

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant is a 38-year-old appointment setter working for a defense contractor. From 2000 through 2006, she annually acquired delinquent debt which was left unaddressed. That debt now amounts to almost \$13,000, including about \$2,000 in medical bills acquired while unemployed and a tax lien. She denied having any delinquent debt or liens in completing her questionnaire for public trust positions. Although she may not have deliberately concealed facts, she has otherwise failed to mitigated security concerns regarding her financial considerations and personal conduct. Eligibility for positions designated ADP I/II/III is denied.

CASENO: 06-25543.h1

DATE: 08/29/2007

DATE: August 29, 2007

In re:)	
)	
)	
-----)	ADP Case No. 06-25543
SSN: -----)	
)	
Applicant for Public Trust Position)	

**DECISION OF ADMINISTRATIVE JUDGE
ARTHUR E. MARSHALL, JR.**

APPEARANCES

FOR GOVERNMENT

John Bayard Glendon, Esq., Department Counsel

FOR APPLICANT

Pro se

SYNOPSIS

Applicant is a 38-year-old appointment setter working for a defense contractor. From 2000 through 2006, she annually acquired delinquent debt which was left unaddressed. That debt now amounts to almost \$13,000, including about \$2,000 in medical bills acquired while unemployed and a tax lien. She denied having any delinquent debt or liens in completing her questionnaire for public trust positions. Although she may not have deliberately concealed facts, she has otherwise failed to mitigated security concerns regarding her financial considerations and personal conduct. Eligibility for positions designated ADP I/II/III is denied.

STATEMENT OF THE CASE

On February 10, 2007, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing the basis for its preliminary determination that she was not eligible for assignment to information systems positions designated ADP I/II/III.¹ The SOR alleges trustworthiness concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). Specifically, it alleges that she falsified material facts on a Questionnaire for Public Trust Positions, Standard Form 85P (SF-85P), by denying she had a tax lien within the past seven years and for denying being 180-days or more past due on any loans or obligations.

Applicant responded with a notarized Answer to the SOR, dated April 9, 2007, in which she admitted all allegations. In it, she also declined to request a hearing on the record. Consequently, the Government submitted its FORM, containing its argument and seven supporting items, on June 22, 2007. Applicant received the FORM on June 29, 2007, and timely provided a response, dated July 24, 2007. It described efforts to work with creditors and referred to a document showing that she had paid the debt designated in the SOR as 1.a. concerning a \$7,121 tax lien. No such document is contained in the official file with her response, and the Government noted on its receipt of the response "I do not see any new documents accompanying the [Applicant's] letter of 7/24/07." The case was assigned to me on August 13, 2007.

FINDINGS OF FACT

Applicant's admissions to the allegations in the SOR are incorporated herein. After a thorough and careful review of the evidence and exhibits, I make the following additional findings of fact:

Applicant is a 38-year-old appointment setter working for a defense contractor. She has worked for the same employer since April 2006. She returned to work after a year off living with her mother, and was a service associate for a health care provider for several years before that. She earned and received her high school diploma in 1987. Currently, she is a single mother with a nine-year-old son.

Little can be discerned about Applicant because she declined to have a hearing and because she provided few facts for the record. Since 1993, she has had erratic employment. She was unemployed from November 2001 through September 2002, and again from September 2005 through April 2006. A federal tax lien was imposed in about March 2004 for \$7,121. She claims the lien obligation has been settled, but she failed to submit any evidence to support her claim.

The debts at issue became delinquent and were placed into collection between approximately November 2000 and November 2006. In terms of the number of debts, the majority were referred

¹ This action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive). The procedural rules set out in the Directive for security clearance cases are applied to ADP trustworthiness determinations. The adjudicative guidelines set out in Department of Defense Regulation 5200-2R, *Personnel Security Program* (Jan. 1987), as amended and modified (Regulation), are used to make ADP trustworthiness determinations.

for collection in 2001-2002. This period approximately coincides with the time of Applicant's first period of unemployment. The total amount at issue is a little less than \$13,000. Of the 17 debts, 8 are for medical care provided for her asthmatic son while she was unemployed and which she thought had been paid by Medicaid; they amount to about \$2,000. As for the rest, they went delinquent because her income did not meet her obligations.

In explaining why she did not note either her tax lien or her delinquent debts (over 180 days) on her SF-86P, Applicant set forth three explanations. First, regarding Guideline E, in general, she wrote in her response to the SOR: "I did not correctly answer the question. It was not intentionally. I am trustworthy [sic] from my previous employers I had not breached my confidential information. I have dealt with a lot of information and I would never do any type of criminal act." Second, she continued, with regard to the tax lien, by stating: "I am trustworthy. My tax account status was on hold until I was able to make payments again [sic] I was told to do a financial worksheet over the phone and I was over extended. I am filing for my taxes and I should have a small amount that I would owe." Third, regarding her delinquencies, she wrote: "It was not intentionally [sic] the old medical bills I had I thought were being paid from Medicaid [sic] I was told they would be back dated from the time I had applied and the other bills[.] I was not able to make payments on my account due to my income situation."

POLICIES

To be eligible for assignment to sensitive duties, 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."² Appendix 8 of the Regulation sets forth the personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline.

"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."³ Each eligibility determination must be a fair, impartial, and commonplace decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Regulation.⁴ An administrative judge should consider: (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 the 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.⁵ The revised

² Regulation ¶ C6.1.1.1.

³ Regulation Appendix 8.

⁴ *Id.*

⁵ *Id.*

Adjudicative Guidelines (AG) set forth set forth both disqualifying conditions and mitigating conditions applicable to each specific guideline.

DoD contractor personnel are afforded the right to the procedures contained in DoD Directive 5220.6 before any final unfavorable access determination may be made.⁶ In security clearance cases, the Government initially 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.⁷ Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts.⁸ An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.”⁹ “Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.”¹⁰ 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. Based upon consideration of the evidence, I find Guideline F and Guideline E of the revised AG most pertinent to the evaluation of the facts in this case. For clarity, I will discuss the two separately:

Guideline F - Financial Considerations. *The Concern: Failure or an 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.*¹¹

In this matter, the Government provided substantial evidence that Applicant has 17 unpaid, delinquent debts. The balance owed is almost \$13,000. Although no documentary evidence was introduced, she claims she settled one debt, a tax lien. Her debts are multiple in number and most, if not all, remain unpaid. Therefore, Financial Considerations Disqualifying Condition (FC DC) 1, AG ¶ 19(a), (*inability or unwillingness to satisfy debts*) and FC DC 2, ¶ 19(c) (*a history of not meeting financial obligations*) apply. Given this showing, the burden now shifts to Applicant to present evidence of refutation, extenuation, or mitigation, to overcome the case against her.

⁶ Regulation ¶ C8.2.1.

⁷ Directive, ¶ E3.1.14.

⁸ Directive ¶ E3.1.15.

⁹ ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

¹⁰ Directive ¶ E2.2.2.

¹¹ AG ¶ 18.

Of the approximately \$13,000 at issue, approximately \$2,000 represents medical debt. It was acquired providing essential medical care to address her son's severe asthma during a period when she was unemployed. Consequently, Financial Considerations Mitigating Condition (FC MC) 2, AG ¶ 20(b), (*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) and the individual acted responsibly under the circumstances*) applies to the essential medical care provided while unemployed.

The majority of the debts were referred for collection between late 2000 and 2002. The most recent were turned over for collection around November 2006. Taken as a whole, the debts noted in the SOR steadily grew in number with each passing year between November 2000 and November 2006. Some debts were accrued during a period of unemployment; other debts were acquired while employed, but on a salary or budget that did not satisfy all of her obligations. Given the more recent obligations, it cannot be said that Applicant's accrual of debt is a thing of the past or something aberrational in her credit history. Given the fact she chose to have this review based solely on the record and has provided few, if any, additional facts for consideration, she has failed to show that Financial Considerations Mitigating Condition (FC MC) 1, ¶ AG 20(a), (*the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment*) applies.

Despite two periods of unemployment and jobs yielding salaries which apparently could not cover her expenses, there is no indication she has sought credit counseling, assistance with money management, or attempted debt consolidation of what appears to be a potentially manageable amount of debt. With so few facts offered, neither FC MC 3, AG ¶ 20(c) (*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*) nor FC MC 4, ¶ 20(d), (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) can be found to apply.

Guideline E - Personal Conduct. *The Concern: Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.*¹²

In its FORM, the Government emphasizes that it "alleged that Applicant deliberately failed to list her outstanding debts in her security clearance application in response to Questions 22(a) and (b)," in its original SOR. It fails, however, to cite to a specific Personal Conduct Disqualifying Condition (PC DC) as being applicable. It then states that although Applicant admitted to those allegations,¹³ she failed to cite to a specific Personal Conduct Mitigating Condition (PC MC). Consequently, both parties have failed to provide the tribunal with guidance as to which, if any, conditions apply.

¹² AG ¶ 15.

¹³ Albeit with some explanation.

The facts presented do not indicate an intentional or deliberate effort to omit, conceal, or falsify, nor do they reflect a refusal to cooperate. Indeed, Applicant denies intentionally answering the questions incorrectly. The available PC DCs, by and large, contemplate an intentional or deliberate act, refusal, or concealment. Without guidance in the FORM or some indication of duplicity on the part of the Applicant, none of the PC DCs specifically apply. However, the scant facts available do indicate that Applicant failed to provide complete answers on the SF-86P and was, in fact, confused as to the questions.

Personal Conduct security concerns can also arise from conduct involving questionable judgment and questionable reliability. It is apparent Applicant knew she had delinquent debts and she concedes she was working on her tax lien. Based on this knowledge, and in the absence of any additional facts from Applicant proving otherwise, she had an obligation to seek counsel from a security officer or at least provide the minimal explanations she provided in response to the SOR. Such information would have been sufficient to put investigators on notice of problem areas. Based on the few facts presented here, neither the available PC MCs nor an analysis of the underlying security concerns can mitigate this failure or the personal conduct exhibited.

“Whole Person” Analysis.

I have considered both the record and Applicant in light of the “whole person” concept. She is a mature woman and mother with a high school diploma and some experience in the insurance industry. She has experienced minor financial problems which have manifested themselves in the annual accrual of additional debt to the extent that it now amounts to almost \$13,000, a not unmanageable sum. She demonstrated few efforts to address the balance and stated she seldom had the resources to do so. Similarly, she presented few facts and no documentary evidence upon which to consider her case more thoroughly. Based on the scant record provided, Applicant has failed to mitigate financial and personal conduct security concerns. Clearance is denied.

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 (Financial Considerations):	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	For Applicant
Subparagraph 1.f	For Applicant
Subparagraph 1.g	For Applicant
Subparagraph 1.h	For Applicant
Subparagraph 1.i	For Applicant
Subparagraph 1.j	Against Applicant
Subparagraph 1.k	Against Applicant

Subparagraph 1.l	Against Applicant
Subparagraph 1.m	Against Applicant
Subparagraph 1.n	Against Applicant
Subparagraph 1.o	Against Applicant
Subparagraph 1.p	Against Applicant
Subparagraph 1.q	Against Applicant

Paragraph 2. Guideline E (Personal Conduct):	AGAINST APPLICANT
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Subparagraph 2.a.	Against Applicant
Subparagraph 2.b.	Against Applicant

DECISION

In light of all of the circumstances in this case, it is not clearly consistent with the national interest to grant Applicant the eligibility for assignment to sensitive duties. Eligibility for positions designated ADP I/II/III is denied.

Arthur E. Marshall, Jr.
Administrative Judge