

KEYWORD: Financial

DIGEST: Applicant's former boyfriend, a con-man, stole her identity by obtaining credit cards in her name. He charged thousands of dollars on these accounts. She successfully challenged the legitimacy of several debts and paid the remaining debts. She has mitigated the government's concerns under Guideline F about her trustworthiness. Eligibility for a public trust position is granted.

CASENO: 06-23010.h1

DATE: 04/24/2007

DATE: April 24, 2007

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| In re: |) | |
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| ----- |) | |
| SSN: ----- |) | ADP Case No. 06-23010 |
| |) | |
| Applicant for Security Clearance |) | |
| |) | |

**DECISION OF ADMINISTRATIVE JUDGE
MARY E. HENRY**

APPEARANCES

FOR GOVERNMENT

Richard Stevens, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's former boyfriend, a con-man, stole her identity by obtaining credit cards in her name. He charged thousands of dollars on these accounts. She successfully challenged the legitimacy of several debts and paid the remaining debts. She has mitigated the government's concerns under Guideline F about her trustworthiness. Eligibility for a public trust position is granted.

STATEMENT OF CASE

On August 19, 2004, Applicant submitted an application for a position of public trust, an ADP I/II/III position. The Defense Office of Hearings and Appeals (DOHA) declined to grant the application under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended (the "Directive").¹ On November 3, 2006, DOHA issued a Statement of Reasons (SOR) to Applicant, detailing why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue eligibility for a public trust position. Specifically, the SOR, which is in essence the administrative complaint, alleged security concerns arising 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. DOHA recommended the case be referred to an administrative judge to determine whether eligibility for a position of trust should be granted, continued, denied, or revoked. On December 27, 2006, Applicant submitted a notarized response to the allegations. She requested a hearing.

DOHA assigned this case to me on February 9, 2007, and issued a notice of hearing on March 2, 2007. The March 21, 2007 hearing proceeded as scheduled after Applicant waived her right to 15 days notice of the hearing date. The government submitted four exhibits (GE), which were marked and admitted into the record as GE 1-4 without objection. Applicant submitted 23 exhibits (App Ex), which were marked and admitted into the record as App Ex A-J and L-X without objection. Applicant testified on her own behalf. DOHA received the hearing transcript (Tr.) on April 10, 2007.

FINDINGS OF FACT

In her SOR response, Applicant admitted to SOR allegations 1.c, 1.e, and 1.g under Guideline F, but denied the remaining allegations. Applicant's admissions are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant, a 48-year-old woman seeking a position of public trust, works as a claims analyst for a Department of Defense contractor. She has worked for her employer for more than 7 years. She

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.

is a high school graduate and attended college for three and one-half years, but did not graduate. She is single and lives alone.²

Applicant's annual salary is \$25,000 a year, giving her a gross monthly income of just over \$2,000. Her net monthly pay is approximately \$1,200. Her monthly expenses include \$120 for electricity and water, \$74 for cable and internet service, \$44 for telephone, \$140 for gasoline, \$165 for insurance, and \$400 for food. She has neither a mortgage on her home nor a car payment for her two cars. She has one credit card on which her payments are current.³

A review of Applicant's credit reports dated November 30, 2005, October 5, 2006, February 7, 2007, and the SOR shows 7 unpaid debts totaling \$58,413. The current status of these debts is as follows:⁴

| SOR ¶ | TYPE OF DEBT | AMOUNT | CURRENT STATUS |
|-------|--------------|-------------|---------------------------------|
| 1.a | Credit card | \$ 5,737.00 | Disputed, removed credit report |
| 1.b | Credit card | \$10,965.00 | Disputed, removed credit report |
| 1.c | Credit card | \$11,107.77 | Paid ⁵ |
| 1.d | Credit card | \$23,890.35 | Disputed, removed credit report |
| 1.e | Credit card | \$ 1,506.00 | Paid ⁶ |
| 1.f | Credit card | \$ 4,732.00 | Disputed, being investigated |
| 1.g | Credit card | \$ 476.00 | Paid ⁷ |

About eight years ago, Applicant became romantically involved with a man. After some months of dating, he moved into her home. About a year after he started living with her, she realized he had been using her credit information to obtain additional credit cards in her name. He charged high debt on these cards and did not pay the debt. He stole her identity while living with her. Despite no active assistance from the local police and her fear of harm from this man, she finally forced him

²GE 1 (Application for a position of trust, dated August 19, 2004) at 2; Tr. at 43-35, 54, 56.

³Tr. at 53, 56-59.

⁴GE 2 (Credit report, dated November 30, 2005); GE 3 (Credit report, dated October 5, 2006); and GE 4 (Credit report, dated February 7, 2007).

⁵App Ex S (Letter, dated January 3, 2007); Tr. at

⁶App Ex U (Letter, dated December 12, 2006) at 4; Tr at

⁷App Ex T (documents showing settlement offer and payment in December 2006); Tr. at .

to move out of her home in 2002. She no longer has any contact with him. At the hearing, she demonstrated a fearfulness of him, even though he no longer has any involvement in her life.⁸

Applicant's parents died in 2006, leaving her and her sister a farm, which is worth several million dollars. They also left cash and other liquid assets to their daughters. Applicant used some of her inheritance to pay the debts she acknowledged and to pay the remaining mortgage on her house.⁹

After receiving the SOR in November 2006, Applicant wrote to the three major credit bureaus, challenging the debts listed in allegations 1.a, 1.b, 1.d and 1.f. As a result, the credit bureaus investigated these accounts and deleted all challenged accounts except allegation 1.f, which is still being investigated.¹⁰

Applicant's performance reviews for the last three years reflect that in 2005, she received a rating of 4.1, and in 2006, a rating of 4.5 because her work "sometimes exceeds expectations". In 2007, she received a rating of 4.6 because she "consistently exceeds expectations". Applicant's friends and co-workers describe her as a valuable team member, conscientious, honest, trustworthy, innovative, and loyal.¹¹

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."¹² 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 guidelines at issue in this case are:

⁸Tr. at 47-52. A physician who had been treating this man told her he was a multiple personality. She observed changes in his personality that indicate this man was indeed a multiple personality, with some personalities showing criminal aggressiveness. Tr. at 50-51.

⁹Tr. at 43-44, 54-56.

¹⁰App Ex D, G and L (Undated letters to credit bureaus); App Ex R (Proof of mailing and receipt of letters by credit bureaus); App Ex H (Confirmation of dispute); App Ex C (Results of investigation, dated January 12, 2007); App Ex J (Results of investigation, dated January 11, 2007).

¹¹App Ex V (Performance review dated, January 25, 2007); App Ex W (Performance review, dated January 6, 2006); App Ex X (Performance review, dated February 14, 2005); App Ex M-Q (Character reference letters).

¹² *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).

Guideline F - Financial Considerations - An individual who is financially overextended is at risk of having to engage in illegal or unethical acts to generate funds to meet financial obligations. Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligation to protect classified or sensitive information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

Conditions that could raise a trustworthiness concern and may be disqualifying, as well as those which could mitigate security concerns pertaining to these adjudicative guidelines, 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 eligible for a security clearance.¹³ An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person.¹⁴ 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.¹⁵

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.¹⁶ Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts.¹⁷ An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."¹⁸ Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.¹⁹ The same rules apply to trustworthiness determinations for access to sensitive positions.

CONCLUSIONS

¹³ Directive, ¶ E2.2.1.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Directive, ¶ E3.1.14.

¹⁷ Directive, ¶ E3.1.15.

¹⁸ ISCR Case No. 01-20700 at 3 (App. Bd. December 19, 2002).

¹⁹ Directive, ¶ E2.2.2.

I have carefully considered all the facts in evidence and the legal standards. The government has established a *prima facie* case for disqualification under Guideline F - Financial Considerations.

Financial Considerations

Under Guideline F, the “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.) The credit reports reflect several old, large, unpaid debts. Because of the age of these debts and their delinquent status, Applicant showed an inability or unwillingness to pay her debts. Based on the evidence of record, the government established the applicability of DC ¶ 19 (a) *inability or unwillingness to satisfy debts* and DC ¶ 19 (c) *a history of not meeting financial obligations*.

Applicant developed a trusting relationship with a man who kept his true motives for their relationship a secret. Being a con man, he used her trust to steal her identify and create credit issues for her. MC ¶ 26 (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* applies.

Although Applicant never met with a financial counselor, she contacted the creditors to whom she owed money and made arrangements to pay her debts in full. She used her inheritance to pay the remaining balance on her mortgage and to pay her just debts. She has acted in good faith to resolve her unpaid debts. She otherwise lives within her financial means. 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 is under control* and MC ¶ 20 (d) *the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts* apply.

She denied owing the debts alleged in paragraphs 1.a, 1.b, 1.d, and 1.f of the SOR, stating that these debts were created by her former boyfriend, whom she fears, when he used her name to obtain credit, then charged numerous purchases on the credit cards he obtained. Upon receipt of the SOR, she successfully challenged the validity of three debts, which have been removed from her credit history. The fourth debt is still being investigated by the creditor reporting agency. MC ¶ 20 (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* applies.²⁰ Applicant paid her old debts with money she received from her inheritance. Thus, MC ¶ 20(f) *the affluence resulted from a legal source* applies. Applicant has mitigated the financial considerations trustworthiness concern. Guideline F is found in favor of Applicant.

Whole Person Analysis

²⁰The remaining financial considerations mitigating conditions set forth in AG 20 (a) and AG 20 (b) do not apply in this case.

In all adjudications, the protection of our national security is the paramount concern. The objective of the trustworthy determination process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for assignment to sensitive duties. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of her acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

Applicant performs her duties exceedingly well and is highly respected by her co-workers for her work ethic and integrity. Until she became involved with the con man a few years ago, she could pay the debts she incurred. This relationship created serious financial problems for her, which have now been resolved. She recently received a significant inheritance, but has not changed her life style. She continues to live as she did in the past, modestly. Her bills are paid in a timely fashion. There is very little likelihood that she will engage in illegal acts to generate funds, as she is financially solvent. After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole person,²¹ I conclude she has mitigated the trustworthiness concerns pertaining to her finances.

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:

SOR ¶ 1-Guideline F:
Subparagraphs a-g:

FOR APPLICANT
For Applicant

DECISION

In light of all of the evidence presented in this case, it is clearly consistent with the national interest to grant Applicant eligibility for assignment to sensitive duties. Eligibility is granted.

Mary E. Henry
Administrative Judge

²¹See ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006).