

DATE: December 31, 2007

In re:)
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 -----) ISCR Case No. 06-18900
 SSN: -----)
)
 Applicant for Public Trust Position)
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)

**DECISION OF ADMINISTRATIVE JUDGE
ROGER C. WESLEY**

APPEARANCES

FOR GOVERNMENT

Julie R. Edmunds, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of delinquent debts that stem mostly from a car repossession, restitution that was court-ordered in connection with an alcohol-related conviction, and medical debts associated with a series of hospitalizations in which she had difficulties making the co-pay requirements of her health insurance. Applicant disputes most of the debts, and all but the judgment debt and ordered restitution appeared to be barred by the controlling statute of limitations in any case. Applicant establishes both extenuation and mitigation with respect to the financial concerns associated with her debts. Favorable conclusions are warranted with respect to raised financial and criminal conduct concerns. Eligibility for an ADP I/II/III position is granted

STATEMENT OF THE CASE

On March 30, 2007, the Defense Office of Hearings and Appeals (DOHA), pursuant to Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, and Department of Defense (DoD) Regulation 5200.2-R, issued a Statement of Reasons (SOR) to Applicant, which detailed reasons why DOHA could not make the preliminary affirmative determination of Applicant eligibility for occupying an ADP I/II/III position, and recommended referral to an administrative judge to determine whether a trustworthiness determination clearance should be granted, continued, denied or revoked.

Applicant responded to the SOR on April 17, 2007, and requested a hearing. The case was assigned to me on September 20, 2007, and was scheduled for hearing on November 1, 2007. A hearing was convened on November 1, 2007, for the purpose of considering whether it would be clearly consistent with the national interest to grant, continue, deny, or revoke Applicant's application for a public trust position. At hearing, the Government's case consisted of eight exhibits. Applicant relied on one witness (herself) and no exhibits. The transcript (R.T.) was received on November 9, 2007.

PROCEDURAL ISSUES

_____ In July 2007, Department counsel moved to amend the SOR to add three additional allegations under Guideline J. Specifically, Department counsel requested leave to add allegations that Applicant (a) was arrested for driving under the influence (DuI) and endangerment in January 2000, for which she was convicted, sentenced to probation, and ordered \$9,381.00 in restitution and \$2,342.50 in fees, (b) was arrested in March 2004 for violating the terms of her probation, for which the court reinstated and extended her probationary period by three years, and ordered her to complete a community service requirement, pay restitution, and attend an alcohol education class, and (c) is currently on probation due to her still outstanding restitution.

Applicant did not object to Department Counsel's motion to amend, and for good cause shown, Department Counsel's amendment motion was granted. Asked how she wished to plead to the amended allegations, Applicant admitted them.

SUMMARY OF PLEADINGS

Under Guideline F, Applicant is alleged to have incurred numerous delinquent debts: She is alleged to have incurred one judgment for \$1,200.00 and 11 delinquent debts altogether, which exceed \$27,000.00 in total.

For her response to the SOR, Applicant admitted two of the debt-related allegations (*i.e.*, the judgment and deficiency related to an auto repossession), but denied the remaining allegations without explanations (save for claiming some monies were paid on the listed judgment).

FINDINGS OF FACT

_____Applicant is a 40-year-old office assistant of a defense contractor who seeks a trustworthiness determination. The allegations covered in the SOR and admitted to by Applicant are incorporated herein by reference and adopted as relevant and material findings. Additional findings follow.

Applicant has approximately two years of college training and has worked for her current employer since September 2004 (ex. 1; R.T., at 55), save for an extended period of disability that included multiple hospital admissions, including three this year alone (R.T., at 59). She estimates to have received disability payments of around 50 per cent of her salary while out of work on disability in 2007 (RT., at 59).

Since 2000, Applicant has accumulated a number of debts, most of them medical-related. She has encountered difficulties in tracking down some of the medical debts with credit reporting agencies and medical providers and cannot identify them by name (*see* ex. 8; R.T., at 31). One of her larger medical bills is the \$9,362.00 hospital debt covered by creditor 1.b, with whom she was employed at the time of her hospitalization. Believing this hospital debt was covered by insurance, she has not been able to make any headway in eliciting debt details with the collection agency holding this debt (*see* ex. A; R.T., at 33-38). Her most recent e-mail and telephone exchanges with the creditor have yielded no results, and the status of this debt remains unclear. Considering that she was employed by this hospital at the time of her hospitalization, her understanding that her hospital stay was insurance covered I is plausible. The debt is much too large to attribute solely to a missed co-payment. Her dispute of this debt is at the very least entitled to an inference of good faith questioning of the debt of creditor 1.b.

Applicant questions, too the other medical debts listed in the SOR. They are relatively small in amounts and may very well represent missed co-pays. As with her creditor 1.b debt, she has had no success in obtaining financial information from these listed creditors with medically-related debts. Without information about these debts she cannot affirm whether they are legitimate or not.

Besides her medical debts, Applicant is indebted to a landlord on an apartment she rented in 1999 from a co-worker on a month-to-month basis for about two months time. This landlord (Creditor 1.a) obtained a judgment against her in October 1999 in the sum of \$1,411.00 (R.T., at 56). Applicant is certain she paid some of the judgment in 2001 through garnishment while employed for creditor 1.b (ex. 8), but can provide no documentation (R.T., at 56-57). She estimates to owe maybe half of the judgment (R.T.,at 56), but has received no correspondence of any kind from the judgment holder.

Applicant's largest debt, by far, is a deficiency balance on a car she purchased in 1999 for about \$24,000.00 (R.T., at 45-46). She made monthly payments of around \$500.00 on the car for about six months before defaulting in her payments (*see* ex. 8). The car was repossessed in 2001 and reportedly sold at public auction. After being advised by the creditor of a \$17,000.00 deficiency balance, she made payment arrangements with the creditor and made one payment before suspending payments altogether (ex. 8). She does not know whether the \$16,000.00 figure listed in her credit report is correct or not (R.T., at 47-48). Without more information about the condition of the car and sale documentation from the lender, it is not possible to assess whether or not Applicant was adequately credited by the lender.

Applicant attributes most of her debts to a rough period between 2000 and 2004 when she was unhappy at work, drinking a lot, and experiencing medical issues requiring hospitalization (*see* ex. 8). Her work and medical problems were compounded by a January 2000 accident she was involved in while driving a rental car (R.T., at 62). She had been drinking prior to her accident, and hit a pole beside the highway (*see* ex. 8). An ambulance arrived at the scene and transported her to a local hospital. While in the hospital, a sheriff's officer came to the hospital and took a blood sample (ex. 8). She was subsequently charged with one count of driving under the influence (DUI) and three counts of endangerment (a class 6 felony). In court, she was convicted of all the charges and sentenced to probation and ordered to pay \$9,362.00 in restitution for the damage caused to the rental car (not insured) and \$2,342.50 in fees.

Applicant did not initially report to her probation department as ordered by the court, and was she was arrested (in March 2004) for failing complete all of the terms of her probation (*see* exs. 7 and 8; R.T., at 64-65). At hearing, the court reinstated and extended her probationary period by three years (*i.e.*, to April 2007) and ordered her to complete a community service requirement, pay restitution, and attend an alcohol class. Because of a remaining restitution balance in April 2007 (estimated to be about \$9,000.00), the court extended her probation for an additional three years (*see* ex. 7; R.T., at 64-65). Applicant's probation officer describes her as compliant with her probation conditions. She credits her with making restitution payments and maintaining full-time employment and a stable residence (ex. 7). Applicant currently sends her probation department something every month on her restitution balance (*see* ex. 7; R.T., at 66). She does not know what will happen if at the end of the remaining three years of her probation, she has still not discharged the remaining restitution balance (R.T., at 67).

Applicant disputes each of the listed medical debts, which she believes should have been discharged long ago by her medical insurance. She is barely able to pay her current bills with her current take home pay (estimated to be around \$1,700.00) and living expenses (*see* exs. 2 and 8; R.T., at 60-61), and is considering bankruptcy.

Not much is known about Applicant's work performance or trust and confidence in which she is held by her supervisors and coworkers. She did not provide any documentation of her performance evaluations, character references, or achievement certificates.

POLICIES

_____ On April 9, 1993, the Composite Health Care Program Office (CHCSPO), the Defense Office of Hearing and Appeals (DOHA), and the Assistant Secretary of Defense for Command, Control, Communication and Intelligence (ASDC31), entered into a Memorandum of Agreement (MOA), which gave DOHA responsibility to provide trustworthiness determinations for contractor personnel working on unclassified Information Systems Positions as defined in DoD Regulation 5200.2-R.

_____ The revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (effective September 2006) list Guidelines to be considered by judges in the decision making process covering DOHA cases. These Guidelines require the judge to consider all of the "Conditions that could raise a security concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating Conditions," if any, before deciding whether or not a

security clearance should be granted, continued or denied. The Guidelines do not require the judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in E2.2.2 of the Adjudicative Process of Enclosure 2 of the Directive, which are intended to assist the judges in reaching a fair and impartial common sense decision.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

Financial Considerations

The Concern: An individual who is financially overextended is at risk at having to engage in illegal acts to generate funds. Unexplained influence is often linked to proceeds from financially profitable criminal acts.

Criminal Conduct

The Concern. Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

Burden of Proof

By virtue of the precepts framed by the Directive, a decision to grant or continue an Applicant's application for a trustworthiness determination may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires Administrative Judges to make a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for an ADP I/II/III position depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the Judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted fact[s] alleged in the Statement of Reasons and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain an ADP I/II/III position. The required showing of material bearing, however, does not require the Government to affirmatively demonstrate that the applicant has actually abused a trust relationship before it can deny or revoke a trustworthiness determination. Rather, consideration must take account of cognizable risks that an applicant may deliberately or inadvertently fail to adhere to principles of trust.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the evidentiary burden shifts to the applicant to establish his or her trustworthiness through evidence of refutation, extenuation or mitigation of the Government's case.

CONCLUSIONS

Applicant is an assistant for a defense contractor who had one judgment taken against her and accumulated medically-related delinquent debts she attributes to co-pay issues, a significant deficiency associated with a car repossession, and her continued probation status stemming from an alcohol-related incident in which she was convicted, ordered to pay significant restitution, and placed on probation (twice since renewed due to her failure to comply with her original probation terms).

With the limited resources available to her, she has been able to keep up with her current household expenses and debts (including the court-ordered restitution) but not much more. She has heard nothing from her old creditors in many years and is not the subject of any known collection action on her debts. More recent efforts to elicit information from her largest medical creditor (creditor 1.b) have been unsuccessful.

Applicant's finances

Security concerns are raised under the financial considerations guideline of the Adjudicative Guidelines where the individual applicant is so financially overextended that he or she is at risk of having to engage in illegal acts to generate funds. Applicant's accumulation of delinquent debts, which heretofore she has not been in a position to address, warrant the application of two of the disqualifying conditions (DC) of the Adjudicative Guidelines for financial considerations: and DC 19(a) (*inability or unwillingness to satisfy debts*) and DC 19(c) (*a history of not meeting financial obligations*).

Extenuating circumstances are associated with Applicant's lack of sufficient income to address many of her old debts, most of which she continues to dispute. Due to her periods of unemployment and personal difficulties between 2000 and 2004 associated with her extended periods of disability, and more recently, her relatively low levels of compensation generated from her current work, she has not been able to make much headway in addressing any of her debts (disputed or otherwise). MC 20(b) of the financial considerations guideline (*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)*) has some applicability to Applicant's situation. Albeit, some judgment problems persist over the amount she expended (with the help of her boyfriend) on a late model car in 1999 without the available resources to sustain her agreed monthly payments, and more over the still outstanding restitution she was court-ordered to make following her DuI/Endangerment conviction in January 2000.

Because of the limited income available to Applicant over the past six years, she has not heretofore been in a position to address her old debts (disputed or otherwise). Most of Applicant's listed debts appear to have been placed in collection before 2002, and are likely barred by Arizona's controlling statute of limitations. The only clear exceptions are the judgment debt and the court-ordered restitution debt, both of which have only been partially addressed by Applicant to date. None of Applicant's listed medical and consumer debts reflect any collection action by the individual creditors involved. Based on this record, most of Applicant's covered debts appear to be barred from collection by the pertinent six-year statute of limitation in Arizona. *See* §12-548 of A.R.S. (2007).

Statutes of limitation, while considered important policy tools for discouraging plaintiffs from pursuing stale claims and promoting finality in litigation, have never been equated with good-faith efforts to repay overdue creditors. *See, e.g.,* ISCR Case No. 02-30304, at 3 (App. Bd. April 2004)(quoting ISCR Case No. 99-9020, at 5-6 (App. Bd. June 2001). Still, they provide effective collection barriers and, like bankruptcy, serve to insulate the debtor from pressures to raise cash to satisfy his or her creditors.

To be sure, Applicant does not assert relevant statutes of limitation in Arizona in her defense. With her limited income she has had difficulty making individual or collective progress (such as use of debt consolidation) on her listed debts. At this time it is not clear what steps Applicant might consider in the foreseeable future, if any, to resolve her mostly disputed and time barred debts. If these covered creditors are not willing or in a position to detail the bases of the debts, it is unlikely they have any future interest in pursuing them. While she has not sought financial counseling or initiated constructive steps (such as petitioning for bankruptcy) to discharge or otherwise resolve her debts, she is currently legally insulated from any collection action by the applicable Arizona statute of limitation, and for all practicable purposes, is no longer at risk to having to raise large sums of money to resolve her debts.

Holding a favorable trustworthiness determination involves the exercise of important fiducial responsibilities, among which is the expectancy of consistent trust and candor. Financial stability in a person cleared to access information covered by privacy rights is required precisely to inspire trust and confidence in the holder of the trustworthiness determination.

Taking into account all of the extenuating facts and circumstances surrounding Applicant's debt accumulations, the limited resources she has had to address them with, and the statute of limitation protections now available to her, she mitigates trustworthiness concerns related to her debts. Favorable conclusions warrant with respect to the allegations covered by the financial considerations guideline.

Applicant's DuI/Endangerment offense and her probationary status

While Applicant has no prior history of criminal activity that could raise questions about her judgment and trustworthiness, her 2000 DuI/Endangerment conviction does prompt concerns about her ability to comply with court orders. Her ordered probation in 2000 included a \$9,381.00 restitution condition that Applicant was unable to satisfy. Her failure to satisfy the probation reporting, community service, and restitution requirements prompted the court to extend her probation for three years (to April 2004). And because of her still unsatisfied restitution, the court extended her probation once more in 2007. At this time, she remains on probation, albeit compliant in her probation requirements. Because of this still outstanding restitution condition, trustworthy concerns about her finances are further compounded.

Applicant's two arrests, each arise out of the same original incident. Her second arrest in 2004 for violating her probation is really a compliance issue and is causally related to her problem finances. The initial DuI/Endangerment arrest and conviction and ensuing probation extensions resulting from Applicant's failure to satisfy the court's restitution order and resulting probation extensions are enough to warrant application of DC 31(d) (*individual is currently on parole or*

probation) and DC 31(e) (violation of parole or probation, or failure to complete a court-mandated rehabilitation program) of the guidelines for criminal conduct.

Because she is still on probation, she is in a difficult position to take advantage of any of the potentially applicable mitigating conditions of Guideline J. The underlying incident, however, is isolated.. Her probation officer credits her with compliance with her probation conditions. And since this 2000 offense, she has not committed any other offenses that could subject her to arrest (except for her arrest for probation violation in 2004). For this violation, she received extended probation. She acknowledges poor judgment in the past and pledges to do the best she can in resolving her debts. Based on this record, some application of MC 32(d) (*there is evidence of successful rehabilitation, including but limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement*) is warranted.

Both from a consideration of the applicable guidelines and from a whole person perspective, Applicant mitigates concerns stemming strictly from her 2000 arrest/conviction and related probation violations that ensued based on her failure to satisfy restitution requirements. Taking into account all of the facts and circumstances developed in the record, favorable conclusions warrant with respect to the allegations covered by subparagraphs 2.a through 2.c of the SOR, as amended at hearing.

In reaching my decision, I have considered the evidence as a whole, including each of the E2.2 factors enumerated in the Adjudicative Guidelines of the Directive.

FORMAL FINDINGS

In reviewing the allegations of the SOR in the context of the findings of fact, conclusions and guidelines listed above, I make the following formal findings:

FINANCIAL CONSIDERATIONS:	FOR APPLICANT
Sub-paras. 1.a - 1.1	FOR APPLICANT
CRIMINAL CONDUCT:	FOR APPLICANT
Sub-para. 2a:	FOR APPLICANT
Sub-para. 2.b:	FOR APPLICANT
Sub-para. 2.c:	FOR APPLICANT

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's eligibility for a public trust position. Eligibility for an ADP I/II/III position is granted.

Roger C. Wesley

Administrative Judge