

DATE: January 16, 2007

In re:

SSN: -----

Applicant for ADP I/II/III Position

ADP Case No. 06-02535

DECISION OF ADMINISTRATIVE JUDGE

MARY E. HENRY

APPEARANCES

FOR GOVERNMENT

Nicole Noel, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Between 2001 and 2003, Applicant incurred approximately \$10,000 in delinquent debt, after purchasing a car for transportation to and from work. Because she lacked sufficient income to pay both the car payment and her delinquent credit debt, she chose to forego her credit card payments and pay her car payments. Since August 2003, she has not incurred additional delinquent debt, and timely pays her monthly expenses, including her mortgage and car payment. Under South Carolina law, her creditors no longer have a legal claim against her for delinquent debts. Applicant did not deliberately falsify her trustworthiness application. She has mitigated the trustworthiness concerns raised under financial considerations and personal conduct. Applicant's eligibility for a assignment to a sensitive position is granted.

STATEMENT OF CASE

On August 16, 2004, Applicant submitted an application for a position of public trust, an ADP I/II/III position. The Defense Office of Hearings and Appeals (DOHA) declined to grant the application under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended (the "Directive").⁽¹⁾ On April 3, 2006, DOHA issued Applicant a Statement of Reasons (SOR) detailing the basis for its decision. The SOR, which is in essence the administrative complaint, alleged security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct).

In a sworn statement dated April 27, 2006, Applicant submitted a notarized response to the SOR allegations. She elected to have her case decided on the written record in lieu of a hearing. Department Counsel prepared a File of Relevant Material (FORM) and provided Applicant with a complete copy on October 5, 2006. Applicant had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. She submitted a response on October 27, 2006. The government does not object to the admission of this response. The case was assigned to me on November 15, 2006.

FINDINGS OF FACT

In her SOR response, Applicant admits the facts supporting all the SOR allegations under Guideline F, but denies the overall concern. She admits the allegation under Guideline E, but denies that she intentionally falsified her answers in her application. These admissions 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 30 years old, employed as a Claims Associate II for a Department of Defense contractor, and seeks a position of public trust. She has worked for her employer for almost six years. She is a high school graduate. She is divorced and the single mother of two children, ages 10 and 8. [\(2\)](#)

Financial Considerations

Based on a credit report dated August 28, 2004, Applicant's admissions, and her answers to interrogatories, the following SOR debts are outstanding:

| SOR # | TYPE OF DEBT | DATE FOR COLLECTION | AMOUNT | STATUS |
|-------|--------------------------|---------------------|------------|---|
| 1.a. | Credit card | February 2001 | \$ 247.00 | unpaid collection |
| 1.b. | Department store account | July 2001 | \$ 794.00 | Account balance listed as zero on credit report (3) |
| 1.c. | Credit card | February 2002 | \$1,928.00 | unpaid bad debt |
| 1.d. | Credit card | February 2002 | \$1,406.00 | unpaid bad debt |
| 1.e. | Credit card | August 2002 | \$1,915.00 | unpaid collection |
| 1.f. | Store account | September 2002 | \$ 814.00 | unpaid collection |
| 1.g. | Store account | October 2002 | \$ 942.00 | unpaid collection |
| 1.h. | Catalog account | June 2003 | \$ 570.00 | unpaid collection |
| 1.i. | Credit card | June 2003 | \$1,224.00 | Credit report reflects a zero balance (4) |
| 1.j. | Store account | August 2003 | \$ 618.00 | unpaid collection |

Applicant receives no child support for her two children. Her net monthly income in February 2005 totaled \$1,472.04. Her monthly expenses equaled her monthly income, leaving no additional funds to pay her debts. In May 2002, she purchased a car for transportation to work. Because of the car payment, she stopped making the credit card payments. Her monthly car payment of \$478 will be finished by the end of 2007. She stated that she paid one credit card debt, which is reflected on her credit report, and that once she completes her car payments at the end of 2007, she can repay her debts. She candidly admits that she has not developed any payment plans for her outstanding debts. [\(5\)](#)

The credit reports reflect that between February 2001 and August 2003, Applicant stopped payments on a variety of debts, but not all her debts. During this time and subsequently, she always timely paid her mortgage and car payment. She also timely paid a number of other bills. Since August 2003, she has not incurred any new delinquent debts. [\(6\)](#)

Personal Conduct

On August 16, 2004, Applicant completed a Public Trust Position Application (SF 85P). [\(7\)](#) She answered "no" to the following question: [\(8\)](#)

Question 20. Your Financial Record - 180 Day Delinquencies which reads

"Are you now over 180 days delinquent on any loan or financial obligation? (Include loans or obligations funded or guaranteed by the Federal Government.)."

Her background investigation revealed ten delinquent credit accounts totaling around \$10,000. [\(9\)](#) These accounts are

identified in the above chart.

In her response, she denied intentionally falsifying Question 20. She thought the question related to personal loans from the bank. She did not think about her credit card debt.⁽¹⁰⁾ In a signed sworn statement dated February 15, 2005, Applicant readily acknowledged the debts. She did not discuss her "no" answer to the above question.⁽¹¹⁾

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."⁽¹²⁾ In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information and determining trustworthiness within the executive branch.

To be eligible for a security clearance or access to sensitive information, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. The adjudicative guidelines at issue in this case are:

Guideline F - Financial Considerations - 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 or sensitive information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

Guideline E - Personal Conduct - Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

Conditions that could raise a trustworthiness 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."⁽¹³⁾ An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person.⁽¹⁴⁾ 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.⁽¹⁵⁾

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.⁽¹⁶⁾ Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts.⁽¹⁷⁾ An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."⁽¹⁸⁾ Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.⁽¹⁹⁾ The same rules apply to trustworthiness determinations for access to sensitive positions.

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 - Financial Considerations.

It has not done so under Guideline E - Personal Conduct.

Financial Considerations

Based on all the evidence, Financial Considerations Disqualifying Conditions (FC DC) E2.A6.1.2.1 (*A history of not meeting financial obligations*), and FC DC E2.A6.1.2.3 (*Inability or unwillingness to satisfy debts*) apply to Applicant's case. Since 2002, Applicant has been unable to meet all her financial obligations. Currently, she has numerous delinquent debts related to credit cards or store accounts, totaling around \$10,000.

I considered the Financial Considerations Mitigating Conditions (FC MC). Applicant's ten delinquent debts remain outstanding and are more than three years old. Therefore, I cannot apply FC MC E2.A6.1.3.1 (*The behavior was not recent*) in full. She gets some credit for not incurring additional delinquent debt in the last three years. FC MC E2.A6.1.3.2 (*The behavior was isolated*) does not apply because she incurred ten different delinquent debts incurred over a period of two and one-half years.

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)*) does not apply. Applicant became delinquent on these debts after purchasing a car, which she needed for transportation to work. The car payment amounts to one-third of her net monthly income, leaving no extra money for payment of her debt.

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 under control*) does not apply. Applicant does not indicate that she has sought financial counseling or credit counseling regarding her debts.

FC MC E2.1.3.6 (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) is not applicable. Applicant states that she intends to pay these debts one at a time when she concludes her car payment at the end of 2007. A promise to pay in the future is not sufficient to mitigate the financial considerations concern or evidence of a good faith effort to repay debt. None of the debts alleged in SOR are being repaid. Other than her promise to pay in the future, she has not taken steps to resolve these debts. Except for the two accounts with zero balances, her debts remain, and are unlikely to be resolved in the near future because she earns only enough money to pay her current living expenses. [\(20\)](#)

She does, however, receive some credit in the whole person analysis, *infra*, for the application of the 3-year South Carolina statute of limitations, which applies to all of her unpaid SOR debts. *See* S.C. Code. Ann. § 15-3-530. [\(21\)](#) The South Carolina Court of Appeals succinctly explained the societal and judicial value of application of the statute of limitations:

Statutes of limitations embody important public policy considerations in that they stimulate activity, punish negligence and promote repose by giving security and stability to human affairs. The cornerstone policy consideration underlying statutes of limitations is the laudable goal of law to promote and achieve finality in litigation. Significantly, statutes of limitations provide potential defendants with certainty that after a set period of time, they will not be ha[le]d into court to defend time-barred claims. Moreover, limitations periods discourage plaintiffs from sitting on their rights. Statutes of limitations are, indeed, fundamental to our judicial system.

Carolina Marine Handling, Inc. v. Lasch, 363 S.C. 169, 175-76, 609 S.E.2d 548, 552 (S.C. Ct. App. 2005) (internal quotation marks and citations omitted).

Elimination of her delinquent debt load through the statute of limitations has ended her potential vulnerability to improper financial inducements because she is no longer "financially overextended," but it does not negate her past conduct in accumulating debt which she could not pay.

Personal Conduct

Personal conduct under Guideline E is always a trustworthiness concern because it asks the central question does a

person's past conduct justify confidence the person can be trusted to properly safeguard classified and/or sensitive information. Deliberate omission, concealment, or falsification of a material fact in any written document or oral statement to the government when applying for a security clearance or in other official matters is a trustworthiness concern. It is deliberate if it is done knowingly and willfully.

Under Guideline E, the government established that Applicant omitted material facts from her SF 85P when she answered "no" to Question 20 because she had ten delinquent credit card or store accounts. She denies, however, that she deliberately falsified her answer to this question. When a falsification allegation is controverted, the government has the burden of proving it. Proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant's intent or state of mind at the time the omission occurred. ⁽²²⁾ For Personal Conduct Disqualifying Conditions (PC DC) E2.A5.1.2.2 (*The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire . . .*) and PC DC E2.A5.1.2.3 (*Deliberately providing false or misleading information concerning relevant and material matters to an investigator . . .*) to apply, the government must establish that Applicant's omission, concealment or falsification in her answers was deliberate.

In this case, Applicant explained that she did not list her delinquent debts in response to Question 20 on the public trust application because she thought the question related to personal loans and her credit card debt never crossed her mind. From this statement, I infer that she did not understand her credit card debt to be a loan. When confronted with her credit report by the investigator, Applicant readily acknowledged these debts in an affidavit, dated February 5, 2005. She does not deny these debts and admits without reservation that she has not made any effort to resolve them. She truthfully stated that she paid one debt. In weighing all her statements regarding her indebtedness, I find that she did not deliberately falsify her answer to Question 20. She has been forthright in her presentation of all other information related to her finances, and has not tried to gloss over or conceal her financial problems. Her statement that she misinterpreted the information requested in Question 20 is credible. Thus, Personal Conduct Disqualifying Condition (PC DC) E2.A5.1.2.2 (*The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*) does not apply. Guideline E is decided in favor of Applicant.

Whole Person Analysis

In all adjudications, the protection of our national security is the paramount concern. The objective of the trustworthy determination process is the fair-minded, common sense 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 have considered all the evidence and the "whole person" in evaluating Applicant's trustworthiness. As noted above, Applicant's lengthy history of failing to meet her financial obligations, and inability or unwillingness to satisfy her debts raises serious trustworthiness concerns. She is 30 years old, and sufficiently mature to be fully responsible for her conduct. She chose to pay for her purchases with credit, then decided not to pay her credit bills. Her inability to repay her debts started when she needed to purchase a car. Given her limited income, she chose between transportation for work and paying her creditors. Her substantial monthly car payment, which is always timely, absorbed her excess income, and prevented her from paying some of her other credit obligations. She timely pays her monthly bills, including her mortgage. She has not incurred any unpaid credit debt since August of 2003. The absence of new delinquent debt over the last three years and compliance with a budget are additional factors which evidence rehabilitation, positive behavior changes, and self-discipline in regards to her finances. The potential for pressure, coercion, exploitation, or duress is low because she is current on her recent debts, and has been steadily employed for the last six years. She is very conscious of her income limitations and has shown an ability to live within her monthly income. Her attitude about her finances and her adherence to her budget support a determination of trustworthiness.

In sum, in the absence of unanticipated and unusual expenses, the likelihood of new debt problems is low. Applicant has stated an intent to resolve her delinquent debts, even though she is not legally required to pay them because of the South Carolina 3-year statute of limitations. Although eight of the ten SOR debts remain unpaid, there is little likelihood that this unpaid debt would present a security clearance problem as she is not legally liable for these debts. After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole person, ⁽²³⁾ I conclude she has mitigated the trustworthiness concerns pertaining to financial considerations, and the personal conduct concerns are not substantiated.

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: FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: For Applicant

Subparagraph 1.e: For Applicant

Subparagraph 1.f: For Applicant

Subparagraph 1.g: For Applicant

Subparagraph 1.h: For Applicant

Subparagraph 1.i: For Applicant

Subparagraph 1.j: For Applicant

Paragraph 2. Guideline E: FOR APPLICANT

Subparagraph 2.a: For Applicant

DECISION

In light of all of the evidence presented in this case, it is clearly consistent with the national interest to grant Applicant eligibility for assignment to sensitive duties. Eligibility is granted.

Mary E. Henry

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended; and Memorandum from the Deputy Under Secretary of Defense Counterintelligence and Security, titled "Adjudication of Trustworthiness Cases," dated November 19, 2004.
2. Item 3 (Questionnaire for Public Trust Position SF 85P) at 5.
3. This debt has been sold twice and is not currently listed as owed to any creditor. Other sold or transferred accounts

continue to show unpaid balances. Item 6 (Credit report, dated August 28, 2004); Item 7 (Credit report, dated February 3, 2005).

4. Item 7, *supra* note 3, at 3.

5. Item 4 (Personal statement and copy of earnings statement for February 4, 2005) at 3, 5, 6; Item 5 (Applicant's Answers to Interrogatories, dated March 9, 2006) at 1-5.

6. Item 6, *supra* note 3; Item 7, *supra* note 3.

7. Item 3, *supra* note 2.

8. *Id.* at 7.

9. Item 6, *supra* note 3; Item 7, *supra* note 3.

10. Item 1 (Applicant's response to SOR, dated April 27, 2006) at 2; Item 5, *supra* note 5, at 4.

11. Item 4, *supra* note 5.

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

13. Directive, ¶ E2.2.1.

14. *Id.*

15. *Id.*

16. Directive, ¶ E3.1.14.

17. Directive, ¶ E3.1.15.

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

19. Directive, ¶ E2.2.2.

20. The Board has previously explained what constitutes a "good faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of Financial Considerations Mitigating Condition 6, an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term 'good-faith.' However, the Board has indicated that 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.' Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of Financial Considerations Mitigating Condition 6.

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)). In ISCR Case No. 99-9020 at 6 (App. Bd. Dec. 1, 1999), the Appeal Board specifically addressed application of the statute of limitations, stating a "person who decides not to honor his or her debts may be able to avoid paying those debts until they are legally uncollectible because the statute of limitations has run. Reliance on the running of a statute of limitations would be a legally permissible course of action. However, it would not demonstrate a good-faith effort to resolve one's debts that would fall under the meaning of Financial Considerations Mitigating Condition 6." *See* ISCR Case No. 03-10880 (App. Bd. June 24, 2005); ISCR Case No. 01-09691 (App. Bd. Mar. 27, 2003) (stating an applicant must do more than merely cite the statute of limitations to obtain the full benefit of FC MC 6). *See also* ISCR Case No. 01-09691 at 3 (App. Bd. Mar. 27, 2003) ("[E]ven if a delinquent

debt is legally unenforceable under state law, the federal government is entitled to consider the facts and circumstances surrounding an applicant's conduct in incurring and failing to satisfy the debt in a timely manner."); ISCR Case No. 98-0349 at 2-3 (App. Bd. Feb. 3, 1999) (even though an applicant's delinquent debts were not legally collectible because of the statute of limitations, that fact did not preclude the Administrative Judge from considering the applicant's failure to resolve the delinquent debts before the statute of limitations ran). *Cf.* ISCR Case No. 01-04425 at 3-4 (App. Bd. May 17, 2002) (adverse Guideline F conclusions possible where applicant chose not to pay her delinquent debts, waited until her creditors ceased trying to collect those delinquent debts, and they were eventually dropped from her credit report.).

21. *See* ISCR Case No. 04-07360 at 2 (App. Bd. Sept. 26, 2006) (stating partial credit was available under FCMC 6 for debts being resolved through garnishment).

22. *See* ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004) (explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004)).

23. *See* ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006).