

DATE: November 20, 2006

In re:

SSN: -----

Applicant for Security Clearance

P Case No. 06-08252

DECISION OF ADMINISTRATIVE JUDGE

MARK W. HARVEY

APPEARANCES

FOR GOVERNMENT

Julie R. Edmunds, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Forty-three year-old Applicant had five alleged debts listed in the statement of reasons (SOR). One debt was a duplication. The remaining four SOR debts were accumulated prior to her 1999 divorce and her six-month periods of unemployment in 1999 and 2002. She obtained an associates degree in 2004, and has subsequently made all payments on her student loan. She made her initial and two monthly payments on her debt consolidation loan, which will eventually pay off all her SOR debts. She has mitigated concerns about financial considerations. Eligibility for an ADP I/II/III position is granted.

PROCEDURAL RULING

On September 12, 2006, Department Counsel made a motion to amend the Statement of Reasons (SOR), changing the reference from Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program* (Regulation), dated January 1987, as amended to DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified. ⁽¹⁾ Applicant did not object to the amendment. Department Counsel's motion is granted.

STATEMENT OF THE CASE

On December 7, 2004, Applicant applied for a public trust position and submitted a Questionnaire for Public Trust Positions (Standard Form (SF) 85P). ⁽²⁾ On July 11, 2006, the Defense Office of Hearings and Appeals (DOHA) issued a SOR to her, ⁽³⁾ pursuant to the Directive and the Regulation. The SOR alleges security concerns under Guideline F (Financial Considerations). The SOR detailed reasons why DOHA recommends that Applicant's case be submitted to an administrative judge for a determination that Applicant is not eligible for occupying an ADP I/II/III position.

In a notarized answer, dated July 27, 2006, Applicant responded to the SOR allegations, and elected to have her case

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decided on the written record in lieu of a hearing. A complete copy of the file of relevant material (FORM), dated September 13, 2006 was provided to her on September 19, 2006; and she was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation.⁽⁵⁾ On September 27 and October 10, 2006, DOHA received additional materials in response to the FORM from Applicant. On October 19, 2006, Department Counsel indicated she did not object to the additional matters Applicant submitted. The case was assigned to me on October 19, 2006.

FINDINGS OF FACT

As to the factual allegations under Guideline F, Applicant admitted that she was responsible for the debts listed on the SOR.⁽⁶⁾ Her admissions are incorporated herein as findings of fact. Her response to the SOR indicated the SOR debts became delinquent between December 1999 and July 2001. The debts in SOR ¶¶ 1.a and 1.c are duplications. After a complete and thorough review of the evidence of record, and upon due consideration of the same, I make the following additional findings of fact:

Applicant is 43-years-old, and has been employed by a United States government contractor since January 2005.⁽⁷⁾ From 2002 to 2004, she attended a business technology college and received an associates degree.⁽⁸⁾ She has no prior military service.⁽⁹⁾ From 2000 to 2004, she was employed with a temporary employment agency, a bank and worked briefly in production/assembly.⁽¹⁰⁾ She became unemployed in November 1999, and in June 2002 both times due to corporate downsizing. She was unemployed for about six months each time.⁽¹¹⁾ The quality of her employment is not characterized. The date of her marriage is not in the record, but she was divorced from her husband in October or November 1999. Her husband stopped making child support payments three or four months after the divorce. As a result of her divorce, and unemployment, she fell behind in making payments on her debts.

On April 21, 2005, Applicant provided a personal financial statement (PFS) to the security investigator.⁽¹²⁾ In 2005, her gross salary was \$2,054.00 per month, her net salary was \$1,494.00 per month, and her expenses totaled \$1,065.00 per month. After making all payments, including rent (\$445.00), groceries (\$200.00), clothing (\$60.00), utilities (\$120.00), car expenses (\$140.00), (payments on student loan of \$21,558 were deferred) and miscellaneous (\$100.00), \$429.00 per month remained. The 2005 PFS did not include any of the debts that were listed on the SOR. The PFS lists assets of \$400.00 in savings, and a car valued at \$3,600.00.

The five allegations in the SOR, and their current status, are described in the table below:

SOR ¶	TYPE DEBT	AMOUNT	CURRENT STATUS
¶ 1.a	Credit card	\$2,024.00	duplication of SOR debt ¶ 1.c ^{(13), (14)}
¶ 1.b	Credit card	\$1,561.00	debt consolidation loan ^{13, (16)}
¶ 1.c	Credit card	\$4,004.00	debt consolidation loan ^{13, 14}
¶ 1.d	Cell phone bill	\$326.00	debt consolidation loan ^{13, (17)}
¶ 1.e	Credit card	\$5,406.00	debt consolidation loan ^{13, (18)}

In her April 21, 2005, statement to a security investigator, Applicant stated she has placed herself on a strict budget, did not have any credit cards, and intended to pay her debts. In her June 2, 2006 response to interrogatories, she said she planned to work overtime to obtain additional income, so that she could pay her creditors.⁽¹⁹⁾ She explained that after her divorce and unemployment in 1999 she received credit counseling, and negotiated lower payments and balances with her creditors. However, when she was unemployed in 2002, she again fell behind in her payments.

On July 19, 2006, Applicant signed an agreement with a debt consolidation company (DCC), agreeing to pay DCC an initial payment of \$249.00 and \$171.00 per month thereafter. DCC agreed to contact the four outstanding creditors, negotiate settlements, and to pay her debts. Applicant paid DCC the initial payment, as well as the first two monthly
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payments. The settlement amounts for the four creditors are not part of the record evidence. Applicant provided proof that she has been making payments of approximately \$144.00 per month on her student loan from January to September 2006. [\(21\)](#)

POLICIES In the evaluation of an Applicant's security suitability for a public trust position, an administrative judge must consider Appendix 8 of the Regulation, which sets forth brief introductory explanations for each guideline, and the adjudicative guidelines, which are divided into Disqualifying Conditions (DC) and Mitigating Conditions (MC).

These adjudicative guidelines are not inflexible ironclad rules of law. Instead, recognizing the complexities of human behavior, an administrative judge should apply these guidelines in conjunction with the factors listed in the adjudicative process provision at Appendix 8 of the Regulation. An administrative judge's overarching adjudicative goal is a fair, impartial and common sense decision.

To be eligible for a public trust position, an applicant must meet the security guidelines contained in the Regulation. "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.

"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. Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept," an administrative judge should consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a meaningful decision. Specifically, an administrative judge should consider the nine adjudicative process factors listed in the Regulation, Appendix 8, at 132: (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.

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.

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 section below.

Since the protection of sensitive information is the paramount consideration, the final decision in each case is arrived at by applying the standard that eligibility for a public trust position is "clearly consistent with the interests of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

In the decision-making process, facts must be established by "substantial evidence." [\(22\)](#) The government initially has the burden of producing evidence to establish a case which demonstrates, in accordance with Regulation, Appendix 8, that it is not clearly consistent with national security to approve eligibility for a public trust position. Directive ¶ E3.1.14. If the government meets its initial burden, the Applicant then has the burden of persuasion, that is to present evidence in refutation, explanation, extenuation or mitigation sufficient to overcome the doubts raised by the government's case. 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.

A person who seeks eligibility for a public trust position enters into a fiduciary relationship with the government predicated upon trust and confidence. It is a relationship that transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship the government must be able to repose a high degree of trust and confidence in those individuals to whom it grants eligibility for a public trust position. Decisions include, by necessity, consideration of the possible risk an Applicant may deliberately or inadvertently fail to protect or safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information.

The scope of an administrative judge's decision is limited. Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Decisions concerning eligibility for a public trust position cover many characteristics of an Applicant other than allegiance, loyalty, and patriotism. Nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism.

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude the following with respect to the allegations set forth in the SOR:

Guideline F (Financial Considerations)

The government has met its initial burden under Guideline F. Applicant's failure to pay her debts is of concern, especially in light of her desire to have access to sensitive government information. Regulation, Appendix 8, clearly expresses the government's concern regarding financial considerations, stating, "an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds." 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 sensitive information.

Applicant's actions in failing to satisfy her outstanding financial obligations give rise to Financial Considerations Disqualifying Condition (FC DC) 1, "a history of not meeting financial obligations," and FC DC 3, "inability or unwillingness to satisfy debts." The debt in SOR ¶ 1.a is included in the debt in SOR ¶ 1.c. The four debts listed in SOR ¶¶ 1.b, 1.c, 1.d, and 1.e will be discussed briefly below.

FC DCs 1 and 3 apply to her multiple failures to meet her financial obligations, and her admission that she was unable to pay her debts, which then became delinquent and remained delinquent from 2002 until her debt consolidation loan brings them to current status. The government produced substantial evidence of these two disqualifying conditions, and the burden shifted to Applicant to produce evidence and prove a mitigating condition. The burden of disproving a mitigating condition never shifts to the government. ⁽²³⁾

I considered Financial Considerations Mitigating Condition (FC MC) 1, "the behavior was not recent;" FC MC 2, "it was an isolated incident;" FC MC 3, "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;" 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 is under control;" and FC MC 6, "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts."

The Regulation does not define "recent," and there is no "bright-line" definition of what constitutes "recent" conduct. In the last four years Applicant had four delinquent debts. Based on evaluation of the record evidence as a whole, ⁽²⁴⁾ I conclude FC MCs 1 and 2 do not apply because Applicant has multiple (four) delinquent SOR debts. Even if the payments are now considered current due to her debt consolidation loan, this loan was obtained in July 2006, after she

received the SOR. This positive change is simply too recent to merit full application of FC MC 1.

FC MC 3 partially applies to all four SOR debts at issue because the debts became delinquent in 1999 and 2002 were the result of her 1999 divorce and her unemployment (in 1999 and 2002). Applicant's divorce and unemployment are specifically enumerated in FC MC 3 as examples of causes of financial problems that may be "largely beyond the person's control." I conclude that Applicant's statement about how her divorce and unemployment affected her financial situation is credible and sufficient to provide some credit under FC MC 3 in regard to her debts. Applicant, however, does not receive full credit for FC MC 3 because she had approximately four years to demonstrate progress resolving these four debts. The impact of her 2002 unemployment is somewhat reduced by her steady employment for the past 18 months, and the paucity of evidence showing how she has endeavored to pay or resolve her debts. She has made progress resolving her debts for the last three months, and some credit is warranted for her payments on her debt consolidation loan.

A credit counseling service stopped creditors from harassing Applicant in 1999, reached some settlements with her creditors and established a payment plan. ⁽²⁵⁾ She became unemployed in 2002, and her debts again became delinquent. FC MC 4 does not fully apply because there is insufficient evidence that she has had recent financial counseling. Some mitigating credit is warranted because there are clear indications (since July 2006) that the problem is being resolved or is under control.

FC MC 6 does not fully apply because there is insufficient information to establish that Applicant showed good faith in the resolution of her debts. ⁽²⁶⁾ She has not provided any information about how she attempted to resolve or repay her debts in the period from 2002 until July 2006. She does, however, merit partial credit for her recent efforts through a debt consolidation program to repay her creditors, which is a legal means for resolving these four debts. ⁽²⁷⁾ Reduction in her debts will substantially reduce her potential vulnerability to improper financial inducements.

"Whole Person" Analysis

In addition to the enumerated disqualifying and mitigating conditions, I have considered the general adjudicative guidelines related to the whole person concept under the Regulation, Appendix 8, at 132. As noted above, Applicant's lengthy history of failing to meet her financial obligations, and inability or unwillingness to satisfy her debts raise serious trustworthiness concerns. She is 43 years old, sufficiently mature to be fully responsible for her conduct. Her actions in generating or failing to resolve her four debts were knowledgeable and voluntary. Her debt problems resulted from voluntary decisions to purchase items. However her initial inability to repay her debts resulted from her divorce, her husband's failure to pay child support, and two periods of unemployment. She subsequently made decisions to use her money for her education, and her children, rather than paying her four creditors. There is some evidence of rehabilitation and positive behavior changes as indicated by her statement that she intends to work overtime to increase her income, her arrangement in July 2006 for a debt consolidation loan, and her credible promise to pay her creditors. So there is some possibility of increased income and a short track record of three payments on her debt consolidation loan. The potential for pressure, coercion, exploitation, or duress is low--Applicant has not obtained any additional debt, except for her student loan, in the last several years. These behavior changes will result in an improvement of her financial circumstances. Applicant earned an associate's degree in 2004. She does not have any credit cards, and her only new debt is her \$21,000.00 student loan. She has made all of her scheduled payments on her student loan. These recent accomplishments show significant self-discipline. In sum, the likelihood of recurrent debt problems is low. After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole person, I conclude she has mitigated the trustworthiness concerns pertaining to financial considerations.

Substantial evidence supports Applicant's trustworthiness eligibility and suitability. I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my "careful consideration of the whole person factors" ⁽²⁸⁾ and supporting evidence, as well as my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities. For the reasons stated, I conclude Applicant is eligible for a public trust position.

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

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's eligibility for a public trust position. Eligibility for an ADP I/II/III position is granted.

Mark W. Harvey

Administrative Judge

1. A memorandum from the Deputy Under Secretary of Defense (Counterintelligence and Security) to Director, Defense Office of Hearings and Appeals (DOHA), dated November 19, 2004 states DOHA shall utilize provisions of the Directive to resolve contractor cases involving trustworthiness determinations. Accordingly, in this decision I will follow the procedural rules of the Directive but apply the adjudicative guidelines in the Regulation.

2. Item 6, Questionnaire for Public Trust Positions, Standard Form (SF) 85P, is dated December 7, 2004.

3. Item 1, Statement of Reasons (SOR), dated July 11, 2006. This citation is the source for all the factual assertions in the remainder of this paragraph.

4. Item 3 (Applicant's response to SOR with supporting documentation, was date stamped received at DOHA on July 27, 2006).

5. Defense Office of Hearings and Appeals (DOHA) transmittal letter is dated September 13, 2006. It was served on Applicant on September 19, 2006. The DOHA transmittal letter informed Applicant that she had 30 days after receipt to submit information.

6. The source for all factual assertions in this paragraph is Item 3, *supra* note 4.

7. Item 6, *supra* note 1, at 1 and Item 8 (Applicant's response to Department Counsel's interrogatories, dated June 2, 2006), at 5.

8. *Id.*, question 10, at 2.

9. *Id.*, question 16, at 10.

10. *Id.*, question 11, at 7.

11. *See* Item 7 (Applicant's statement, dated April 21, 2005, to a Special Investigator for the Office of Personnel Management, Investigations Service) at 1. This citation is the source for the remainder of this paragraph.

12. Item 7 (Form 154, Personal Financial Statement (PFS), dated April 21, 2005). The remainder of this paragraph is

derived from Applicant's PFS.

13. See Items 1 (SOR), 3 (Applicant's response to SOR), 9 (Applicant's credit report dated April 12, 2006), and 10 (Applicant's credit report, dated December 16, 2004). Applicant's response to the SOR admits the debts as described in the SOR. The SOR includes the amount of the debt, and the date the debt was charged off. This table includes the SOR amounts. Applicant's responses to the SOR and FORM indicate all debts are being paid using a debt consolidation loan.

14. For the SOR debts in ¶¶ 1.a and 1.c, Applicant's original balance was \$2,100.00. She stopped making payments in May 2002, and the current balance is approximately \$4,004.00. [\(15\)](#)

15. Item 8 (Applicant's response to Department Counsel's interrogatories, dated June 2, 2006), at 2-3 is the source for the facts in the first two sentences of this paragraph. ' ' -

16. For the SOR debt in ¶ 1.b, Applicant's original balance was \$500.00. She stopped making payments in May 2002, and the current balance is approximately \$1,561.00. See Item 8 (Applicant's response to Department Counsel's interrogatories, dated June 2, 2006), at 2-3.

17. For the SOR debt in ¶ 1.d, Applicant's original balance was \$326.00 on this cell phone bill which she received around June 1999. She never made any payments because she believed her former spouse should pay it as it was from his cell phone. Item 8 (Applicant's response to Department Counsel's interrogatories, dated June 2, 2006), at 2-3, and Item 7 (Applicant's statement, dated April 21, 2005, to a Special Investigator for the Office of Personnel Management, Investigations Service) at 1.

18. For the SOR debt in ¶ 1.e, Applicant's original balance was \$2,500.00. She stopped making payments in March 2002, and the current balance is approximately \$5,406.00. See Item 8 (Applicant's response to Department Counsel's interrogatories, dated June 2, 2006), at 2-3.

19. Item 8 (Applicant's response to Department Counsel's interrogatories, dated June 2, 2006), at 2-3 is the source for the facts in the remainder of this paragraph

20. Applicant's response to the FORM, dated October 9, 2006, at 1-6.

21. *Id.* at 1-2, 7.

22. "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent [a Judge's] finding from being supported by substantial evidence." *Consolo v. Federal Maritime Comm'n*, 383 U.S. 607, 620 (1966). "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).

23. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

24. See ISCR Case No. 03- 02374 at 4 (App. Bd. Jan. 26, 2006) (citing ISCR Case No. 02-22173 at 4 (App. Bd. May 26, 2004)). When making a recency analysis for FC MC 1, all debts are considered as a whole.

25. See Item 8 at 4.

26. 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)).

27. *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).

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