

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant filed for bankruptcy in August 2005. Her debts were discharged in December 2005. Post-bankruptcy, four additional delinquent debts showed up on her credit report, an approximate total of \$4,715. She and her husband owe the Internal Revenue Service (IRS) approximately \$17,157 for delinquent income taxes for tax years 1996-2001 and 2003. They recently entered into a repayment plan with the IRS but provided no evidence pertaining to the additional delinquent accounts. Applicant deliberately failed to list her delinquent debts on her questionnaire for public trust position. She has not mitigated the security concerns raised under financial considerations and personal conduct. Clearance is denied.

CASENO: 05-13451.h1

DATE: 08/29/2007

DATE: August 29, 2007

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In re: )  
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----- ) ADP Case No. 05-13451  
SSN: ----- )  
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Applicant for Public Trust Position )  
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**DECISION OF ADMINISTRATIVE JUDGE  
ERIN C. HOGAN**

**APPEARANCES**

**FOR GOVERNMENT**  
Nichole Noel, Esq., Department Counsel

**FOR APPLICANT**  
*Pro Se*

## **SYNOPSIS**

Applicant filed for bankruptcy in August 2005. Her debts were discharged in December 2005. Post-bankruptcy, four additional delinquent debts showed up on her credit report, an approximate total of \$4,715. She and her husband owe the Internal Revenue Service (IRS) approximately \$17,157 for delinquent income taxes for tax years 1996-2001 and 2003. They recently entered into a repayment plan with the IRS but provided no evidence pertaining to the additional delinquent accounts. Applicant deliberately failed to list her delinquent debts on her questionnaire for public trust position. She has not mitigated the security concerns raised under financial considerations and personal conduct. Clearance is denied.

## **STATEMENT OF CASE**

On September 22, 2006, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) stating they were unable to find that it is clearly consistent with the national interest to grant or continue a a position of public trust.<sup>1</sup> The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline F, Financial Considerations, and Guideline E, Personal Conduct, of the revised Adjudicative Guidelines (AG) issued on December 29, 2005, and implemented by the Department of Defense effective September 1, 2006.

In a sworn statement, dated December 5, 2006, Applicant responded to the SOR allegations and elected to have her case decided on the written record, in lieu of a hearing. Department Counsel submitted the government's file of relevant material (FORM) on May 30, 2007. The FORM was mailed to Applicant on June 4, 2007, and received on June 18, 2007. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not respond. The case was assigned to me on August 20, 2007.

## **FINDINGS OF FACT**

In her SOR response, Applicant admits to all of the allegations. Her admissions are incorporated herein. In addition, after a thorough and careful review of the pleadings and exhibits, I make the following findings of fact.

Applicant is a 35-year-old woman employed with a Department of Defense contractor who is applying for a trustworthiness position. She is married and has two sons, ages 15 and 12.<sup>2</sup>

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<sup>1</sup>This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).

<sup>2</sup> Item 4.

On May 11, 2004, Applicant completed a questionnaire for public trust position, Standard Form 85P (SF 85P).<sup>3</sup> She answered "No" in response to question 22(a) Your Financial Record, "In the last 7 years, have you, or a company over which you exercised some control, filed for bankruptcy, been declared bankrupt, been subject to a tax lien, or had a legal judgment rendered against you for a debt? If you answered, "Yes," provide date of initial action and other information requested below." She did not disclose a federal tax lien filed against her in May 2002 for nonpayment of tax debt for tax years 1996, 1997, 1998, and 1999. Applicant claims that she was not aware of the tax lien at the time she filled out the SF 85P. Her husband handled all of the financial affairs for the family.<sup>4</sup>

Applicant also answered, "No" in response to question 22(b) on her May 11, 2004, SF 85P which reads, "Are you now over 180 days delinquent on any loan or financial obligation? Include loans or obligations funded or guaranteed by the Federal Government." A credit report, dated May 25, 2004, was obtained during Applicant's background investigation. The credit report listed 26 delinquent accounts, an approximate total of \$18,257. Most of the delinquent accounts were over 180 days delinquent.<sup>5</sup> Applicant claims that she was not aware of the extent of her financial problems when she filled out her questionnaire for a public trust position. However, she admits that she was aware that there were some outstanding delinquent accounts, yet did not indicate any delinquencies on her trustworthiness questionnaire.<sup>6</sup>

On August 29, 2005, Applicant filed for bankruptcy under Chapter 7. She listed assets of \$2,150 and liabilities of \$47,888. Her debts were discharged on December 22, 2005 and the bankruptcy case was closed on December 29, 2005.<sup>7</sup>

Post-bankruptcy, Applicant admits to owing the IRS approximately \$17,157 in federal income taxes for tax years 1996-2001 and 2003. Her husband handled the family financial matters. She later discovered they did not withhold enough money from their paychecks to cover the tax obligations.<sup>8</sup>

Two additional credit reports, dated July 19, 2006, and May 22, 2007, revealed the following outstanding accounts: a \$1,463 student loan account, placed for collection in November 2003 (SOR ¶ 1.d), a \$2,960 judgment was entered against Applicant in January 2005 on behalf of a vocational training institute (SOR ¶ 1.g); a \$197 delinquent account, placed for collection in August 2000 (SOR ¶ 1.b); and a \$95 retail store account related to insufficient funds checks, placed for collection in September 2005 (SOR ¶ 1.h). The student loan debt alleged in SOR ¶ 1.d was also alleged in SOR

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<sup>3</sup> Item 4.

<sup>4</sup> Item 5.

<sup>5</sup> Item 10.

<sup>6</sup> Item 5.

<sup>7</sup> Item 13.

<sup>8</sup> Item 5 at 1-2.

¶ 1.e). I find for Applicant with respect to SOR ¶ 1.e since it is a duplicate of SOR ¶ 1.d as indicated by the identical account numbers.

Applicant states her family's financial problems began in August 1999 after she, her husband and their two small children moved to the state where her parents resided due to her father's poor health. She and her husband had difficulty finding employment. They did not have jobs lined up prior to moving.<sup>9</sup> The family finances were further aggravated by additional expenses incurred related to two hip replacement surgeries her husband had in September 2001 and July 2002.<sup>10</sup> The family's income was also reduced from April to December 2002 because Applicant was on medical leave during much of this period.<sup>11</sup>

In February 2006, Applicant and her husband entered into a payment plan with the IRS, agreeing to pay \$200 per pay period towards their IRS debt.<sup>12</sup> Applicant provided no evidence to indicate that timely payments are being made towards this payment plan. She provided no evidence that she took steps to resolve the debts listed under her most recent credit reports (SOR ¶¶ 1.b, 1.d, 1.g and 1.h).<sup>13</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>14</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. The revised Adjudicative Guidelines, approved by the President on December 29, 2005 and implemented by the Department of Defense, effective September 1, 2006, 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: 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

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<sup>9</sup> Item 9.

<sup>10</sup> Item 5 at 2.

<sup>11</sup> *Id.* at 9.

<sup>12</sup> Item 8.

<sup>13</sup> *See* Items 12 and 13.

<sup>14</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).

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.<sup>15</sup>

Guideline E - Personal Conduct: 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.<sup>16</sup>

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 an acceptable security risk.”<sup>17</sup> An administrative judge must apply the “whole person concept,” and consider and carefully weigh the available, reliable information about the person. 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 extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent 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.<sup>18</sup>

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.<sup>19</sup> Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts admitted by the applicant or proven by Department Counsel. The applicant has the ultimate burden of persuasion as to obtaining a favorable clearance decision.<sup>20</sup> “Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security.”<sup>21</sup> The same rules apply towards trustworthiness determinations for access to sensitive positions.

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<sup>15</sup> Revised AG, dated August 2006, ¶ 18.

<sup>16</sup> Revised AG, dated August 2006, ¶ 15.

<sup>17</sup> Revised AG, dated August 2006, ¶ 2(a).

<sup>18</sup> *Id.*

<sup>19</sup> Directive ¶ E3.1.14.

<sup>20</sup> Directive ¶ E3.1.15.

<sup>21</sup> Revised AG, dated August 2006, ¶ 2(b).

## CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. I make the following conclusions.

### **Guideline F - Financial Considerations**

Applicant's poor financial history raises a security concern. She has encountered financial problems since 1999. Prior to filing for bankruptcy, she had over 26 delinquent accounts, totaling approximately \$18,257. She and her husband also owed the IRS for overdue taxes for tax years 1996-2001 and 2003, an approximate total of \$17,157. Financial Considerations Disqualifying Condition (FC DC) ¶19(a) (*inability or unwillingness to satisfy debts*) and FC DC ¶19(c) (*a history of not meeting financial obligations*) apply to Applicant's case.

FC DC ¶19(e) (*consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis*) applies due to Applicant's excessive indebtedness and her inability to meet her financial obligations to include her federal income taxes.

The financial considerations concern can be mitigated. Financial Considerations Mitigating Condition (FC MC) ¶20(b) (*the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances*) potentially could be applied. Applicant and her husband have suffered from medical problems which prevented them from working in the early 2000s. Applicant considered her options and decided to file for bankruptcy which is a legal way of resolving one's debts. However, she has since incurred several delinquent accounts after the bankruptcy and provided no evidence that she has taken steps to resolve these accounts.

FC MC 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolved debts*), applies, in part, because the majority of Applicant's debts were discharged after her bankruptcy. Applicant recently entered into a repayment plan with the IRS to repay the tax debt. I give this mitigating condition less weight due to the fact that Applicant has not provided evidence that she is making regular payments towards the tax debt, and provided no evidence to indicate that she is repaying her student loans and the other accounts that were not discharged in bankruptcy.

Applicant provided no information as to her current financial status. A question remains as to whether she will be capable of making regular payments towards the tax debt. There is no evidence that she received financial counseling which would be helpful given her past history of financial

irresponsibility. For these reasons, Applicant has not provided sufficient information to mitigate the concerns under Guideline F.

Guideline F is decided against Applicant.

### **Guideline E - Personal Conduct**

Personal conduct under Guideline E is always a security concern because it asks the central question if a person's past conduct justifies confidence the person can be trusted to properly safeguard classified and/or sensitive information. Deliberate omission, concealment, or falsification of a material fact in any written document or oral statement to the government when applying for a security clearance or in other official matters is a security concern. It is deliberate if it is done knowingly and willfully.

The SOR alleges Applicant falsified her public trust position application, dated May 11, 2004, in response to questions 22(a) and 22(b). She allegedly deliberately falsified her response to question 22(a) because she failed to list a tax lien filed against her in May 2002. Applicant states that she was not aware of the tax lien at the time of she filled out the security clearance application because her husband handled the finances. With respect to omitting the tax lien, I find that Applicant did not deliberately falsify her response to question 22(a). However, I find that she did deliberately falsify her response to question 22(b) which asked whether applicant was over 180 days delinquent on any loan or financial application. Applicant may not have been aware of all of her delinquent accounts but she does admit that she knew there were some outstanding debts at the time she completed her SF 85P.<sup>22</sup> She answered "No" to question 22(b) although she was aware that she had delinquent accounts. In an affidavit dated September 16, 2004, Applicant provided further details about her delinquent debts, supporting the premise that she was aware that she had some delinquent debt at the time she filled out the SF 85P.<sup>23</sup>

With respect to Applicant's deliberate false answer to question 22(b) on her Questionnaire for Public Trust Position, Personal Conduct Mitigating Condition (PC MC) 16(a) (*deliberate omission, concealment, of falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*) applies. I find that none of the personal conduct mitigating conditions apply. Applicant's decision to deliberately omit information about her delinquent debts on her SF 85P raises questions about her reliability, trustworthiness, and judgment. She has not mitigated the concerns raised by her conduct. I find against Applicant under personal conduct concern.

I considered all the evidence provided and also considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. I find Applicant failed to mitigate the trustworthiness concerns raised under financial considerations and personal

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<sup>22</sup> Item 9 at 2.

<sup>23</sup> Item 5.

conduct. Therefore, I am persuaded by the totality of the evidence in this case, that it is not clearly consistent with the national interest to grant Applicant a position of public trust.

### **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:

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|---------------------------|-------------------|
| Paragraph 1. Guideline F: | AGAINST APPLICANT |
| Subparagraph 1.a:         | Against Applicant |
| Subparagraph 1.b:         | Against Applicant |
| Subparagraph 1.c:         | Against Applicant |
| Subparagraph 1.d:         | Against Applicant |
| Subparagraph 1.e:         | For Applicant     |
| Subparagraph 1.f:         | Against Applicant |
| Subparagraph 1.g:         | Against Applicant |
| Subparagraph 1.h:         | Against Applicant |
| Subparagraph 1.i:         | Against Applicant |
| Paragraph 2. Guideline E: | AGAINST APPLICANT |
| Subparagraph 2.a:         | For Applicant     |
| Subparagraph 2.b:         | Against Applicant |

### **DECISION**

In light of all of the evidence presented by the record in this case, it is not clearly consistent with the national interest to find Applicant suitable for a position of public trust. Applicant's request to be granted a position of public trust is denied.

Erin C. Hogan  
Administrative Judge