

DATE: March 30, 2007

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In re:

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SSN: -----

Applicant for ADP I/II/III Position

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ADP Case No. 06-12750

**DECISION OF ADMINISTRATIVE JUDGE**

**MARY E. HENRY**

**APPEARANCES**

**FOR GOVERNMENT**

Ray T. Blank, Jr., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's husband, the main family wage earner, lost his job in 2002 and remained unemployed for more than two years. During this time, they incurred medical debt and credit card debt, which is now delinquent. Applicant has started paying some of her old debt and is paying her current bills in a timely fashion. She has mitigated the government's concerns about her finances. Applicant's eligibility for a assignment to a sensitive position is granted.

**STATEMENT OF CASE**

On August 31, 2004, Applicant submitted an application for a position of public trust, an ADP I/II/III position. The Defense Office of Hearings and Appeals (DOHA) declined to grant the application under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended (the "Directive").<sup>(1)</sup> On June 29, 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. DOHA assigned this case to another administrative judge on January 26, 2007 and reassigned it to me on February 6, 2007 for caseload considerations. DOHA issued a notice of hearing on February 6, 2007. Applicant waived her right to 15 days notice of the hearing date by letter with a Facsimile date of February 6, 2007. I conducted a hearing on February 14, 2007. The government submitted four exhibits, which were marked as Government Exhibits (Gov Ex) 1- 4 and admitted into the record without objection. Applicant submitted 20 exhibits, which were marked as Applicant Exhibits (AE) A -T and admitted into the record without objection. Applicant testified on her own behalf. DOHA received the hearing transcript (Tr.) on March 1, 2007.

**FINDINGS OF FACT**

In her SOR response, Applicant admitted to the SOR allegations under Guideline F. Applicant's admissions are incorporated herein. [\(2\)](#) In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant, a 45-year-old woman, has worked as a benefit service representative for more than seven years for a Department of Defense contractor. She is seeking a trustworthiness determination needed for her position. She attended a technical college after high school. [\(3\)](#) She is married with six children, including stepchildren. Two children are living at home, including one attending college. [\(4\)](#)

In 1995, Applicant and her husband bought two houses. They lived in one house and rented the other house. About 5 years later, they purchased land 200 miles away in another state, with the intent of building a house. In 2001, while building the house, her husband fell and broke his ankle. He continued to receive his pay from his employer during his convalescence. However, not long after he returned to work in 2002, his boss died, resulting in the loss of his job. Shortly thereafter, they sold the house in which they lived, and moved into a trailer located on the lot where they were building their new house. They lived in the trailer for one year. When her husband completed building their new house in 2003, they moved out of the trailer and into their new home. They still have the trailer on their property. [\(5\)](#)

A review of Appellant's credit reports dated February 10, 2005, May 18, 2006, January 22, 2007, and the SOR shows 12 unpaid debts totaling \$19,782. The current status of these debts is as follows: [\(6\)](#)

SOR ¶	TYPE OF DEBT (date)	AMOUNT	CURRENT STATUS
1.a	Medical bill (2001)	\$ 101.00	Paid <a href="#">(7)</a>
1.b.	Credit - home building (2002)	\$1,097.00	Unpaid
1.c	Credit card (2002)	\$3,907.00	Unpaid
1.d	Credit card (2002)	\$1,767.00	Unpaid
1.e	Department store credit (2001)	\$3,486.00	Unpaid
1.f	Medical bill (2002)	\$ 545.00	Unpaid
1.g	Hospital bill (2002)	\$ 247.00	Unpaid
1.h	Credit - home building (2003)	\$5,534.00	Unpaid
1.i	Medical bill (2004)	\$ 235.00	Unpaid
1.j	Medical bill ((2004)	\$2,521.00	Paying \$50 a month, balance as of 1/31/07 \$2371.70 <a href="#">(8)</a>
1.k	Medical bill (2004)	\$ 192.00	Paying \$20 a month, Balance \$152.00 <a href="#">(9)</a>
1.l	Medical bill (2005)	\$ 150.00	Unpaid.

In December 2003, Applicant's yearly income decreased \$3,000-\$4,000 when her current employer reduced her work hours from full-time to part-time. Because of the job situation, Applicant did not have medical insurance. During this time, she incurred significant medical expenses for emergency room care. She paid her medical bills with her credit card. She and her husband also used their credit cards to purchase materials to build their new house. Applicant's husband did not find a new job until March 2005. Applicant returned to work full-time in July 2005.

Applicant recently had neck surgery for cervical fusions. After insurance paid her hospital bill, her bill had a remaining balance of \$1,798. She pays \$50 a month on this bill, which is not listed in the SOR. The unpaid balance as of January 31, 2007, was \$1,648. [\(10\)](#)

When Applicant's husband lost his job, their household income was reduced by \$35,000 that year. For the next two tax years, her salary provided the only household income, averaging about \$30,000 each year. When her husband returned to work their household income increased to \$88,700 the first year and for the 2006 tax year to \$110,000. Applicant's gross income is \$2,200 a month and her net income is \$1,300 a month. Her husband's gross income is \$7,000 a month and his net income is \$5,200 a month. They also receive \$525 a month in rental income from the house being rented by

one of their daughters. Their total monthly net income is approximately \$7,025.<sup>(11)</sup>

Applicant's household monthly expenses are \$675 for the mortgage on the rental property, \$1,100 for two car payments (a third monthly car payment of \$590 ended in February 2007),<sup>(12)</sup> \$138 for the mortgage on the trailer, \$600 for groceries; \$655 for utilities, \$555 for gasoline for the cars, \$220 for insurance, \$125 for medical bills; \$200 for clothing, \$300 for credit card payments, and \$225 for miscellaneous expenses. She failed to include an estimate for her property taxes on her current properties, telephone, and cable. I estimate these expenses at approximately \$552 a month, for total estimated monthly expenses of \$5,345, leaving joint excess funds in the amount \$1680 a month (\$590 of this amount became available in March 2007). Applicant denies having this much money available every month because there are unexpected bills each month.<sup>(13)</sup>

Applicant and her husband own two properties, one which she values at \$350,000 and the other at \$90,000. They have a \$26,000 mortgage on the second property. They have approximately \$10,000 in the bank. Applicant testified that her husband does not want to place a mortgage on their current home nor does he want to deplete their savings to pay old or new debts because he does not want to lose the house or be without any funds should he lose his job. Instead, they decided to pay their current joint debts first, then pay their individual old debts. Applicant provided a proposed payment schedule for repaying some their debts, which reflects that most of their debts will be paid by 2009. She also testified to an intent to pay bills in allegations 1.g., 1.i and 1.l in the next 6 months. Her credit reports reflect timely payments on many of her debts. She did call a financial counselor who provided no assistance.<sup>(14)</sup>

Applicant's performance reviews reveal that she regularly received an above average rating. She has received special recognition from her employer for certain job tasks and skills. Her co-workers describe her as discrete, helpful, and trustworthy.<sup>(15)</sup>

## 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."<sup>(16)</sup> In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information and determining trustworthiness within the executive branch.

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

Guideline F - Financial Considerations - An individual who is financially overextended is at risk of having to engage in illegal or unethical acts to generate funds to meet financial obligations. Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligation to protect classified or sensitive information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

Conditions that could raise a trustworthiness concern and may be disqualifying, as well as those which could mitigate security concerns pertaining to these adjudicative guidelines, are set forth and discussed in the conclusions below.

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance."<sup>(17)</sup> An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person.<sup>(18)</sup> 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. [\(19\)](#)

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. [\(20\)](#) Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. [\(21\)](#) An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." [\(22\)](#) Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security. [\(23\)](#) 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) E2.A6.1.2.1 (*A history of not meeting financial obligations*), and FC DC E2.A6.1.2.3 (*Inability or unwillingness to satisfy debts*) apply to Applicant's case. Since 2000, Applicant has been unable to meet all her financial obligations. While she pays her current financial obligations, she has numerous delinquent and old debts related to credit cards and medical bills, totaling around \$19,000.

I considered the Financial Considerations Mitigating Conditions (FC MC). Nine of Applicant's 12 delinquent debts remain outstanding, and 7 debts are more than three years old. Therefore, I cannot apply FC MC E2.A6.1.3.1 (*The behavior was not recent*) in full. She gets some credit for not incurring additional delinquent credit card debt in the last three years. FC MC E2.A6.1.3.2 (*The behavior was isolated*) does not apply because she accrued numerous different delinquent debts over a period of more than two years.

FC MC E2.A6.1.3.3 (*The conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce, or separation)*) applies. Applicant's husband provided the primary family income, which has been and is about three times her income. After losing his job in 2002, he remained unemployed for more than two years. During this same time, her employer reduced her work hours to part-time, causing the loss of medical insurance. Her husband's unemployment severely impacted their finances.

FC MC E2.A6.1.3.4 (*The person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or under control*) applies in part. Applicant contacted a financial counselor who provided no assistance, but does not receive credit for financial counseling. The majority of applicant's debts were incurred between 2001 and 2004. Since this time, she has not incurred any additional outstanding credit debt. With her husband's re-employment, she has been able to timely pay her current bills.

FC MC E2.1.3.6 (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) applies in part. Applicant states that she intends to pay her delinquent debts over the next two or three years. A promise to pay in the future is not sufficient to mitigate the financial considerations concern or evidence of a good faith effort to repay debt. She has paid one small debt and has developed payment plans for three debts, one of which is not listed in the SOR. She has timely made the agreed upon payments. [\(24\)](#)

### **Whole Person Analysis**

Protection of our national security is of paramount concern. Security clearance decisions are not intended to assign guilt or to impose further punishment for past transgressions. Rather, the objective of the adjudicative process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information. Thus, in reaching this decision, I have considered the whole person concept in evaluating Appellant's risk and vulnerability in

protecting our national interests.

Applicant and her husband encountered significant financial problems a few years ago. They sold one house and lived in a trailer for one year to reduce their monthly expenses, while her husband completed the work on their new house. During this time, they incurred credit card debt to pay medical bills and buy materials necessary to complete the house. Since her husband returned to full time employment, they have avoided incurring any significant unpaid debt. They have purchased two new cars recently and timely make the monthly payments on these cars. They pay their current credit card debt, and have decided to pay their current debts in full, before paying their old debt. Their decision not to allow current debts to become delinquent while paying old debt is reasonable. Because of his past job loss and significant time unemployed, Applicant's husband does not want to mortgage their house for fear he may not be able to pay the mortgage if he again loses his job. For the same reasons, he wants some cash in the bank. His fear is not unreasonable, thus his refusal to eliminate his reserve funds or obtain additional debt to pay debt is not entirely unreasonable.

Applicant does receive some credit for the application of the 3-year state statute of limitations, which applies to 7 of her unpaid SOR debts. *See* State Code. Ann. § 1-52(1).<sup>(25)</sup> Under this statute, her creditors are precluded from using the legal process to collect debts more than 3 years old. Elimination of her delinquent debt load through the statute of limitations has ended her potential vulnerability to improper financial inducements because she is no longer "financially overextended," but it does not negate her past conduct in accumulating debts which she could not pay

During their more than two years of financial crisis, neither Applicant nor her husband resorted to illegal activities to pay their debts. They paid what they could, and simply allowed the credit card and medical bills to go into collection. They are honest and hardworking individuals. In light of all the circumstances, she has demonstrated that she is trustworthy. There is little chance her delinquent debt could be used to pressure, coerce, or exploit her, or subject her to duress or reoccur. After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole person,<sup>(26)</sup> I conclude she has mitigated the trustworthiness concerns pertaining to her finances.

### **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:

SOR ¶ 1-Guideline F: FOR APPLICANT

Subparagraphs a-l: For Applicant

### **DECISION**

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

Mary E. Henry

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended; and Memorandum from the Deputy Under Secretary of Defense Counterintelligence and Security, titled "Adjudication of Trustworthiness Cases," dated November 19, 2004.
2. Applicant's response to the SOR, dated July 13, 2007, at 1-3.
3. GE 1 (Applicant's application for a position of trust) at 1-3.
4. *Id.* at 5; Tr. at 41.

5. AE A (2001 medical report for husband) at 1; Tr. at 43-46.
6. GE 2 (Credit report, dated May 18, 2006); GE 3 (Credit report, dated February 10, 2005); and GE 4 (Credit report, dated January 22, 2007).
7. AE G (Copy of bill with zero balance) at 3.
8. AE K (Copy of statement of account) at 1-3.
9. AE L (Copy of payment receipts) at 1-2.
10. AE J (Account statements); Tr. at 37-39.
11. AE B through E (Copies of income tax returns for the tax years 2002 through 2006); AE U (Copy of income and expense sheet); Tr. at 29, 45-46.
12. Their van is 6 years old and the two car payments are for a 2005 Land Rover and a 2006 Honda; Tr. at 55.
13. AE U, *supra* note 11; Tr. at 33-36, 45-46, 53-55.
14. GE 3, *supra* note 6; AE H (Applicant's debt payment schedule); AE I (Copy of paid credit card bill); Tr. at 32-33, 47, 52, 54-55, 60.
15. AE M (Performance reviews); AE O, P, and T (Performance recognition documents); AE Q - S (Letters from co-workers).
16. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).
17. Directive, ¶ E2.2.1.
18. *Id.*
19. *Id.*
20. Directive, ¶ E3.1.14.
21. Directive, ¶ E3.1.15.
22. ISCR Case No. 01-20700 at 3 (App. Bd. December 19, 2002).
23. Directive, ¶ E2.2.2.
24. The Board has previously explained what constitutes a "good faith" effort to repay overdue creditors or otherwise resolve debts:

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

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)). In ISCR Case No. 99-9020 at 6 (App. Bd. Dec. 1, 1999), the Appeal Board specifically addressed application of the statute of limitations, stating a "person who decides not to honor his or her

debts may be able to avoid paying those debts until they are legally uncollectible because the statute of limitations has run. Reliance on the running of a statute of limitations would be a legally permissible course of action. However, it would not demonstrate a good-faith effort to resolve one's debts that would fall under the meaning of Financial Considerations Mitigating Condition 6." *See* ISCR Case No. 03-10880 (App. Bd. June 24, 2005); ISCR Case No. 01-09691 (App. Bd. Mar. 27, 2003) (stating an applicant must do more than merely cite the statute of limitations to obtain the full benefit of FC MC 6). *See also* ISCR Case No. 01-09691 at 3 (App. Bd. Mar. 27, 2003) ("[E]ven if a delinquent debt is legally unenforceable under state law, the federal government is entitled to consider the facts and circumstances surrounding an applicant's conduct in incurring and failing to satisfy the debt in a timely manner."); ISCR Case No. 98-0349 at 2-3 (App. Bd. Feb. 3, 1999) (even though an applicant's delinquent debts were not legally collectible because of the statute of limitations, that fact did not preclude the Administrative Judge from considering the applicant's failure to resolve the delinquent debts before the statute of limitations ran). *Cf.* ISCR Case No. 01-04425 at 3-4 (App. Bd. May 17, 2002) (adverse Guideline F conclusions possible where applicant chose not to pay her delinquent debts, waited until her creditors ceased trying to collect those delinquent debts, and they were eventually dropped from her credit report.).

25. *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).

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