

KEYWORD: Financial

DIGEST: Applicant is 28 years old, unmarried, and works for a defense contractor. He has \$32,674 in delinquent debts for which he has not established any repayment plan. He has not mitigated the financial considerations trustworthiness concern. Eligibility for an ADP I/II/III position is denied.

CASENO: 06-23444.h1

DATE: 07/17/2007

DATE: July 17, 2007

In re:	)	
	)	
-----	)	
SSN: -----	)	ADP Case No. 06-23444
	)	
Applicant for ADP I/II/III Position	)	
	)	

**DECISION OF ADMINISTRATIVE JUDGE  
PHILIP S. HOWE**

**APPEARANCES**

**FOR GOVERNMENT**

Eric Borgstrom, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is 28 years old, unmarried, and works for a defense contractor. He has \$32,674 in delinquent debts for which he has not established any repayment plan. He has not mitigated the financial considerations trustworthiness concern. Eligibility for an ADP I/II/III position is denied.

## STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a position of trust for Applicant<sup>1</sup>. On February 1, 2007, DOHA issued a Statement of Reasons<sup>2</sup> (SOR) detailing the basis for its decision—trustworthiness concerns raised under Guideline F (Financial Considerations) of the revised Adjudicative Guidelines of the Directive issued on December 29, 2005, and implemented by the Department of Defense, effective September 1, 2006. Applicant answered the SOR in writing on February 26, 2007, and Applicant requested his case be decided on the written record in lieu of a hearing.

On March 29, 2007, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) was provided to the Applicant. He was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not file a response to the FORM. The case was assigned to me on June 14, 2007.

## FINDINGS OF FACT

Applicant's admissions to some of the SOR allegations are incorporated as findings of fact. After a complete and thorough review of the evidence in the record, and full consideration of that evidence, I make the following additional findings of fact:

Applicant is 28 years old, unmarried, and works for a defense contractor as a service representative. He started work for this employer in November 2004. He was unemployed from April 2001, to September 2002, and again from October 2002, to October 2003. He has 18 delinquent debts. He has not repaid any of these debts. He claims to have a consolidation repayment plan for seven of the debts, but did not submit any documents showing the plan, or that he is making payments. Some debts he claims are not his and are the result of identify theft, but provided no objective evidence to support his claim. (Items 2-5)

Applicant's delinquent debts as alleged in the SOR and their current payment status are as follows:

<b>SOR ALLEGATION</b>	<b>CURRENT STATUS</b>
1.a. Apartment rent, \$883	Admits, unpaid. Items 2-5
1.b. Utility bill, \$225	Denies, unpaid. Items 2-5
1.c. Consumer debt, \$1,524	Admits, unpaid; no documentation of purported debt consolidation plan. Items 2-5

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<sup>1</sup>Adjudication of trustworthiness cases for ADP I, II, and III positions are resolved using the provisions of DoD Directive 5220.6 (Directive), pursuant to the memorandum from Carol A. Haave, Deputy Under Secretary of Defense for Counterintelligence and Security to DOHA Director, *Adjudication of Trustworthiness Cases* (Nov. 19, 2004).

<sup>2</sup>Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and the Directive.

1.d. Consumer debt, \$2,849	Admits, unpaid, no documentation of purported debt consolidation plan. Items 2-5
1.e. Telephone bill, \$804	Denies, claims he cannot contact creditor, unpaid. Items 2-5
1.f. Cable television bill, \$77	Admits, unpaid. Items 2-5
1.g. Consumer debt, \$892	Admits, unpaid, claims it is in debt consolidation plan, but no documentation. Items 2-5
1.h. Consumer debt, \$101	Denies and delinquent since July 2003, unpaid. Items 2-5
1.i. Consumer debt, \$245	Denies, unpaid. Items 2-5
1.j. Hospital bill, \$83	Denies, unpaid. Items 2-5
1.k. Telephone bill, \$235	Denies, unpaid. Items 2-5
1.l. Telephone bill, \$453	Denies, unpaid. Items 2-5
1.m. Telephone bill, \$7,723	Denies, claims fraudulent, no documentation of fraud or that his is paying the bill, unpaid. Items 2-5
1.n. Education debt, \$4,057	Admits, unpaid, wages garnished to pay debt of \$12,753.58 since January 19, 2007. Items 2 (including garnishment letter of January 4, 2007)-5
1.o. Education debt, \$2,917	Admits, unpaid, wages garnished since January 19, 2007, to pay. Items 2-5
1.p. Education debt, \$3,176	Admits, unpaid, wages garnished since January 19, 2007, to pay. Items 2-5
1.q. Consumer debt, \$900	Denies he ever had such an account, unpaid, delinquent since May 2000. Items 2-5
1.r. Auto loan debt, \$5,530	Admits he co-signed loan for aunt who failed to make payments. Car was repossessed. Aunt later died. Unpaid. Items 2-5

**POLICIES**

As Commander in Chief, 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.” *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information with Industry* § 2 (Feb. 20, 1960). By direction of the Under Secretary of Defense for Counterintelligence and Security, adjudications of cases forwarded to DOHA by the Defense Security Service or the Office of Personnel Management (OPM) for a trustworthiness determination shall be conducted under the provisions of the Directive. Eligibility for a position of trust is predicated upon the applicant meeting the guidelines contained in the Directive and a finding it is clearly consistent with the national interest to do so. See Directive ¶ 2.3. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his trustworthiness determination.” See Directive ¶ E3.1.15

The adjudication process is based on the whole person concept. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline that must be carefully considered in making the overall common sense determination required. The decision to deny an individual eligibility to occupy a position of trust is not necessarily a determination as to the loyalty of the applicant. See Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a such a determination.

In evaluating the trustworthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. Those assessments include: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (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 (See Directive, Section E2.2.1. of Enclosure 2). Because each case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible to occupy a position of trust. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant’s trustworthiness suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996). All that is required is proof of facts and circumstances that indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at \*\*6-8 (App. Bd. 2001). Once the Government has

established a *prima facie* case by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. See Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that is clearly consistent with the national interest to grant or continue his trustworthiness determination. ISCR Case No. 01-20700 at 3 (App. Bd. 2002). “Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.” Directive ¶ E2.2.2

Based upon a consideration of the evidence as a whole, I find the following adjudicative guideline most pertinent to an evaluation of the facts of this case:

**Guideline F: Financial Considerations: 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 could 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 standard that must be met for . . . assignment to sensitive duties is that, based on all available information, the person’s loyalty, reliability, and trustworthiness are such that . . . assigning the person to sensitive duties is clearly consistent with the interests of national security.” (Regulation ¶ C6.1.1.1) Appendix 8 of the Regulation sets forth the adjudicative policy, as well as the disqualifying conditions (DC) and mitigating conditions (MC) associated with each guideline. DoD contractor personnel are afforded the adjudication procedures contained in the Directive. (Regulation ¶ C8.2.1)

## CONCLUSIONS

**Guideline F:** Applicant owes \$32,674 in delinquent debts. The only debts he is repaying are three education loans by garnishment. He is not voluntarily repaying those debts. Applicant claimed he put some debts into a debt consolidation program, but did not submit any documents to support his assertion. The disqualifying conditions applicable are Financial Considerations Disqualifying Condition ¶19.a. (inability or unwillingness to satisfy debts), ¶19.b. (indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt), and ¶19.c. (a history of not meeting financial obligations).

Applicant has done nothing to dispute, pay, or resolve these delinquent debts. Nor are there any conditions beyond his control that explain or excuse his failure to repay these debts. Therefore, no mitigating conditions in ¶20 of Guideline F can be applied.

**Whole Person Analysis** “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” trustworthiness decision. Directive E2.2.1. “Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.” *Id.* In

evaluating Applicant's case, I have considered the adjudicative process factors listed in the Directive ¶E2.2.1.

Considering the criteria of the "whole person concept," I conclude the nature of Applicant's debt problem, the extent or magnitude of his debt for a person only 28 years old, and the lack of efforts he has made to repay the seven debts under \$500 to be a serious lack of attention to his financial responsibilities. He knowingly and voluntarily accumulated these debts without sufficient income to repay them while unemployed or in college. There is no rehabilitation, or behavioral change in Applicant's conduct toward his financial responsibilities and debts. The magnitude of these debts makes Applicant a potential target for pressure, coercion, exploitation, or duress, and he is likely to continue his attitude toward his obligations to repay his debts based on his past performance. His failure to manage responsibly his finances indicates poor judgment.

I conclude the financial considerations trustworthiness concern against Applicant. I also conclude the "whole person concept" against Applicant.

### **FORMAL FINDINGS**

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline F:                   AGAINST APPLICANT

    Subparagraph 1.a. to 1.r:           Against Applicant

### **DECISION**

In light of all of 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. His application for eligibility for an ADP I/II/III position is denied.

Philip S. Howe  
Administrative Judge