

KEYWORD: Financial

DIGEST: Applicant accrued about \$25,000 in delinquent debt between 2000 and 2006, due almost entirely to unforeseen events and circumstances beyond her control. She has responded responsibly to her financial problems, making difficult but necessary decisions to resolve her debts and re-establish her financial well-being. Available information is sufficient to mitigate the security concerns about her finances. Eligibility for an ADP I/II/III position is granted

CASENO: 06-22585.h1

DATE: 07/30/2007

DATE: July 30, 2007

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In re:)	
)	
-----)	ADP Case No. 06-22585
SSN: -----)	
)	
Applicant for ADP I/II/III Position)	
_____)	

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

APPEARANCES

FOR GOVERNMENT

Stephanie C. Hess, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant accrued about \$25,000 in delinquent debt between 2000 and 2006, due almost entirely to unforeseen events and circumstances beyond her control. She has responded responsibly to her financial problems, making difficult but necessary decisions to resolve her debts and re-establish her financial well-being. Available information is sufficient to mitigate the security concerns about her finances. Eligibility for an ADP I/II/III position is granted.

STATEMENT OF THE CASE

On December 28, 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 finding¹ that it is clearly consistent with the national interest to grant Applicant a position of trust. On December 14, 2006, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts that raise trustworthiness concerns addressed in the Directive under Guideline F (financial considerations).²

Applicant timely responded to the SOR, and requested a hearing. The case was originally assigned to another administrative judge on April 11, 2007, but transferred to me on May 22, 2007, due to workload considerations. I convened a hearing on June 14, 2007, at which the parties appeared as scheduled. The government offered three exhibits, all of which were admitted without objection (Gx. 1 - 3). Applicant testified and introduced nine exhibits (Ax. A - I), which were admitted without objection. I also left the record open to receive Applicant's post-hearing submission, which is admitted without objection as Ax. J. DOHA received the transcript (Tr.) on June 27, 2007.

FINDINGS OF FACT

The government alleged through the SOR that Applicant accrued \$25,833 in delinquent debt for 25 unpaid accounts, 19 of which (SOR ¶¶ 1.a, 1.c - 1.e, 1.g, 1.h, 1.l, 1.m - 1.o, 1.q - 1.y) have been referred to collection agencies. The remaining accounts (SOR ¶¶ 1.b, 1.f, 1.i - 1.k) were charged off as business losses. Applicant admitted all of the SOR allegations. Her admissions are incorporated herein as facts. Applicant's testimony was credible, and she responded to questioning from government counsel and the bench in a candid and straightforward manner. She also was well informed about the status of her past due debts and her current finances. After a thorough review of the transcript and exhibits, I make the following findings of additional relevant fact:

Applicant is 29 years old and has worked since October 2004 for a 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 children, ages 10, 7, and 18 months. Applicant and the father of the youngest child were married in March 2006, but separated soon thereafter. Her estranged husband gives her about \$400 each month as child support pending a final divorce decree. The other two children were born of a previous relationship. Applicant receives from their father \$852 each month in court-ordered child support.

After graduating from high school, Applicant worked for three years in a medical services company, but was laid off in 2003 when the company was sold. From March 2003 until June 2004,

¹ Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.

² 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. The Revised Adjudicative Guidelines supercede the guidelines listed in Enclosure 2 to the Directive, and they apply to all adjudications or trustworthiness determinations in which an SOR was issued on or after September 1, 2006.

she was unemployed while studying to be a medical assistant. In June 2004, she started a medical clinic internship that she hoped would lead to full-time employment at a medical clinic, but left after three hurricanes hit the area that summer and forced the business to close. Thereafter, she was hired by her current employer.

Applicant became pregnant with her youngest child in February 2005. A few months later, she was diagnosed as a high-risk pregnancy and had to take medical leave because she was put on bed rest. Several of the medical bills listed in the SOR resulted from delays resolving her claims for short-term disability benefits and gaps in her insurance coverage. (Ax. D) After the child was born in November 2005, Applicant returned to work, albeit briefly. In December 2005, she developed a hypertensive condition in her brain caused by other neurological abnormalities that kept her out of work until early 2006. At that time, after several attempts, she had found a neurologist who prescribed an effective course of treatment. Despite continuing to suffer severe headaches and other symptoms, Applicant's attendance at work has been excellent. As of the hearing, she was awaiting a surgical procedure that will hopefully provide a permanent solution. As a result of her 2003 lay-off, and her inability to work through most of 2005, Applicant did not earn any reportable income in 2004, and earned only \$8,200 in reportable income in 2005. (Ax. F)

After she was hired by her current employer in 2004, Applicant and her children moved in with her parents to save money on living expenses, such as child care. Her grandmother and step-grandfather lived a few doors away and were able to care for the children. However, she was forced to find her own place to live around mid-2005 when she learned her step-grandfather was a registered sex offender. (Ax. E) With the new rent obligation, which she never missed (Ax. J), bills she already was late in paying became delinquent when she had to take medical leave. Applicant had to rely on help from her parents and on her credit cards and other personal credit to make ends meet.

When she returned to work in 2006, Applicant realized she would not be able to pay the debts she had accrued over the previous three years. She consulted a bankruptcy attorney and began the process of filing for Chapter 7 protection. (Ax C) On March 7, 2007, she filed her petition, and, as of the hearing, no protests from her creditors had been received before the deadline, and all parties were awaiting official discharge of her debts sometime in June or July of this year.

In April 2007, Applicant moved back in with her parents, but her children went to live with her estranged husband's sister. Applicant sends her the monthly child support from the children's fathers, and she also provides clothing, school supplies and other special needs as they arise. Otherwise, Applicant's only monthly expenses consist of a monthly self-storage rental (\$89), a pay-as-you-go cell phone (average \$20), and, in exchange for the use of her parents' car she pays the insurance (\$148). (Ax. I) She is trying to save at least \$5,000 as contingency funds before she moves out and resumes caring for her children.

Applicant has an excellent reputation at work. (Ax G) As evidence of her reliability and trustworthiness, available information shows Applicant reported a violation of health information privacy laws when she witnessed a new employee she was training using another's social security number to access his records. (Ax. H)

POLICIES AND BURDEN OF PROOF

The Directive sets forth adjudicative guidelines³ to be considered in evaluating an applicant's suitability for access to sensitive information.⁴ 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.⁵ 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 variables⁶ 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."⁷

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.⁸ 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

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⁴ 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, AP102.3.1) 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.

⁵ Directive, 6.3.

⁶ Revised Adjudicative Guidelines, Section 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."

⁷ Revised Adjudicative Guidelines, Section 2.

⁸ *Department of the Navy v. Egan*, 484 U.S. 518, at 528, 531 (1988).

reasonable doubt about an applicant's suitability for a public trust position should be resolved in favor of the government.⁹

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.”¹⁰ The government presented sufficient information to support the SOR allegations that Applicant owed at least \$25,000 in delinquent debts accrued between 2000 and 2006. Available information further shows she was unable to pay those debts, and has recently petitioned for discharge of her obligations through Chapter 7 bankruptcy. These facts warrant consideration of Guideline F disqualifying conditions 19(a) and 19(c).¹¹

By contrast, available information shows Applicant accrued the listed debts as a result of unforeseen events, and through circumstances beyond her control. Applicant was unable to work for more than a year due to a high risk pregnancy, and a subsequent medical problem that, after several failed attempts in late 2006 and early 2007, is now being resolved. In 2004, her attempt to reduce expenses by moving in with her parents and using her grandmother as daycare for her children was derailed when she learned her step-grandfather was a sex offender. No longer able to leave her children near that person, in 2005 she rented her own house, thereby impeding her ability to pay other bills. Soon thereafter, she endured a high-risk pregnancy that left her out of work for much of 2006. Many of the listed medical bills resulted from improperly processed claims for disability benefits and insurance claims.

In 2006, by the time she was again receiving steady income, Applicant’s debts had, through interest and penalties, outpaced her ability to pay or even settle them. Under the circumstances, it was reasonable for Applicant to seek bankruptcy protection. Available information shows it is more likely than not her debts have been discharged. She has also made the difficult decision to separate from her children, so she can significantly reduce expenses and save enough money for future contingencies before she again obtains her own housing and rejoins her children. Applicant has virtually no major expenses, and no new debts. Further, she has begun establishing good credit through her reliable payment of rent for the year before she moved in with her parents in April 2007. All of the foregoing requires consideration of Guideline F mitigating conditions 20(a), 20(b), and

⁹ See *Egan*; Revised Adjudicative Guidelines, ¶ 2(b).

¹⁰ Revised Adjudicative Guidelines, ¶ 18.

¹¹ “(a) a history of not meeting financial obligations; (c) inability or unwillingness to satisfy debts.”

20(c)¹² On balance, and in light of all of the available information probative of this issue, I conclude this guideline for the Applicant.

Whole Person. In evaluating Applicant’s case, I have also considered the adjudicative process factors collectively referred to as the “whole person” concept.¹³ Applicant is a mature adult, who now has a measure of financial stability for the first time in several years. She also appears to be a productive and trustworthy employee. While bankruptcy is not an ideal solution to one’s debts, under certain circumstances, as presented here, it is the most reasonable and effective means for ensuring one’s financial problems will not continue to be a source of pressure or coercion. The circumstances leading to her financial problems no longer exist, and she has taken what steps she can to improve her financial standing so as to avoid similar problems in the future. As a matter of common sense, the facts presented in this case do not pose an unacceptable risk to the interests of national security.

FORMAL FINDINGS

Formal findings regarding each SOR allegation are as follows:

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

FOR THE APPLICANT
For the Applicant

DECISION

In light of all of the information presented, it is clearly consistent with the interests of national security to grant Applicant a position of public trust.

Matthew E. Malone
Administrative Judge

¹² “(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.”

¹³ See notes 6 and 7, supra.