

DATE: November 21, 2006

In re:

SSN: -----

P Case No. 06-07434

DECISION OF ADMINISTRATIVE JUDGE

ERIN C. HOGAN

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant and her husband incurred over \$47,547 in delinquent debt. Much of the debt became delinquent in 2003, as a result of Applicant's six month period of unemployment due to health issues and her husband's business failure. Applicant and her husband refinanced their mortgage and used the extra money to pay off much of the debt. She is making regular payments towards her student loan account, which accounts for \$26,997 of the delinquent debt. She and her husband currently have well paying jobs. They are able to meet their financial obligations and have made a good faith effort towards resolving their delinquent debts. Applicant's eligibility for a assignment to a sensitive position is granted.

STATEMENT OF CASE

On December 6, 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 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").
[\(1\)](#) On May 25, 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.

In a sworn statement dated July 13, 2006, Applicant responded to the SOR allegations and requested a hearing. The case was assigned to me on August 16, 2006. A notice of hearing was issued on September 18, 2006, scheduling the hearing for October 5, 2006. The hearing was conducted on that date. The government submitted Government Exhibits (Gov Ex) 1- 4 which were admitted into the record without objection. Applicant testified on her own behalf, and submitted Applicant Exhibits (AE) A - G which were admitted into the record without objection. The record was held open until October 19, 2006, to allow Applicant to submit further documents. A 32 page document was timely submitted and marked as AE H. It was admitted without objection. DOHA received the hearing transcript (Tr.) on October 13, 2006.

FINDINGS OF FACT

In her SOR response, Applicant admits to all the SOR allegations with the exception of SOR ¶¶ 1.g, 1.i, 1.o and 1.p. Applicant's 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 a 42-year-old woman employed as a reconsideration specialist with a Department of Defense contractor who is seeking a position of public trust. She has worked for her employer for two years. (2) She is married and has two sons, ages 19 and 16. (3) She has a Master's Degree in Nursing. (4)

Applicant suffers from chronic back problems. From March 24, 2003, to September 14, 2003, she was unemployed as a result of her medical condition. In the fall 2003, her husband's business failed. Several of their debts became delinquent as a result. Her son broke his arm this same year. Insurance would not pay for his broken arm. Many of the debts are medical bills and delinquent student loan accounts. When Applicant and her husband obtained new employment, their salary was much less than their previous jobs. (5)

On December 6, 2004, Applicant completed a Public Trust Position Application (SF 85-P). (6) Her background investigation revealed 16 delinquent accounts with a total approximate balance of \$47,547. (7) The accounts included a \$94 medical account placed for collection (SOR ¶ 1.a); a \$114 medical account placed for collection (SOR ¶ 1.b); a \$154 department store account placed for collection (SOR ¶ 1.c); a \$177 medical account placed for collection (SOR ¶ 1.d); a \$2,717 account charged off as a bad debt in May 2004 (SOR ¶ 1.e); a \$6,258 medical account placed for collection in June 2004 (SOR ¶ 1.f); a \$1,737 department store account placed for collection in May 2004 (SOR ¶ 1.g); a \$2,944 account which was charged off as a bad debt in August 2004 (SOR ¶ 1.h); a \$78 medical account placed for collection in September 2004 (SOR ¶ 1.i); a \$3,683 medical account placed for collection in December 2004 (SOR ¶ 1.j); four student loan accounts placed for collection in March 2005, total balance \$26,997 (SOR ¶¶ 1.k - 1.n); a \$1,543 medical account, placed for collection in July 2005 (SOR ¶ 1.o); and a \$781 medical account placed for collection in December 2005 (SOR ¶ 1.p). Of these debts, \$12,728 are medical bills and \$26,997 are delinquent student loan accounts.

The current status of the delinquent debts are:

SOR Paragraph	Debt	Status	Record
1.a	\$94.12 medical account.	Paid off. Combined with balance in 1.f.	AE H at 30-31; Answer SOR. atch 1; Tr.at 29; AE C; AE F; Gov Ex 2 at 3.
1.b	\$114 medical collection account	Unable to contact company to settle account. Intends to pay debt.	Answer to SOR; Gov Ex 2 at 5.
1.c	\$154 collection account.	Paid.	Answer to SOR; Gov Ex 3 at 3; Gov Ex 4 at 3.
1.d	\$177 medical collection account.	Making payments.	Answer to SOR, atch 2.
1.e	\$2,717 charged off account.	Paid.	AE H at 28-29; Answer to SOR, atch 3; Gov Ex 2 at 2; Gov Ex 3 at 2; Gov Ex 4 at 2.
1.f	\$6,528 medical collection account.	Paid.	AE H at 30-31; Answer SOR. atch 1; Tr.at 29; AE C; AE F; Gov Ex 2 at 3.
1.g	\$1,737 department store account charged off as a bad debt.	Believes paid. Can't find receipt. Creditor has no record of account.	Tr. at 26-27; Answer to SOR; Gov Ex 2 at 2.
1.h	\$2,944 charged off account.	Making payments on a payment plan.	Answer to SOR, atch 4; AE E; Gov Ex 3 at 2; Gov Ex 4 at 2.

1.i	\$78 medical account/unknown medical provider.	Unable to determine who this creditor is. Made attempts to figure out. Needs more info.	Tr. at 27-28; Answer to SOR.
1.j	\$3,683 medical account placed for collection.	Paid.	AE H at 27; Answer SOR, atch 5; AE D; Gov Ex 2 at 4.
1.k	\$5,216 defaulted student loan account.	Making payments to bring payments up-to-date.	Answer SOR, atch 5 -6; AE B; Gov Ex 3 at 3; Gov Ex 4 at 3.
1.l	\$3,952 defaulted student loan account.	Making payments to bring payments up-to-date	Answer SOR, atch 5 -6; AE B; Gov Ex 3 at 3; Gov Ex 4 at 3.
1.m	\$9,951 defaulted student loan account.	Making payments to bring payments up-to-date	Answer SOR, atch 5 -6; AE B; Gov Ex 3 at 3; Gov Ex 4 at 3.
1.n	\$7,878 defaulted student loan account.	Making payments to bring payments up-to-date	Answer SOR, atch 5 -6; AE B; Gov Ex 3 at 3; Gov Ex 4 at 3.
1.o	\$1,543 medical account/unknown medical provider.	Unable to determine who this creditor is. Made attempts to figure out. Needs more info.	Tr. at 27-28; Answer to SOR.
1.p	\$781 medical account/unknown medical provider.	Unable to determine who this creditor is. Made attempts to figure out. Needs more info.	Tr. at 27-28; Answer to SOR.

Applicant and her husband refinanced the mortgage on their home in order to pay off a majority of the debts. On October 6, 2006, they closed on the loan.⁽⁸⁾ With the proceeds received from the refinancing, they paid off the debts in SOR ¶¶ 1.a, 1.e, 1.f, and 1.j.⁽⁹⁾ The debt alleged in SOR ¶ 1.c has also been paid.⁽¹⁰⁾ Applicant has almost finished rehabilitating her delinquent student loan accounts which are alleged in SOR ¶¶ 1.k-1.n. She has been making timely monthly payments for 7 months. She is two months away from rehabilitating her student loans. Once she completes these payments, her student loans will no longer be considered in default.⁽¹¹⁾

Applicant is making payments towards the debts alleged in SOR ¶¶ 1.d⁽¹²⁾ and 1.h.⁽¹³⁾ She has been unsuccessful in contacting the creditor of the debt in SOR ¶ 1.b but will pay the debt when she contacts the creditor.⁽¹⁴⁾ She believes her husband paid off the debt in SOR ¶ 1.g. She has unsuccessfully tried to get a receipt from the creditor. The creditor has no record of the account.⁽¹⁵⁾

The debts alleged in SOR ¶¶ 1.i, 1.o, and 1.p are medical accounts but the creditor is unknown. Applicant has researched this issue and is unable to identify the creditors. She is willing to resolve these accounts if the identity of the creditors is established.⁽¹⁶⁾

Applicant has only one open credit card account. It has a balance of \$400.⁽¹⁷⁾ Since 2003, she and her husband have obtained well paying jobs. Her husband earns \$60,000 a year and she earns \$52,000 a year. Their mortgage is \$1,800 a month. They have no car payments. They pay their oldest son's community college tuition which is about \$1,000 a semester. Their financial situation has improved.⁽¹⁸⁾ The loan officer who refinanced their mortgage gave them advice regarding finances and budgeting. They did not attend a formal financial counseling program.⁽¹⁹⁾

Applicant has progressed in her current position. She was promoted in January 2006.⁽²⁰⁾ She has attended numerous training sessions in order to progress in her career.⁽²¹⁾ She has received numerous accolades from her superiors and co-workers.⁽²²⁾ She also has received numerous awards.⁽²³⁾ Her performance evaluations indicate she is an above average performer.⁽²⁴⁾

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."⁽²⁵⁾ In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information 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 guideline at issue in this case is:

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.

Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns pertaining to this adjudicative guideline, 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."⁽²⁶⁾ An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person.⁽²⁷⁾ 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.⁽²⁸⁾

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.⁽²⁹⁾ Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts.⁽³⁰⁾ An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."⁽³¹⁾ Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.⁽³²⁾ 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.

Financial Considerations

Based on all the evidence, Financial Considerations Disqualifying Conditions (FC DC) 1 (*A history of not meeting financial obligations*), and FC DC 3 (*Inability or unwillingness to satisfy debts*) apply to Applicant's case. Applicant has had difficulty meeting her financial obligations since 2003. She incurred 16 delinquent debts with an approximate total balance of \$47,547, including \$26,997 in delinquent student loans.

I considered the Financial Considerations Mitigating Conditions (FC MC) and conclude FC 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)*) applies. Applicant and her family encountered financial problems in 2003 due to the failure of her husband's business, and her six month period of unemployment as a result of health issues. Eight of the delinquent debts are medical accounts related to Applicant's chronic back condition

and the medical expenses for her son's broken arm which was not covered by insurance.

FC 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 under control*) applies. Although not technically a formal financial counseling program, Applicant and her husband received a lot of financial advice from the loan officer who refinanced their mortgage. They have paid off five of the delinquent accounts, an approximate total of \$13,176. They are making payments on two of the accounts. Applicant is close to bringing her student loan payments out of default. Her delinquent student loans account for a large part of the delinquent debt, approximately \$26,997. Once they are out of default, she is capable of continuing to make timely payments towards her student loans. She and her husband both have well paying jobs. Their financial problems appear to be under control.

FC MC 6 (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) is also applicable. Applicant and her husband have actively worked on resolving their delinquent accounts. I note that Applicant was unable to determine the identity of the creditors in SOR ¶¶ 1.i, 1.o and 1.p. She looked through her financial records and found no similar accounts. I find that she has made a good faith effort to resolve these accounts considering the vagueness of the allegations. Each of these accounts allege that she owes "an unknown creditor." She takes her job very seriously and is sincere about getting her family's financial situation in order. She has made a good-faith effort to resolve her delinquent debts.

Applicant has mitigated the financial considerations security concern. Guideline F is decided for Applicant.

In all adjudications, the protection of our national security is the paramount concern. The objective of the trustworthiness 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 have considered all the evidence and the "whole person" in evaluating Applicant's trustworthiness. Applicant has an exemplary work history. Her health issues, her six month period of unemployment and the failure of her husband's business contributed to her financial problems. She has taken positive steps to deal with her financial problems. Based on the evidence in the record, it is clearly consistent with the national interest to grant Applicant eligibility for assignment to sensitive duties. Eligibility is granted.

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

Subparagraph 1.k: For Applicant

Subparagraph 1.l: For Applicant

Subparagraph 1.m: For Applicant

Subparagraph 1.n: For Applicant

Subparagraph 1.o: For Applicant

Subparagraph 1.p: 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.

Erin C. Hogan

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. Tr. at 6-7; Gov Ex 1.

3. Tr. at 37-38.

4. Tr. at 7.

5. Tr. at 36-38; Gov Ex 2.

6. Gov. Ex. 1.

7. Gov. Ex. 2, 3, 4.

8. AE A.

9. Tr. at 23, 29, 32; AE H at 27-31.

10. Gov Ex 4 at 3.

11. Tr. at 23, 30-31; AE A.

12. Answer SOR, atch 2.

13. Answer SOR, atch 4; AE E.

14. Answer to SOR.

15. Tr. at 26-27; Answer to SOR.
16. Tr. at 27-28; Answer to SOR.
17. Tr. at 33.
18. Tr. at 34-35.
19. Tr. at 31-32.
20. Tr. at 7, 25.
21. AE H at 2-4.
22. AE H at 5-6, 22-24.
23. AE H at 5-10; 19-21; 25-26.
24. AE H at 11-18.
25. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).
26. Directive, ¶ E2.2.1.
27. *Id.*
28. *Id.*
29. Directive, ¶ E3.1.14.
30. Directive, ¶ E3.1.15.
31. ISCR Case No. 01-20700 at 3 (App. Bd. December 19, 2002).
32. Directive, ¶ E2.2.2.