



## STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a position of trust for Applicant<sup>1</sup>. On April 5, 2007, DOHA issued a Statement of Reasons<sup>2</sup> (SOR) detailing the basis for its decision—trustworthiness concerns raised under Guideline F (Financial Considerations) of the revised Adjudicative Guidelines of the Directive issued on December 29, 2005, and implemented by the Department of Defense, effective September 1, 2006. Applicant answered the SOR in writing on April 26, 2007, and elected to have a hearing before an administrative judge. The case was assigned to me on June 21, 2007. On August 7, 2007, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a trustworthiness determination for Applicant. The Government and the Applicant submitted exhibits that were admitted into evidence, including one exhibit Applicant submitted after the hearing as she was allowed to do. The Government had no objection and the exhibit was marked as Exhibit K. DOHA received the hearing transcript (Tr.) on August 20, 2007.

## FINDINGS OF FACT

Applicant's admissions to the SOR allegations are incorporated as findings of fact. After a complete and thorough review of the evidence in the record, and full consideration of that evidence, I make the following additional findings of fact:

Applicant is 47 years old, married, and has two adult children. She has worked for a defense contractor in the health management business as a claims support adjuster for the past three years. She moved to her current town of residence in 2001 from another state with her husband who wanted to be near his father who suffered from cancer. In her previous state and town of residence, Applicant and her husband made about \$75,000 annually. They owned a house and paid their debts. In April 2002, her husband lost his job, which he was able to keep even though he had moved. He had other periods of unemployment from October 2002 to January 2003, August 2003 to January 2004, and July 2006 to December 2006. He is currently employed as a parts department manager for \$30,000 annually. Applicant earns about \$25,000 annually, which is about her salary before she moved. (Tr. 15, 27, 28, 41, 76-84; Exhibit 1)

Applicant has no credit cards. Nor does she and her husband have any savings. They used his retirement account, about \$5,000, to pay for their daughter's first year of college. The daughter is paying the college loans which they incurred for the other three years of her education. Applicant owns a house in her current town. They tried to sell the house in their prior town and state of residence when they moved in 2001, but it never sold. Eventually, the mortgage holder foreclosed in 2004. The house sold for \$6,000 less than Applicant owed, but the lender wants \$23,260 as the balance on the mortgage. This debt is not listed on the SOR. Applicant has not incurred additional

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<sup>1</sup>Adjudication of trustworthiness cases for ADP I, II, and III positions are resolved using the provisions of DoD Directive 5220.6 (Directive), pursuant to the memorandum from Carol A. Haave, Deputy Under Secretary of Defense for Counterintelligence and Security to DOHA Director, *Adjudication of Trustworthiness Cases* (Nov. 19, 2004).

<sup>2</sup>Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and the Directive.

debt since moving in 2001. Her repayment plan is to repay creditors who make her settlement offers, which she can fund from her current income. Using this plan, she repaid \$5,000 in debt between 2001 and the present time. Another part of her repayment plan is to repay the smallest debts first. Applicant showed she paid three debts not listed on the SOR as part of her plan. Applicant believes she and her husband are making progress on paying her debts, in addition to having one of their used cars fully paid, and owing \$600 on the other car. (Tr. 16, 17, 22, 26, 29-33, 41, 68, 69, 71; Exhibits 2-5, G, H, J)

The SOR lists 12 delinquent debts totaling \$20,713.35. The current disposition of these delinquent debts are as follows:

<b>SOR ¶, DEBT AMOUNT, CREDITOR TYPE</b>	<b>CURRENT DISPOSITION, AMOUNT, EVIDENTIARY SUPPORT</b>
1.a \$4,370 owed to bank	Current balance \$2,169, a line of credit used for home repairs at former residence, Applicant currently not making payments because of lack of funds. New debt payment plan in Exhibit K provides \$100 monthly to repay loan. Tr. 39, 42; Exhibits 2-5, K
1.b \$1,903.16 owed to hospital bill collector	New payment plan shows \$75 paid monthly. Former plan paid nothing. Tr. 43; Exhibits 2-5, K
1.c \$255 owed to a medical provider for eye treatment in her former town	Applicant disputes amount and is not paying it at present. Tr. 44; Exhibit 2
1.d \$194.92 for a dental bill	Applicant paid this debt on July 4, 2007. Tr. 23, 45; Exhibit B
1.e \$584.78 to retailer for food and other household items	Applicant paid this debt on May 31, 2007. She could not pay it before that date because she had insufficient funds to do so. Tr. 24, 46; Exhibits 2-5, B
1.f \$1,679.55 to retailer for daughter's college computer.	Applicant could not repay on schedule because husband became unemployed in 2002. Applicant settled this debt for \$846 on May 17, 2007, by making two payments of \$423.23. Tr. 24, 47-49; Exhibits 2-5
1.g \$2,506.17 to a retailer	Applicant has not made payments to this creditor. Her new payment plan in Exhibit K shows payments of \$100 monthly to be made. Tr. 55, 56; Exhibits 2-5, K
1.h \$2,164 owed to a bank	Applicant does not recognize this debt or what she spent that caused it. She is not making payments now. Tr. 56, 57

1.i \$516.70 owed to a department store for clothing purchased for the family	Applicant stopped paying this debt when her husband became unemployed. She settled this debt for \$307 on May 4, 2007. Tr. 24, 58; Exhibit D
1.j \$1,953.39 on a judgment for a water softener installed at their former residence	Applicant paid \$150 in 2003 on this debt. In March 2007, she resumed payments of \$100 monthly when her husband again got a job. The debt shows on her new payment plan in Exhibit K at \$100. Tr. 37, 60-63; Exhibits 2-5, I, K
1.k \$186.01 for cellular phone service	Applicant paid this debt on March 1, 2007. Tr. 63; Exhibits 2-5, C
1.l \$4,399.67 for a judgment owed to a savings and loan company for a car loan. The car is inoperative, and not repossessed.	Applicant could not afford to pay this debt before she developed her new payment plan showing this creditor will receive \$100 monthly. Tr. 63; Exhibits 2-5, K

### POLICIES

As Commander in Chief, 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.” *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information with Industry* § 2 (Feb. 20, 1960). By direction of the Under Secretary of Defense for Counterintelligence and Security, adjudications of cases forwarded to DOHA by the Defense Security Service or the Office of Personnel Management (OPM) for a trustworthiness determination shall be conducted under the provisions of the Directive. Eligibility for a position of trust is predicated upon the applicant meeting the guidelines contained in the Directive and a finding it is clearly consistent with the national interest to do so. *See* Directive ¶ 2.3. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his trustworthiness determination.” *See* Directive ¶ E3.1.15

The adjudication process is based on the whole person concept. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline that must be carefully considered in making the overall common sense determination required. The decision to deny an individual eligibility to occupy a position of trust is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a such a determination.

In evaluating the trustworthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. Those assessments include: (1) the

nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (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 (See Directive, Section E2.2.1. of Enclosure 2). Because each case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible to occupy a position of trust. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's trustworthiness suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996). All that is required is proof of facts and circumstances that indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at \*\*6-8 (App. Bd. 2001). Once the Government has established a *prima facie* case by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. See Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that is clearly consistent with the national interest to grant or continue his trustworthiness determination. ISCR Case No. 01-20700 at 3 (App. Bd. 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

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:

Guideline F: 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 could 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.

(Regulation ¶ C6.1.1.1) Appendix 8 of the Regulation sets forth the adjudicative policy, as well as the disqualifying conditions (DC) and mitigating conditions (MC) associated with each guideline. DoD contractor personnel are afforded the adjudication procedures contained in the Directive. (Regulation ¶ C8.2.1)

## CONCLUSIONS

**Guideline F:** Applicant incurred several debts listed in the SOR, including other delinquent debts, after she and her family moved from one state to another in 2001 for family medical reasons. There are two debts she is not paying, one because she disputes her obligation for eye treatments, and the other she does not recognize for what the money was spent. Lastly, she disputes an eye doctor's bill and a credit card or bank bill because she contends the former did not help her condition, and the latter is not known to her as a creditor. If she could determine the legitimacy of each debt, she would pay them based on the totality of her efforts to repay debts to date. All other SOR debts are paid or being paid monthly.

Based on these facts, the disqualifying conditions applicable are Financial Considerations Disqualifying Condition ¶19.a. (inability or unwillingness to satisfy debts), and ¶19.c. (a history of not meeting financial obligations).

The totality of the evidence shows me there are three Mitigating Conditions (MC) that apply:

- (1) ¶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);
- (2) ¶20.d (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts); and,
- (3) ¶20.e (the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue).

In April 2002, her husband lost his job, and has suffered several extended periods of unemployment since then. He has subsequently never been able to obtain employment at the same level of compensation, resulting in a continuous \$20,000 deficit in their annual income. The SOR debts occurred before the move and loss of employment, which two factors adversely affected Applicant's ability to repay the debts. She has not ignored them, paying a series of them over the past six years, as shown by the exhibits she submitted. She has a plan for repayment, and recently amended that plan to pay every creditor something every month. She is paying her debts, and has been executing a plan to do so with regularity and rationality. Her efforts are made in good-faith from available financial resources. She met her burden of proof.

**Whole Person Analysis:** "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." "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 trustworthiness decision. "Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination." ¶ 2 *The Adjudicative Process, August 2006* In

evaluating Applicant's case, I have considered the adjudicative process factors listed in the Adjudicative Guidelines.

In evaluating these factors, in addition to the DC and MC of the specific guidelines, I considered the totality of the evidence in view of the "whole person" concept. I considered Applicant's age, employment status, and her husband's employment and diminution of income over the past six years. I looked at her past and present record of debt payments contained on the credit reports, noting her financial problems and debt repayment problems pertain to debts incurred when she had greater income and her husband was employed. No debt newer than 2001 or prior which is unpaid is listed in the SOR. Before 2001, Applicant paid her debts. I considered that only 12 debts were at issue, and she has paid five debts in total or in settlement amounts. Five other debts she is paying on an installment basis. She does not have credit cards, and lives on a cash basis for debt payment. She has a plan to repay debts and it is working, limited only by her income on the schedule of repayment. I do not believe she poses a trustworthiness concern or that similar conduct will recur in the future.

Therefore, I conclude the financial considerations trustworthiness concern for Applicant. Finally, I conclude the "whole person" concept for Applicant.

### **FORMAL FINDINGS**

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

Paragraph 1. Guideline F: FOR APPLICANT

Subparagraph 1.a to 1.1: For Applicant

### **DECISION**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for assignment to sensitive duties. Her application for eligibility for a Public Trust position is granted.

Philip S. Howe  
Administrative Judge