

KEYWORD: Financial

DIGEST: Applicant failed to mitigate security concerns over her long-standing financial problems as she has over \$800,000 in debt incurred from 1999 to 2006, including two judgments totaling \$371,000. While she recently decided to file for Chapter 7 bankruptcy in July 2007 to discharge her long-standing debts, she did not establish which, if any, of the two dozen debts have been discharged. Even since her business failed in 2002, she developed many new debts and documented no efforts to resolve even minor debts. Her business failure linked to bad advice does not establish a defense of special circumstance. Her reported good performance on the job is not sufficient to establish how she has reformed or demonstrated positive changes in behavior need to mitigate financial concerns. Eligibility for a trustworthiness position is denied.

CASENO: 06-21980.h1

DATE: 09/27/2007

DATE: September 27, 2007

In Re:)
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 SSN: -----)
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 Applicant for Public Trust Position)
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ADP Case No. 06-21980

**DECISION OF ADMINISTRATIVE JUDGE
KATHRYN MOEN BRAEMAN**

APPEARANCES

FOR GOVERNMENT

Stephanie C. Hess, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant failed to mitigate security concerns over her long-standing financial problems as she has over \$800,000 in debt incurred from 1999 to 2006, including two judgments totaling \$371,000. While she recently decided to file for Chapter 7 bankruptcy in July 2007 to discharge her long-standing debts, she did not establish which, if any, of the two dozen debts have been discharged. Even since her business failed in 2002, she developed many new debts and documented no efforts to resolve even minor debts. Her business failure linked to bad advice does not establish a defense of special circumstance. Her reported good performance on the job is not sufficient to establish how she has reformed or demonstrated positive changes in behavior need to mitigate financial concerns. Eligibility for a trustworthiness position is denied.

STATEMENT OF THE CASE

On December 5, 2006, the Defense Office of Hearings and Appeals (DOHA) declined to grant the application for a position of public trust under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended (the "Directive").¹ Consequently, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision and alleged security concerns under Guideline F (Financial Considerations) in paragraph 1 based on the revised Adjudicative Guidelines² issued on December 29, 2005, and implemented by the Department of Defense, to be effective September 1, 2006. Applicant responded to these SOR allegations in a notarized Answer dated December 26, 2006, which DOHA received on January 3, 2007. She requested a decision without a hearing.

Department Counsel on June 5, 2007, prepared a File of Relevant Material (FORM) which was forwarded to her on June 8, 2007. The Applicant received the FORM on June 15, 2007; in response she submitted supplementary information on July 1, 2007. The Department Counsel did not object to her submissions, so they were admitted into evidence as Exhibits A and B. The matter was assigned to me on July 26, 2007. Subsequently, after an initial review, I requested Department counsel contact the Applicant and allowed her to submit updated information on her bankruptcy filing. In response, on August 14, 2007, she submitted Exhibit C, the Notice of Chapter 7 Bankruptcy Case Filing of July 13, 2007, and other documents which were admitted into evidence.

FINDINGS OF FACT

After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I make the following Findings of Fact:

Applicant, 49 years old, has worked for a defense contractor in State #1 since September 11,

¹ This action was taken under Executive Order 10865, dated February 20, 1960, as amended; and Memorandum from the Deputy Under Secretary of Defense Counterintelligence and Security, titled "Adjudication of Trustworthiness Cases," dated November 19, 2004.

² Applicant did receive a copy of the DoD Directive 5220.6 sent with the Statement of Reasons (SOR).

2005, when she completed a Questionnaire for Public Trust Positions (SF 85P). She is a health care finder. She stated she had excellent evaluations and attendance. Earlier, she attended a state university in State #2 from 1976 to 1977 but received no degree. She is divorced. (Answer; Exhibit 4)

Finances

Although Applicant revealed only one debt in her SF 85P, investigation revealed a substantial number of debts. (Exhibits 5, 6) In her response to the SOR, she explained that she had a business as a sole proprietor where she was “misinformed and ignorant as to how to open a business” and was “given the wrong advice.” (Answer) She explained further that she had been misled by her former boyfriend in this business. She used all of the income to pay for bills, insurance, and had even paid her boyfriend’s child support for three children. The business failed five years ago in 2002. She claimed to have been “tricked” and that caused the “break up of that relationship,” but she could not sue him as he had signed nothing. She could not afford to file for bankruptcy at that time. However, she has used her financial resources to help support her daughter and her two-year old child. (Exhibit A)

Applicant admitted all of the debts listed to creditors which total \$861,710. Her debts include three repossessed car debts in a \$6,154 debt for an auto repossessed in 1999 (SOR ¶ 1.a.), a \$27,912 debt for a repossessed leased auto in 2002 (SOR ¶ 1.g.), and \$7,291 for an auto repossessed in 2004 (SOR ¶ 1.p.) which seem unlikely to be business-related debts. Her other debts range from small consumer debts which she documented no efforts to pay to numerous other large debts and judgments detailed in the SOR. Her financial problems continued to April 2006 when a \$69,028 delinquent account (SOR ¶ 1.v.) was referred for collection. In December 2006 she explained she planned to file for bankruptcy, but had not been able to do so earlier as she did not have the money. (Answer) Prior to filing bankruptcy she provided no evidence that she had made arrangements to pay any of the debts.

She paid a \$1,700 fee in December 2006 to a bankruptcy firm. (Exhibit B) In July 2007 she stated that she planned to see her attorney to file for bankruptcy under Chapter 7 and had taken a required credit counseling course. (Exhibit A) Her Chapter 7 bankruptcy case was filed on July 12, 2007; and a meeting of creditors was scheduled for August 15, 2007. (Exhibit C) However, she failed to provide any documentation as to which creditors were included in the bankruptcy and which, if any, of her debts were discharged.

In her Answer she disclosed she has a net monthly income of approximately \$1,700 and monthly expenses of \$1,300 which leaves her a balance of over \$400 each month; however, beyond stating that she lives within her means, she did not explain how she planned to resolve these debts other than to file for bankruptcy. She moved to a less expensive apartment to reduce her expenses. She drives a 1997 vehicle that she owns. (Answer)

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.”³ 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. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. 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.⁴

An administrative judge must apply the “whole person concept,” and consider and carefully weigh the available, reliable information about the person.⁵ 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.⁶

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.⁷ Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts.⁸ An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.”⁹ Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.¹⁰ The same rules apply to trustworthiness determinations for access to sensitive positions.

CONCLUSIONS

³ *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).

⁴ Directive, ¶ E2.2.1.

⁵ *Id.*

⁶ *Id.*

⁷ Directive, ¶ E3.1.14.

⁸ Directive, ¶ E3.1.15.

⁹ ISCR Case No. 01-20700 at 3 (App. Bd. December 19, 2002).

¹⁰ Directive, ¶ E2.2.2.

Guideline F: Financial Considerations

¶ 18. **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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

The government provided substantial evidence of Applicant's financial problems reflected by her accumulating over \$861,000 in debts that have persisted from 1999 to 2006. While she claimed that several of the debts were linked to her failed business, she did not explain exactly how any of the debts were business debts. Included are three repossessed car debts in 1999 (SOR ¶ 1.a.), in 2002 (SOR ¶ 1.g.), and in 2004 (SOR ¶ 1.p.) which seem unlikely to be business-related debts. While the majority of her debts are large debts and judgments to financial institutions which may be linked to her failed business, she also has a series of small debts of \$192 (SOR ¶ 1.m.), \$53 for cable (SOR ¶ 1.n.), \$55 for a wireless phone (SOR ¶ 1.q.), and \$53 to a department store (SOR ¶ 1.t.): it seems unlikely that those debts relate to her failed business. Nor did she document any efforts to resolve even these minor debts. Since her business failed in 2002, she did not explain how the most recent debt of \$69,028, referred for collection in April 2006, (SOR ¶ 1.v.) is linked to her failed business. Consequently, Financial Considerations Disqualifying Condition (DC), AG ¶ 19(a), (*inability or unwillingness to satisfy debts*) and AG ¶ 19(c), (*a history of not meeting financial obligations*) apply.

With the government's case initially established, the burden shifted to Applicant to present evidence of refutation, extenuation, or mitigation¹¹ to overcome the case against her. In large part, Applicant claims that her debts grew out of a failed business, but she did not link any of these specific debts to the business. While she claims that many of her debts were due to conditions beyond her control, she did not establish that link clearly. Applicant did take some action and gave a fee to a lawyer to file for Chapter 7 Bankruptcy in December 2006; however, he did not file until July 2007. While her debts may ultimately be discharged under Chapter 7, she provided no evidence

¹¹ Five Financial Considerations Mitigating Conditions under Guidelines ¶ 20(a)-(e) potentially apply: (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; (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; (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 is under control; (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; (e) the individual has a reasonable basis to dispute the legitimacy of 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.

as to which debts to which creditors were included in her filing. She showed unsound judgment in her delay in addressing these serious financial issues, so she did not establish she acted in good faith.¹² Thus, she fails to meet AG ¶ 20(d), (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*). Indeed the evidence suggests she continued to develop new debts even beyond the time that her business failed in 2002. In order to establish that her business failed due to special circumstances, she would have to provide a clearer explanation.

While Applicant stated she had received counseling in a course that the Bankruptcy court requires for these financial problems, she did not provide the certificate. Nor did she explain how the counseling has led her to improve her financial practices. She failed to establish the clear steps she has taken to turn around her long-standing financial issues. Overall, Applicant failed to establish mitigation as her decision to file for bankruptcy is too recent and she provided no evidence as to which debts might have been discharged. An applicant must do more than merely show that she relied on a legally available option (such as bankruptcy) in order to claim the benefit of the “good faith” mitigating condition.

Whole Person Analysis

Evaluating Applicant in light of the “whole person” concept, I conclude she is a sincere person who lived through difficult circumstances. However, she failed to demonstrate any initiative to develop a solution to her large and long-standing delinquent debt. She even delayed filing for bankruptcy under Chapter 7 from December 2006 to July 2007, so she did not establish that any of the debts alleged in the SOR have been discharged. Neither did she show how she has changed her financial practices other than moving to a place with lower rent. Beyond her own statements, she provided no evidence to establish her favorable employment history. Given the persistence of her substantial financial problems from 1999 to 2006, the likelihood of new debts and related problems is high.

After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole person, I conclude she has failed to mitigate the security concerns pertaining to financial considerations. I rule against Applicant on subparagraphs 1.a. through 1.v. under SOR Paragraph 1.

FORMAL FINDINGS

¹² The Appeal Board has previously explained what constitutes a “good faith” effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the “good faith” mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant’s debts. The Directive does not define the term ‘good-faith.’ However, the Board has indicated that the concept of good-faith ‘requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.’ Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [the “good faith” mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

After reviewing the allegations of the SOR in the context of the Adjudicative Guidelines in Enclosure 2 and the factors set forth under the Adjudicative Process section, I make the following formal findings:

Paragraph 1. Guideline F:

AGAINST APPLICANT

Subparagraph 1.a through 1.v.

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 Applicant eligibility for assignment to sensitive duties. Eligibility for a trustworthiness position is denied.

Kathryn Moen Braeman
Administrative Judge