

KEYWORD: Financial

DIGEST: Applicant is 41 years old and has worked as a health care finder for a medical contractor with the federal government. She and her husband had delinquent debts discharged in bankruptcy in 1996. They continue to have financial problems and have over \$65,000 in unresolved delinquent debts. She has paid one debt, but the largest remain. Applicant failed to mitigate the financial considerations concerns under Guideline F. Eligibility is denied

CASENO: 06-20754.h1

DATE: 04/30/2007

DATE: April 30, 2007

In re:)	
)	
-----)	
SSN: -----)	ADP Case No. 06-20754
)	
Applicant for Public Trust Position)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
CAROL G. RICCIARDELLO**

APPEARANCES

FOR GOVERNMENT

Braden Murphy, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 41 years old and has worked as a health care finder for a medical contractor with the federal government. She and her husband had delinquent debts discharged in bankruptcy in 1996. They continue to have financial problems and have over \$65,000 in unresolved delinquent debts. She

has paid one debt, but the largest remain. Applicant failed to mitigate the financial considerations concerns under Guideline F. Eligibility is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue an ADP I/II/III position for Applicant. As required by Department of Defense Directive 5220.6 ¶ E3.1.2 (Jan. 2, 1992), as amended (Directive), DOHA issued a Statement of Reasons (SOR) on December 29, 2006. It detailed the basis for its decision—security concerns raised 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. Applicant’s answer to the SOR was in writing but undated. She elected to have a hearing before an administrative judge. The case was assigned to me on February 16, 2007. With the consent of the parties, I convened a hearing on March 21, 2007, to consider whether it is clearly consistent with the interests of national security to grant or continue Applicant’s eligibility to occupy an ADP I/II/III position. Department Counsel offered five exhibits that were marked as GE 1-5, and admitted without objections. Applicant offered nine exhibits that were marked as AE A-L and admitted without objections. DOHA received the hearing transcript (Tr.) on March 30, 2007.

FINDINGS OF FACT

Applicant’s admissions to the allegations in the SOR are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 41 years old and has worked as a health-care finder for a federal contractor since August 2005. She is a high school graduate and has attended some college courses. She is married and has a 17 year old daughter who graduated from high school in February 2007. Her daughter lives at home and does not work. Applicant’s husband receives social security benefits and is presently working as a security guard. Applicant’s daughter also receives social security benefits.

Applicant and her family lived in State A from 1985 to 1999. She was employed in State A and her husband was not. Her husband decided he wanted to move to State B, so they did. Neither had secured employment in State B when they moved.¹ They moved to City Y where Applicant’s husband was a property manager of an apartment for two months. They did not like City Y, so they moved to City X. Neither had secured employment in City X before they moved.² Applicant did not work from September 1999 until April 2000. It is unclear when Applicant’s husband secured employment, but he was not working when she quit her job in December 2003. Applicant originally testified that she lost her job, but when questioned further she admitted she actually quit. She did not work again until August 2005, when she was hired by her present employer.³ During this time she

¹Tr. 75-77.

²Tr. Tr. 77-79.

³Tr. 70-71.

took a course at a local college that her husband paid for with his social security benefits. She stated was looking for employment, but could not find a job.⁴

Applicant and her husband filed for bankruptcy in 1996. Approximately \$60,000 in debt was discharged. The reason for the bankruptcy was a failed trucking business. Applicant stated she was a silent partner in the business.⁵

SOR 1.b is a judgment from State A entered against Applicant in 1996 for unpaid taxes in the amount of \$1,006.52. Applicant stated she believed she paid all of her taxes before leaving State A and did not know what this judgment was for. She stated her accountant should have taken care of this matter.⁶ She stated she contacted State A and the matter should have been taken care of.⁷ She did not provide any supporting documents to show she paid the taxes and the judgment has been cleared.

SOR 1.c is the deficiency owed on a truck Applicant and her husband owned and was repossessed. They could not make payments on the vehicle when her husband lost her job. She has not contacted the creditor or made any payments on the debt.⁸

SOR 1.d is an account in collection status. Applicant stated she has made payments on this debt and negotiated a settlement in January 2006.⁹ She provided AE A, which is an account statement from August 2005. She also provided copies of unsigned checks to reflect payments she made by phone. The balance reflected on AE A is \$512.98 and shows it is still in a delinquent status. It is less than the original delinquent amount, but no substantive documentation was provided to reflect a current balance and payments.¹⁰

SOR 1.e is a debt for a repossessed mobile home. Applicant and her husband purchased the home in 2001. They could not afford the payments when Applicant's husband lost his job and she quit her job in December 2003. She could not recall when her husband lost his job. They have not paid any of this debt or contacted the creditor to resolve it.¹¹

⁴Tr. 46-48.

⁵Tr. 26.

⁶Tr. 28-31.

⁷Tr. 28-31.

⁸Tr. 31-32.

⁹Answer.

¹⁰Tr. 33-34.

¹¹Tr. 35-36.

SOR 1.f is a debt on an account with a bank for nonsufficient funds. An automatic withdrawal was processed on the account and Applicant did not have sufficient funds to cover the amount. Applicant settled this account with the bank on December 11, 2006.¹²

Applicant is currently making the payments on a truck she financed. She provided documents to show she is paying other bills, including one for elective laser eye surgery. She believes the cost was approximately \$600 per eye.

In the past Applicant was responsible for paying the family expenses, but in 2003 her husband took over the responsibilities.¹³ However, they do not pool their money to pay joint bills. She pays certain monthly expenses and he pays others. He does not contribute payments toward their delinquent debts.¹⁴ He is responsible for his money and they have not discussed how they will pay for joint bills. She agreed they will need to do that in the future.¹⁵ Applicant has not had credit counseling because she stated she believed it was only available when the delinquent debts are credit card bills, which she does not have.¹⁶

Applicant provided a reference letter from her landlord to reflect that she has lived at his apartment complex since September 2005 and has never been late in paying her rent.¹⁷ Coworkers believe her to be an excellent employee with a positive approach and ability to adapt to change. She is considered professional with an outstanding work ethic. She adheres to company policy and is considered reliable, truthful, and a hard worker. She is considered an invaluable resource.¹⁸

POLICIES

The adjudicative guidelines are used to make ADP trustworthiness determinations. Department of Defense contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination may be made.¹⁹

¹²Answer.

¹³TR. 57.

¹⁴Tr. 102.

¹⁵Tr.102-104.

¹⁶Tr. 84.

¹⁷AE F.

¹⁸AE F, G, H, and I.

¹⁹Regulation ¶ C8.2.1.

An individual may not be assigned to perform sensitive duties unless a competent security authority determines it is clearly consistent with the interests of national security to do so.²⁰ Positions designated as ADP I or ADP II are classified as sensitive positions.²¹ ADP III positions are “nonsensitive positions.”²² However, DOHA has been directed to apply the due process provisions of the Directive for all trustworthiness determinations under ADP I, II, and including ADP III positions by a memorandum from the Deputy Undersecretary of Defense (Counterintelligence and Security) dated November 19, 2004. Thus, even though ADP III positions are nonsensitive, they are treated in the same way and adjudicated under the same guidelines and procedures as ADP I and II cases.

“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.”²³ Appendix 8 of the Regulation sets forth adjudicative policy, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. Department of Defense contractor personnel are afforded the adjudicative procedures contained in the Directive.²⁴

“The adjudicative process is an examination of a sufficient period of a person’s life to make an affirmative determination that the person is an acceptable security risk.”²⁵ Each eligibility determination must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Regulation. Specifically these are: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the individual’s age and maturity at the time of the conduct; the voluntariness of participation; the presence or absence of rehabilitation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; and the likelihood of continuation or recurrence. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.²⁶ The government

²⁰Regulation ¶ C2.1.2.

²¹Regulation ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3.

²²Regulation ¶ C3.1.2.2.

²³Regulation ¶C6.1.1.1.

²⁴Regulation ¶ C8.2.1.

²⁵Regulation Appendix 8 at 132.

²⁶ISCR Case No. 96-0277 at 2 (App. Bd. Jul. 11, 1997).

has the burden of proving controverted facts.²⁷ The burden of proof is something less than a preponderance of evidence.²⁸ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.²⁹ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.³⁰ These same burdens of proof apply to trustworthiness determinations for ADP positions.

No one has a right to a security clearance³¹ and “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”³² Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.³³ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.³⁴ 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 clearance.

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 is set forth and discussed in the conclusions below.

CONCLUSIONS

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

Based upon consideration of all the evidence, I find the following adjudicative guideline most pertinent to the evaluation of the facts in this case:

Financial Considerations are a security concern because 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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence

²⁷ISCR Case No. 97-0016 at 3 (App. Bd. Dec. 31, 1997); Directive, Enclosure 3, ¶ E3.1.14.

²⁸*Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

²⁹ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.

³⁰ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.

³¹*Egan*, 484 U.S. at 531.

³²*Id.*

³³*Id.*; Directive, Enclosure 2, ¶ E2.2.2.

³⁴Executive Order 10865 § 7.

that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

Based on all the evidence, Financial Considerations Disqualifying Condition (FC DC) 19 (a) (*inability or unwillingness to satisfy debts*) and FC DC 19 (c) (*a history of not meeting financial obligations*), apply in this case. Applicant has over \$65,000 in delinquent debts that remain unpaid. She has not contacted the creditors that hold her largest debts and although she stated she is attempting to pay others, she failed to provide documents to support her payments. She has paid one delinquent debt.

I have considered all the Financial Considerations Mitigating Conditions (FC MC), and especially considered 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 judgment*), 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 received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control*), FC MC 20 (d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*).

Applicant and her husband had their debts discharged in bankruptcy in 1996. Applicant has a tax judgment that remains unresolved. She has two large debts, both for repossessions, that she has not contacted the creditors to resolve. She provided no indication of how she planned on resolving the debts. I find FC MC 20 (a) does not apply. Applicant and her husband have had periods of unemployment, but they have also made financially risky decisions that were within their control. Applicant was employed when they chose to move without either of them having secured employment. They moved to City Y and then moved again without having employment in City X. Applicant quit her job when her husband was unemployed and remained unemployed for an extended period of time. These conditions were within Applicant's control. I find FC MC 20 (b) does not apply. Applicant has not taken action on her large debts. She has paid one debt. There is no evidence that she has received financial counseling to resolve her debts. The documents Applicant did provide do not substantiate that she is paying one of her smaller debts. I find neither FC MC 20 (c) or (d) apply.

The Whole Person

In all adjudications, the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. 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 considered all the evidence provided and also considered the "whole person" concept in evaluating Applicant's trustworthiness. I considered Applicant's age and her work performance. I also considered that Applicant did not provide any evidence that she has made a payment or contacted the

creditors to resolve her largest delinquent debts. Although she paid one debt, the others remain either unpaid or insufficient proof was provided to show progress in paying. Applicant had a job and quit it when she could not afford to do so. Because of her actions she was unemployed for a long period. She and her husband have also had their debts discharged in bankruptcy in 1996 and find themselves in financial trouble again. I conclude Applicant has failed to mitigate the trustworthiness concerns raised by the financial considerations under Guideline F.

FORMAL FINDINGS

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

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:	For Applicant

DECISION

In light of all of the circumstances in this case, it is not clearly consistent with the interests of national security to grant or continue Applicant's eligibility for an ADP I/II/III position. Eligibility is denied.

Carol G. Ricciardello
Administrative Judge