

KEYWORD: Financial

DIGEST: Between 2000 and 2002, Applicant accrued two delinquent credit card debts in the approximate amount of \$6,000, and lost her mobile home to repossession. Her financial problems corresponded with the breakdown of a volatile domestic relationship. Since then, she has remarried, purchased a home, initiated a good-faith dispute regarding the deficiency balance remaining from the repossession, satisfied one of the credit card delinquencies, and has been attempting to contact the remaining creditor since July 2006. She has alleviated the trustworthiness concern, and eligibility to occupy a sensitive position is granted.

CASENO: 06-20215.h1

DATE: 05/31/2007

DATE: May 31, 2007

In re:)	
)	
-----)	
SSN: -----)	ADP Case No. 06-20215
)	
Applicant for Public Trust Position)	

**DECISION OF ADMINISTRATIVE JUDGE
MARC E. CURRY**

APPEARANCES

FOR GOVERNMENT

Ray T. Blank, Jr., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

_____ Between 2000 and 2002, Applicant accrued two delinquent credit card debts in the approximate amount of \$6,000, and lost her mobile home to repossession. Her financial problems corresponded with the breakdown of a volatile domestic relationship. Since then, she has remarried, purchased a home, initiated a good-faith dispute regarding the deficiency balance remaining from the repossession, satisfied one of the credit card delinquencies, and has been attempting to contact the remaining creditor since July 2006. She has alleviated the trustworthiness concern, and eligibility to occupy a sensitive position is granted.

STATEMENT OF THE CASE

On December 7, 2006, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended. (Directive).

The SOR detailed reasons why DOHA could not make a preliminary affirmative finding that it was clearly consistent with the interest of national security to grant or continue Applicant's eligibility for occupying a sensitive position in support of a contract with the Department of Defense, and recommended a referral to an administrative judge to determine whether such eligibility should be granted, continued, denied, or revoked. Applicant answered the SOR on January 12, 2007, and requested a hearing.

The case was assigned to me on March 7, 2007. A notice of hearing was issued on March 28, 2007, scheduling the case for April 19, 2007. The hearing was held as scheduled.

During the hearing, I received four government exhibits, four Applicant exhibits, and Applicant's testimony. At the hearing's conclusion, I left the record open to allow Applicant to submit additional exhibits. Subsequently, she submitted six additional exhibits which I marked and received as Applicant's exhibits E through J. DOHA received the transcript on May 9, 2007.

FINDINGS OF FACT

I have incorporated Applicant's admissions into the findings of fact, and make the following additional findings.

Applicant is a 38-year-old woman with two children, ages 2 and 15. She has been married since 2002, and has been married twice previously. She served in the U.S. Army from 1989 through 1991 when she was honorably discharged. She has earned three years of college credits. Since 2001, she has worked for an insurance company that has a contract with the Department of Defense.

Applicant is highly respected at work and in her community. According to her boss, she is a "dependable, insightful employee with a strong work ethic who has the potential for advancement

in the company if the opportunity presents itself.”¹ Also, she performs volunteer work for a support group serving spouses of deployed service members.²

In the late 1990s, Applicant lived with her boyfriend in a mobile home. She owned it, and he helped her with the mortgage payments.³ In approximately 1999, their relationship began to deteriorate. In March 2000, the boyfriend’s increasingly violent conduct prompted Applicant to vacate the mobile home and obtain a domestic violence protective order “to bring about a cessation of acts of domestic violence.”⁴ Under the order, the boyfriend was to refrain from any contact with her, and enable her to return to the mobile home with a sheriff to retrieve clothing and toiletries. He remained in the mobile home after she moved.

Shortly thereafter, Applicant’s boyfriend stopped assisting with the mortgage payments. Applicant, fearing for her safety, never confronted him about the payments.⁵ Instead, she contacted a representative of the mortgagor, informed him of her predicament, stated she was unable to make payments, and requested a voluntary repossession.⁶ The mortgagor rejected her request, and repossessed the property in April 2001.

The record is unclear with respect to when the mortgagor resold the property, and the amount of the deficiency. According to a September 2006 credit report, Applicant owes \$81,000.⁷ Applicant argues that the amount owed, if any, is nominal because she purchased it for \$81,000, and the mortgagor resold it for \$76,000 after the repossession. In support of her contention, she references a property tax record containing a chronology of transactions involving the property.⁸ A March 2007 credit report lists the deficiency as \$68,690.⁹ Applicant wrote a letter to the mortgagor informing it of her dispute in May 2007.¹⁰

Both of the other debts listed in the SOR grew delinquent during Applicant’s separation from her boyfriend in the late 1990s. She did not address them until she prepared to buy a house in

¹Exhibit C, Supervisor’s Reference Letter, dated April 18, 2007.

²Exhibit B, Reference Letter (undated).

³Tr. 28.

⁴Domestic Violence Protective Order dated March 20, 2000, at 1.

⁵Answer, dated January 12, 2007.

⁶*Id.*

⁷Exhibit 3, Credit Bureau Report dated September 22, 2006, at 2.

⁸County Tax Assessor’s Property Information Mini-Sheet, dated January 8, 2007, as included in Answer at 2.

⁹Exhibit 2, Credit Bureau Report, dated October 29, 2005, at 2.

¹⁰Exhibit G, dated May 1, 2007.

2005.¹¹ As of September 2006, she owed the creditor listed in subparagraph 1.a approximately \$1,000. She satisfied it in February 2007.¹²

As of October 2005, Applicant owed the remaining creditor listed in the SOR approximately \$4,600. When she contacted the creditor in June 2006 to arrange a payment plan, she was told that the delinquency had been assigned to a collection agent.¹³ Using the phone number given to her by the creditor, she then attempted to contact the collection agency, but was unsuccessful. On May 1, 2007, she wrote the collection agency. In the letter, she proposed to satisfy the delinquency through five monthly payments.¹⁴

In August 2006, Applicant successfully applied for a \$149,000 mortgage loan. Since moving into the new home, she has made payments as scheduled. She pays all of her other monthly bills in a timely fashion, and has not accrued any additional delinquent debt since remarrying in 2002.¹⁵ She has approximately \$1,500 remaining each month after expenses.¹⁶

POLICIES

The adjudicative guidelines, as revised December 29, 2005, and implemented September 1, 2006, apply to ADP trustworthiness determinations. In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into those that may be considered in deciding whether to deny or revoke an individual's eligibility for access to classified information or eligibility for occupying a sensitive position (disqualifying conditions), and those that may be considered in deciding whether to grant an individual's eligibility for access. An administrative judge need not view them as inflexible rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set forth in the Adjudicative Process provision in Section E2.2., Enclosure 2, of the Directive, are intended to assist the administrative judge in reaching fair, common sense decisions.

Because the entire process is a scrutiny of a number of variables known as the "whole person concept," all available, reliable information about the person, past and present, favorable and unfavorable, should be considered in making a meaningful decision. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future.

¹¹Tr. 31.

¹²Exhibit D, Credit Bureau Report dated March 16, 2007, at 1.

¹³Tr. 22.

¹⁴Exhibit E, Letter from Applicant to Creditor.

¹⁵Tr. 33.

¹⁶*Id.*

The following adjudicative guideline is raised:

Guideline F - Financial Considerations: 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.

Since the protection of national security (and sensitive information) is the paramount consideration, the final decision in each case must be reached by applying the standard that the determination of an applicant's eligibility for occupying an Information Systems Position is "clearly consistent with the national interest."¹⁷ In reaching this decision, I have drawn only those conclusions that are based on the evidence contained in the record.

The government is responsible for presenting evidence to establish facts in the SOR that have been controverted. The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by the government, and has the ultimate burden of persuasion as to obtaining a favorable trustworthiness determination.

CONCLUSIONS

Financial Considerations

Between 2000 and 2002, Applicant accrued two delinquent credit card debts in the approximate amount of \$6,000, and lost her mobile home to repossession. Financial Considerations Disqualifying Condition (FC DC) 19(c): *A history of not meeting financial obligations*, applies.

Applicant's most significant delinquency corresponded with the breakdown of a volatile domestic relationship. Specifically, upon moving out of the mobile home for her safety, her ex-boyfriend, who remained, stopped assisting her with the mortgage payments. Unable to make the payments alone, she contacted the mortgagor to request an involuntary repossession. It refused, and subsequently repossessed the property involuntarily. Financial Considerations Mitigating Condition (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*, applies.

Applicant disputes the amount of the deficiency owed to the mortgagor after the resale of the mobile home. She alleges that the property was resold for nearly the amount of her original purchase price leaving her with a nominal deficiency balance. Although the document she provided in her Answer in support of this contention was not persuasive enough for me to incorporate it into the findings of fact, it was persuasive enough, however, to meet the criteria governing the applicability of FC MC 20(e): *The individual has a reasonable basis to dispute the legitimacy of*

¹⁷See Directive §§ 2.3, 2.5.3, 3.2, and 4.2.

the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue, particularly in light of the conflicting evidence provided by the government with respect to the deficiency balance.

Applicant's handling of the other delinquencies does not satisfy the second prong of FC MC 20(b). Although they accrued as a result of the same circumstances that generated the repossession, she did not attempt to resolve them until approximately four years had elapsed. Nevertheless, she has satisfied one of the delinquencies, and has taken steps to resolve the remaining delinquency. FC MC 20(d): *the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*, applies. Applicant has mitigated the financial considerations security concern.

Whole Person Concept

Applicant's financial difficulties were caused by the domestic problems and ensuing separation from an ex-boyfriend in the late 1990s. The significance of her separation is somewhat diminished by the length of time she took to begin resolving her delinquencies. Any negative inference extrapolated from Applicant's procrastination is greatly outweighed by her otherwise exemplary character, her current strong financial standing, and the amount of time that has elapsed since she experienced the financial difficulties. The evidence of these factors renders the likelihood of a recurrence of her financial problems and the potential for coercion minimal regardless of the outcome of her dispute with the mortgagor of the mobile home regarding the deficiency balance.

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant or continue Applicant's eligibility for occupying a sensitive position. Eligibility is granted.

FORMAL FINDINGS

Paragraph 1., Guideline F:	FOR THE APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant or continue Applicant's eligibility for occupying a sensitive position. Eligibility is granted.

Marc E. Curry
Administrative Judge