

DATE: October 30, 2006

In re:

SSN: -----

Applicant for Trustworthiness Determination

ADP Case No. 04-08945

DECISION OF ADMINISTRATIVE JUDGE

LEROY F. FOREMAN

APPEARANCES

FOR GOVERNMENT

Sabrina E. Redd, Esq., Department Counsel

FOR APPLICANT

Sabrina Williams, Personal Representative

SYNOPSIS

Applicant incurred numerous delinquent debts after leaving his wife in 1997. He disputed some debts and resolved some, but the trustworthiness concern based on four delinquent debts totaling more than \$16,000 was not mitigated. Eligibility for assignment to sensitive positions is denied.

STATEMENT OF THE CASE

On June 6, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its preliminary decision to deny Applicant a favorable trustworthiness determination. This action was taken under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive), and Department of Defense Regulation 5200.2-R, *Personnel Security Program* (Jan. 1987), as amended and modified (Regulation). The SOR alleged trustworthiness concerns raised under Guideline F (Financial Considerations).

Applicant answered the SOR in writing on July 22, 2005, denied most of the allegations, and elected to have a hearing before an administrative judge. The case was assigned to an administrative judge on May 18, 2006, and reassigned to me on July 20, 2006, based on workload. The case was heard on August 23, 2006, as scheduled. I kept the record open until September 25, 2006, to enable Applicant to submit additional documentary evidence. I received his additional evidence on September 14, 2006 and September 27, 2006. Department Counsel did not object to the untimely submission. Applicant's additional documents are incorporated in the record as Applicant's Exhibits (AX) N through T. DOHA received the hearing transcript (Tr.) on September 6, 2006.

FINDINGS OF FACT

Applicant's admissions in his answer to the SOR and at the hearing are incorporated into my findings of fact. I make the following findings:

Applicant is a 55-year-old systems specialist for a federal contractor. He has worked for his current employer since March 1998, at different locations. His performance appraisals reflect that he has consistently met or exceeded the expectations of his supervisors (AX E through N). He has never held an ADP clearance.

Applicant was married in April 1972 and has two children. He and his spouse have been separated since April 1997. The children are now adults (Tr. 72). Applicant sends his spouse \$300 per month (Tr. 69).

Before Applicant and his wife separated, she handled the household finances. When they separated, Applicant was aware of the debt alleged in SOR ¶ 1.d, but he was otherwise unaware of his financial situation (Tr. 59). He moved to an expensive area and lived with a girl friend, but he continued to send money to his family. His wife agreed to find a job and make the house payments, and Applicant agreed to send her \$900 per month. His family stayed in their home and incurred the delinquent utility bill alleged in SOR ¶ 1.g (GX 2 at 1, 3). His wife failed to make the house payments but did not inform Applicant.

Applicant has not yet divorced his wife. He has lived with the woman who is now his fiancée for about four years. Since 2004, his fiancée has been helping him resolve his financial problems. After receiving the SOR, he disputed seven adverse items on his credit report, none of which are alleged in the SOR. Four of the disputed items were deleted from his credit report, two remained on the report, and one was pending resolution at the time of the hearing (AX C and D).

The following table summarizes the evidence regarding the debts alleged in the SOR.

SOR	Debt	Amount	Status	Record
1.a	Bad check	\$481	Unproven	Tr. 21
1.b	Collection	\$1,008	Unproven	Tr. 21
1.c	Auto loan	\$11,587	Paid \$200, 9-15-06	AX U
1.d	Charge Account	\$848	Unpaid	GX 3 at 2; GX 5 at 6
1.e	Water bill	\$54	No record of debt	Tr. 46
1.f	Charge Account	\$2,350	Unpaid	GX 2 at 3
1.g	Utility bill	\$1,449	Unpaid	AX U
1.h	Cell phone	\$280	Settled	AX N, O, and S
1.i	Rent	\$421	Paid in full, 6-6-06	AX A
1.j	Utility bill	\$67	Paid in full, 6-6-06	AX A
1.k	Bad check	\$456	Paid in full, 6-12-06	AX B

Department Counsel conceded she had no evidence of the debts alleged in SOR ¶¶ 1.a and 1.b. They are resolved in Applicant's favor.

The debt alleged in SOR ¶ 1.c resulted from a voluntary repossession of Applicant's automobile. In response to DOHA interrogatories in February 2005, he asserted this debt was paid in full (GX 3 at 3). At the hearing, he testified he did not know he was responsible for the full amount of the loan even if he voluntarily surrendered the automobile (Tr. 71). In his post-hearing submission, he submitted proof of a \$200 payment on this debt (AX U).

In his response to the DOHA interrogatories, Applicant stated he had made payment arrangements for the debt alleged in SOR ¶ 1.d to begin in March 2005, with half the amount due to be paid "up front to show good faith." As of the date of the hearing, no payments had been made on this debt.

Applicant attempted to verify the water bill alleged in SOR ¶ 1.e, but the utility company had no record of an account in his name (GX 3 at 4; Tr. 46). I resolve this allegation in Applicant's favor.

In a signed statement to a security investigator in September 2003, Applicant acknowledged the debt alleged in SOR ¶ 1.f. As of the date of the hearing, no payments had been made on this debt.

In his post-hearing submission, Applicant acknowledged that the debt in SOR ¶ 1.g was for utility service for his house in 1998 (AX N). He promised to resolve the debt, but he has not yet done so.

Applicant submitted proof the debts alleged in SOR ¶ 1.h, 1.i, 1.j, and 1.k were settled (AX A, B, N, O, and S). These allegations are resolved in his favor.

In a personal financial statement executed in September 2003, Applicant reported net monthly income of \$2,000, expenses of \$1,350, debt payments of \$75, and a remainder of \$575 (GX 2 at 6). At the hearing, he testified his net pay every two weeks is about \$1,300, and his fiancée's weekly take-home pay is about \$360. He estimated his net monthly remainder is about \$500 (Tr. 73).

POLICIES

The adjudicative guidelines set out in the Regulation are used to make ADP trustworthiness determinations. Department of Defense contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination may be made. Regulation ¶ C8.2.1.

Positions designated as ADP I and ADP II are classified as "sensitive positions." Regulation ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3. "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 personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline.

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk." Regulation Appendix 8 at 132. Each eligibility determination must be a fair, impartial, and commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Regulation. An administrative judge should consider: (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. *Id.*

In security clearance cases, the government must initially present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information. Directive ¶ E3.1.14. Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 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. These same burdens of proof apply to trustworthiness determinations for ADP positions.

CONCLUSIONS

Guideline F (Financial Considerations)

Under Guideline F, "[a]n individual who is financially overextended is at risk of having to engage in illegal acts to generate funds." Regulation Appendix 8 at 144. A person who fails or refuses to pay long-standing debts or is financially irresponsible may also be irresponsible or careless in his or her duty to protect sensitive information. Two disqualifying conditions (DC) under Guideline F could raise a trustworthiness concern and may be disqualifying in this case. DC 1 applies where an applicant has a history of not meeting his or her financial obligations. *Id.* DC 3 applies where an applicant has exhibited inability or unwillingness to satisfy debts. *Id.*

Since the government produced substantial evidence to establish DC 1 and DC 3, the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. Applicant has the burden of proving a mitigating condition, and the burden of disproving it is never shifted to the government. *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

A trustworthiness concern based on financial problems can be mitigated by showing the delinquent debts were not recent (MC 1) or an isolated incident (MC 2). Regulation Appendix 8 at 144. Applicant has multiple delinquent debts that are not yet fully resolved. I conclude MC 1 and MC 2 are not established.

Trustworthiness concerns arising from financial problems can be mitigated by showing they are the result of conditions "largely beyond the person's control" (MC 3). *Id.* Even if Applicant's financial difficulties initially arose due to circumstances beyond his control, it is appropriate to consider whether he acted in a reasonable manner when dealing with his financial difficulties. ISCR Case No. 02-02116 at 4 (App. Bd. Sep. 25, 2003). His wife's financial irresponsibility was a circumstance beyond his control. He took reasonable steps to notify creditors of his new address when he and his wife separated. His wife defaulted on the home mortgage payments she had promised to pay, but that delinquency was not alleged in the SOR. However, he took no steps to resolve the debts alleged in SOR ¶¶ 1.d and 1.f, even though he was aware of them. In essence, he walked away from his debts when he left his wife in 1997, and he took no significant actions to resolve them until his fiancée began assisting him in 2004. I conclude MC 3 is not established.

A mitigating condition (MC 4) applies when an applicant "has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control." Regulation Appendix 8 at 144. MC 4 is not established because Applicant has not sought financial counseling. His fiancée is not a trained financial counselor, and he has not demonstrated that his finances are under control.

A trustworthiness concern arising from financial problems can be mitigated by showing a good-faith effort to resolve debts (MC 6). *Id.* The concept of good faith "requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation." ISCR Case No. 99-0201, 1999 WL 1442346 at *4 (App. Bd. Oct. 12, 1999). Evidence of past irresponsibility is not mitigated by payment of debts only under pressure of qualifying for a trustworthiness clearance.

Applicant became aware that his debts raised questions about his trustworthiness when he was interviewed by a security investigator in September 2003. The SOR was issued in June 2005, but he did not resolve any of the debts alleged in the SOR until June 2006. He has made one \$200 payment on the debt alleged in SOR ¶ 1.c, leaving a balance of more than \$11,000. He has taken no action to resolve the debts alleged in SOR ¶¶ 1.d, 1.f, and 1.g, totaling more than \$4,600. His testimony at the hearing shows he has the financial means to begin paying off his debts, but he has furnished no evidence of a payment plan, nor has he established a track record of systematic repayment of his delinquent debts. I conclude MC 6 is not established.

Whole Person Analysis

In addition to considering the specific disqualifying and mitigating conditions under each guideline, I have also considered the general adjudicative guidelines in the Regulation. I have considered: (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 applicant'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. Regulation Appendix 8 at 132.

Applicant has a long history of financial delinquencies, attributable in large part to inattention and neglect. He is a mature adult who is gainfully employed. Although he recently has resolved several debts, he has not yet demonstrated a change in his financial habits. His unresolved debts make him vulnerable to pressure, coercion, exploitation, or duress. Whether his past financial irresponsibility will recur cannot yet be determined, because he has not yet demonstrated a track record of financial responsibility. "Only with the passage of time will there be a track record that shows whether a person, through actions and conduct, is willing and able to adhere to a stated intention to refrain from acting in a way

that the person has acted in the past." ISCR Case No. 97-0727, 1998 DOHA LEXIS 302 at *7 (App. Bd. Aug. 3, 1998).

After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the trustworthiness concern based on based on financial considerations. Accordingly, I conclude he has not carried his burden of showing that it is clearly consistent with the interests of national security to grant him a favorable trustworthiness determination.

FORMAL FINDINGS

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

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: Against Applicant

Subparagraph 1.d: Against Applicant

Subparagraph 1.e: For Applicant

Subparagraph 1.f: Against Applicant

Subparagraph 1.g: Against Applicant

Subparagraph 1.h: For Applicant

Subparagraph 1.i: For Applicant

Subparagraph 1.j: For Applicant

Subparagraph 1.k: For Applicant

DECISION

In light of all of the circumstances in this case, it is not clearly consistent with the interests of national security to grant Applicant eligibility for assignment to sensitive duties. Eligibility is denied.

LeRoy F. Foreman

Administrative Judge