

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant is 38 years old and has worked as a budget analyst for a defense contractor since November 2006. She is raising two minor children from her first marriage. Shortly after marrying her second husband, he had a stroke and a kidney transplant and is now on disability. She has delinquent consumer and medical debts totaling approximately \$48,000. Of that amount, approximately \$14,737 has either been paid off or deleted from her credit report. The amount of Applicant's delinquent debt, although not negligible, should not make her vulnerable to coercion, exploitation, or duress. Eligibility for an ADP I/II/III position is granted.

CASENO: 06-19856.h1

DATE: 05/31/2007

DATE: May 31, 2007

In re:)	
)	
)	
-----)	ADP Case No. 06-19856
SSN: -----)	
)	
Applicant for ADP I/II/III Position)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
JACQUELINE T. WILLIAMS**

APPEARANCES

FOR GOVERNMENT

Fahryn Hoffman, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 38 years old and has worked as a budget analyst for a defense contractor since November 2006. She is raising two minor children from her first marriage. Shortly after marrying her second husband, he had a stroke and a kidney transplant and is now on disability. She has delinquent consumer and medical debts totaling approximately \$48,000. Of that amount, approximately \$14,737 has either been paid off or deleted from her credit report. The amount of Applicant's delinquent debt, although not negligible, should not make her vulnerable to coercion, exploitation, or duress. Eligibility for an ADP I/II/III position is granted.

STATEMENT OF THE CASE

On March 2, 2004, Applicant applied for a determination of eligibility for assignment to sensitive positions and completed a Questionnaire for Public Trust Positions (SF 85P).¹ On August 29, 2006, the Defense Office of Hearings and Appeals (DOHA) issued her a Statement of Reasons (SOR) detailing the basis for its preliminary determination that she was not eligible for assignment to an Information Systems Position designated ADP I/II/III.² The SOR alleges trustworthiness concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct).

In a sworn, written statement, dated November 11, 2006, Applicant responded to the SOR allegations and requested a hearing.³ The case was assigned to me on February 5, 2007. A Notice of Hearing was issued on February 12, 2007, scheduling the hearing for February 27, 2007. The hearing took place as scheduled. Department Counsel submitted six exhibits, Exs. 1-6. Applicant submitted 14 exhibits (Exs. A-N). All exhibits were admitted without objection. The Transcript (Tr.) was received on March 9, 2007. The record was left open until March 19, 2007, to allow Applicant the opportunity to submit additional documents. By memorandum dated April 4, 2007, Department Counsel stated that Applicant had not submitted any additional documents. The record was closed on April 4, 2007.

FINDINGS OF FACT

Applicant admitted some of the factual allegations pertaining to financial considerations under Guideline F and personal conduct, Guideline E. Those admissions are incorporated herein as

¹This case was originally docketed with an ISCR case number. However, the hearing revealed that this was an ADP case. Accordingly, the case number was changed to reflect that this is an ADP case. Gov. Ex. 1 (Questionnaire for Public Trust Positions (SF 85P), dated March 2, 2004).

²This action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive). The procedural rules set out in the Directive for security clearance cases are applied to ADP trustworthiness determinations. The adjudicative guidelines set out in Department of Defense Regulation 5200-2R, *Personnel Security Program* (Jan. 1987), as amended and modified (Regulation), are used to make ADP trustworthiness determinations.

³Applicant's Answer, dated November 11, 2006.

findings of fact. She denied some of the other factual allegations under financial considerations. After a thorough and careful review of the record, I make the following additional findings of fact:

Applicant is 38 years old and has worked as a budget analyst⁴ for a defense contractor since November 2006. She has worked for other employers doing budget analyst work since 2004.⁵ Applicant first received a security clearance in 1991 while working for the federal government.⁶ Currently, she has a Secret level clearance.⁷ She received an associate's degree and is currently studying toward a bachelor's degree in business administration, with a minor in accounting.⁸

Applicant's marriage from 1989 to 1993 ended in divorce.⁹ She was left to raise two children from that marriage. The children are now aged 16 and 13 and they continue to reside with her. While married, her husband did not help support the household or the children. She testified—

And the job that I had at the time, I mean I was barely getting by. Apartments and things I had to rent out, then I had to end up leaving those and leaving to go back to my mom's house and I just didn't have any help.¹⁰

When she divorced her husband, he did not pay child support.¹¹ Her ex-husband, the biological father of her children, died in January 2004.¹² She testified that she “was in a bad relationship years prior to my second marriage and I accrued a lot of his debt and he has since died and I got struck with that.”¹³ Each daughter receives approximately \$650 per month in survivors' benefits, until the age of 18.¹⁴ Applicant uses that money to assist her in paying household bills.¹⁵

⁴Tr. 16, 20.

⁵Tr. 20.

⁶Tr. 25.

⁷Tr. 21.

⁸Tr. 19-20.

⁹Tr. 17.

¹⁰Tr. 42.

¹¹Tr. 19.

¹²Tr. 18.

¹³Tr. 133.

¹⁴Tr. 113.

¹⁵Tr. 113.

Applicant petitioned for Chapter 7 bankruptcy on June 28, 1996. Her debts were discharged on October 4, 1996.¹⁶ The liabilities or assets related to the discharge are not part of the record.

In 2004, Applicant remarried.¹⁷ Her two stepchildren are aged 22 and 20, and live with their mother.¹⁸ In 2004, shortly after her remarriage, her husband had a stroke.¹⁹ In 2005, he had a kidney transplant.²⁰ He is now on disability.²¹ Applicant stated she has been the sole provider for the family since her husband's illnesses and his eventual disability, causing her to fall behind in paying all of the household bills.²² Their two-family paychecks became one. At one point, her youngest stepdaughter's mother kicked her out of the house. She then moved in with Applicant and her husband for about a year.²³ Applicant recounted that it was financially rough during this period because she had to "finish getting her [stepdaughter] through high school, two years ago. Graduation, prom, I tried to send her over to college, got stuck with that bill. So it's just been a lot going on."²⁴

In September 2006, Applicant lost her job.²⁵ She found another job in November 2006. While unemployed, her debts became delinquent. Applicant's 32 delinquent debts total approximately \$48,039. Of that amount, approximately \$14,737 has either been paid or deleted from the 2007 credit report.²⁶ The unpaid delinquent debts now total approximately \$33,263. Her salary is approximately \$54,000 annually, which nets about \$4,100 a month.²⁷ Her husband's disability pay is \$1,300 a month, and payments began in either "the latter part of '04, maybe '05 or so."²⁸ His monthly

¹⁶Ex. 6 (United States Bankruptcy Court, Discharge of Debtor, dated October 4, 1996).

¹⁷Tr. 18.

¹⁸Tr. 18.

¹⁹Tr. 84.

²⁰Tr. 43, 84.

²¹Tr. 43.

²²Tr. 43.

²³Tr. 16.

²⁴Tr. 43.

²⁵Tr. 84.

²⁶Ex. 5 (Credit Report, dated February 27, 2007). Debts listed in subparagraphs 1.b-1.e, 1.h-1.k, 1.s, 1.y-1.aa, and 1.ff no longer appear on the 2007 credit report. Debts in subparagraphs 1.i and 1.k for \$165 and \$166, respectively are duplicates. The \$50 debt for medical services in subparagraph 1.n says "paid." The debt in subparagraph 1.r for \$35 states that "customer disputes." Subparagraph 1.aa, a \$70 debt for medical services indicates that it has been paid.

²⁷Tr. 21, 106.

²⁸Tr. 43, 89.

disability pay is substantially less than the monthly income he earned prior to his disabilities. Her monthly mortgage is \$1,800.²⁹

Applicant responded “no” to Question 20 on the SF 85P, executed on March 2, 2004, which asked the following question (*Your Financial record 180 day delinquencies Are you now over 180 days delinquent on any loan or financial obligations? (Include loans or obligations funded or guaranteed by the Federal Government)*). Applicant failed to list those debts that were at least 180 days delinquent, as set forth in subparagraphs 1.b through 1.e, 1.h through 1.k, and 1.m through 1.o of the SOR. Applicant contends that she misunderstood the question. She rushed through completing the application, causing her to misread the question and answer incorrectly.

Applicant worked for a company that assisted people with debt consolidation.³⁰ She did have them assist her with a debt for a major department store.³¹ She stopped using the service because she contends that a mortgage lender told her that if she used such a company, it would not reflect well on her credit.³² Once her delinquent debts are satisfied, she would like to buy a house.³³

POLICIES

To be eligible for assignment to sensitive duties, an applicant must meet the security guidelines contained in the Regulation. “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.”³⁴ Appendix 8 of the Regulation sets forth the personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline.

“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.”³⁵ Each eligibility determination must be a fair, impartial, and commonplace decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Regulation.³⁶ 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 individual’s age and maturity at the time of the conduct; (5) the

²⁹Tr. 43.

³⁰Tr. 86.

³¹Tr. 87.

³²Tr. 87.

³³Tr. 91.

³⁴Regulation ¶ C6.1.1.1.

³⁵Regulation Appendix 8.

³⁶*Id.*

voluntariness of the 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.³⁷

DoD contractor personnel are afforded the right to the procedures contained in DoD Directive 5220.6 before any final unfavorable determination may be made.³⁸ In trustworthiness determination cases, the Government initially must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible to occupy an ADP position.³⁹ Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts.⁴⁰ In security clearance cases, an applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.”⁴¹ “Any doubt as to whether access to classified information is clearly consistent with national interest will be resolved in favor of the national security.”⁴² The same rules apply to trustworthiness determinations for access to sensitive positions.

CONCLUSIONS

Financial Considerations

Under Guideline F, a trustworthiness concern exists for an individual who is financially overextended. The person is at risk of having to engage in illegal or unethical acts to generate funds to meet financial obligations. Similarly, an individual who is financially irresponsible may also be unconcerned, negligent, or careless in properly handling and safeguarding classified information. Applicant has a history of financial problems. Her delinquent debts total approximately \$48,039. Thus, Financial Considerations Disqualifying Conditions (FC DC) E2.A6.1.2.1 (*a history of not meeting financial obligations*) and FC DC E2.A6.1.2.3 (*inability or unwillingness to satisfy debts*) apply.

Various conditions can mitigate trustworthiness concerns arising from financial difficulties. Applicant has been besieged by financial difficulties arising from both of her marriages. Her first marriage resulted in no financial support from her spouse while he was living in their home, which also included no child support payments when they divorced. Her dire financial situation became intolerable and in 1996 she filed for bankruptcy. In the intervening years after the bankruptcy, she was still trying to get her finances unraveled and paid timely. Shortly after her marriage in 2004, her husband suffered a stroke and then had a kidney transplant. Their two-income household dissolved,

³⁷*Id.*

³⁸Regulation ¶ C8.2.1.

³⁹Directive, ¶ E3.1.14.

⁴⁰Directive ¶ E3.1.15.

⁴¹ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

⁴²Directive ¶ E2.2.2.

and she became the sole supporter for the family. More than a year later, he started to receive monthly disability payments, which were substantially less than his monthly income prior to his illnesses. Applicant has been working hard to keep the family financially afloat. Accordingly, Financial Considerations Mitigating Condition (FC MC) E2.A6.1.3.3 (*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 FC MC E2.A6.1.3.6 (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) apply.

Personal Conduct

Personal conduct under Guideline E is always a trustworthiness concern because it asks the central question of a person's past conduct justifies confidence the person can be trusted to properly safeguard sensitive information. Applicant did not deliberately falsify a material fact on her SF 85P. I believe she was truthful and credible when she stated that she failed to disclose debts that were over 180 days delinquent because she misunderstood the question and was rushing through the application. Thus, Personal Conduct Disqualifying Condition E2.A5.1.2.2 (*the deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*) does not apply.

I have considered all the evidence in this case. I have also considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. At 38, Applicant is a mature and earnest woman. She seems eager to resolve her financial problems. She could certainly benefit from some financial counseling to ascertain the true extent of her finances. No doubt she is scared of the financial strains caused by her husband's stroke and kidney transplant. She is trying to avoid another financial disaster, and is diligently trying to pay off her past and current debt. She does not want to file for bankruptcy again. Under these circumstances, Applicant has mitigated the Government's case under the pertinent financial considerations and personal conduct guidelines. Accordingly, I conclude that it is consistent with the national interest to grant a favorable trustworthiness determination to Applicant.

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:

Paragraph one. Guideline F (Financial Considerations):	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant

Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	For Applicant
Subparagraph 1.l:	For Applicant
Subparagraph 1.m:	For Applicant
Subparagraph 1.n:	For Applicant
Subparagraph 1.o:	For Applicant
Subparagraph 1.p:	For Applicant
Subparagraph 1.q:	For Applicant
Subparagraph 1.r:	For Applicant
Subparagraph 1.s:	For Applicant
Subparagraph 1.t:	For Applicant
Subparagraph 1.u:	For Applicant
Subparagraph 1.v:	For Applicant
Subparagraph 1.w:	For Applicant
Subparagraph 1.x:	For Applicant
Subparagraph 1.y:	For Applicant
Subparagraph 1.z:	For Applicant
Subparagraph 1.aa:	For Applicant
Subparagraph 1.bb:	For Applicant
Subparagraph 1.cc:	For Applicant
Subparagraph 1.dd:	For Applicant
Subparagraph 1.ee:	For Applicant
Subparagraph 1.ff:	For Applicant

Paragraph 2. Guideline E (Personal Conduct):

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 make a favorable trustworthiness determination for Applicant. Eligibility is granted.

Jacqueline T. Williams
Administrative Judge