001. Although she received unemployment, her job loss impacted her ability to pay her bills.<sup>5</sup>

Applicant currently earns \$9.27 an hour and usually works a 40 hour week. She occasionally works overtime, but not more than 4 hours in a month. Her gross monthly salary is approximately \$1,484, and her net monthly income is approximately \$1,290. She receives \$600 a month in food stamps. Since she lives with her mother, she does not pay rent. Her other monthly expenses total approximately \$825. She pays her expenses with cash and does not use credit cards.<sup>6</sup>

A review of Appellant's credit reports dated October 8, 2004, November 23, 2005, August 22, 2006, February 28, 2007, and the SOR shows 13 unpaid debts totaling \$18,113.<sup>7</sup> The current status of these debts is as follows:

SOR ¶	ACCOUNT/AMOUNT	STATUS	EVIDENCE
1.a.	Credit card \$1,726	Statue of Limitations	
1.b.	Credit card \$2,428	Statute of Limitations	
1.c.	Credit card \$2,078	Statute of Limitations	
1.d.	Credit card \$2,668	Challenged, removed from credit report	GE 5, p.2; GE 6, p.1-2; App Ex B

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<sup>3</sup>GE 1(Applicant's application for a position of public trust, dated August 24, 2004) at 1, 3; Tr. at 17, 44.

<sup>4</sup>Tr. at 16-18, 20, 40.

<sup>5</sup> *Id.* at 19; GE 1, *supra* note 3, at 3.

<sup>6</sup>App Ex J (Earnings statement for March, April and May 2007); Tr. at 19-21, 45-47.

<sup>7</sup>GE 3 (Credit report, dated October 8, 2004); GE 4 (Credit report, dated November 23, 2005); GE 5 (Credit report, dated August 22, 2006); GE 6 (Credit report, dated February 28, 2007).

1.e.	Phone bill	\$ 310	Paid one-half; Statute of Limitations	App Ex K
1.f.	Personal loan	\$1,519	Statute of Limitations, contacted	Tr. at 29-30
1.g.	Personal loan	\$1,958	Unpaid	
1.h.	Car loan	\$2,555	Paid	App Ex C
1.i.	Hospital bill	\$ 187	Paid all accounts	App Ex D; Tr. at 38
1.j	Personal loan	\$ 880	Unpaid, contacted	Tr. at 38
1.k.	Personal loan	\$ 681	Unpaid, contacted	Tr. at 38
1.l	Personal loan	\$ 838	Unpaid, contacted	Tr. at 38
1.m.	Personal loan	\$ 285	Paid	GE 6, p.2; App Ex E

Applicant began paying on two credit card debts in November 2006. She paid a total of \$500 on these cards before she stopped her payments. Her credit cards, which are with the same credit company, had a \$500 limit, which she had reached when she could not longer continue her payments. She believes the remaining charges on each of her accounts is interest and late fees. She contacted the creditor and inquired about settlement of these debts. The creditor refused to discuss settlement. She stated that the debt in allegation 1.f. was originally \$3,000 and that she made payments on the debt for sometime, before she defaulted. Approximately one month ago, she contacted a credit counseling service by telephone. She called several creditors, and subsequently agreed to begin paying \$50 a month as soon as she can.<sup>8</sup>

In her evaluations for the last four years, Applicant's performance has been rated sometimes exceed expectations on three occasions and once at consistently exceeds expectations. She is a consistent high producer with a low error rate. She volunteers to take on additional work responsibilities and is viewed as an asset to the organization. As part of her employment, her employer required her to sign a confidentiality agreement to protect its confidential information. If she does not, she can be fired.<sup>9</sup>

## POLICIES

The revised Adjudicative Guidelines set forth disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. An administrative judge need not view the revised adjudicative guidelines as inflexible ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, are intended to assist the administrative judge in

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<sup>8</sup>App Ex A (Copies of payments to creditor); Tr. at 22-27, 31, 42-43, 47-48.

<sup>9</sup>App Ex F (Letter dated June 6, 2007); App Ex G (Performance evaluations dated January 2006 and February 2007); App Ex H (Confidentiality agreement); and App Ex I (Employee Profile, dated January 23, 2007).

reaching fair and impartial common sense decisions. Although the presence or absence of a particular condition or factor for or against a trustworthiness determination is not outcome determinative, the revised AG should be followed whenever a case can be measured against this policy guidance. In addition, each security clearance decision must be based on the relevant and material facts and circumstances, the whole-person concept, and the factors listed in the Directive. Specifically, these are: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (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 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.<sup>10</sup>

The sole purpose of a trustworthiness determination is to decide if it is clearly consistent with the national interest to grant eligibility for assignment to sensitive duties to an applicant.<sup>11</sup> The government has the burden of proving controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information.<sup>12</sup> The burden of proof is something less than a preponderance of the evidence.<sup>13</sup> Once the government has met its burden, the burden shifts to the applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.<sup>14</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>15</sup> 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.

No one has a right to a security clearance,<sup>16</sup> and “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>17</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.<sup>18</sup> Section 7 of Executive Order 10865 specifically provides industrial security clearance decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” The decision to deny an individual a security clearance is not necessarily a determination as to the allegiance, loyalty, and

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<sup>10</sup>Directive, revised Adjudicative Guidelines (AG) ¶2(a)(1)-(9).

<sup>11</sup>ISCR Case No. 96-0277 at 2 (App. Bd., July 11, 1997).

<sup>12</sup>ISCR Case No. 97-0016 at 3 (App. Bd., December 31, 1997); Directive, Enclosure 3, ¶ E3.1.14.

<sup>13</sup>*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

<sup>14</sup>ISCR Case No. 94-1075 at 3-4 (App. Bd., August 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.

<sup>15</sup>ISCR Case No. 93-1390 at 7-8 (App. Bd. Decision and Reversal Order, January 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.

<sup>16</sup>*Egan*, 484 U.S. at 531.

<sup>17</sup>*Id.*

<sup>18</sup>*Id.*; Directive, revised AG ¶ 2(b).

patriotism of an applicant.<sup>19</sup> 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. Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.<sup>20</sup> The same rules apply to trustworthiness determinations for access to sensitive positions.

## CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. The government has established a *prima facie* case for disqualification under Guideline F - Financial Considerations.

### **Financial Considerations**

Under Guideline F, the “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.” (AG ¶ 18.) The credit reports reflect several old, large, unpaid debts. Because of the age of these debts and their delinquent status, Applicant showed an inability or unwillingness to pay her debts. Based on the evidence of record, the government established the applicability of DC ¶ 19 (a) *inability or unwillingness to satisfy debts* and DC ¶ 19 (c) *a history of not meeting financial obligations*.

In 2000, Applicant lost her job about the same time her youngest daughter died. Until this time, she managed to pay her debts. It took her eight months to find other employment. With the loss of her job, she slowly fell behind in her credit payments. She, however, continued to pay the bills she could pay. MC ¶ 26 (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* applies.

Applicant called a financial counseling company, but has not retained their services to help with the repayment of her debts. She, however, contacted many of her creditors on her own and made arrangements to pay her debts. 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* may have some application as indicated in the discussion of MC ¶ 20(d).

MC ¶ 20 (d) *the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts* apply. Applicant paid three of her debts, which eliminated \$3,027 of unpaid debt. She also paid \$500 on two other old debts, before she stopped paying. Although a promise to pay by itself is insufficient to establish a good faith effort, her agreements with three additional creditors to make monthly payments is given some weight as she has methodically worked to pay her debts. With her limited income, she can only repay her debts one at a time. She has made a good faith effort to resolve her old debts.

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<sup>19</sup>Executive Order No. 10865 § 7.

<sup>20</sup> Directive, revised AG ¶ 2(b).

More than \$8,000 of her old debt may be barred from collection under state law.<sup>21</sup> Thus, she does receive some credit in the whole person analysis, *infra*, for the application of the 3-year South Carolina statute of limitations, which may apply to her five largest unpaid SOR debts. *See* S.C. Code. Ann. § 15-3-530.<sup>22</sup> The South Carolina Court of Appeals succinctly explained the societal and judicial value of application of the statute of limitations:

Statutes of limitations embody important public policy considerations in that they stimulate activity, punish negligence and promote repose by giving security and stability to human affairs. The cornerstone policy consideration underlying statutes of limitations is the laudable goal of law to promote and achieve finality in litigation. Significantly, statutes of limitations provide potential defendants with certainty that after a set period of time, they will not be ha[le]d into court to defend time-barred claims. Moreover, limitations periods discourage plaintiffs from sitting on their rights. Statutes of limitations are, indeed, fundamental to our judicial system.

*Carolina Marine Handling, Inc. v. Lasch*, 363 S.C. 169, 175-76, 609 S.E.2d 548, 552 (S.C. Ct. App. 2005) (internal quotation marks and citations omitted).

Elimination of her delinquent debt through the statute of limitations has ended her potential vulnerability to improper financial inducements because she is no longer “financially overextended,” but it does not negate her past conduct in accumulating debt which she could not pay. Because she is no longer legally responsible for these debts, it is reasonable and responsible for her not to pay these debts since any payment would revive the debt.

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* applies to allegation 1.d of the SOR. Applicant denied owing the debt in allegation 1.d. She challenged this information on her credit report, and the creditor agreed to remove it from her credit report. Thus, she has eliminated an additional \$2,668 of debt.

## **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 her 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.

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<sup>21</sup>Because she made payments totaling \$500 on two of her credit cards, the statute of limitations may have restarted from the date of her last payment on these debts.

<sup>22</sup>*See* ISCR Case No. 04-07360 at 2 (App. Bd. Sept. 26, 2006) (stating partial credit was available under FCMC 6 for debts being resolved through garnishment).

Applicant is a single mother whose income is limited. She has raised five children on her own, while working. She paid her bills until she lost her job in 2000. Eight months later she started her current employment. The loss of income made it difficult for Applicant to keep up with her bills. Even after she obtained employment, her limited income prevented her from repaying her unpaid debts, some of which were originally around \$500, but now are in excess of \$2,000 because of high fees and interest charges. In the last six years, she has worked regularly and supported her children until they were old enough to be on their own. She is a reliable and dependable employee and parent. She pays her current bills and refuses to use credit cards. She lives with her mother. She does not live extravagantly. Despite her income, she has made an effort to repay her debts, one at a time. She has not incurred excessive unpaid debt in the last three years. The record lacks any evidence that she resorted to illegal activities to obtain money to pay her bills.

Applicant performs her duties exceptionally well, is respected by her co-workers for her reliability, dependability and honesty, and is valued by her employer. She has not violated company rules during her years of employment and complies with the rules of society. I have weighed the mitigating factors, the reasons for her debts, her current family situation, her efforts to maintain a home for her children, and the positive recommendations against her inability to pay her old debts. I find that the overwhelming weight of the evidence indicates that she is a person of integrity, who is trustworthy. She would not act in a manner which would harm her employer or the government. There is little likelihood she would violate the privacy rights she has agreed to protect because of her existing debt problems. I conclude she has mitigated the trustworthiness concerns pertaining to financial considerations.

### **FORMAL FINDINGS**

Formal Findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

SOR ¶ 1-Guideline F:  
Subparagraphs a-m:

FOR APPLICANT  
For Applicant

### **DECISION**

In light of all of the evidence presented in this case, it is clearly consistent with the national interest to grant Applicant eligibility for assignment to sensitive duties. Eligibility is granted.

Mary E. Henry  
Administrative Judge