

KEYWORD: Financial

DIGEST: Applicant is 60 years old and is a medical claims processor for a federal contractor. Several years ago he took custody of two grandchildren and got behind in his finances. Applicant has numerous outstanding debts, has not paid them, disputes many of them, but has done nothing to resolve them, nor does he have the financial means or commitment to do so. Applicant's eligibility for assignment to a sensitive position is denied.

CASENO: 05-03261.h1

DATE: 02/21/2006

DATE: February 21, 2006

In re:

SSN: -----

Applicant for Trustworthiness Determination

ADP Case No. 05-03261

DECISION OF ADMINISTRATIVE JUDGE

CAROL G. RICCIARDELLO

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Esq., Department Counsel

FOR APPLICANT

Pro se

SYNOPSIS

Applicant is 60 years old and is a medical claims processor for a federal contractor. Several years ago he took custody of two grandchildren and got behind in his finances. Applicant has numerous outstanding debts, has not paid them, disputes many of them, but has done nothing to resolve them, nor does he have the financial means or commitment to do so. Applicant's eligibility for assignment to a sensitive position is denied.

STATEMENT OF THE CASE

On September 14, 2004, Applicant submitted an application for a position of public trust. The Defense Office of Hearings and Appeals (DOHA) declined to grant the application under the Department of Defense Regulation 5200.2-R, *Personnel Security Program*, (Jan. 1987), as amended and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended (the "Directive"). On September 15, 2005, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision, The SOR, which is in essence the administrative complaint, alleged a security concern under Guideline F, (financial considerations).

In a sworn statement, dated October 3, 2005, Applicant responded to the SOR allegations and requested a hearing. In his SOR response, Applicant admitted SOR allegation ¶ 1.d. under Guideline F and denied the remaining allegations in SOR. The case was assigned to me on November 25, 2005. A notice of hearing was issued on December 21, 2005, scheduling the hearing for January 11, 2006. The hearing was conducted as scheduled. The government submitted seven exhibits that were marked as Government Exhibits (GE) 1-7. The exhibits were admitted into the record without objection. Applicant testified on his own behalf, and submitted six exhibits that were marked as Applicant's Exhibits 1-6. The exhibits were admitted without objection. DOHA received the hearing transcript (Tr.) on January 19, 2006.

FINDINGS OF FACT

Applicant's admissions to the allegations in the SOR, 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 is 60 years old and works a medical claims processor for a federal contractor. Applicant is very familiar with medical insurance and how medical bills are paid through insurance companies. Applicant is married and has three children, one stepchild, and nine grandchildren. One adult child, his stepchild and her husband, and four grandchildren reside with him and his wife. The husband of the stepchild is the only adult that contributes to household expenses and his contribution is only for groceries.

When divorcing from his first wife, Applicant was awarded custody of his daughter and later retained custody of two granddaughters. In the 1990s he had some medical issues and incurred debts to health care providers and facilities. SOR ¶ 1.a is a debt to a medical provider that was incurred in September 2000. He believes his wife's medical insurance should have paid the debt. The insurance company claimed the policy had lapsed and they are not responsible for the debt. Applicant negotiated a settlement amount with the medical facility for between \$1,500-\$800⁽¹⁾ but has not received the settlement agreement. He concedes he owes them money, but not what they claim. The debt originated in 1998, has fallen off his credit report, has not been paid, and he has not taken any action to resolve it.⁽²⁾

Applicant's debts listed in SOR ¶¶ 1.b, 1.g, and 1.I are a single debt to a cell phone service. Applicant believed when he moved from one state to another his service should have been switched and the rate plan transferred to the new region. He provided no documentation to show his contractual obligation or verification of his position. He claims he contacted the service by telephone, but never disputed the bill in writing, followed through on resolving it, or disputed it on his credit report. It remains unpaid and unresolved.

Applicant owes \$200 for an emergency room medical bill as listed in SOR ¶ 1.c, that was incurred in July 2001. He claims the provider filed the claim with the wrong insurer. Although he provided the correct insurance company and he is aware of the unpaid bill, he did not take any initiative to file the claim himself to satisfy the debt, nor has he done anything else to resolve the debt. Applicant is very experienced in medical claims because it is his job, yet could provide no explanation for why he would not just file the claim himself and get it paid.⁽³⁾

Applicant is indebted to an apartment complex for \$2,486. He and his wife co-signed a lease for their ex-son-in-law who had custody of their two grandchildren. The ex-son-in-law defaulted on the six-month lease and Applicant became responsible for the debt. He knew of the debt and his responsibility to pay it, but has not done so.⁽⁴⁾

A debt for cable communications was incurred by Applicant as listed in SOR ¶ 1.e. for \$319.00. The original debt was for \$519.00, but when he returned the leased equipment it was reduced to the current amount. Applicant disputes he owes this debt, but has no documentation to show that the debt was satisfied or he disputed it with the company or on his credit report.⁽⁵⁾ The debt has been in a collection status since December 2002.

Applicant was unable to explain the basis for \$57.00 debt in SOR ¶ 1.f. Despite being made aware of it through the SOR and on his credit report, he has not done anything to investigate its legitimacy, pay it or dispute it. [\(6\)](#)

Applicant owes \$71 and \$578 for telephone services as listed in SOR ¶¶ 1.h and 1.j. The debts have been in a collection status since December 2004 and February 2005, respectively. He acknowledges having an account with the service provider at one time, but not two accounts; he no longer subscribes to the service. [\(7\)](#) He does not agree he owes these debts, but has not contacted the provider and disputed the debts in writing, nor has he disputed it on his credit report or researched the legitimacy of the debts. They remain unpaid and unresolved.

Applicant is indebted to a different telephone provider for \$739 as listed in SOR ¶ 1.k. That account has been in a collection status since May 1999. Applicant believes this account may be for a service when he moved from one state to another and he changed services. The debt remains unpaid and he has done nothing to resolve it. [\(8\)](#)

Applicant has a student loan that he was delinquent in paying for approximately two years. Because he failed to take action on repaying the debt, his wages were and continue to be garnished each month in the amount of approximately \$220, until the debt is satisfied. He does not know how much he has left to pay "and he is afraid to ask." [\(9\)](#)

Applicant and his wife have a net monthly salary of \$5,522 and they rarely have any money remaining at the end of the month after they pay their expenses. He carries 4-5 credit cards and guesses the balances range from \$450 to \$200. He leases a 2005 and a 2004 car and has two cell phones.

Applicant answered interrogatories on June 30, 2005 and stated he would be disputing many of the debts that are alleged. [\(10\)](#) He has not formally done so, other than in his testimony. Applicant's believes his delinquent debts and financial situation speak to his priorities and not to his trustworthiness. [\(11\)](#) He is considered by a friend to be trustworthy and faithful to those he serves in his job. He has a very giving nature and helps others. [\(12\)](#) He received excellent personnel appraisals from his employer. [\(13\)](#)

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."⁽¹⁴⁾ The President provided that eligibility for access to classified information shall be granted only to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information."⁽¹⁵⁾

To be eligible for assignment to sensitive duties, an applicant must meet the security guidelines contained in DoD 5200.2-R. "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."⁽¹⁶⁾ The Regulation sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline.⁽¹⁷⁾ The adjudicative guideline at issue in this case is:

Financial Considerations—a security concern exists when a person has significant delinquent debts. 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 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 security 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."⁽¹⁸⁾ An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person.⁽¹⁹⁾ 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. ⁽²⁰⁾

DoD contractor personnel are afforded the right to the procedures contained in DoD Directive 5220.6 before any final unfavorable access determination may be made. ⁽²¹⁾ 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. ⁽²²⁾ Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. ⁽²³⁾ An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ⁽²⁴⁾ "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." ⁽²⁵⁾

A person granted access to classified information enters into a special relationship with the government. 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. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. ⁽²⁶⁾ It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

CONCLUSIONS

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.

Based on all the evidence, Financial Considerations Disqualifying Condition (DC) (*A history of not meeting financial obligations*), and DC 3 (*Inability or unwillingness to satisfy debts*), apply in this case. Applicant accumulated significant delinquent debts. He did not take any action on the debts even after he knew they were an issue for a trustworthiness determination.

I have considered all the Financial Considerations Mitigating Conditions (MC), and especially considered MC 1 (*The behavior was not recent*), MC 2 (*It was an isolated incident*), MC 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)*), MC 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*), and MC 6 (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*).

Applicant's debts are recent. They are unpaid and therefore are still owed to the creditors. Applicant has numerous creditors and therefore his delinquencies are not isolated. Minimally Applicant became aware of his delinquencies when he answered interrogatories about them in June 2005.⁽²⁷⁾ Although it is not unheard of for a credit report to have discrepancies; Applicant seems to deny almost all of the listed debts, however, when confronted with each debt he acknowledges having an account with the creditor at one time, then disputes the account, or claims he paid the account or he believes the account should have been paid by an insurance company. Applicant provided no documentation to support that he has taken any action to resolve his disputes, remove items from his credit report or pay the debts. I find Applicant's limited memory about many of the accounts to be not credible. He acknowledges he is not a good money manager and his focus has been on other priorities. Applicant's financial problems started when he took custody of his grandchildren. I find MC 3 applies. Applicant unexpectedly took on additional financial responsibilities by caring for his grandchildren. Applicant also has other family members whom he supports. However, his benevolence occurred at least three years ago and he has not taken any action to improve his financial situation. He provided no evidence that he is seeking credit counseling, has an established budget to repay his debts, or taken any other substantiated action. His attitude is one of ambivalence towards the debts. I find MC 4 does not apply. Applicant must have an ability to repay his debts, a desire to repay, and evidence of a good faith effort to repay if MC 6 is to apply. Applicant has made none of those efforts and does not have any excess income at the end of the month to do so.⁽²⁸⁾ I have considered all the circumstances surrounding Applicant's financial situation and find that although he has provided some mitigation, it is not enough to overcome and sufficiently mitigate the financial consideration concerns with regard to a trustworthy determination.

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 their 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.

I considered the "whole person" concept in evaluating Applicant's trustworthiness. An applicant with a good or even exemplary work history may engage in conduct that has negative security implications. Although Applicant's loyalty to the United States is not in question, I am persuaded by the totality of the evidence that he failed to mitigate the trustworthiness concerns regarding Guideline F and that it is not clearly consistent with the national interest to grant Applicant eligibility for assignment to sensitive duties. Eligibility is denied.

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 THE APPLICANT

Subparagraph 1.a: Against the Applicant

Subparagraph 1.b: Against the Applicant

Subparagraph 1.c: Against the Applicant

Subparagraph 1.d: Against the Applicant

Subparagraph 1.e: Against the Applicant

Subparagraph 1.f: Against the Applicant

Subparagraph 1.g: Against the Applicant

Subparagraph 1.h: Against the Applicant

Subparagraph 1.I: Against the Applicant

Subparagraph 1.j: Against the Applicant

Subparagraph 1.k: Against the Applicant

Subparagraph 1.l: Against the Applicant

DECISION

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

Carol G. Ricciardello

Administrative Judge

1. The exact amount is uncertain because Applicant's sworn statement, GE 2 at p.3, states the amount was negotiated for \$1,500, but at the hearing Applicant testified the amount was \$800.

2. Tr. 26-30.
3. Tr. 36-38.
4. Tr. 38-39.
5. Tr. 39-43.
6. Tr. 43.
7. Tr. 47-49.
8. Tr. 49-50.
9. Tr. 33. I have not considered this debt as a separate allegation. I have only considered it in light of Applicant's ability to repay his other debts and to decide if there is a pattern of unwillingness and inability to repay his debts.
10. GE 4.
11. Tr. 21.
12. AE A.
13. AE B-F.
14. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).
15. Exec. Or. 12968, *Access to Classified Information*, § 3.1(b) (Aug. 4, 1995).
16. DoD 5200.2-R, ¶ C6.1.1.1.
17. *Id.* at Appendix 8.
18. *Id.*
19. *Id.*
20. *Id.*
21. *Id.* at ¶ C8.2.1.
22. Directive , ¶ E3.1.14.
23. *Id.* at ¶ E3.1.15.
24. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).
25. Directive, ¶ E2.2.2.
26. Exec. Or. 10865 § 7.
27. GE 4.
28. SOR ¶ 1.1. alleges Applicant's personal financial statement has a monthly net remainder of income of \$3,754.00 and he is financially capable of resolving his debts. The financial statement incorrectly added his wife's monthly income twice, and he does not have any or has very limited remaining funds at the end of each month to pay his debts. I have amended SOR ¶ 1.1. to reflect Applicant is not financially able to pay his debts and does not have a surplus of funds at

the end of each month.