

KEYWORD: Financial

DIGEST: Applicant accrued about \$14,000 in delinquent debt between 1997 and 2006. Despite being steadily employed since 2001, she did not try to pay or otherwise resolve her debts until faced with the loss of her trustworthiness position. Her recent actions to resolve her debts and improve her ability to manage her finances are insufficient to overcome the security concerns caused by her financial problems. Eligibility for an ADP I/II/III position is denied.

CASENO: 06-22100.h1

DATE: 09/26/2007

DATE: September 26, 2007

---

In re: )  
 )  
 )  
 ----- ) ADP Case No. 06-22100  
 SSN: ----- )  
 )  
 Applicant for ADP I/II/III Position )  
 )  
 )

---

**DECISION OF ADMINISTRATIVE JUDGE  
MATTHEW E. MALONE**

**APPEARANCES**

**FOR GOVERNMENT**

Rita O'Brien, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant accrued about \$14,000 in delinquent debt between 1997 and 2006. Despite being steadily employed since 2001, she did not try to pay or otherwise resolve her debts until faced with

the loss of her trustworthiness position. Her recent actions to resolve her debts and improve her ability to manage her finances are insufficient to overcome the security concerns caused by her financial problems. Eligibility for an ADP I/II/III position is denied.

## STATEMENT OF THE CASE

On August 23, 2004, Applicant submitted a Public Trust Position Application (SF 85P). After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding<sup>1</sup> that it is clearly consistent with the national interest to grant Applicant a position of trust. On April 7, 2007, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts that raise trustworthiness concerns addressed in the Directive under Guideline F (financial considerations).

Applicant timely responded to the SOR, and requested a hearing. The case was assigned to me on June 29, 2007, and I convened a hearing on August 7, 2007, at which the parties appeared as scheduled. The government offered six exhibits, all of which were admitted without objection (Gx. 1 - 6). Applicant testified and introduced 21 exhibits (Ax. A - U), which were admitted without objection. DOHA received the transcript (Tr.) on August 23, 2007.

## FINDINGS OF FACT

The government alleged through the SOR that Applicant owes \$14,112 in delinquent debt for 21 unpaid accounts, 13 of which (SOR ¶¶ 1.a - 1.m) are unpaid medical accounts referred to collection agencies. The remaining accounts are commercial accounts for credit cards or consumer services referred for collection (SOR ¶¶ 1.n, 1.r - 1.u) or charged off as business losses (SOR ¶¶ 1.o - 1.q). Applicant admitted all of the allegations, except for SOR ¶¶ 1.a, 1.b, 1.d, 1.g, 1.i, 1.m, and 1.t. Her admissions to the remaining allegations are incorporated herein as facts. After a thorough review of the transcript and exhibits, I make the following additional findings of fact.

Applicant is 42 years old, has never been married, and works as a claims associate for a large health care and medical insurance company contracted to manage medical insurance claims and information for TRICARE, the Department of Defense (DoD) medical insurance system for military personnel and their families. She is a single mother of three, one of whom is a grown adult. One child is in college, and her tuition is being financed through scholarships, grants, and student loans.<sup>2</sup> Applicant's youngest child, age 3, still resides with Applicant. The father of her youngest child has only occasionally paid child support, and Applicant intends to seek a court order to force him to pay current and past due support.<sup>3</sup>

---

<sup>1</sup> Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended. A memorandum from Carol A. Haave, Deputy Under Secretary of Defense for Counterintelligence and Security to DOHA Director, *Adjudication of Trustworthiness Cases* (Nov. 19, 2004), directed that adjudication of trustworthiness cases for ADP I, II, and III positions be resolved using the provisions of the Directive rather than, as originally drafted, DoD Regulation 5200.2-R, *DoD Personnel Security Program*, as amended (Regulation). Positions designated as ADP I or ADP II are classified as sensitive positions in section AP10.2.1 of the Regulation. ADP III positions are nonsensitive positions. (Regulation, AP10.2.3.1) By virtue of the aforementioned memorandum, however, even though they are nonsensitive positions, ADP III cases are treated in the same way and adjudicated under the same guidelines and procedures as ADP I and II cases.

<sup>2</sup> Ax. P; Tr., 58, 63.

<sup>3</sup> Gx. 1; Tr., 61 - 62.

From September 1989 until February 2001, Applicant worked as a secretary and payroll clerk for an electrical manufacturing company. During that period, she had two miscarriages, the second of which occurred in February 2001. It was around this time that she lost her job when the company moved its operations to Mexico, and was unemployed until September 2001, when she was hired by her current employer. While unemployed, she relied for income on short-term disability benefits and unemployment payments. Her health benefits paid for the costs of her first miscarriage, but the coverage was unavailable after she was laid off. In December 2001, Applicant suffered another miscarriage and missed two weeks of work without benefit of medical leave because she was still classified as a new employee.<sup>4</sup>

In 2002, Applicant applied for and was granted a position of trust, which is required as part of her current job duties. On the SF 85P she submitted, she disclosed she was more than 180 days delinquent on a single credit card account. When she applied for a periodic reinvestigation in 2004, she disclosed the same delinquent credit card account. A credit report obtained as part of the ensuing background investigation showed Applicant owed the debts listed in the SOR, most of which had been referred for collection.<sup>5</sup>

Several of the debts listed in Applicant's credit report are for medical services related to her miscarriages and to the birth of her youngest child in 2003 (SOR ¶¶ 1.a, 1.b, 1.d - 1.g, 1.i, 1.k). Applicant also became delinquent on other debts related to her own medical care (SOR ¶¶ 1.h, 1.j, 1.l, 1.m). The listed medical delinquencies totaled \$5,124. In 2006, she paid the debts listed the debts listed in SOR ¶¶ 1.a, 1.b, 1.d - 1.f, and 1.h, which total \$4,620.<sup>6</sup> Applicant also has paid most of the remaining \$504 medical debts.<sup>7</sup>

Applicant also owed another \$6,960 in delinquent debts consisting of an unpaid cable TV account (SOR ¶ 1.n), an unpaid jewelry store account (SOR ¶ 1.o), five delinquent credit card or personal loan accounts (SOR ¶¶ 1.p - 1.r, 1.t, and 1.u), and an unpaid telephone service account (SOR ¶ 1.s). Of these debts, she has paid or resolved the debts listed in SOR ¶ 1.n and ¶ 1.s.<sup>8</sup>

Applicant resolved the credit card debts listed in SOR ¶¶ 1.t and 1.u by enrolling in debt rehabilitation plans run by each card company. She now has a different version of each card and her accounts are current for credit reporting purposes. But she pays a higher interest rate and will have a lower credit limit when she pays down a lower amount owed by the terms of her settlement. She pays about \$35 monthly to each plan.<sup>9</sup>

---

<sup>4</sup> Tr., 76 - 79.

<sup>5</sup> Gx. 5.

<sup>6</sup> Ax. A; Ax. C; Ax. I.

<sup>7</sup> Ax. D - H; Ax. J.

<sup>8</sup> Ax. K; Ax. M.

<sup>9</sup> Ax. N; Ax. O.

Applicant also has paid about half of the \$751 she owed on the jewelry store listed in SOR ¶ 1.o, and she continues to pay \$50 each month on this debt. It became delinquent because she forgot about it.<sup>10</sup> She still has not resolved the \$3,400 in unpaid credit card debt listed in SOR ¶¶ 1.p and 1.q.

The \$2,028 debt listed in SOR ¶ 1.c is for unpaid orthodontic services provided for Applicant's middle child in 2003. Applicant contends she is not obligated to pay this debt because she was dissatisfied with the care provided,<sup>11</sup> but did not provide any documentation of her dispute.

Applicant has been steadily employed since September 2001. Applicant has full medical coverage, but it extends only to herself and not her children because the extra coverage takes too much out of her paycheck.<sup>12</sup> All but three (SOR ¶¶ 1.l, 1.m, and 1.r) of Applicant's debts arose after she began working for her current employer. In June 2006, a government investigator interviewed Applicant about her debts, but it was not until she received DOHA interrogatories about her finances in December 2006 that she began paying or trying to resolve her debts. As part of her response to interrogatories, Applicant provided a personal financial statement (PFS) that showed she had a positive monthly cash flow of about \$760.<sup>13</sup>

In April and May 2007, Applicant attended a financial management class. She asserts she learned a great deal about personal finances and she intends to attend the second part of the class in September 2007.<sup>14</sup> Applicant has acknowledged she relied too much on credit cards in recent years and now knows her financial limitations.<sup>15</sup> Applicant's job performance over the past six years has been outstanding. She has completed virtually every training requirement and opportunity offered by her employer. She has also greatly exceeded the performance standards for her position. Associates at both her current and former job speak highly of her integrity and reliability, and fully support her request for eligibility.<sup>16</sup>

---

<sup>10</sup> Ax. L; Tr., 56.

<sup>11</sup> Gx. 2; Tr. 52 - 53.

<sup>12</sup> Tr., 82 - 83.

<sup>13</sup> Gx. 2.

<sup>14</sup> Ax. T; Tr., 59 - 60.

<sup>15</sup> Tr., 87 - 88.

<sup>16</sup> Ax. Q - S; Ax. U.

## POLICIES AND BURDEN OF PROOF

The Directive sets forth adjudicative guidelines<sup>17</sup> to be considered in evaluating an applicant's suitability for access to sensitive information. Each trustworthiness determination must reflect consideration of both disqualifying conditions and mitigating conditions under each adjudicative issue applicable to the facts and circumstances of each case, as well as a fair and impartial common sense consideration of all available relevant and material information.<sup>18</sup> The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to sensitive information. Further, the decision must include "the careful weighing of a number of variables<sup>19</sup> 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."<sup>20</sup>

Trustworthiness determinations are intended solely to resolve whether it is clearly consistent with the interests of national security for an applicant to receive or continue to have access to sensitive information. The government bears the initial burden of producing admissible information on which it based the preliminary decision against the applicant. Additionally, the government must be able to prove controverted facts alleged in the SOR. If the government meets its burden, the burden then shifts to the applicant to refute, extenuate or mitigate the government's case. As with security clearances, no one has a "right" to such access.<sup>21</sup> Thus, an applicant bears a heavy burden of persuasion. Access to sensitive information is a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest in ensuring each applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect sensitive information pertaining to the national interests as his or her own. Resolution of any reasonable doubt about an applicant's suitability for a public trust position should be resolved in favor of the government.<sup>22</sup>

---

<sup>17</sup> Adjudication of this case is controlled by the Revised Adjudicative Guidelines, approved by the President on December 29, 2005, which were implemented by the Department of Defense on September 1, 2006. Pending official revision of the Directive, the Revised Adjudicative Guidelines supercede the guidelines listed in Enclosure 2 of the Directive. They apply to all adjudications or trustworthiness determinations in which an SOR was issued on or after September 1, 2006.

<sup>18</sup> Directive, 6.3.

<sup>19</sup> Revised Adjudicative Guidelines, ¶ 2 lists 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; (9) The likelihood of continuation or recurrence."

<sup>20</sup> Revised Adjudicative Guidelines, ¶ 2.

<sup>21</sup> *Department of the Navy v. Egan*, 484 U.S. 518, at 528, 531(1988).

<sup>22</sup> See *Egan*; Revised Adjudicative Guidelines, ¶ 2(b).

## CONCLUSIONS

**Financial Considerations.** Under Guideline F, “[f]ailure 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>23</sup> The government presented sufficient information to support the SOR allegations that Applicant owed at least \$14,000 in delinquent debts accrued between 2000 and 2006. Available information further showed she did not pay or otherwise resolve any of those debts until the last six months of 2006, and that she still owes about \$5,400 of the delinquencies alleged in the SOR. These facts require consideration of Guideline F disqualifying conditions 19(a) and 19(c).<sup>24</sup>

Of the Guideline F mitigating conditions (MC) potentially applicable to these facts, only MC 20(c)<sup>25</sup> has some basis for consideration. Applicant recently attended a financial management course and will attend a second such course in September. However, while she has increased her awareness of sound financial management practices, she has yet to establish a financial track record sufficient to overcome the security concerns about her past financial problems. Her financial problems, a large portion of which arose from over-reliance on credit cards, were multiple in nature and continued as recently as 2006, thus precluding consideration of MC 20(a).<sup>26</sup> It is to her benefit that she has paid or resolved many of her debts. However, because she waited until she received the DOHA interrogatories and it was clear her eligibility for access was in jeopardy before doing so, her actions do not constitute a good-faith effort to resolve her obligations as contemplated by MC 20(d).<sup>27</sup>

As to the possibility her debts arose due to circumstances beyond her control,<sup>28</sup> Applicant claimed her debts were caused by either her six-month period of unemployment in 2001 and/or by three consecutive miscarriages. However, she did not present evidence showing how, if at all, those events prevented her from paying her debts earlier than she did. She acknowledged that she used credit cards too much after 2001, and she has had medical coverage for all but a brief period since she has held her current job. But Applicant did not explain why she could not pay for her own medical care. Even allowing for the possibility that her medical debts were caused by unforeseen circumstances, they have been in place since 2003 and Applicant has had sufficient income and positive monthly cash flow to enable her to resolve her debts sooner than she did. As to her credit

---

<sup>23</sup> Revised Adjudicative Guidelines, ¶ 18.

<sup>24</sup> “(a) a history of not meeting financial obligations; (c) inability or unwillingness to satisfy debts.”

<sup>25</sup> “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;”

<sup>26</sup> “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;”

<sup>27</sup> “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;”

<sup>28</sup> MC 20(c): “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;”

card, jewelry, and other delinquent debts, Applicant has not provided information that would support any of the Guideline F mitigating conditions. Lastly, Applicant’s claim she is contesting the unpaid \$2,000 orthodontist bill (SOR ¶ 1.c) is uncorroborated by the record, and MC 20(e)<sup>29</sup> may not be considered. On balance, available information is insufficient to overcome the security concerns about Applicant’s financial problems.

**Whole Person.** I have evaluated the facts presented by all of the available information, and I have applied the appropriate adjudicative factors, pro and con, under Guideline F. I have also reviewed the record in the context of the whole person factors listed in section 2(a) of the Revised Adjudicative Guidelines.<sup>30</sup> Applicant is a mature adult who is only now learning how to manage her finances. Her work record is impressive and she has held a position of trust without incident since 2002. To her credit, she has paid more than half the total delinquent debt alleged in the SOR. However, her claims that her financial problems are the result of her medical problems and unemployment in 2001, are greatly attenuated by the passage of nearly six years, and she incurred significant delinquent personal credit debt after obtaining steady income. She has had a positive monthly cash flow, which she could have used to resolve many of the more modest debts well before it was clear the government was concerned about her finances.

The combination of her poor financial practices and procrastination in resolving her debts serves to sustain the concerns about her finances and her judgment related thereto. Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security.<sup>31</sup> It is laudable that she has received formal guidance on how to manage her money and that she has reduced her overall debt. And while the mere presence of unpaid debts is not *per se* disqualifying, a fair and commonsense assessment<sup>32</sup> of all available information shows that the Applicant has not yet overcome the doubts about her ability to exercise the requisite good judgment and discretion expected of one in a position of trust. Accordingly, I cannot conclude from all of the available information that she has demonstrated permanent changes in her financial practices sufficient to show that her problems will not recur in the future.

### **FORMAL FINDINGS**

Formal findings regarding each SOR allegation are as follows:

Paragraph 1, Guideline F (Financial):  
Subparagraph 1.a:

FOR THE APPLICANT  
For the Applicant

---

<sup>29</sup> “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;”

<sup>30</sup> “ (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; (9) The likelihood of continuation or recurrence.”

<sup>31</sup> Revised Adjudicative Guidelines, ¶ 2(b).

<sup>32</sup> Directive, 6.3.



Subparagraph 1.b:	For the Applicant
Subparagraph 1.c:	Against the Applicant
Subparagraph 1.d:	For the Applicant
Subparagraph 1.e:	For the Applicant
Subparagraph 1.f:	For the Applicant
Subparagraph 1.g:	For the Applicant
Subparagraph 1.h:	For the Applicant
Subparagraph 1.i:	For the Applicant
Subparagraph 1.j:	For the Applicant
Subparagraph 1.k:	For the Applicant
Subparagraph 1.l:	For the Applicant
Subparagraph 1.m:	For the Applicant
Subparagraph 1.n:	For the Applicant
Subparagraph 1.o:	Against the Applicant
Subparagraph 1.p:	Against the Applicant
Subparagraph 1.q:	Against the Applicant
Subparagraph 1.r:	Against the Applicant
Subparagraph 1.s:	For the Applicant
Subparagraph 1.t:	Against the Applicant
Subparagraph 1.u:	Against the Applicant

**DECISION**

In light of all of the information presented, it is not clearly consistent with the interests of national security to grant Applicant a position of public trust.

Matthew E. Malone  
Administrative Judge