

KEYWORD: Financial

DIGEST: Applicant has a history of failing to meet her financial obligations dating back to 2000. As of the date of her response to the file of relevant material, she still had five delinquent debts, owing approximately \$10,900, which have been delinquent for years. Although she established circumstances beyond her control contributing to her financial problems, her evidence is insufficient to show that she is in control of her finances, is not overextended, and has a track record of financial responsibility. Eligibility for a public trust position is denied.

CASENO: 06-20768.h1

DATE: 09/19/2007

DATE: September 19, 2007

In re:	)	
	)	
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SSN: -----	)	ADP Case No. 06-20768
	)	
Applicant for Public Trust Position	)	
	)	

**DECISION OF ADMINISTRATIVE JUDGE  
JUAN J. RIVERA**

**APPEARANCES**

**FOR GOVERNMENT**

Alison O’Connell, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant has a history of failing to meet her financial obligations dating back to 2000. As of the date of her response to the file of relevant material, she still had five delinquent debts, owing approximately \$10,900, which have been delinquent for years. Although she established circumstances beyond her control contributing to her financial problems, her evidence is insufficient to show that she is in control of her finances, is not overextended, and has a track record of financial responsibility. Eligibility for a public trust position is denied.

## STATEMENT OF THE CASE

On October 25, 2004, Applicant submitted a questionnaire for public trust positions (SF 85P) (GE 5). On April 5, 2007, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a statement of reasons (SOR) alleging facts and trustworthiness concerns under Guideline F (Financial Considerations). The SOR informed Applicant that based on available information, DOHA adjudicators could not make a preliminary affirmative finding that it is clearly consistent with the national interest to grant her eligibility to occupy an automated data processing position (ADP) designated ADP-I/II/III to support a government contract. Her case was submitted to an administrative judge for a trustworthiness determination.<sup>1</sup>

On April 23, 2007, Applicant answered the SOR. She admitted all the SOR allegations with explanations and requested a decision without a hearing. On June 22, 2007, Department Counsel prepared a File of Relevant Material (FORM), which was received by Applicant on July 2, 2007. She answered the FORM on July 22, 2007, and submitted additional information for consideration within the 30-day period. The case was assigned to me on August 27, 2007.

## FINDINGS OF FACT

Applicant's admissions to the SOR allegations are incorporated herein as findings of facts. After a thorough review of Applicant's answer to the SOR, her answer to the FORM, and the evidence, I make the following additional findings of facts.

Applicant is a 38-year-old customer service advocate who has worked for two government contractors since July 1998.<sup>2</sup> From September 1998 to May 1999, she attended vocational school and was certified as an emergency medical technician and medical assistant. She is divorced (did not indicate the marriage/divorce dates), and he has two children, a girl age 16, and a boy age 14.

Applicant's job history shows she was employed as an ambulance driver from February 1996 to July 1998; senior customer service representative from July 1998 to August 2000; unemployed from August 2000 to September 2000; employed as a medical consultant from September 2000 to April 2003; customer service representative from April 2003 to July 2004; and employed as a customer service advocate from July 2004 to the present. She has been working for her current employer, a government contractor, since July 2004. She has had access to confidential information since April 2003. There is no evidence that she mishandled or compromised classified information

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<sup>1</sup> See 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) (Directive), as amended and revised. On August 30, 2006, the Under Secretary of Defense (Intelligence) published a memorandum directing application of revised Adjudicative Guidelines to all adjudications and other determinations made under the Directive and Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program* (Regulation), dated January 1987, as amended, in which the SOR was issued on or after September 1, 2006.

<sup>2</sup> GE 5 (Office of Personnel Management Questionnaire for Public Trust Positions (SF85P), dated October 24, 2004), unless indicated otherwise, is the source for the facts in this paragraph.

while working for two different government contractors. Applicant has lived in the same residence since July 1997.

In her October 2004 public trust position application, Applicant disclosed she was over 180 days delinquent on four debts. The subsequent background investigation addressed Applicant's financial situation and included the review of her February 2005, September 2006, and June 2007 credit bureau reports (CBR).<sup>3</sup> It also included the review of Applicant's February 2007 answer to DOHA interrogatories (GE 6).

The SOR alleges five delinquent/charged off accounts owing approximately \$10,900. I find the SOR allegations are supported by the government's evidence and Applicant's admissions. As of the day she answered the FORM, Applicant's debts remained delinquent. In her April 2007 answer to the SOR, and in her answers to the DOHA interrogatories, Applicant admitted ¶ 1.a, but claimed it was paid in full in 2000. She failed, however, to provide information corroborating her claim. The other four debts remain delinquent as of the date she answered the FORM.

In her July 22, 2007 answer to the FORM, Applicant claimed she settled the debt alleged in ¶ 1.b and that it would be paid on July 27, 2007; that she would be making \$100 payments on the debts alleged in ¶¶ 1.c and 1.d, beginning on July 27, 2007; and that the debt alleged in ¶ 1.e, was settled and would be paid in two installments, the first one due on July 27, 2007. She also claimed that she paid another debt owing \$330 (not alleged in the SOR) through a wage garnishment. Applicant submitted no evidence, other than her statements, to corroborate her claims.

Applicant's February 2007 personal financial statement shows her gross monthly income plus child support totaled approximately \$2,700. Her monthly expenses were approximately \$700, she paid \$380 in monthly debts, and had \$1,749 of unexplained deductions. That left Applicant with a monthly net remainder of \$121. A review of Applicant's three CBRs show that she has a history of having financial judgments filed against her, and numerous delinquent and charged off debts. Specifically, the June 2007 CBR (GE 10) shows (in part) two unsatisfied judgments owing approximately \$900, filed in 2006 and 2007, a \$24,800 voluntary repossession of a car, and a \$16,400 charge off debt for a car loan.

Applicant claimed she developed financial problems in 2000 because of her inability to work full time due to her medical problems, and the death of her daughter's father in 2006. Her evidence established mitigating circumstances that likely contributed to her financial problems, i.e., she suffers from debilitating and serious medical conditions, she is a single parent with limited child support for her two teenagers, and has had periods of unemployment and underemployment resulting from her medical problems. Notwithstanding, Applicant's evidence (other than her uncorroborated statements) is not sufficient to explain why the alleged debts became delinquent, what efforts, if any, she has taken to pay, settle, or resolve the debts; the status of her current financial situation (i.e., income, monthly expenses, debts, etc.); whether she is still financially overextended; whether she has participated in financial counseling; or whether she has taken any measures to avoid future financial problems.

Applicant averred that during the last four years she has worked for two different government contractors and her trustworthiness has never been questioned. She claimed to be diligent and a hard

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<sup>3</sup> GEs 8-10, respectively.

worker. She averred she has received letters of commendation and awards for her good work performance. Her main concern is the welfare of her family. She is taking care of her financial obligations in the best way she can under the circumstances. She considers herself to be honest and morally sound.

## **POLICIES**

The Directive sets forth adjudicative guidelines (AG) which must be considered in evaluating an Applicant's eligibility for a public trust position. Foremost are the Disqualifying and Mitigating conditions under each AG applicable to the facts and circumstances of the case. However, the guidelines are not viewed as inflexible ironclad rules of law. The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an Applicant. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3 of the Directive,<sup>4</sup> and the whole person concept.<sup>5</sup> Having considered the record evidence as a whole, I conclude Guideline F (Financial Considerations) is the applicable relevant AG.

## **BURDEN OF PROOF**

The purpose of a trustworthiness determination is to resolve whether it is clearly consistent with the national interest to grant or continue an applicant's eligibility for a public trust position.<sup>6</sup> The government has the initial burden of proving controverted facts alleged in the SOR. To meet its burden, the government must establish a prima facie case by substantial evidence.<sup>7</sup> The responsibility then shifts to the applicant to refute, extenuate or mitigate the government's case. Because no one has a right to a public trust position, the applicant carries the ultimate burden of persuasion.<sup>8</sup>

A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest to

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<sup>4</sup> Directive, Section 6.3. "Each clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy in enclosure 2 . . ."

<sup>5</sup> AG ¶ 2(a). ". . . 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. . . ." The whole person concept includes the consideration of "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 extent to which participation is voluntary; the presence or absence of rehabilitation and other permanent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; and the likelihood of continuation or recurrence. . ."

<sup>6</sup> See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

<sup>7</sup> ISCR Case No. 98-0761 at 2 (App. Bd. Dec. 27, 1999) (Substantial evidence is more than a scintilla, but less than a preponderance of the evidence); ISCR Case No. 02-12199 at 3 (App. Bd. Apr. 3, 2006) (Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record); Directive ¶ E3.1.32.1.

<sup>8</sup> *Egan*, *supra* n. 6, at 528, 531.

ensure each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or her own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access to classified information in favor of protecting national security.<sup>9</sup> The same standard applies in trustworthiness determinations.

## CONCLUSIONS

Under Guideline F (Financial Considerations), the government’s concern is that Applicant’s 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. AG ¶ 18.

It was Applicant’s responsibility to refute, extenuate, or mitigate the government’s allegations against her. She failed to provide sufficient evidence to do so. Based on the record evidence, I conclude that as of July 2007, Applicant had five outstanding delinquent debts (¶¶1.a - 1.e) owing approximately \$10,900. Applicant’s financial problems are recent, not isolated, and ongoing. Applicant’s unwillingness or inability to honor her financial obligations is evidenced by the delinquent debts she has been carrying for years, and her failure to show meaningful efforts to repay creditors or otherwise resolve her financial situation. Financial Considerations Disqualifying Condition AG ¶ 19(a): *inability or unwillingness to satisfy debts*; and AG ¶ 19(c): *a history of not meeting financial obligations*; apply in this case.

Applicant was provided with a copy of the FORM in which the government strongly argued that Applicant had failed to demonstrate she had resolved the debts alleged in the SOR, that she was financially solvent, that she had a track record of financial responsibility. Notwithstanding the government’s concerns, Applicant failed to provide documents to corroborate her assertions.

Applicant’s evidence raised facts that I considered as circumstances beyond her control contributing to her financial problems, i.e., her medical condition, she is a single parent, and her periods of unemployment and/or underemployment resulting from her medical problems. Notwithstanding, under the totality of the circumstances of her case, Applicant failed to provide sufficient information to support the applicability of Financial Considerations Mitigating Condition AG ¶ 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.*

Her unemployment/underemployment could be considered as a circumstance beyond her control, however, Applicant’s evidence is not sufficient to show that she has dealt responsibly with her financial obligations. Many of her debts preceded her one month period of unemployment. She failed to submit corroborating information showing her periods of underemployment resulting from her medical conditions, and the extent to which her medical condition affected her ability to work full

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<sup>9</sup> See *Id.*; AG ¶ 2(b).

time. She also failed to explain the impact on her financial situation caused by the death of her daughter's father in 2006.

Applicant failed to provide sufficient information to support the applicability of any of the Financial Considerations Mitigating Conditions. Her evidence is not sufficient to show she has dealt responsibly with her financial obligations. Applicant presented little or no evidence of meaningful efforts taken to resolve her debts before or after receipt of the SOR (i.e., paid debts, settlements, negotiations, payment plans, budgets, financial assistance/counseling). Furthermore, she failed to present sufficient evidence to show she is not overextended or that her financial problems will not be a concern in the future. Applicant's financial history and lack of favorable evidence preclude a finding that she has established a track record of financial responsibility. Applicant's available evidence is not sufficient to demonstrate she has taken control of her financial situation and is capable of overcoming her financial difficulties. On the contrary, her 2007 CBR shows she acquired and defaulted two additional large debts.

I have carefully weighed all evidence, and I applied the disqualifying and mitigating conditions as listed under the applicable adjudicative guidelines. I specifically considered Applicant's answers to the SOR and the FORM, her age, level of education, her years working for government contractors, her medical condition, her periods of unemployment/underemployment, that she is a single parent of two, and that there is no evidence that she ever mishandled or caused the compromise of classified information. Considering all available information, and the whole person concept, I find Applicant has not mitigated the Financial Considerations security concern.

### **FORMAL FINDINGS**

Formal findings regarding each SOR allegation as required by Directive Section E3.1.25 are as follows:

Paragraph 1, Financial Considerations  
Subparagraphs 1.a - 1.e

AGAINST APPLICANT  
Against Applicant

## **DECISION**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue eligibility for a public trust position for Applicant. Eligibility for a public trust position is denied.

Juan J. Rivera  
Administrative Judge