

DATE: October 15, 2007

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In re:	)	
	)	
-----	)	ADP Case No. 06-21950
SSN: -----	)	
	)	
Applicant for Public Trust Position	)	
_____	)	

**DECISION OF ADMINISTRATIVE JUDGE  
ERIN C. HOGAN**

**APPEARANCES**

**FOR GOVERNMENT**

Richard A. Stevens, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant has three delinquent debts totaling \$11,759. In her response to the SOR, she indicates that the bills are in the process of being paid off. At the close of the record, there is sufficient proof that one account is paid. Applicant provided no proof that the other two debts were settled. She has not mitigated the trustworthiness concerns raised under financial considerations. Applicant's request to be granted a position of a public trust position is denied.

**STATEMENT OF CASE**

On December 14, 2006, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) stating they were unable to find that it is clearly consistent with the national interest to grant or continue a position of public trust.<sup>1</sup> The SOR, which is in essence the administrative complaint, alleges 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.

In a sworn statement, dated January 2, 2007, Applicant responded to the SOR allegations and elected to have her case decided on the written record, in lieu of a hearing. Department Counsel submitted the government's file of relevant material (FORM) on July 11, 2007. The FORM was mailed to Applicant on July 12, 2007, and received on July 17, 2007. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not respond. The case was assigned to me on September 26, 2007.

### **FINDINGS OF FACT**

In her SOR response, Applicant admits all of the allegations. Her admissions are incorporated herein. In addition, after a thorough and careful review of the pleadings and exhibits, I make the following findings of fact.

Applicant is a 53-year-old woman employed with a Department of Defense contractor who is applying for a position of public trust. She is married and has two children and one stepchild.<sup>2</sup>

On August 16, 2004, Applicant completed a questionnaire for public trust position, Standard Form 85P (SF 85P).<sup>3</sup> In response to question 22(b) Your Financial Record, "Are you now over 180 days delinquent on any loan or financial obligation?", she listed three debts from 2002. In an affidavit provided to OPM related to her background investigation, Applicant listed the three accounts alleged in the SOR. They include a \$3,686 personal loan, placed for collection in July 2002 (SOR ¶ 1.a); a \$928 department store credit card account that was charged off and placed for collection in August 2002 (SOR ¶ 1.b); and a \$7,145 delinquent credit card account, placed for collection in August 2002 (SOR ¶ 1.c).<sup>4</sup>

In a signed statement provided to the Office of Personnel Management (OPM) on September 18, 2003, Applicant indicated that she and her husband got behind on their bills in 2002. In May 2002, they were both unemployed. Neither of them received unemployment benefits. Applicant began working full-time for her current employer in September 2002. Her husband was still not

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<sup>1</sup>This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).

<sup>2</sup> Item 5.

<sup>3</sup> *Id.*

<sup>4</sup> Item 6, *see also* Items 7-10.

working a steady job in September 2003. She tried unsuccessfully to negotiate with her creditors to make smaller monthly payments. She intends to pay these bills off as soon as she can.<sup>5</sup>

In her response to the SOR, dated January 2, 2007, Applicant indicates that the bills are in the process of being paid off and included a copy of a Department of Housing and Urban Development Settlement Statement, dated January 2, 2007. The settlement statement includes a section called "Disbursement to Others." This section lists eight creditors. Three of the creditors listed were the creditors alleged in the SOR ¶¶ 1.a, 1.b, and 1.c.<sup>6</sup>

Applicant did not provide additional information to verify that all three accounts alleged in the SOR were fully satisfied (such as receipts from the creditor indicating the account was paid in full). A July 10, 2007, credit report provided by the Government lists the debt alleged in SOR ¶ 1.a as paid in full.<sup>7</sup> The credit report still lists the debt alleged in SOR ¶1.b as a \$928 charged off account. The debt alleged in SOR ¶ 1.c is listed with a balance of \$7,145 but there is a notation that Applicant disputes the account.<sup>8</sup> An additional collection account in the amount of \$1,253 is listed. It is likely that this is the same debt that is alleged in SOR ¶ 1.b that has been transferred to a new collection agency.<sup>9</sup>

On September 23, 2003, Applicant provided a personal financial statement. Her net monthly household income was \$1,469.05. Her total monthly household expenses were \$1,325.46. Applicant had approximately \$143.59 left over each month after expenses.<sup>10</sup> She did not provide an updated personal financial statement in response to the SOR.

## 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.”<sup>11</sup> 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, approved by the President on December 29, 2005 and implemented by the Department of Defense,

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<sup>5</sup> Item 6.

<sup>6</sup> Item 4.

<sup>7</sup> Item 10 at 3.

<sup>8</sup> Item 10 at 2.

<sup>9</sup> Item 10 at 2.

<sup>10</sup> Item 6 at 5.

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

effective September 1, 2006, sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. 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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.<sup>12</sup>

Conditions that could raise a trustworthiness concern and may be disqualifying, as well as those which could mitigate security 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 an acceptable security risk.”<sup>13</sup> An administrative judge must apply the “whole person concept,” and consider and carefully weigh the available, reliable information about the person. 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 extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent 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.<sup>14</sup>

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.<sup>15</sup> Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts admitted by the applicant or proven by Department Counsel. The applicant has the ultimate burden of persuasion as to obtaining a favorable clearance decision.<sup>16</sup> “Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security.”<sup>17</sup> The same rules apply towards trustworthiness determinations for access to sensitive positions.

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<sup>12</sup> Revised AG, dated August 2006, ¶ 18.

<sup>13</sup> Revised AG, dated August 2006, ¶ 2(a).

<sup>14</sup> *Id.*

<sup>15</sup> Directive ¶ E3.1.14.

<sup>16</sup> Directive ¶ E3.1.15.

<sup>17</sup> Revised AG, dated August 2006, ¶ 2(b).

## CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. I make the following conclusions.

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 to Applicant's case. In 2002, Applicant and her husband encountered financial problems due to a period of unemployment. They incurred three delinquent accounts totaling \$11,759.

The financial considerations concern can be mitigated. Financial Considerations Mitigating Condition (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*) does not apply. Applicant did not attempt to resolve these delinquent accounts until late December 2006/early January 2007. Applicant's financial problems were ongoing and recent. It is unclear whether two of the accounts, SOR ¶¶ 1.b and 1.c have been completely resolved.

FC MC ¶ 20(b) (*the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances*) applies, in part. Applicant and her husband encountered financial problems when they both were unemployed in May 2002. However, Applicant has been employed full-time since September 2002. She did not take steps to resolved her delinquent debts until January 2007, approximately one month after the SOR was issued. FC MC ¶ 20(b) is given less weight due to the length of time it took Appellant to take action to resolve her delinquent accounts.

FC MC 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. Applicant provided no evidence that she attended financial counseling. She did not provide information on her current financial situation, such as an updated personal financial statement. Two of the three delinquent debts remain listed as delinquent debts on Applicant's credit report. Applicant has provided insufficient information to form a conclusion that her financial situation is now under control.

FC MC 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*), applies with respect to the debt alleged in SOR ¶ 1.a. However, Applicant has the burden to mitigate the concerns raised due to her financial situation. Part of that burden is to provide sufficient proof that her delinquent debts were paid in full. She did not meet her burden of proof to show that the debts alleged in SOR ¶¶ 1(b) and 1(c) were satisfied. Both accounts are listed on her most recent credit report. She did not provide enough evidence to support her claims that these accounts are resolved.

Applicant provided no information as to her current financial status. There is no evidence that she received financial counseling which would be helpful given her past history of financial irresponsibility. For these reasons, Applicant has not provided sufficient information to mitigate the concerns under Guideline F.

Guideline F is decided against Applicant.

I considered all the evidence provided and also considered the “whole person” concept in evaluating Applicant’s risk and vulnerability in protecting our national interests. I find Applicant failed to mitigate the trustworthiness concerns raised under financial considerations. Therefore, I am persuaded by the totality of the evidence in this case, that it is not clearly consistent with the national interest to grant Applicant a position of public trust.

**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:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant

**DECISION**

In light of all of the evidence presented by the record in this case, it is not clearly consistent with the national interest to find Applicant suitable for a position of public trust. Applicant's request to be granted a position of public trust is denied.

Erin C. Hogan  
Administrative Judge