

DATE: November 19, 2007

---

In re: )  
 )  
 )  
 ----- ) ADP Case No. 06-19738  
 SSN: ----- )  
 )  
 Applicant for Public Trust Position )  
 )  
 )

---

**DECISION OF ADMINISTRATIVE JUDGE  
PHILIP S. HOWE**

**APPEARANCES**

**FOR GOVERNMENT**

Caroline H. Jeffreys, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is 52 years old, and divorced with three adult children. He works for a defense contractor as a security camera technician. He had 17 delinquent debts totaling about \$28,000 listed in the SOR. He has a repayment plan for five debts, and owes \$5,752 on the remaining twelve debts. Applicant answered the delinquent debt question on his trustworthiness applicant truthfully. Applicant mitigated the financial considerations and personal conduct trustworthiness concerns. Eligibility for a public trust position is granted.

## STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a position of trust for Applicant<sup>1</sup>. On January 17, 2007, DOHA issued a Statement of Reasons<sup>2</sup> (SOR) detailing the basis for its decision—trustworthiness concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of the revised Adjudicative Guidelines of the Directive issued on December 29, 2005, and implemented by the Department of Defense, effective September 1, 2006. Applicant answered the SOR in writing on March 16, 2007, and elected to have a hearing before an administrative judge. The case was assigned to me on June 14, 2007. On September 18, 2007, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a trustworthiness determination for Applicant. The Government and the Applicant submitted exhibits that were admitted into evidence. DOHA received the hearing transcript (Tr.) on September 27, 2007.

## FINDINGS OF FACT

Applicant's admissions to all of the SOR allegations are incorporated as findings of fact. After a complete and thorough review of the evidence in the record, and full consideration of that evidence, I make the following additional findings of fact:

Applicant is 52 years old, and was divorced after 25 years of marriage in 2004, and the father of three adult children. He works as security camera contractor for a Government contractor. He earns \$3,040 before taxes each month, and takes home about \$1,000 twice monthly. His monthly expenses total about \$1,800. He rents an apartment. He was unemployed from the summer of 2004 to the spring of 2005. During that time, he paid his bills and bought necessities with his credit cards. After his divorce, he did not keep track of his debts, and allowed friends or acquaintances to use his checking account and have access to his credit cards. He stopped allowing those people access some time ago, and now has no credit cards and a small savings account. (Tr. 15-19, 28-31, 40, 41, 46, 48; Exhibit 1)

Applicant has 17 delinquent debts, totaling about \$28,000. The debts listed in the SOR became delinquent and in write-off status in December 2004 to February 2005. Some of the credit card debt was incurred during his marriage, and he was obligated in the divorce judgment to pay it. In 2005 and 2006, for a period of six months, he worked with a credit counseling agency to try to pay his delinquent debts. He paid \$300 to \$500 monthly for about six months while being counseled through that agency's program. When his car stopped working, he ceased going to the credit counseling agency. He started to work directly with his creditors. The only repayment plan for all his delinquent debts he has involves paying the largest debt first which has the most demanding collector. Then, he would repay the other creditors in the order of the largest balance next, and so

---

<sup>1</sup>Adjudication of trustworthiness cases for ADP I, II, and III positions are resolved using the provisions of DoD Directive 5220.6 (Directive), pursuant to the memorandum from Carol A. Haave, Deputy Under Secretary of Defense for Counterintelligence and Security to DOHA Director, *Adjudication of Trustworthiness Cases* (Nov. 19, 2004).

<sup>2</sup>Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and the Directive.

on down the creditor list. Applicant has settled about \$22,000 of his \$28,000 in delinquent debt. He is comfortable financially paying \$400 monthly toward his debts. At one time he was paying \$700 monthly on a debt, but that amount put a burden on him financially. His current monthly bills are paid on time and in full. Applicant admits his responsibility for his debts. (Tr. 28, 29, 35, 43-46, 48, 49, 51, 52; Exhibits 2-5)

Applicant paid or is negotiating to pay five delinquent debts listed in the SOR in the following manner:

A credit card debt for \$7,768 (SOR Para. 1.a), another credit card debt owed to the same bank for \$2,820 (SOR Para. 1.b.), and a department store credit card issued by the same bank with a debt of \$1,404 (SOR Para. 1.o.) settled for \$6,000. He has not started repaying the settlement amount because he has not finalized it, and he has to repay the settlement for the credit card debt in Para. 1.i. first. (Tr. 23-25, 49-52; Exhibit A)

Another credit card debt owed to a bank is \$2,703 (SOR Para. 1.c.). Applicant paid this debt in a settlement for \$2,000, payable in installments of \$667 over three months from June to August 2007. (Tr. 25, 26; Exhibit C)

Applicant owes a bank \$7,768 on a credit card debt (SOR Para. 1.i). He negotiated a \$3,000 settlement. He is paying \$400 monthly from September 2007, for eight months. He paid previously a \$2,000 debt, and can now use the money he paid on that debt to repay this debt. (Tr. 20-24; Exhibit B)

Applicant has not paid the remaining 12 delinquent debts totaling \$5,752. As he pays off one debt, he plans to pay the remaining debts in descending order according to the size of the debt. Applicant can comfortably repay \$400 monthly on one or more debts, but not more, based on his income. (Tr. 28, 45, 49-52; Exhibits 2-5)

Applicant completed his public trustworthiness position application, a Standard Form 85P, on March 23, 2005. In answer to Question 20 (Are you now over 180 days delinquent on any loan or financial obligation?), Applicant answered “no.” Applicant explained his answer by admitting he had not kept track of his debts after his divorce, “for a couple of years I’ve kind of let things go. Maybe really didn’t care. That’s no excuse.” Applicant knew he had some debts past due, but did not think any were older than 180 days delinquent. None of the debts listed on the credit reports that are also listed in the SOR are older than six months delinquent. All delinquencies were reported on or after September 2004, the 180 day commencement period. (Tr. 29, 40; Exhibits 1-4)

## POLICIES

As Commander in Chief, 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.” *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that

it is clearly consistent the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information with Industry* § 2 (Feb. 20, 1960). By direction of the Under Secretary of Defense for Counterintelligence and Security, adjudications of cases forwarded to DOHA by the Defense Security Service or the Office of Personnel Management (OPM) for a trustworthiness determination shall be conducted under the provisions of the Directive. Eligibility for a position of trust is predicated upon the applicant meeting the guidelines contained in the Directive and a finding it is clearly consistent with the national interest to do so. See Directive ¶ 2.3. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his trustworthiness determination.” See Directive ¶ E3.1.15

The adjudication process is based on the whole person concept. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline that must be carefully considered in making the overall common sense determination required. The decision to deny an individual eligibility to occupy a position of trust is not necessarily a determination as to the loyalty of the applicant. See Exec. Or. 10865 § 7. 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 such a determination.

In evaluating the trustworthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive and the revised Guidelines effective September 1, 2006. Those assessments include: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (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 pertinent 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 (See revised Guidelines ¶2.a., effective September 1, 2006). Because each case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible to occupy a position of trust. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant’s trustworthiness suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996). All that is required is proof of facts and circumstances that indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at \*\*6-8 (App. Bd. 2001). Once the Government has established a *prima facie* case by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. See Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that is clearly consistent with the national interest to grant or continue his trustworthiness determination. ISCR Case No. 01-20700 at 3 (App. Bd. 2002). “Any doubt as to

whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.” Directive ¶ E2.2.2

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

**Guideline F: Financial Considerations: The Concern:** 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 could 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. ¶18

**Guideline E: Personal Conduct: The Concern:** 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 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. ¶15

“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.” (Regulation ¶C6.1.1.1) The revised Guidelines, effective September 1, 2006, set forth the adjudicative policy, as well as the disqualifying conditions (DC) and mitigating conditions (MC) associated with each guideline. DoD contractor personnel are afforded the adjudication procedures contained in the Directive. (¶1 of the revised Guidelines, effective September 1, 2006)

## CONCLUSIONS

**Guideline F:** Applicant incurred about \$28,000 in delinquent debt in 2004 and 2005. He had to repay some debt from his 25-year marriage, and incurred additional debt after the 2004 divorce when he was unemployed for several months. During that time, he used his credit cards to finance his living necessities. The Disqualifying Conditions (DC) that apply are ¶19.a. (inability or unwillingness to satisfy debts), and ¶19.c. (a history of not meeting financial obligations).

However, Applicant’s financial situation was aggravated by the divorce and his subsequent unemployment. Now he has a repayment plan, has repaid two debts, is in the midst of a repayment plan on another settlement agreement, and is finalizing another settlement plan, which he will start repaying in about eight months. Applicant consulted a credit counseling agency for six months and was repaying some his debts through that process. Then he negotiated with his creditors directly, and developed a repayment plan. His plan is to pay \$400 monthly to creditors, starting with the largest debts first. As a result of his plan, he has repaid or has settlement agreements being executed or is in negotiations for about \$22,000 of his delinquent debt. His unpaid smaller delinquent debt, total \$5,752. The Mitigating Conditions (MC) which apply are ¶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), ¶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 ¶20.d (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts).

**Guideline E:** Applicant did not disclose any 180 day delinquent debts on his public position trustworthiness application in 2005, because he did not realize he had any delinquent debts older than 180 days. He had delinquent debts listed in the SOR which were written off after September 2004, as shown on Exhibits 2-4. The fact that no debt was reported delinquent prior to September 2004, coupled with the forthright and frank manner in which Applicant acknowledged his responsibility to repay his debts, and his denial of any intentional falsification, show no DC apply in this case because Applicant did not deliberately falsify his answer to Question 20. His credibility and honesty, coupled with the facts on the credit reports, show his truthfulness in answering Question 20.

**Whole Person Analysis:** "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 trustworthiness decision. (Revised Guidelines ¶2.a.) "Eligibility for access to classified information is predicated upon the individual meeting these personnel security guidelines. The adjudication process is the careful weighing of a number of variables known as the whole-person concept. Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination." In evaluating Applicant's case, I have considered the adjudicative factors listed in the revised Guidelines, effective September 1, 2006, contained in ¶2.a.

I considered all the variables regarding his debt problems. Applicant spent more money than he earned, but some of the debts arose during his 25-year marriage and he became responsible for them after his divorce. I considered the size of the debts, their nature, and extent of the amount. I also considered the circumstances of his divorce and subsequent unemployment. He has not incurred any recent debt he cannot repay on a monthly basis, and is working to repay all these debts. His efforts resulted in a plan to settle about \$22,000 of his debt, leaving him with \$5,752 to repay over the next few years. His participation in accumulating the debt was voluntary, but circumstances also contributed to some of his debt problems. He sought credit counseling to help repay his debt. Based on his acceptance of responsibility for the debts, and his efforts to repay these debts, I do not find a potential for coercion, pressure, exploitation, or duress, nor a likelihood the past spending pattern will recur, in part because Applicant has no credit cards presently.

These same variables need not be considered regarding the personal conduct allegations in the SOR. Applicant told the truth on his application form, and the "whole person concept" is satisfied by that fact.

Therefore, I conclude the financial considerations trustworthiness concern for Applicant. I conclude the personal conduct trustworthiness concern for Applicant. I also conclude the "whole person concept" for Applicant.

**FORMAL FINDINGS**

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

Paragraph 1. Guideline F: FOR APPLICANT

Subparagraph 1.a to 1.q: For Applicant

Paragraph 2. Guideline E: FOR APPLICANT

Subparagraph 2.a: For Applicant

**DECISION**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for assignment to sensitive duties. His application for eligibility for a public trust position is granted.

Philip S. Howe  
Administrative Judge