

KEYWORD: Financial ; Trustworthiness

DIGEST: In 2000, Applicant incurred debt from a failed business venture. By September 2004, there were three delinquent liabilities totaling approximately \$22,547.00. He had two judgments also stemming from the business, which he satisfied between 2001 and 2004. He settled the three delinquent debts in September 2005. He has mitigated the security concerns under the Financial Considerations guideline. Eligibility for an ADP I/II/III position is granted.

CASE NO: 05-03808

DATE: 05/31/2006

DATE: May 31, 2006

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In re:

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SSN: -----

Applicant for Trustworthiness Determination

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ADP Case No. 05-03808

**DECISION OF ADMINISTRATIVE JUDGE**

**NOREEN A. LYNCH**

**APPEARANCES**

**FOR GOVERNMENT**

Braden M. Murphy, Esq., Department Counsel

## FOR APPLICANT

*Pro Se*

### SYNOPSIS

In 2000, Applicant incurred debt from a failed business venture. By September 2004, there were three delinquent liabilities totaling approximately \$22,547.00. He had two judgments also stemming from the business, which he satisfied between 2001 and 2004. He settled the three delinquent debts in September 2005. He has mitigated the security concerns under the Financial Considerations guideline. Eligibility for an ADP I/II/III position is granted.

### STATEMENT OF THE CASE

On September 16, 2005, the Defense Office of Hearings and Appeals (DOHA), issued a Statement of Reasons (SOR) to Applicant<sup>(1)</sup> under 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 Security Clearance Review Program* (Directive), 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, dated August 4, 1999.

The SOR detailed reasons under Guideline F (financial considerations), why DOHA could not make a 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 I/II/III to support a contract with the Department of Defense. DOHA recommended referral to an Administrative Judge to determine whether such eligibility should be granted, continued, denied, or revoked.

On October 7, 2005, Applicant submitted a notarized response to the SOR, and elected to have his case decided on the record in lieu of a hearing. Department Counsel submitted the government's written case on March 15, 2006. Applicant received a complete file of relevant material (FORM) on March 21, 2006, and was provided the opportunity to file objections and submit material to refute, extenuate, or mitigate the government's case.<sup>(2)</sup> Applicant submitted a written response to the FORM on April 14, 2006. This case was assigned to another administrative judge on April 28, 2006, but reassigned to me on May 12, 2006, because of caseload considerations.

## **FINDINGS OF FACT**

Applicant admitted all the allegations in the SOR.<sup>(3)</sup> Those admissions are incorporated as findings of fact. After a complete review of the evidence in the record and upon due consideration, I make the following additional findings of fact:

Applicant is a single, 42-year-old employee of a defense contractor, seeking an Information Systems Position. He has been with his current employer since January 2000, serving as a customer service supervisor for a pharmacy benefits provider.<sup>(4)</sup> He submitted an application for a position of trust in connection with his employment in April 2004.<sup>(5)</sup>

Prior to his current employment, Applicant and a business partner opened a gourmet coffee company in 1997. His partner owned 51% of the business, and he owned 49%. He advanced the initial costs for supplies and equipment for the business venture because his partner did not have any credit. However, the business did not produce sufficient revenue to stay open or pay the costs advanced by him. The business ended in 2000, and the partners each went their own way. Because he charged the start-up business costs on his credit cards, Applicant had the sole responsibility for these debts. Prior to this time, his credit rating was good.<sup>(6)</sup>

By July 2000, he had three delinquent liabilities totaling approximately \$22,547.00, which were either past due, charged off as bad debts, or placed for collection. He indicated that he was unable to pay any of the bills and did not want to file for bankruptcy. Instead, he wanted to save his money and pay all the delinquent bills at one time. During that time he also paid his own credit card accounts.<sup>(7)</sup>

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

SOR ¶	TYPE DEBT	AMOUNT	CURRENT STATUS
¶1.a.	collection account (original creditor - bank) Past due since November 2000	\$15,941. <sup>(8)</sup>	Settled as of September 30, 2005. <sup>(9)</sup>
¶1.b.	collection account (original creditor compute company) Past due since April 2001	\$ 6,349. <sup>(10)</sup>	Settled as of August 26, 2005. <sup>(11)</sup>
¶1.c.	collection account (original creditor phone company) Past due since January 2001	\$ 257. <sup>(12)</sup>	Paid as of September 29, 2005. <sup>(13)</sup>

Although Applicant did not pay or settle his three delinquent accounts from the failed business venture (listed in the SOR) until 2005, he did pay in full his two other accounts that are mentioned as judgments in his 2005 credit report. An accounting firm 2004 judgment of \$8,092.00 was paid in full on July 19, 2004. The credit card business account judgment in the amount of \$5,813.00 was paid in 2001. [\(14\)](#)

## **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 information." [\(15\)](#) In Executive Order 12968, *Access to Classified Information*, § 3.1(b) (August 4, 1995), 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 to abide by regulations governing the use, handling, and protection of classified information."

To be eligible for assignment to sensitive duties, an applicant must meet the security guidelines contained in the Regulation. [\(16\)](#) "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." [\(17\)](#) 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 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. [\(20\)](#)

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:

**Financial Considerations- Guideline F: 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.**

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

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.<sup>(26)</sup> It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

## CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate adjudicative factors, I conclude the following with respect to the allegation set forth in the SOR:

The government established its case under Guideline F. In 2000 or 2001, Applicant incurred debt from a failed business venture. By September 2004, there were three delinquent debts totaling approximately \$22,547.00. This 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*).

Applicant's debts resulted from a failed business, which bring this matter within FC MC 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).*

He chose not to file bankruptcy in 2000, instead he paid some debt in 2001 and 2004, and the remaining three debts in 2005. Thus, not only the three delinquent debts listed in the SOR, but two judgments that resulted from the unsuccessful business are resolved. None of the debts were due to excessive personal spending. Because his business partner did not contribute to the payments, Applicant assumed full responsibility for the delinquent debts. This shows motivation and a good-faith effort to pay the debt. FC MC E2.A6.1.3.6. (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) applies in this case.

Finally, I considered the whole person concept in evaluating Applicant's risk and vulnerability in protecting our national interests. I balanced all the factual circumstances and applied them to the adjudicative criteria established in the Regulation in light of the whole person concept. Under these circumstances, Applicant has mitigated the government's case. Allegations 1.a. through 1.d. of the SOR under Guideline F are concluded in favor of Applicant. Accordingly, I conclude it is clearly consistent with the national interest to grant a trustworthiness determination to Applicant.

## **FORMAL FINDINGS**

Formal findings for or against Applicant on the allegations set forth in the SOR are:

Paragraph 1. Guideline F: FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: For Applicant

## **DECISION**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national interest to grant Applicant's request for a determination of trustworthiness and eligibility for assignment to sensitive duties. Eligibility is granted.

Noreen A. Lynch

Administrative Judge

1. In ADP trustworthiness determinations, I am required to follow the procedural rules of the Directive but the substantive guidelines from the Regulation.
2. The government submitted eleven items in support of its contentions.
3. Item 3 (Applicant's Answer to SOR, dated October 7, 2005) at 1-2.
4. Item 4 (Application for Public Trust Positions (SF 85P), dated April 13, 2004) at 1-8.
5. *Id.*
6. Item 5 (Applicant's Affidavit, dated August 18, 2004) at 1-7.
7. *Id.*
8. *Id.*
9. Applicant's Response to FORM, dated April 12, 2006.
10. *Id.*
11. *Id.*
12. *Id.*
13. *Id.*
14. *Id.*

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

16. DoD 5200.2-R, ¶ C6.1.3.1.

17. *Id.* at ¶ C6.1.1.1.

18. DoD 5200.2-R, Appendix 8.

19. *Id.*

20. *Id.*

21. DoD Directive 5220.6; DoD 5200.2-R, ¶ C8.2.1.

22. Directive, ¶ E3.1.14.

23. Directive, ¶ E3.1.15.

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

25. Directive, ¶ E2.2.2.

26. Exec. Ord. 10865, § 7.