

KEYWORD: Financial

DIGEST: Applicant is 44 years old and works for a federal contractor. Since 2000, she accumulated a significant amount of debts listed in the Statement of Reasons (SOR) that she has neither resolved nor paid. She failed to mitigate the concerns raised by financial considerations. Eligibility for a public trust position is denied.

CASENO: 06-18965.h1

DATE: 05/31/2007

DATE: May 31, 2007

In re:	)	
	)	
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SSN: -----	)	ADP Case No. 06-18965
	)	
Applicant for Public Trust Position	)	
	)	

**DECISION OF ADMINISTRATIVE JUDGE  
SHARI DAM**

**APPEARANCES**

**FOR GOVERNMENT**

Melvin A Howry, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is 44 years old and works for a federal contractor. Since 2000, she accumulated a

significant amount of debts listed in the Statement of Reasons (SOR) that she has neither resolved nor paid. She failed to mitigate the concerns raised by financial considerations. Eligibility for a public trust position is denied.

### **STATEMENT OF THE CASE**

On May 4 and September 9, 2004, Applicant submitted an application for a position of public trust, an ADP I/II/III position. On December 7, 2006, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant under Department of Defense Directive 5220.6, *Defense Industrial Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and revised.<sup>1</sup> The SOR alleged trustworthiness concerns under Guideline F (Financial Considerations), and detailed reasons why DOHA recommends the case be referred to an administrative judge to determine whether eligibility for a position of trust should be granted.

In an answer received at DOHA on January 4, 2007, Applicant responded to the SOR allegations and elected to have the case decided on the written record in lieu of a hearing. On February 12, 2007, Department Counsel prepared a File of Relevant Material (FORM), containing eleven Items, and mailed Applicant a complete copy on February 16, 2007. Applicant received the FORM on March 30, 2007, and had 30 days from its receipt to file objections and submit material in refutation, extenuation, or mitigation. On May 1, 2007, Applicant submitted additional information that I marked as Applicant Exhibits (AX) 1-3. Department Counsel did not object to the submission. The case was assigned to me on May 22, 2007.

### **FINDINGS OF FACT**

As to the factual allegations under Guideline F, Applicant admitted all of the debts listed in the SOR, except those noted in ¶¶ 1.a, 1.c, 1.e, and 1.k. Applicant's admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following findings of fact:

Applicant is 44 years old and single. From September 1984 until September 1988, she served as a seaman with the U.S. Navy. After leaving the Navy, she worked as a ward clerk for a hospital from approximately August 1989 to October 2003. Subsequently, she was unemployed until she began her current position in May 2004, as a beneficiary service representative for a company that administers health care benefits for the federal government. (Item 4 at 1-2).

In October 2006, Applicant completed a set of Interrogatories related to her financial responsibility. In them, she responded to numerous debts and indicated that she lives with her mother with whom she shares expenses and pools income. (Item 8).

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<sup>1</sup>On August 30, 2006, the Under Secretary of Defense (Intelligence) published a memorandum directing application of revised Adjudicative Guidelines to all adjudications and other determinations made under the Directive and Regulation, in which the SOR was issued on or after September 1, 2006. A memorandum from the Deputy Under Secretary of Defense (Counterintelligence and Security) to Director of DOHA, dated November 19, 2004, states DOHA shall utilize provision of the Directive to resolve contractor cases involving trustworthiness determinations.

In December 2006, the Government filed a SOR and alleged in Paragraph 1(¶¶ 1.a. through 1.m) that she owed 13 delinquent debts, totaling \$30,695. According to credit reports, dated October 26, 2004, and November 23, 2005, her delinquent debts began accruing in early 2000. Applicant admitted that she owed all of the delinquent debts listed in the SOR, except four of them, totaling \$13,930, which she claimed belonged to her mother. (Item 3). She asserted that she would go to a legal clinic for assistance in resolving her debts and begin making payments by the end of January 2007. (*Id.*). In March 2007, she wrote letters to the four creditors, challenging her responsibility for the debts. (AX 1). According to a request for payment by the creditor listed in ¶ 1.c, Applicant's mother is the responsible party. (AX 2). The debt listed in ¶ 1.e for \$840 appears to be Applicant's, per a April 2007 response from Equifax investigations. (AX 3). Applicant subsequently admitted owing the credit card debt listed for \$4,679 in ¶ 1.a. (*Id.* at 4). The status of her challenge to the debt listed in ¶ 1.k for \$5,188 is unclear.

In response to the FORM, Applicant submitted numerous documents indicating that she was in the process of investigating various debts. However, she did not provide any evidence that she obtained assistance for resolving her financial problems or made payments in January 2007 on specific debts, as she asserted she would do in her answer to the SOR.

## POLICIES

In an evaluation of an applicant's suitability for a public trust position, an administrative judge must consider the "Adjudicative Guidelines for Determining Eligibility for Access to Classified Information" (Guidelines), which set forth adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into Disqualifying Conditions (DC), and Mitigating Conditions (MC), which are used to determine an applicant's eligibility for access to classified information. By recognizing that individual circumstances of each case are different, the guidelines provide substantive standards to assist an administrative judge in weighing the evidence in order to reach a fair, impartial and common sense decision.

These Guidelines are not inflexible ironclad rules of law. Instead, recognizing the complexities of human behavior, an administrative judge should apply these Guidelines in conjunction with the factors listed in the adjudicative process. Guideline ¶ 2. An administrative judge's overarching adjudicative goal is a fair, impartial and common sense decision. Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept," an administrative judge should consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. Guideline ¶ 2(c).

Specifically, an administrative judge should consider the nine adjudicative process factors listed at Guideline ¶ 2(a): "(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."

Since the protection of sensitive information is the paramount consideration, the final decision in each case is arrived at by applying the standard that eligibility for a public trust position is “clearly consistent with the interest of national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

In the decision-making process, facts must be established by “substantial evidence.”<sup>2</sup> The Government initially has the burden of producing evidence to establish a case which demonstrates, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant’s access to classified information. Once the Government has produced substantial evidence of a disqualifying condition, the burden shifts to Applicant to produce evidence and prove a mitigating condition. Directive ¶ E3.1.15 provides, “The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and [applicant] has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” The burden of disproving a mitigating condition never shifts to the Government. *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “Any doubt concerning personnel being considered for access to classified information will be resolved in favor of national security.” Guideline ¶ 2(b). These same burdens of proof apply to trustworthiness determinations for ADP positions.

A person who seeks eligibility for a public trust position enters into a fiduciary relationship with the government predicated upon trust and confidence. It is a relationship that transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship the government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions under this Directive include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

The scope of an administrative judge’s decision is limited. Nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant’s allegiance, loyalty, or patriotism. Executive Order 10865, § 7.

## CONCLUSIONS

I considered all facts in evidence and legal standards, including the “whole person” concept, and concluded the following with respect to the allegations set forth in the SOR.

### Guideline F: Financial Considerations

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<sup>2</sup>“Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006)(citing Directive ¶ E3.1.32.1). “This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent [a Judge’s] finding from being supported by “substantial evidence.” *Consolo v. Federal Maritime Comm’n*, 383 U.S. 607, 620 (1966). “Substantial evidence” is “more than a scintilla but less than preponderance.” *See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994).

Guideline ¶ 18 articulates the Government’s concern regarding financial problems. “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.”

Two Financial Considerations Disqualifying Conditions could raise a trustworthiness concern and may be disqualifying in this case: “inability or unwillingness to satisfy debts” and “a history of not meeting financial obligations.” Guidelines ¶ 19(a) and (c). Despite a statement in her answer that she intended to begin paying her delinquent debts in January 2007, she failed to do so, indicating either an unwillingness or inability to satisfy them. According to credit reports, Applicant has a history of failing to meet her financial obligations since early 2000. DOHA’s Appeal Board has concluded that “[a] person who is unwilling to fulfill his legal obligations does not demonstrate the high degree of good judgment and reliability required of persons granted access to classified information.” ISCR Case No. 98-0810 at 4 (App. Bd. June 8, 2000).

After the Government produced substantial evidence of these two disqualifying conditions, the burden shifted to Applicant to produce evidence and prove a mitigating condition.

Six Financial Considerations Mitigating Conditions under Guidelines ¶ 20(a)-(e) are potentially applicable:

- (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;
- (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;
- (c) 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;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;
- (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 dispute or provides evidence of actions to resolve the issue;
- (f) the affluence resulted from a legal source of income.

Based on my evaluation of the record evidence as a whole, I conclude Guideline ¶ 20(a) does not apply. Applicant has multiple delinquent debts, which remain unpaid. Because she has not addressed the majority of the debts, she has failed to show that such financial problems are “unlikely to recur.” Applicant did not produce any evidence to trigger the application of Guidelines ¶ 20(b), (c), or (d). Applicant disputed several debts, which constitutes some mitigation under Guideline ¶ 20(e). However, after disputing four debts, Applicant learned that two of them are hers, one belongs to her mother, and the fourth is unresolved. Guideline ¶ 20(f) does not apply.

### **Whole Person Analysis**

In addition to the enumerated disqualifying and mitigating conditions, I have considered the general adjudicative guidelines related to the whole person concept under Guideline ¶ 2(a). As noted above, Applicant's failure to make greater progress resolving her delinquent debts is an ongoing, long-term problem and is sufficiently serious to raise a security concern. Her financial decisions to incur debt that she was unable to repay were voluntary. She is 44 years old and sufficiently mature to be fully responsible for her obligations. Although she was clearly aware of the problem in October 2006 when she completed the Interrogatories, she waited until March 2007 to begin formally addressing the problem, despite indications that she would start payments in January 2007 and seek assistance. Without an established budget and a track record of consistent financial management demonstrating reliability and good judgment, I am concerned that her financial problems will recur.

After weighing the disqualifying and mitigating conditions, all facts and circumstances, in the context of the whole person, I conclude she has not mitigated the security concerns raised under Guideline F. She did, however, mitigate the allegations noted in SOR ¶¶ 1.c. Accordingly, Guideline F is decided against her and she is not eligible for a public trust position at this time.

### **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 as follows:

Paragraph 1: Guideline F (Financial Considerations)    **AGAINST APPLICANT**

Subparagraphs 1.a–1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraphs 1.d–m:	Against Applicant

### **DECISION**

In light of all the circumstances and evidence presented in this case, it is not 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 denied.

Shari Dam  
Administrative Judge