

KEYWORD: Financial

DIGEST: Between 2000 or 2001 and June 2002, Applicant incurred some unanticipated emergency medical expenses which were not fully covered by health insurance. By October 2004, there were 10 delinquent liabilities totaling approximately \$15,675.00. She made no effort to pay any of her debts, planning, instead, to file for bankruptcy as soon as she could afford to do so. As of December 2005, no filing for bankruptcy had yet taken place. Doubts remain as to her eligibility for occupying an Information Systems Position designated ADP-II. Eligibility is denied.

CASENO: 05-05611.h1

DATE: 04/04/2006

DATE: April 4, 2006

In re:

SSN: -----

Applicant for Trustworthiness Determination

ADP Case No. 05-05611

DECISION OF CHIEF ADMINISTRATIVE JUDGE

ROBERT ROBINSON GALES

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Between 2000 or 2001 and June 2002, Applicant incurred some unanticipated emergency medical expenses which were not fully covered by health insurance. By October 2004, there were 10 delinquent liabilities totaling approximately \$15,675.00. She made no effort to pay any of her debts, planning, instead, to file for bankruptcy as soon as she could afford to do so. As of December 2005, no filing for bankruptcy had yet taken place. Doubts remain as to her eligibility for occupying an Information Systems Position designated ADP-II. Eligibility is denied.

STATEMENT OF THE CASE

On November 8, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified; Department of Defense Regulation 5200.2-R., *Personnel Security Program*, dated January 1987, as amended and modified (the Regulation); Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended and modified (Directive); a memorandum from the Deputy Under Secretary of Defense (Counterintelligence and Security, *Adjudication of Trustworthiness Cases*, dated November 19, 2004; and a memorandum from the Deputy Director for Personnel Security, Office of the Assistant Secretary of Defense, Command, Control, Communications, and Intelligence (C³I), dated August 4, 1999.

The SOR detailed reasons, under Guideline F (financial considerations), 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 Applicant's eligibility for occupying an Information Systems Position designated ADP-II to support a contract with the Department of Defense, and recommended referral to an Administrative Judge to determine whether such eligibility should be granted, continued, denied, or revoked.

In a sworn written answer, dated December 6, 2005, Applicant responded to the SOR allegations, and elected to have her case decided on the written record in lieu of a hearing. Department Counsel submitted the government's written case on January 25, 2006. A complete copy of the file of relevant material (FORM) ⁽¹⁾ was provided to Applicant, and she was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Any such submissions were due by March 2, 2006. She chose not to respond. The case was assigned to me on March 17, 2006.

FINDINGS OF FACT

Applicant has admitted all of the factual allegations pertaining to financial matters under Guideline F (subparagraphs 1.a. through 1.j.). Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 24-year-old employee of a defense contractor seeking to be granted eligibility for occupying an Information Systems Position designated ADP-II. She has been with her current employer since December 2003, and presently holds a position of customer service supervisor for a pharmacy benefits provider. ⁽²⁾ She previously served as a collections representative with another employer. The quality of her work performance has not been provided. Applicant is unmarried, but resides with her fiancé.

Applicant's finances were apparently unremarkable until about 2000. At some point in 2000 or 2001, she incurred some unanticipated emergency medical expenses. ⁽³⁾ In June 2002, she was the victim of a domestic assault, and again required emergency medical services and life saving surgery. ⁽⁴⁾ Her medical expenses were not fully covered by health insurance. By October 2004, she had 10 delinquent liabilities totaling approximately \$15,675.00, which were either past due, charged off as a bad debt, or placed for collection. She indicated she was unable to pay any of the bills and could not foresee being able to do so without the assistance of bankruptcy. ⁽⁵⁾ She stated she planned to file for bankruptcy as soon as she could save \$1,000.00 to pay the attorney fees. ⁽⁶⁾ Applicant had not filed for bankruptcy as of December 2005.

The SOR identified 10 delinquent accounts. Those accounts, and their current status, are described below:

SOR	TYPE DEBT	AMOUNT	CURRENT STATUS
¶1.a.	collection account (original creditor not	\$1,148. ⁽⁸⁾	Applicant made arrangements to pay entire balance

	identified) - past due since May 2000 ⁽⁷⁾		within 40 days of December 6, 2005, but still unpaid. ⁽⁹⁾
¶1.b.	emergency medical expenses - placed for collection in February 2001 ⁽¹⁰⁾	\$332. ⁽¹¹⁾	Unpaid. In December 2005, Applicant was working on debt consolidation program. ⁽¹²⁾
¶1.c.	emergency medical expenses - placed for collection in February 2001 ⁽¹³⁾	\$1,157. ⁽¹⁴⁾	Unpaid. In December 2005, Applicant was working on debt consolidation program. ⁽¹⁵⁾
¶1.d.	emergency medical expenses - placed for collection in February 2001 ⁽¹⁶⁾	\$65. ⁽¹⁷⁾	Unpaid. In December 2005, Applicant was working on debt consolidation program. ⁽¹⁸⁾
¶1.e.	emergency medical expenses - placed for collection in February 2001 ⁽¹⁹⁾	\$174. ⁽²⁰⁾	Unpaid. In December 2005, Applicant was working on debt consolidation program. ⁽²¹⁾
¶1.f.	store credit card - charged of as bad debt in December 2001 ⁽²²⁾	\$625. ⁽²³⁾	Applicant made arrangements to pay entire balance within 40 days of December 6, 2005, but still unpaid. ⁽²⁴⁾
¶1.g.	emergency medical expenses - placed for collection in June 2003 ⁽²⁵⁾	\$10,961. ⁽²⁶⁾	Unpaid. In December 2005, Applicant was working on debt consolidation program. ⁽²⁷⁾
¶1.h.	emergency medical expenses - placed for collection in June 2003 ⁽²⁸⁾	\$290. ⁽²⁹⁾	Unpaid. In December 2005, Applicant was working on debt consolidation program. ⁽³⁰⁾
¶1.i.	emergency medical expenses - placed for collection in June 2003 ⁽³¹⁾	\$893. ⁽³²⁾	Unpaid. In December 2005, Applicant was working on debt consolidation program. ⁽³³⁾
¶1.j.	emergency medical expenses - placed for collection in June 2003 ⁽³⁴⁾	\$33. ⁽³⁵⁾	Unpaid. In December 2005, Applicant was working on debt consolidation program. ⁽³⁶⁾

Although Applicant contends she is working with a debt consolidation organization in hopes of resolving her delinquent debts, she has offered no further information regarding the organization or the purported efforts to do so. She did not indicate when she first approached the organization, which organization she is dealing with, if she entered into a payment plan and agreement, the details of any such plan or agreement, and when her payments were to commence, or which payments, if any, were made.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in the evaluation of security suitability (as well as trustworthiness eligibility). In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into those that may be considered in deciding whether to deny or revoke an individual's eligibility for access to classified information or eligibility for occupying an Information Systems Position (Disqualifying Conditions) and those that may be considered in deciding whether to grant an individual's eligibility for access to classified information or eligibility for occupying an Information Systems Position (Mitigating Conditions).

An administrative judge need not view the adjudicative guidelines as inflexible ironclad rules of law. Instead,

acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set forth in the Adjudicative Process provision in Section E2.2., Enclosure 2, of the Directive, are intended to assist the administrative judge in reaching fair and impartial common sense decisions.

Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept," all available, reliable information about the person, past and present, favorable and unfavorable, should be considered in making a meaningful decision. The Adjudicative Process factors which an administrative judge should consider are: (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.

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: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Unexplained affluence is often linked to proceeds from financially profitable criminal acts.

Conditions that could raise a security or trustworthiness concern and may be disqualifying, as well as those which could mitigate security or trustworthiness concerns, pertaining to the adjudicative guideline, are set forth and discussed in the Conclusions section below.

Because the protection of the national security (and sensitive information) is the paramount consideration, the final decision in each case must be arrived at by applying the standard the issuance of the clearance is "clearly consistent with the interests of national security,"⁽³⁷⁾ or "clearly consistent with the national interest." For the purposes herein, despite the different language in each, I have concluded all of the standards are the same. In reaching this Decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

In the decision-making process, the burden of producing evidence initially falls on the government to establish a case which demonstrates, in accordance with the Directive, it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information or eligibility for occupying an Information Systems Position. If the government meets its burden, the heavy burden of persuasion then falls upon the applicant to present evidence in refutation, explanation, extenuation or mitigation sufficient to overcome the doubts raised by the government's case, and to ultimately demonstrate it is clearly consistent with the national interest to grant or continue the applicant's clearance

or eligibility for occupying an Information Systems Position.

A person who seeks access to classified or sensitive information enters into a fiduciary relationship with the government predicated upon trust and confidence. It is a relationship that transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship the government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information or eligibility for occupying an Information Systems Position. Decisions under this Directive include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect or safeguard classified or sensitive information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information.

One additional comment is worthy of note. Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides industrial security clearance decisions (and by inference, trustworthiness decisions) shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Security clearance and trustworthiness decisions cover many characteristics of an applicant other than allegiance, loyalty, and patriotism. Nothing in this Decision should be construed to suggest I have based this decision, in whole or in part, on any express or implied decision as to Applicant's allegiance, loyalty, or patriotism.

CONCLUSIONS

Upon consideration of all the facts in evidence and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude the following with respect to each allegation set forth in the SOR:

The government has established its case under Guideline F. Between 2000 or 2001 and June 2002, Applicant incurred some unanticipated emergency medical expenses which were not fully covered by health insurance. There is no evidence of any efforts to pay those debts, and by October 2004, there were 10 delinquent liabilities totaling approximately \$15,675.00. She claimed she was unable to pay any of the bills and indicated she would seek relief by filing for bankruptcy as soon as she could afford to do so. As of December 2005, no such filing had yet taken place. Throughout the period in question, Applicant was fully employed. Her inaction in taking little, if any, effort to satisfy her debts gives rise to Financial Considerations Disqualifying Condition (FC DC) E2.A6.1.2.1. (*history of not meeting financial obligations*); and FC DC E2.A6.1.2.3. (*inability or unwillingness to satisfy debts*).

Due to the nature of Applicant's debts, her initial financial situation and difficulties bring this matter within Financial

Considerations Mitigating Condition (FC C) E2.A6.1.3.3. (*the conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation)*). However, that fact does not absolve her of reasonable efforts to subsequently resolve them. Applicant is aware of her financial obligations because of her prior experience as a collections representative. In this instance, her years of inaction negate any application of FC MC E2.A6.1.3.6. (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*). There are no clear indications that the problem is being resolved or is under control.

To the contrary, the absence of meaningful evidence pertaining to financial counseling or debt consolidation, as well as the vagueness of Applicant's actual intentions, as opposed to her mere continuing, but unfulfilled promises, renders FC MC E2.A6.1.3.4. (*the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control*) inapplicable. No other FC MC apply. Under these circumstances, Applicant has failed to mitigate or overcome the government's case, for the evidence leaves substantial doubts as to Applicant's eligibility for occupying an Information Systems Position. Accordingly, allegations 1.a. through 1.j. of the SOR are concluded against Applicant.

For the reasons stated, I conclude Applicant is not eligible to occupy an Information Systems Position designated ADP-II to support a contract with the Department of Defense.

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:

Paragraph 1., Guideline F: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: Against Applicant

Subparagraph 1.g.: Against Applicant

Subparagraph 1.h.: Against Applicant

Subparagraph 1.i.: Against Applicant

Subparagraph 1.j.: 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 or continue Applicant's eligibility for occupying an Information Systems Position designated ADP-II. Eligibility is denied.

Robert Robinson Gales

Chief Administrative Judge

1. The government submitted six items in support of the allegations.
2. Item 3 (Response to SOR, dated December 6, 2005) at 2-3.
3. *Id.*
4. *Id.*
5. Item 5 (Affidavit, dated October 14, 2004) at 1.
6. *Id.*
7. Item 3, *supra* note 2, at 1.
8. *Id.*
9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.*

20. *Id.*

21. *Id.*

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.*

26. *Id.*

27. *Id.* at 2.

28. *Id.* at 2.

29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.*

33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.*

37. The Directive, as amended by Change 4, dated April 20, 1999, uses "clearly consistent with the national interest" (Sec. 2.3.; Sec.2.5.3.; Sec. 3.2.; and Sec. 4.2.; Enclosure 3, Sec. E3.1.1.; Sec. E3.1.2.; Sec. E3.1.25.; Sec. E3.1.26.; and

Sec. E3.1.27.), "clearly consistent with the interests of national security" (Enclosure 2, Sec. E2.2.3.); and "clearly consistent with national security" (Enclosure 2, Sec. E2.2.2.).