

KEYWORD: Financial

DIGEST: Applicant is a 45-year-old employee of a defense contractor seeking eligibility for a position of public trust. Credit reports show, and Applicant admits, she accumulated approximately eight delinquent debts, totaling over \$10,000. She has not explained how she accumulated the delinquent debt. She claims she paid two small debts, but submitted no documents to support such payments. She stated she would make arrangements to pay the remaining debt, but provided no information on any arrangements made or contemplated. She has not mitigated security concerns for financial considerations. Eligibility for a position of public trust is denied.

CASENO: 06-19485.h1

DATE: 06/26/2007

DATE: June 26, 2007

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| In Re: |) | |
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| ----- |) | ADP Case No. 06-19485 |
| SSN: ----- |) | |
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| Applicant for Public Trust Position |) | |

**DECISION OF ADMINISTRATIVE JUDGE
THOMAS M. CREAN**

APPEARANCES

FOR GOVERNMENT

Braden M. Murphy, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

_____Applicant is a 45-year-old employee of a defense contractor seeking eligibility for a position of public trust. Credit reports show, and Applicant admits, she accumulated approximately eight delinquent debts, totaling over \$10,000. She has not explained how she accumulated the delinquent debt. She claims she paid two small debts, but submitted no documents to support such payments. She stated she would make arrangements to pay the remaining debt, but provided no information on any arrangements made or contemplated. She has not mitigated security concerns for financial considerations. Eligibility for a position of public trust is denied.

STATEMENT OF THE CASE

On December 5, 2006, the Defense Office of Hearing and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to deny an application for a position of public trust for Applicant. The action was taken under Department of Defense Regulation 5200.2-R, *Personnel Security Program* (January 1987), as amended (Regulation), and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), using the Revised Adjudicative Guidelines (AG), issued by the President on December 29, 2005, and implemented by the Department of Defense on September 1, 2006. The revised guidelines were provided to Applicant and she was aware that the case would be adjudicated under those guidelines. Applicant acknowledged receipt of the SOR on December 11, 2006. The SOR alleges security concerns under Guideline F (Financial Considerations). Applicant answered the SOR in writing on January 19, 2007, admitting the eight factual allegations under Guideline F with explanation. She elected to have the matter decided on the written record in lieu of a hearing.

Department Counsel submitted the Government's written case on March 30, 2007. Applicant received a complete file of relevant material (FORM) on April 10, 2007, and was provided the opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. She did not provide any additional information. The case was assigned to me on June 14, 2007.

FINDINGS OF FACT

Applicant is a 45-year-old employee of a defense contractor. She is a high school graduate who has worked as a clinical care coordinator for a defense contract for over 12 years. She is married with one child.¹

Applicant submitted a Questionnaire for a Public Trust Position on February 11, 2005.²

¹1. Item 4.

²*Id.*

Subsequent investigation of credit reports shows Applicant has delinquent debts.³ The SOR lists eight delinquent debts that are of security concern. In her response to the SOR, Applicant admits the factual allegations of each debt. The delinquent debts are a medical debt collection account for \$95 from February 2000; a collection account for \$33 for a cell phone account from July 2004; a collection account for a credit card for \$1,331 from July 2004; an automobile gasoline credit card charged off account for \$772 from July 2004; another automobile gasoline credit card charged off account for \$1,197 from September 2004; a computer purchase charged off account for \$1,469 from December 2004; a store charged off account for \$1,176 from December 2004; and a bank credit card charged off account for \$4,036 from February 2005.⁴ Applicant noted that she paid the \$95 and \$33 collection accounts in January 2007, but provided no proof of such payments. She admits to the \$1,331 debt with no explanation. She admits to the remaining debts, and states she is making arrangements to pay the debts but provides no proof of such an agreement.⁵

Applicant states she contacted a financial services company but terminated them when they refused to settle with creditors. She states she was paying the financial services company \$115 per month. She presented no proof of a contract with the company or any payments made under a contract. She also states she has hired a certified public accountant (CPA) to assist her with the other debts.⁶

POLICIES

The President has “the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information.”⁷ To be eligible to occupy an Information Systems Position designated ADP II/III, an applicant must meet the security guidelines contained in the Regulation. The standard that must be met 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.⁸

The Regulation sets out the adjudicative guidelines for making trustworthiness determinations. Appendix 8 of the Regulations sets forth adjudicative guidelines for determining trustworthiness, and lists the disqualifying conditions and mitigating conditions for each guideline. The adjudicative guideline at issue in this case are:

³Item 5 (Credit report, dated May 3, 2005), Item 6 (Credit report, dated August 28, 2006); and Item 8 (Credit report, dated March 30, 2007).

⁴Item 2, SOR.

⁵Item 3, Response to SOR, dated January 19, 2007.

⁶Item 7 (Interrogatories, dated October 23, 2006).

⁷*Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁸Regulation ¶ C6.1.1.1.

Guideline F - Financial Considerations: A security concern exists because a 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.

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, pertaining to the adjudicative guideline are set forth and discussed in the conclusions section below.

The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance. An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. An administrative judge should consider: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the applicant's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation of recurrence.⁹

DoD contractor personnel are afforded the rights to the procedures contained in the DoD Directive before any final unfavorable access determination may be made.¹⁰ Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the Applicant from being eligible for access to classified information.¹¹ Thereafter, Applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts.¹² An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."¹³ "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability."¹⁴ "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security."¹⁵ Each clearance decision must be fair, impartial, and a commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in new adjudicative guidelines. A person granted access to classified information enters into a special relationship with the government.

⁹AG ¶ 29(a).

¹⁰DoD 5200.2-R, ¶ C8.2.1.

¹¹Directive ¶ E3.1.14.

¹²ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15.

¹³ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

¹⁴ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993))

¹⁵*Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.

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. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant.¹⁶ It is merely an indication that the applicant has not met the strict guidelines have established for issuing a clearance.

CONCLUSIONS

I carefully considered all of the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

Applicant's delinquent debts from credit reports and admitted by Applicant brings the matter within Financial Considerations Disqualifying Conditions (FC DC) ¶ 19(a) *Inability or unwillingness to satisfy debts*, FC DC ¶ 19(b) *indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt*, and FC DC ¶ 19(c) *a history of not meeting financial obligations*. Applicant admits the debts, and provided no explanation how or why each delinquent debt was accumulated. She presented no evidence of payment or a plan to pay the debts. She accumulated debt because she was spending more than she had the ability to pay. I conclude the above disqualifying conditions have been established.

Appellant's answer to the SOR raises Financial Consideration Mitigating Conditions (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 judgement*, 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*, and FC MC 20(d) *the individual initiated a good-faith effort to repay overdue creditors or other wise resolve debts*. Applicant's debts are current since she has not paid or resolved them. The debts became delinquent under normal circumstances in 2000, 2004, and 2005. She had many years to begin repaying even the smallest debts and has not done so. She states she paid two small debts but presents no information to confirm such payments. She states that she will make arrangements to pay the remaining debts but presents no proof of such arrangements. An intention to pay debts in the future is not sufficient to establish a good-faith effort to pay the debts. She presented no information to confirm an agreement with a credit counseling agency and payments made to them under an agreement. Additionally she did not explain why the delinquent debts were accumulated so there is no indication the debts resulted from conditions beyond her control. Applicant admitted to the debts and took no action to pay or resolve them. Applicant presented insufficient information to explain the debts, so she has failed to carry her burden. I conclude Applicant has not mitigated the security concerns for financial considerations.

¹⁶See Exec. Or. 10865 § 7.

I carefully considered all of the circumstances in light of the “whole person” concept. I conclude Applicant is not eligible for a position of public trust.

FORMAL FINDINGS

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

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| Paragraph 1, Guideline F: | AGAINST APPLICANT |
| Subparagraph 1.a. thru 1.h.: | Against Applicant |

DECISION

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national security to grant or continue eligibility for assignment to sensitive duties for Applicant. Eligibility is denied.

Thomas M. Crean
Administrative Judge