

KEYWORD: Financial

DIGEST: Applicant incurred approximately \$43,978 delinquent credit card debt, for which she has no payment plan in place. She has failed to mitigate the trustworthiness concerns raised under financial considerations. Applicant's eligibility for a trustworthiness position is denied.

CASENO: 06-20256.h1

DATE: 05/29/2007

DATE: May 29, 2007

In re:)	
)	
)	
-----)	ADP Case No. 06-20256
SSN: -----)	
)	
Applicant for Public Trust Position)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
NOREEN A. LYNCH**

APPEARANCES

FOR GOVERNMENT

Richard A. Stevens, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant incurred approximately \$43,978 delinquent credit card debt, for which she has no payment plan in place. She has failed to mitigate the trustworthiness concerns raised under financial considerations. Applicant's eligibility for a trustworthiness position is denied.

STATEMENT OF THE CASE

On January 3, 2006, Applicant submitted an application for a position of public trust, an ADP I/II/III position. The Defense Office of Hearings and Appeals (DOHA) declined to grant the application under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended (the “Directive”).¹ On September 28, 2006, DOHA issued Applicant a Statement of Reasons (SOR) detailing the basis for its decision. The SOR, which is in essence the administrative complaint, alleged security concerns under Guideline F, Financial Considerations of the revised Adjudicative Guidelines (AG) issued on December 29, 2005, and implemented by the Department of Defense effective September 1, 2006. The revised guidelines were provided to Applicant when the SOR was issued.

On October 19, 2006, Applicant submitted a notarized response to the SOR, and elected to have her case decided on the record in lieu of a hearing. Department Counsel submitted the government’s written case on March 2, 2007. Applicant received a complete file of relevant material (FORM) on March 6, 2007, and was provided the opportunity to file objections and submit material to refute, extenuate, or mitigate the government’s case.² Applicant submitted additional information on April 5, 2007. The case was assigned to me on May 2, 2007.

FINDINGS OF FACT

Applicant admitted allegations 1.a, 1.b, 1.d, and 1.g. in her SOR response under Guideline F.³ She denied the remaining Guideline F allegations. The admissions are incorporated as findings of fact. After a complete review of the evidence in the record and upon due consideration, I make the following additional findings of fact:

Applicant is a 37-year-old woman employed as nurse in a position of public trust for a defense contractor. After graduating from high school in 1988, she attended college and received a degree in nursing in 1996. She has worked for her current employer for more than a year. She is single and has no children.⁴

Applicant’s four credit card debts in the SOR total approximately \$ 43,978.00. The other debts in the SOR are in dispute.⁵ Applicant also has significant student loans (\$49,495.00).⁶ She was

¹This action is taken under Executive Order 10865, dated February 20, 1960, as amended.

²The government submitted eight items in support of its contentions.

³Item 2 (Applicant’s Answer to SOR, dated October 19 2006) at 1-3.

⁴Item 5 (Application for Public Trust Positions (SF 85P), dated January 3, 2006) at 1-9.

⁵Item 2, *supra* note 3, at 1-3.

⁶*Id.*

past due on the student loan account more than 120 days in September 2005.⁷ Applicant offered no explanation for any debts. Multiple accounts were charged off or placed for collection between 2001 and 2004, including credit card debt. Several of the debts have been in collection since 2000.⁸

Applicant has not made any payments on the delinquent accounts. In her October 19, 2006 letter, Applicant provided no evidence of any mitigating conditions involving medical problems or other extenuating circumstances.⁹ She reported that she is actively pursuing settlements and disputed debts with the companies listed on the SOR. Applicant noted she obtained copies of her credit reports and “is actively resolving all debts.” The record contains no information concerning her income or expenses. Applicant traveled abroad for pleasure in June 2005.¹⁰

Applicant provided no information concerning her work record.

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.”¹¹ In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information and determining trustworthiness within the executive branch.

To be eligible for a security clearance or access to sensitive information, an applicant must meet the security guidelines contained in the Directive. The revised Adjudicative Guidelines set forth potentially disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. Additionally, each security decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the adjudicative process factors listed in ¶ 6.3 of the Directive, and AG ¶ 2(a). The adjudicative guideline at issue in this case is:

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 or sensitive information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

⁷Item 8 (Credit Bureau Report, dated February 27, 2007) at 2.

⁸*Id.*

⁹*Id.*

¹⁰Item 5 *supra*, note 4 at 6.

¹¹ *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).

Conditions that could raise a trustworthiness concern and may be disqualifying, as well as those which could mitigate concerns pertaining to this adjudicative guideline, are set forth and discussed in the conclusions 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.”¹² An administrative judge must apply the “whole person concept,” and consider and carefully weigh the available, reliable information about the person.¹³ An administrative judge should consider the following factors: (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 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.¹⁴

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.¹⁵ Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts.¹⁶ An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.”¹⁷ Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.¹⁸ The same rules apply to trustworthiness determinations for access to sensitive positions.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. The government has established a *prima facie* case for disqualification under Guideline F of the revised Adjudicative Guidelines (AG) most pertinent to the evaluation of the facts in this case.

¹² Directive, ¶ E2.2.1.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Directive, ¶ E3.1.14.

¹⁶ Directive, ¶ E3.1.15.

¹⁷ ISCR Case No. 01-20700 at 3 (App. Bd. December 19, 2002).

¹⁸ Directive, ¶ E2.2.2.

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 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.*¹⁹

In this matter, the government provided substantial evidence that Applicant accrued delinquent debts with an approximate total balance of \$43,978. It produced substantial evidence that Applicant accrued debt over six years. Applicant admits to four credit card debts. Her 2006 and 2007 credit reports confirm the debts. Consequently, Financial Considerations Disqualifying Conditions (FC DC) AG ¶19(a), (*inability or unwillingness to satisfy debts*) and FC DC ¶19 (c), (*a history of not meeting financial obligations*) apply.

With the government's case established, the burden shifts to Applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against her. I considered the Financial Considerations Mitigating Condition (FC MC) AG ¶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 judgment*). It does not apply because she still carries a significant amount of delinquent debt. Two collection accounts are from 2001. Despite steady employment, she has not made any payments on her debts for several years.

Applicant provided no evidence or explanation concerning any conditions or situations to support the FC MC AG ¶20 (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 circumstance*).

FC MC AG ¶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 under control*) does not apply. Her mere statement that she is actively pursuing settlement and resolution of the debts, without evidence of specific actions is not sufficient to mitigate her situation. A promise to take action in the future is not sufficient to mitigate the financial considerations concern. All of the debts remain outstanding. She has not taken any steps to resolve these debts. Applicant's financial problems remain, and it is unlikely they will be resolved in the near future.

FC MC ¶20(d) (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) is not applicable. Applicant has not shown that she established a record of steady payments or financial stability. She made no attempts to resolve the majority of the delinquent accounts. I cannot conclude that she made a good-faith effort to resolve her debts despite her stated intention to do so in the future. She has not paid even one small debt.

The issue is not whether Applicant is still legally liable for any or all of her outstanding debts, but whether she has presented sufficient evidence of extenuation, mitigating or changed circumstances to warrant a favorable trustworthiness determination. Her remaining unpaid debt constitutes a

¹⁹AG ¶ 18.

trustworthiness concern. In the last few years, she has not made a concentrated effort to repay this debt, despite steady employment since receiving her nursing degree in 1996. This presents a doubt about her willingness to accept responsibility for her conduct and her trustworthiness to hold a position. She has not mitigated the government’s concerns under Guideline F.

Whole Person

In all adjudications, the protection of our national security is the paramount concern. The objective of the trustworthy determination process is the fair-minded, commonsense assessment of a person’s life to make an affirmative determination that the person is eligible for assignment to sensitive duties. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the “whole person” concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I have considered all the evidence and the “whole person” in evaluating Applicant’s trustworthiness. Even an applicant with a good or even exemplary work history may engage in conduct that has negative trustworthiness implications. It is premature to grant Applicant a trustworthiness position based on her lack of action toward resolving her delinquent accounts. Applicant has not met her burden in this case. Despite her steady employment since graduating from college in 1996, Applicant accrued multiple delinquent credit card accounts. It is not clearly consistent with the national interest to grant Applicant eligibility for assignment to sensitive duties. Eligibility is denied.

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 1. Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant

DECISION

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national interest to grant Applicant's request for a determination of trustworthiness and eligibility for assignment to sensitive duties. Eligibility is denied.

Noreen A. Lynch
Administrative Judge