DATE: January 24, 2007

In re:

SSN: ----------

Applicant for ADP I/II/III Position

ADP Case No. 06-07698

DECISION OF ADMINISTRATIVE JUDGE

LEROY F. FOREMAN

APPEARANCES

FOR GOVERNMENT

Braden M. Murphy, Esq., Department Counsel

FOR APPLICANT

Pro se

SYNOPSIS

From 1998 to 2005, Applicant accumulated 52 delinquent debts totaling about $29,300. In December 2006, she negotiated payment plans for 18 debts, paid off or resolved 14 debts, and tendered payment on one. Four debts are disputed. Fifteen debts totaling more than $19,000 are unresolved. Trustworthiness concerns based on financial considerations are not mitigated. Eligibility for assignment to an ADP I/II/III position is denied.

STATEMENT OF THE CASE

On June 7, 2006, 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 and eligibility for an ADP I/II/III position. 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 security concerns raised under Guideline F (Financial Considerations) of the Regulation, based on 52 delinquent debts totaling about $29,300.

Applicant answered the SOR in writing on July 27, 2006, admitted the debts, submitted proof that some debts had been resolved, and elected to have a hearing before an administrative judge. The case was assigned to me on November 9, 2006. DOHA issued a Notice of Hearing on November 27, 2006, and the case was heard on December 11, 2006, as scheduled. Applicant affirmatively waived the 15-day notice required by the Directive ¶ E3.1.8 (Tr. 31). I kept the record open to enable Applicant to submit additional evidence. I received the hearing transcript and Applicant's additional evidence on December 29, 2006. Department Counsel's response to her additional evidence is attached to the record as Hearing Exhibit I. Her additional evidence has been incorporated into the record as Applicant's Exhibits (AX) L through Y.

PROCEDURAL RULING

At the hearing, Department Counsel moved to amend the SOR by deleting the reference to the Regulation. I granted the motion in part by deleting the reference to the outdated paragraph cited in the SOR, but I denied the portion of the motion requesting that the entire reference to the Regulation be deleted (Tr. 17-26). I announced at the hearing that I would apply the adjudicative guidelines in the Regulation and follow the procedures in the Directive (Tr. 25). The issue whether the guidelines in the Regulation or those in the Directive should apply to this case is moot, because the disqualifying and mitigating conditions in the Directive under Guideline F are the same as those in the Regulation. Department Counsel's post-hearing submission on the issue is attached to the record as Hearing Exhibit II.

FINDINGS OF FACT

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

Applicant is a 28-year-old beneficiary service representative employed by a defense contractor and working at a military medical facility. She has worked for her current employer since July 2004, and has established a reputation for professionalism and attention to detail (AX L, M). One beneficiary referred to her as "his angel" in her employer's newsletter (AX N). Her most recent performance appraisal scored her performance as 280 on a 300-point scale where any rating above 240 means the employee exceeded expectations (AX O). She received salary increases in April 2005 and April 2006 for exceptional performance (AX P, Q, R).

Applicant dropped out of high school before graduating. She obtained her GED certificate and has been enrolled as a part-time university student since 2002. She has completed about half the requirements for graduating from a four-year program with a major in biology (Tr. 7, 48-49). She was married in September 2006 (Tr. 37), and she has an eight-year-old son from a previous relationship. She has never received a trustworthiness determination (Tr. 56).

The SOR alleges 52 delinquent debts totaling more than $29,300. Applicant admitted all the debts in her answer to the SOR, and she presented documentary evidence that some of the debts had been paid. She also produced evidence that she paid some delinquent debts not alleged in the SOR (AX G). The following table summarizes the evidence regarding the debts alleged in the SOR.

Status of Debts Alleged in SOR

SOR	Debt	Amount	Status	Record
1.a	Bad check	$36.75	Paid 12-11-06	AX B at 1
1.b	Bad check	$33.90	Paid 12-11-06	AX B at 2
1.c	Bad check	$35.75	Paid 12-11-06	AX B at 3
1.d	Bad check	$40.25	Paid 12-11-06	AX B at 4
1.e	Bad check	$38.45	Paid 12-11-06	AX B at 5
1.f	Bad check	$37.35	Paid 12-11-06	AX B at 6
1.g	Bad check	$37.25	Paid 12-11-06	AX B at 7
1.h	Car loan	$15,207.62	Car repossessed; Applicant admitted owing $8,219 but made no payments	Tr. 50-52, 61-64
1.i	Photographs	$700	Disputed	Tr. 90
1.j	Medical	$937	Payment plan to begin 1-07	AX F
1.k	Medical	$336	Payment plan to begin 1-07	AX F
1.l	Medical	$34	Unpaid	Answer to SOR
1.m	Medical	$42	Unpaid	Answer to SOR
1.n	Medical	$26	Unpaid	Answer to

				SOR
1.o	Medical	$138	Payment plan to begin 12-06	AX C; AX K at 2
1.p	Medical	$166	Payment plan to begin 12-06	AX C; AX K at 2
1.q	Medical	$176	Payment plan to begin 12-06	AX C; AX K at 2
1.r	Rent	$722	Disputed	Tr. 87; GX 3 at 13
1.s	Medical	$156	Payment plan to begin 1-07	AX F
1.t	Medical	$169	Payment plan to begin 1-07	AX E; AX S
1.u	Not specified	$88	Disputed	GX 5 at 3
1.v	Cell phone	$731	Unpaid	Tr. 79-80
1.w	Medical	$633	Payment plan to begin 12-06	AX J; AX W
1.x	Medical	$189	Payment plan to begin 1-07	AX E; AX U
1.y	Medical	$204.42	Payment plan to begin 12-06	AX J; AX X
1.z	Medical	$325	Payment plan to begin 1-07	AX E; AX T
1.aa	Medical	$479	Unpaid	Answer to SOR
1.bb	Cable	$152	Unpaid; Applicant asserts payment, has no documentation; credit report reflects "unpaid"	Tr. 81; GX 5 at 2
1.cc	Credit card	$1,276	Settlement agreed but not paid	Tr. 81
1.dd	Medical	$131.43	Payment plan to begin 12-06	AX J; AX X
1.ee	Medical	$50	Paid 6-06	Answer to SOR
1.ff	Medical	$380	Payment plan to begin 12-06	AX D; AX X
1.gg	Medical	$493	Payment plan to begin 12-06	AX J; AX X
1.hh	Medical	$55	Payment plan to begin 12-06	AX D; AX V
1.ii	Credit card	$426	Attempted to pay, 6-06; creditor cannot locate account	Tr. 81
1.jj	Medical	$1,497	Payment plan to begin 1-07	AX F
1.kk	Cable	$95	Unpaid	Tr. 83
1.ll	Medical	$50	Unpaid	Answer to SOR
1.mm	Medical	$100	Settled 12-6-06	AX H at 3; AX I
1.nn	Medical	$174	Payment plan to begin 12-06	AX D; AX V
1.oo	Medical	$66	Payment plan to begin 12-06	AX D; AX V
1.pp	Medical	$32.59	Paid 6-06	Answer to SOR
1.qq	Medical	$78	Unpaid	Tr. 83
1.rr	Credit card	$584	Unpaid	Answer to SOR
1.ss	Medical	$100	Settled 12-6-06	AX H at 5; AX I

1.tt	Medical	$600	Settled 12-6-06	AX H at 2; AX I
1.uu	Electric	$76	Paid 12-11-06	AX A
1.vv	Medical	$100	Unpaid	GX 5 at 1
1.ww	Medical	$120	Unpaid	GX 5 at 1
1.xx	Unspecified	$106	Unpaid	GX 5 at 1
1.yy	Medical	$238	Settled 12-6-06	AX H at 4; AX I
1.zz	Telephone	$625	Disputed	Tr. 91-92

Circumstances Surrounding the Debts

Applicant began falling behind in her financial obligations in early 2000 (Tr. 93). While uninsured medical expenses contributed to her financial problems, her financial situation was largely the product of general overspending and poor financial planning. In her interview with the security investigator in March 2005, Applicant stated she intended to seek consumer credit counseling and consolidate her debts (GX 3 at 2, 4). At the hearing, she testified she was unable to enroll in a consumer counseling program because many of her creditors were unwilling to accept installment payments (Tr. 93-94).

The bad checks alleged in SOR ¶¶ 1.a through 1.g were uttered to a restaurant between October 6, 1998, and October 17, 1998, for amounts between $33.90 and $40.25. In an interview with a security investigator in March 2005, Applicant asserted she had no knowledge of the bad checks, but she surmised that they might be connected to the theft of her purse in 1998 (GX 2 at 7). She has paid off all the checks.

The debt alleged in SOR ¶ 1.h arose from the repossession of a car jointly purchased by Applicant and her then-boyfriend. They parted ways and the boyfriend moved to another state and married someone else. Applicant kept the car but was unable to make the payments. The car was repossessed in November 1998. She contacted the creditor in June 2006 and learned that the creditor obtained a judgment against the ex-boyfriend. The deficiency owed after repossession of the car was $8,219, but it has increased to more than $15,000 because of interest, penalties, and related costs. Applicant had no contact with the creditor after June 2006 (Tr. 60-64).

Applicant began working for an ambulance service in February 2000 and had medical insurance. She was treated for carpal tunnel syndrome in 2001 and for various ailments in 2003, about which she could remember little. Although she had medical insurance, it did not cover the medical bills in full (Tr. 68-69). She was unemployed from January to February 2004, and then employed part-time with no medical insurance July 2004 (Tr. 69-70).

The medical bills alleged in SOR ¶¶ 1.j and 1.k were for treatment received by Applicant in February 2000 (GX 3 at 1). The medical bill in SOR ¶ 1.s was for treatment of her son's ear infections in October 2001 (GX 3 at 2). The medical bills in SOR ¶¶ 1.ll, 1.ss, 1.tt, and 1.vv were related to her miscarriage in February 2004 (GX 3 at 6, 9; Tr. 66-67).

The medical bills alleged in SOR ¶¶ 1.ff, 1.gg, and 1.hh were incurred when Applicant was in an automobile accident with a drunk driver in June 2003. She sued the other driver and received a settlement in December 2003. She assumed her lawyer had settled the medical bills (GX 3 at 10).

In her security interview in March 2006, Applicant asserted that the cable service bill in SOR ¶ 1.kk had been paid in full (GX 3 at 11). At the hearing, she admitted she had probably overlooked this bill and that it was unpaid (Tr. 82).

The debt alleged in SOR ¶ 1.i occurred when Applicant contracted for fashion photography in the late 1990s. The original bill was for more than $1,200. After paying about $500, Applicant received only five photographs. Because she thought she received less than she contracted for, she refused to make any further payments (Tr. 90).

The debt alleged in SOR ¶ 1.r arose when Applicant's apartment and furniture were damaged by water leaking from another apartment above her. When the apartment owner refused to pay for the damage to her furniture, she moved out

and was charged one month's rent for early termination of the lease. She paid half the amount demanded, and refused to pay the remainder (Tr. 86-87).

The cell phone bill alleged in SOR ¶ 1.v arose when Applicant gave her son's grandmother a cell phone with the understanding the grandmother would make the payments. When the grandmother failed to pay the bill, Applicant remained responsible (Tr. 79-80).

The debt alleged in SOR ¶1.zz occurred when Applicant switched long distance carriers but the original carrier continued to bill her, resulting in double billing for her long distance service. Applicant disputes this debt (Tr. 91-92).

Applicant's Current Financial Situation

In a personal financial statement dated March 15, 2005, Applicant reported net monthly income of $1,927.46 (including $366 in child support from her son's father), household expenses of $955, debt payments of $420, and a net remainder of $552.46 (GX 3 at 16). Her income remained at the same level at the time of the hearing (Tr. 95). Her personal financial statement does not reflect her student loans totaling between $25,000 and $30,000, on which payments are deferred (Tr. 105). Her husband owns a lawn service company and earns about $1,200 per month. He works weekends as a musician, earning an additional $1,200 per weekend (Tr. 96). Her husband has taken responsibility for paying all the household expenses, allowing her to use her monthly income to pay both her current and delinquent debts (Tr. 104). She has virtually no savings, but she has about $3,000 in her 401k account (Tr. 103-04, 115). She no longer has any credit cards (Tr. 103).

In March 2005, Applicant listed monthly rent of $750, of which her fiancé paid half. At the hearing she testified she and her husband now pay rent of $550 (Tr. 98). In March 2005, she also listed a car payment of $298 among her debt payments. This payment was for a used 1999 Dodge truck, for which she had paid about $12,000. It turned out to be a "lemon," and after spending almost $5,000 on it, she traded it for a used 2002 Mercedes C240 at a cost of more than $20,000, increasing her monthly car payments to $623 (Tr. 98-99, 109, 118).

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. ADP III positions are "nonsensitive positions." Regulation ¶ C3.1.2.2. However, DOHA has been directed to apply the due process provisions of the Directive to ADP I, II, and III positions by a memorandum from the Deputy Undersecretary of Defense (Counterintelligence and Security) dated November 19, 2004. "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.

In security clearance cases, the government initially must present substantial evidence to establish controverted facts in the SOR that may disqualify the applicant from being eligible for access to classified information. Directive ¶ E3.1.14. "Substantial evidence" is "more than a scintilla but less than a preponderance." *See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). 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 this guideline, "[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 classified information. Two disqualifying conditions (DC) under this guideline could raise a security 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. DC 3 applies where an applicant has exhibited inability or unwillingness to satisfy debts. *Id.* Applicant's financial history is sufficient to raise DC 1 and DC 3.

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 security concern based on financial problems can be mitigated by showing the delinquent debts were not recent (MC 1) or was 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.

Security 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 her control, it is appropriate to consider whether she acted in a reasonable manner when dealing with her financial difficulties. ISCR Case No. 02-02116 at 4 (App. Bd. Sep. 25, 2003).

Applicant's financial difficulties began shortly after the birth of her son in 1998, and several events occurred that were beyond her control. Her purse and checkbook were stolen in 1998. She had periods of unemployment or part-time employment that left her without medical insurance. She was injured by a drunk driver and her car was totaled in June 2003. She suffered a miscarriage in February 2004. Her son had medical problems that were not fully covered by insurance. She gave a cell phone to her son's grandmother and was unaware that the grandmother neglected to pay for the service as she had promised. Her Dodge truck turned out to be a "lemon" requiring expensive repairs.

On the other hand, she did not respond reasonably to her financial difficulties. She failed to resolve any unpaid bills after gaining full-time employment in July 2004, even though her personal financial statement reflects a net monthly remainder of more than $500. Eight delinquent debts were for less than $100, and four were for between $100 and $152, but she took no action to pay any of her delinquent debts until shortly before the hearing. When she needed to replace her lemon truck, she did not purchase another similar vehicle, but instead purchased a more expensive car that increased her monthly car payments by more than $300. 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.

A security 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 security clearance.

Applicant knew in March 2005, when she was interviewed by a security investigator, that her financial situation raised trustworthiness concerns. Applicant did not take any significant steps to resolve her delinquent debts until after she

received the SOR in June 2006. Nevertheless, several debts have been paid or resolved (SOR ¶ 1.a-1.g, 1.ee, 1.mm, 1.pp, 1.ss, 1.tt, 1.uu, and 1.yy), and they no longer raise trustworthiness concerns. I resolve the allegations regarding these debts in her favor.

Applicant has disputed several debts, for reasons that I found plausible and credible. I resolve the debts alleged in SOR ¶¶ 1.i, 1.r, 1.u, and 1.zz in her favor.

Applicant has negotiated payment plans for several debts, with payments beginning in December 2006 and January 2007 (SOR ¶ 1.j, 1.k, 1.o, 1.p, 1.q, 1.s, 1.t, 1.w, 1.x, 1.y, 1.z, 1.dd, 1.ff, 1.gg, 1.hh, 1.jj, 1.nn, and 1.oo). These payment plans are steps in the right direction, but they are not sufficient to mitigate the trustworthiness concerns under DC 1 and DC 3, for three reasons. First, they were negotiated under pressure of qualifying for a trustworthiness determination. Second, Applicant has not yet established a track record indicating she is likely to follow through on the payment plans. "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). Third, there is no evidence showing likelihood of resolution of 15 debts totaling more than $19,000 (SOR ¶ 1.h, 1.l, 1.m, 1.n, 1.v, 1.aa, 1.bb, 1.kk, 1.ll, 1.qq, 1.rr, 1.vv, 1.ww, and 1.xx.). Applicant was not required, as a matter of law, to establish that she had resolved every debt. *See* ISCR Case No. 04-10671 at 3 (App. Bd. May 1, 2006). Nevertheless, the number and dollar amount of the unresolved debts, her inaction until she received the SOR, and her lack of a good financial track record leave me unconvinced that she has made or will continue to make a good faith effort to resolve all her 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: (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. Some of these factors are addressed in the discussion of Guideline F above, but some merit additional comment.

Applicant appears to be an exceptionally bright, articulate woman. She enjoys her job and has done it well. She works hard to improve her educational level. However, her failure to pay off her numerous small debts even though she had a net monthly remainder of about $500 is troublesome. Her purchase of an expensive automobile at a time she was in financial distress did not demonstrate financial acuity.

Applicant's resolution of many debts and skillful negotiation of several payment agreements were steps in the right direction. If she adheres to those payment agreements and addresses the unpaid and unresolved debts, she may well qualify for a favorable determination in the future. *See* Directive ¶¶ E3.1.37, E3.1.38 (reconsideration after one year). However, based on her record to date, she has not mitigated the trustworthiness concern based on financial considerations. Accordingly, I conclude she has not carried her burden of showing that it is clearly consistent with the interests of national security to grant her a favorable trustworthiness determination.

FORMAL FINDINGS

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

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraphs 1.a-1.g For Applicant

Subparagraph 1.h: Against Applicant

Subparagraph 1.i: For Applicant

Subparagraphs 1.j-1.q: Against Applicant

Subparagraph 1.r: For Applicant

Subparagraphs 1.s-1.t: Against Applicant

Subparagraph 1.u: For Applicant

Subparagraphs 1.v-1.dd Against Applicant

Subparagraph 1.ee: For Applicant

Subparagraphs 1.ff-1.hh Against Applicant

Subparagraph 1.ii For Applicant

Subparagraphs 1.jj-1.ll Against Applicant

Subparagraph 1.mm: For Applicant

Subparagraphs 1.nn-1.oo Against Applicant

Subparagraph 1.pp: For Applicant

Subparagraphs 1.qq-1.rr Against Applicant

Subparagraphs 1.ss-1.uu For Applicant

Subparagraphs 1.vv-1.xx Against Applicant

Subparagraphs 1.yy-1.zz 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 for assignment to an ADP I/II/III position is denied.

LeRoy F. Foreman

Administrative Judge