

DATE: October 25, 2006

In re:

SSN: -----

Applicant for Security Clearance

P Case No. 06-09401

DECISION OF ADMINISTRATIVE JUDGE

MARK W. HARVEY

APPEARANCES

FOR GOVERNMENT

Julie R. Edmunds, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Forty-four year-old Applicant had twelve alleged debts and a 2001 bankruptcy listed in the statement of reasons (SOR). She established that six SOR debts were discharged by bankruptcy. However, she admitted that she was not making payments on the other six delinquent debts, including one for \$6,487.00. She has failed to mitigate concerns about financial considerations. Eligibility for an ADP I/II/III position is denied.

STATEMENT OF THE CASE

On November 3, 2004, Applicant applied for a public trust position and submitted a Questionnaire for Public Trust Positions (Standard Form (SF) 85P).⁽¹⁾ On July 13, 2006, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to her,⁽²⁾ pursuant to Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, and DoD Regulation 5200.2-R, *Personnel Security Program* (Regulation), dated January 1987, as amended.⁽³⁾ 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.⁽⁴⁾

In a notarized answer, dated July 7, 2006, Applicant responded to the SOR allegations, and elected to have her case decided on the written record in lieu of a hearing.⁽⁵⁾ A complete copy of the file of relevant material (FORM), dated August 31, 2006, was provided to her on September 6, 2006; and she was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation.⁽⁶⁾ Applicant provided additional materials in response to the FORM, dated September 9, 2006. The case was assigned to me on October 4, 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. ⁽⁷⁾ Her admissions are incorporated herein as findings of fact. She communicated with collection agencies, and offered to make payments, "even if it's just \$5.00 per month," to no avail. She was separated from her husband and filed for bankruptcy. She was also unemployed. Due to expenses for herself and her granddaughter, she was not able to pay her debts. Her response to the SOR did not discuss the individual debts on the SOR. After a complete and thorough review of the evidence of record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 44-year-old employee of a United States government contractor. ⁽⁸⁾ From 1985 to 1989, she attended a vocational, technical or trade school, and received an associates degree. ⁽⁹⁾ She has no prior military service. ⁽¹⁰⁾ She was unemployed for six months in 2002 to 2003, and again in 2004 for four to six months. Her employment has been stable the last two years. ⁽¹¹⁾ Applicant was married in April 1989, and was separated from her husband in July 2001. ⁽¹²⁾ After she separated from her husband, she fell behind in making payments on her debts. ⁽¹³⁾

In 2001, Applicant had \$25,841.71 in unsecured claims, and \$4,000.00 in secured claims. ⁽¹⁴⁾ She had personal property valued at \$3,215.00. Her monthly income was \$1,415.45 and her current monthly expenditures were \$1,907.98.

On March 31, 2005, Applicant provided a written statement to a security investigator. Her answers were consistent with her response to the SOR, except she listed numerous debts that were discharged in her bankruptcy, including the six debts listed in SOR ¶¶ 1.b., 1.c., 1.d., 1.h., 1.i., and 1.k. ⁽¹⁵⁾ Applicant said she had no further obligations in regard to these six debts. ⁽¹⁶⁾ Although the schedules of liabilities were not provided by the parties, I accept Applicant's statement about the discharge of these six debts as credible. Accordingly, I find that these six debts were discharged in bankruptcy. *See* Table, at 4, *infra*.

On March 31, 2005, Applicant provided a personal financial statement (PFS) to the security investigator. ⁽¹⁷⁾ In 2005, her gross salary was \$1,400.00 per month, and her expenses totaled \$1,231.00 per month. After making all payments, including rent (\$780.00), groceries (\$100.00), clothing (\$25.00), utilities (\$100.00), car expenses (\$125.00), student loan (\$76.00) and miscellaneous (\$25.00), \$169.00 per month remained. Her student loan had a balance owed of about \$10,000.00. The 2005 PFS did not include any of the debts that were listed on the SOR. The PSF lists assets of \$200.00 in savings, and a car valued at \$2,500.00.

The 13 allegations in the SOR, and their current status, are described in greater detail below:

SOR ¶	TYPE DEBT	AMOUNT	CURRENT STATUS
¶ 1.a.	Loan	\$389.00	delinquent as of January 2003 ⁽¹⁸⁾
¶ 1.b.	Loan	\$458.00	discharged by bankruptcy ⁽¹⁹⁾
¶ 1.c.	Medical Debt	\$107.00	discharged by bankruptcy ¹⁹
¶ 1.d.	Loan	\$341.00	discharged by bankruptcy ¹⁹
¶ 1.e.	Medical Debt	\$343.00	delinquent as of October 2003 ¹⁸
¶ 1.f.	Loan	\$244.00	delinquent as of November 2004 ¹⁸
¶ 1.g.	Loan	\$57.00	delinquent as of July 2004 ¹⁸
¶ 1.h.	Judgment	\$555.00	discharged by bankruptcy ¹⁹
¶ 1.i.	Loan	\$289.00	discharged by bankruptcy ¹⁹
¶ 1.j.	Loan	\$269.00	delinquent as of August 2004 ¹⁸
¶ 1.k.	Judgment	\$381.00	discharged by bankruptcy ¹⁹
¶ 1.l.	Car Loan	\$6,487.00	delinquent as of October 2004 ¹⁸
¶ 1.m.	Bankruptcy	\$29,841.00	⁽²⁰⁾

Applicant's debts resulted from support she provided to her daughter's family, in particular her granddaughter, unemployment, and separation from her husband. ⁽²¹⁾ In 2005 she put herself on a tight budget and her financial circumstances improved. ⁽²²⁾ She did not, however, pay her six delinquent SOR debts that were not discharged by her 2001 bankruptcy.

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, 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 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 (*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*). Each of the debts listed in SOR ¶¶ 1.a. to 1.i. as well as her bankruptcy in SOR ¶ 1.m. 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. As indicated previously, Applicant admitted all SOR debts, and her 2001 bankruptcy, acknowledging that she fell behind in her payments, and that she was currently unable to pay her delinquent debts. 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)*), 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 five years Applicant had twelve unpaid debts and a bankruptcy. After her bankruptcy discharged six SOR debts, she generated six additional SOR debts. Based on evaluation of the record evidence as a whole, ⁽²⁴⁾ I conclude FC MCs 1 and 2 do not apply because Applicant currently has multiple (six) unpaid SOR debts.

FC MC 3 applies to SOR ¶¶ 1b., 1.c., 1.d., 1.h., 1.i., 1.k., and 1.m. because the debts that became delinquent in 2001 resulted from her separation from her spouse. Applicant's separation was largely beyond her control. In 2001, Applicant had \$25,841.71 in unsecured debts, \$29,841.00 in total liabilities, and only \$1,415.45 in monthly income. (25) Her current expenditures were \$1,907.98 per month. (26) Her spouse's income is not part of the record. I conclude, however, that Applicant's statement about how her separation affected her financial situation is credible and sufficient to apply FC MC 3 in regard to her debts discharged in the 2001 bankruptcy.

FC MC 3 does not apply to the six SOR debts in ¶¶ 1a., 1.e., 1.f., 1.g., 1.j., and 1.l. because these debts became delinquent after her separation, and are currently delinquent. Applicant provides two explanations for the post-2001 debt delinquencies. After the 2001 bankruptcy, applicant had two periods of unemployment. The impact of this unemployment is negated by her steady employment for the past two years, and the paucity of evidence showing how her unemployment caused these six SOR debts. Her car broke down, and she needed to get it repaired because of her long commute to work. (27) However, she did not explain why these six delinquent debts resulted from her car problems. There is little other evidence to explain why the post-2001 debts alleged in the SOR became or remained delinquent. She had sufficient time over the last two years to demonstrate progress on her debts, but Applicant has not presented any evidence showing such progress.

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. (28) Applicant has not provided any information about how she attempted to resolve or repay the pre-2001 debts before utilizing bankruptcy. She does however merit partial credit for using bankruptcy, which is a legal means for resolving these six debts. (29) Bankruptcy substantially reduced her debts, and accordingly reduced her potential vulnerability to improper financial inducements.

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 and ongoing failure to meet her financial obligations, and inability or unwillingness to satisfy debts raise serious trustworthiness concerns. Her actions were knowledgeable and voluntary. She has multiple delinquent debts. She is 44 years old, sufficiently mature to be fully responsible for her conduct. Her debt problems resulted from voluntary decisions. There is some evidence of rehabilitation and positive behavior changes as indicated by Applicant's search for a part time job to increase her income, and plans to move to a residence with lower rent. (30) So there is some possibility of increased income and lower monthly expenditures, but evidence of future behavior changes that would improve her financial circumstances does not presently exist. The likelihood of recurrence remains high because she has not yet increased her income or decreased her liabilities or expenses. Thus, corroborating evidence of a change is sparse. After weighing the disqualifying and mitigating conditions, all the facts and circumstances, in the context of the whole person, I conclude she has not mitigated the security concerns pertaining to financial considerations.

The evidence leaves me with grave questions and doubts as to Applicant's eligibility for a public trust position. 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" (31) and supporting evidence, my application of the pertinent factors under the adjudicative process, and my interpretation of my responsibilities under the Regulation. Applicant has failed to mitigate or overcome the government's case. For the reasons stated, I conclude Applicant is not 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: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: Against Applicant

Subparagraph 1.g.: Against Applicant

Subparagraph 1.h.: For Applicant

Subparagraph 1.i.: For Applicant

Subparagraph 1.j.: Against Applicant

Subparagraph 1.k.: For Applicant

Subparagraph 1.l.: Against Applicant

Subparagraph 1.m.: For Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant's request for a determination of trustworthiness and eligibility for assignment to sensitive duties. Eligibility is denied.

Mark W. Harvey

Administrative Judge

1. Item 4, Questionnaire for Public Trust Positions, Standard Form (SF) 85P, is dated January 19, 2005, on the first page. Applicant signed the SF 85P on November 3, 2004.
2. Item 1, Statement of Reasons (SOR), dated July 13, 2005.
3. In ADP trustworthiness determinations, I am required to follow the procedural rules of the Directive but apply the adjudicative guidelines in the Regulation.
4. Item 1, SOR, dated July 13, 2005.
5. Item 3 (Applicant's response to SOR with supporting documentation, notarized July 21, 2006, but dated on the first page, July 7, 2006).
6. Defense Office of Hearings and Appeals (DOHA) transmittal letter, dated August 31, 2006. The DOHA transmittal letter informed Applicant that she had 30 days after receipt to submit information.
7. The source for all factual assertions in this paragraph is Item 3, *supra* note 5, at 1.
8. Item 4, *supra* note 1, at 1.
9. *Id.*, question 10., at 2.

10. *Id.*, question 16., at 6.

11. Applicant's Letter in response to the FORM, dated September 8, 2006. The quality of her employment performance was not characterized.

12. Item 4, *supra* note 1, question 14., at 5.

13. Applicant's Letter in response to the FORM, dated September 8, 2006.

14. All facts in this paragraph are based on Item 7, at 3 (Bankruptcy Court's Summary of Schedules).

15. *See* Item 5 (Applicant's statement, dated March 31, 2005, to a Special Investigator for the Office of Personnel Management, Investigations Service) at 2-3.

16. *Id.* On June 28, 2001, the Bankruptcy Court discharged these six SOR debts. *See* Items 7 and 8, Bankruptcy Court documentation. Although Item 6 (Applicant's credit report, dated May 11, 2006) includes references to these six debts as being delinquent or placed for collection after the bankruptcy discharged them, I conclude Applicant's statement and supporting documentation is more credible than Item 6 in regard to the status of these six debts.

17. Item 5, Form 154, Personal Financial Statement (PFS), dated March 31, 2005. The remainder of this paragraph is derived from Applicant's PSF.

18. *See* Items 1 (SOR), 3 (Applicant's response to SOR), and 6 (Applicant's credit report, dated May 11, 2006) at 1-2. Applicant's response to SOR admits the debts as described in the SOR. The SOR includes the amount of the debt and the date the debt was placed for collection or the judgment was entered. This table includes the SOR amounts and dates. The amounts of the debts and the dates in this table are also listed in Applicant's credit report.

19. *See* Items 5, 7, and 8, and discussion about Applicant's bankruptcy at 3 of this decision, *supra*.

20. Applicant's 2001 bankruptcy listed total liabilities of \$29,841.00 (included \$4,000.00 in secured claims) and total assets of \$3,215.00 (personal property). Applicant has no legal obligation with respect to the unsecured debts because they were discharged in bankruptcy. The status of the secured debts referred to in the 2001 bankruptcy is unknown. Applicant's student loan may be included in the total amount of the unsecured debts. If so, it was not released by the bankruptcy, and is listed on Applicant's 2005 PSF. *See* Items 5, 7, and 8, and discussion at note 19, *supra*.

21. Applicant's Letter in response to the FORM, dated September 8, 2006, indicates her commute to work is 45 minutes, and car repairs are one of the circumstances that caused her financial problems.

22. Item 5, dated March 31, 2005, at 6.

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. Item 7, (Bankruptcy Court Summary of Schedules) at 3.

26. *Id.*

27. Applicant's Letter in response to the FORM, dated September 8, 2006, indicates her commute to work is 45 minutes, and car repairs are one of the circumstances that caused her financial problems.

28. 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)).

29. *See* ISCR 04-07360 at 2 (App. Bd. Sept. 26, 2006) (stating partial credit was available under FCMC 6 for debts being resolved through garnishment).

30. Applicant's Letter in response to the FORM, dated September 8, 2006.

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