



**DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of: )  
 )  
----- ) ISCR Case No. 07-09906  
SSN: ----- )  
 )  
Applicant for Public Trust Position )

**Appearances**

For Government: James F. Duffy, Esquire, Department Counsel  
For Applicant: *Pro Se*

July 28, 2008  
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**Decision**  
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WESLEY, Roger C., Administrative Judge:

**Statement of Case**

On February 21, 2008, the Defense Office of Hearings and Appeals (DOHA), pursuant to Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, and Department of Defense (DoD) Regulation 5200.2-R, issued a Statement of Reasons (SOR) to Applicant, which detailed reasons why DOHA could not make the preliminary affirmative determination of eligibility for occupying an ADP I/II/III position, and recommended referral to an administrative judge to determine whether a trustworthiness determination clearance should be granted, continued, denied or revoked.

Applicant responded to the SOR on March 12, 2008, and requested a hearing. The case was assigned to me on March 5, 2008, and was scheduled for hearing on April 15, 2008. A hearing was held on April 30, 2008, for the purpose of considering whether it would be clearly consistent with the national interest to grant, continue, deny, Applicant's application for a public trust position. At hearing, the Government's case consisted of four exhibits; Applicant relied on one witness (herself) and one exhibit. The

transcript (R.T.) was received on May 20, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility to access classified information is denied.

### **Procedural Rulings and Evidentiary Issues**

Before the close of the hearing, Appellant requested leave to supplement the record with documentation of her bank statements. For good cause shown, Applicant was granted 14 days, to May 14, 2008, to supplement the record. The Government was afforded two days to respond. Within the time permitted, Applicant supplemented the record with documented copies of her bank statements and character references. Two months later, she faxed a letter claiming she paid in full the debt covered by creditor 1.a of the SOR. Department counsel did not object to any of these post-hearing submissions. Her post-hearing exhibits were admitted and considered.

### **Summary of Pleadings**

Under Guideline F, Applicant is alleged to have accumulated five debts exceeding \$45, 000.00. For her answer to the SOR, Applicant admitted all of the of the debts, but denied her debt delinquencies indicated poor self control, lack of judgment, or unwillingness to abide by rules and regulations.

### **Findings of Fact**

Applicant is a 58-year-old employee of a defense contractor who seeks a trustworthiness determination. The allegations covered in the SOR and admitted to by Applicant are incorporated herein and adopted as relevant and material findings. Additional findings follow.

With her formal education and training in nursing, Applicant worked in the health field for a number of years. Applicant married in 1977 and has two sons from the marriage (now grown). Her husband (H) inherited an interest in a family distribution center from his father. For many years, Applicant and H owned and operated the business.

Both of Applicant's sons encountered drug problems after high school and became a source of continuous tension in the household. Placing them in structured environments to better address their drug issues cost Applicant and H a great deal of money (R.T., at 21-22). Applicant and H separated in 1996 and went through a very contentious divorce. Applicant coped for a number of years with regular participation in Families Anonymous (FA) group sessions. She is credited with making commendable progress in overcoming her emotional and other problems associated with the destructive behaviors of H and her sons (see exs. B and C).

Applicant and H finalized their divorce in 1999. She estimates to have spent over \$80,000.00 in legal fees on her divorce (R.T., at 28). The divorce settlement apparently did not provide for the coverage of her legal fees. Under the terms of her negotiated

divorce settlement, H made a lump sum payment of \$80,000.00 to Applicant's attorney. She says her attorney, in turn, kept \$40,000.00 of the settlement funds to cover her earned attorneys fees (R.T., at 41). Applicant later learned that her ex-husband remarried a younger woman sometime in 2000 and divorced her in 2007 (R.T., at 57).

Following their 1996 separation, Applicant's sons went to live with their father, who continued to operate their distribution center. With her own surplus funds, Applicant bought a house in 1998 and remodeled it. After their divorce was final in 2000, Applicant sold her home for a \$30,000.00 loss (R.T., at 28-29). For several years she tried different jobs without any permanent success, and accumulated a number of delinquent debts (see exs. 3 and 4). Five of these debts exceed \$45,000.00 and are covered in the SOR R.T., at 35-38, 50-53). The attorney she consulted in 2000 counseled against her filing for Chapter 7 bankruptcy relief to steady her finances. He expressed concern she would lose the \$1,500.00 a month share she received from her ex-husband's business every month as a result of her divorce settlement (R.T., at 54-56). These settlement funds are not due to expire until 2010, and Applicant did not want to jeopardize her entitlement with any bankruptcy petition (R.T., at 55-56). It is not clear whether the attorney recommended any kind of Chapter 13 petition for Applicant.

Between 2005 and 2007, Applicant was unable to retain steady employment, losing jobs for various reasons after short tenures. In April 2006, she took time off (approximately 55 days) from working to care for her gravely ill mother (R.T., at 32-33). She estimates she could have made approximately \$8,400.00 during this time based on the \$310.00 a day she was earning (R.T., at 32).

Applicant has sought no financial counseling since her divorce, and has made no tangible effort before the hearing to repay any of her debts (R.T., at 40-43). She claims to have since repaid creditor 1.a that she promised at hearing to pay (R.T., at 48), but provides no payment documentation (see ex. F).

Applicant is considered reliable and trustworthy by a number of old friends familiar with her divorce, family losses, and ongoing drug problems with her two sons (see exs. A through C). Her admitted bank statements reflect regular activity in the payment of her current creditors (see ex. D). She has a developed budget (see ex. E), which allocates expenses (estimated to be \$4,497.00) against her current monthly income (around \$4,500.00). This contrasts with the slightly better personal financial statement she provided in November 2007, that included a \$308.00 monthly remainder (see ex. 3).

## **POLICIES**

On April 9, 1993, the Composite Health Care Program Office (CHCSPO), the Defense Office of Hearing and Appeals (DOHA), and the Assistant Secretary of Defense for Command, Control, Communication and Intelligence (ASDC31), entered into a Memorandum of Agreement (MOA), which gave DOHA responsibility to provide

trustworthiness determinations for contractor personnel working on unclassified Information Systems Positions as defined in DoD Regulation 5200.2-R.

The revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (effective September 2006) list Guidelines to be considered by judges in the decision making process covering DOHA cases. These Guidelines require the judge to consider all of the "Conditions that could raise a security concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating Conditions," if any, before deciding whether or not a security clearance should be granted, continued or denied. The Guidelines do not require the judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in E2.2.2 of the Adjudicative Process of Enclosure 2 of the Directive, which are intended to assist the judges in reaching a fair and impartial common sense decision.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

### **Financial Considerations**

*The Concern:* "Failure or inability to live within one's means, satisfy debts and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts." Adjudication Guidelines, ¶ 18.

### **Burden of Proof**

By virtue of the precepts framed by the revised Adjudicative Guidelines, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires Administrative Judges to make a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the Judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted fact[s] alleged in the Statement of Reasons and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a

security clearance. The required showing of material bearing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of persuasion shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

### **Analysis**

Applicant is highly regarded by friends who have known her for many years. Most of her listed delinquent accounts continue to remain unresolved. Absent documented discharge or payment initiatives with the listed creditors (including her creditor 1.a debt which she claims to have recently paid), these debts raise security significant concerns.

In Applicant's case, her still outstanding delinquent debts and her failure to document the lone debt she claims to have paid warrant the application of two of the disqualifying conditions (DC) of the Guidelines for financial considerations: DC 19 (a) "inability or unwillingness to satisfy debts" and DC 19(c), "a history of not meeting financial obligations." These disqualifying conditions cover the core concern of AG ¶ 18: poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, which, both individually and collectively, can raise questions about an individual's reliability, trustworthiness and ability to safely occupy a position of trust.

Applicant's accumulated debts are attributable in part to contentious and expensive divorce proceedings, periods of unemployment, and family medical issues associated with her mother's grave illness, and her earlier problems (both emotional and financial) with her sons with drug-related issues. Her historical difficulties with family and employment establish extenuating circumstances sufficient to warrant some application of MC 20 (b), "the conditions that resulted in the financial problem 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 the individual acted responsibly under the circumstances," of AG ¶ 18.

At this time, none of Applicant's covered debts are documented to have been paid, disputed, or settled. They exceed \$45,000.00 in the aggregate and represent a considerable debt load on her current income sources. Most of her debts are quite old, and appear to be covered by her state's statute of limitations. The state statute of limitations in Applicant's state for claims based on a written contract is four years See 16.004(a)(3) of T Civ. Prac. and Rem. Code, §§ 16.051 (statute of limitations for contracts and claims not otherwise provided for) and 16.004(a)(3) (statute of limitations for debts). Applicant's listed debts with creditors 1.a through 1.e, all appear to covered

by the State's statute of limitations, and are treated, as such, herein as debts that are time-barred.

While potentially applicable statutes of limitation have not been recognized by our Appeal Board to absolve security risks associated with unresolved delinquent debts, statutes of limitation in general are considered important policy tools for discouraging plaintiffs from pursuing stale claims and promoting finality in litigation. They have never been equated with good-faith efforts, though, to repay overdue creditors. See, e.g., ISCR Case No. 02-30304, at 3 (App. Bd. April 2004)(quoting ISCR Case No. 99-9020, at 5-6 (App. Bd. June 2001).

In Applicant's case, she has experienced some difficult periods of family and financial stress. She has also made important choices about avoiding relief measures such as Chapter 7 bankruptcy relief to save a major income stream from her divorce settlement. To accord Applicant statute of limitation relief in these circumstances without some evidence of repayment efforts with funds available to her is to invite disregard of established Appeal Board precedents with out any accompanying good-faith repayment efforts. By virtue of the age and non-enforcement status of the listed debts alone, MC 20(a), "the behavior happened so long ago, was so infrequent, or occurred under circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment," cannot be applied to Applicant's situation.

Without more documented information to demonstrate she is addressing her listed debts and making use of financial counseling, she cannot safely mitigate all of the Government's financial concerns. Holding a public trust position involves the exercise of important fiducial responsibilities, which include the expectancy of consistent trust and candor. Financial stability in a person cleared for access to classified information is required precisely to inspire trust and confidence in the holder of the clearance. While the principal concern of a trust position holder's demonstrated financial difficulties is vulnerability to coercion and influence, judgment and trust concerns are implicit in financial cases.

Use of a whole person assessment that takes into account all of the facts and circumstances surrounding Applicant's debt accumulations is insufficient to enable Applicant to surmount security concerns independent of the express disqualifying conditions covered by AG¶ 18. Without more to demonstrate progress in resolving her remaining debts, or document payment of the one debt she claims to have paid (creditor 1.a), it is difficult to draw convincing conclusions about her overall trustworthiness based on factors not covered in the mitigation conditions of the guideline for financial considerations.

Taking into account all of the facts and circumstances surrounding Applicant's unsatisfied debts and overall presentation of payment histories, Applicant does not mitigate security concerns related to her still outstanding debts. Unfavorable

conclusions warrant with respect to the allegations covered by sub-paragraphs 1.a through 1.e).

In reaching my decision, I have considered the evidence as a whole, including each of the E2.2 factors enumerated in the Adjudicative Guidelines of the Directive.

### **Formal Findings**

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact, conclusions, conditions, and the factors listed above, I make the following formal findings:

GUIDELINE F: (FINANCIAL CONSIDERATIONS): AGAINST APPLICANT

Sub-paras. 1.a through 1.e:           AGAINST APPLICANT

### **Conclusions**

In light of all the circumstances presented by the record in this case, it is not 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 denied.

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Roger C. Wesley  
Administrative Judge

