



## **SYNOPSIS**

Applicant is a 36-year-old single female that incurred numerous debts that are delinquent. When she moved from one state to another state she did not leave a forwarding address for her creditors. Since receiving the statement of reasons, she has contacted some creditors and paid two creditors. She failed to provide corroborating documentation on claims she set up payment plans and that her mother was to make payments when she moved. Applicant failed to list she had delinquent debts on her trustworthiness application. Her explanation was not credible. Applicant failed to mitigate the trustworthiness concerns raised by financial considerations and personal conduct. Eligibility is denied.

## STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue an ADP I/II/III position for Applicant. As required by Department of Defense Regulation 5200.2-R (Jan. 1987), as amended (Regulation), and Department of Defense Directive 5220.6 ¶ E3.1.2 (Jan. 2, 1992), as amended (Directive), DOHA issued a Statement of Reasons (SOR) on August 17, 2006 detailing the basis for its decision—concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of the Regulation. In a sworn statement dated October 11, 2006, Applicant responded to the SOR allegations. Applicant elected to have her case decided on the written record. Department Counsel submitted the government’s file of relevant material (FORM) on January 23, 2007. The FORM was mailed to Applicant on January 27, 2007, and received on February 2, 2007. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant provided additional information and it was received on March 5, 2007. Department Counsel had no objections. The case was assigned to me on March 14, 2007.

## FINDINGS OF FACT

Applicant is a 36-year-old single female who works for a medical contractor for the federal government. Applicant listed on her Public Trust Position Application (SF 85P) that prior to her present employment, which began on November 29, 2004, she was employed steadily, with no periods of unemployment, since January 27, 1992. In her answer to the FORM, Applicant stated she had periods of unemployment and was forced to resign from a job due to medical issues, sometime after July 25, 2002. She stated once she recovered from her injuries she looked for a job and was hired on April 12, 2004. She left that employment to take the job with her present employer in November 2004. She also listed that from October 1, 2001, until the present she lived at the same address. Applicant stated in her answer to the FORM that when she moved from State A to State B in May 2001, she “lived with relatives and friends for the first few years until 2004.” She now has her own permanent residence. She listed only one residence on her SF 85P from October 2001 to the present.

Applicant admitted the debt in SOR ¶ 1. a and claimed it is a duplicate of ¶ 1. c. The debt was charged off in February 2000. The debt is a judgment that was filed in September 2000. She stated she never received notice. She recently contacted the creditor and updated her current address. The creditor originally wanted full payment and would not accept a payment plan. However, the creditor agreed in June 2006 to accept monthly payments of \$200 beginning in July. Applicant stated she made three payments but has not provided verification of these payments.<sup>1</sup>

SOR ¶ 1.b is a debt that Applicant stated she paid prior to leaving State A. She failed to keep a record of her payment, claimed she recently contacted them to provide her new address and was going to “try to work out a payment plan with them.”<sup>2</sup> No documentation was provided.

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<sup>1</sup>GE 3.

<sup>2</sup>*Id.*

SOR ¶ 1. d is a debt to retail store credit card. Applicant contacted the creditor to provide a current address. She stated she sent money to her mother to pay the debt. She also stated she would repay the debt within one year.<sup>3</sup> No further documentation was provided to show any payments have been made. This debt was charged off in February 2001.

SOR ¶¶ 1.e and 1.f and 1.i are all from the same creditor and are for overdrafts and credit card loans. These three debts were charged off in May, June and November 2001 respectively. Applicant has contacted the creditor and stated she would have payments deducted from her pay starting in August 2006. No proof of payments were provided.

The debt in SOR ¶ 1.g is an account from a retail store. She stated she had paid it off, but later found out more was owed. She settled and repaid the debt with two payments completed in November 2006.<sup>4</sup> The debt was originally sent to collection in September 2001. It appears that this is the same debt as listed in SOR ¶ 1.1.

The debt in SOR ¶ 1. h, Applicant claims is the same as in ¶ 1. b, but provided no proof of the duplication or that it is paid. Applicant admits to the debt in SOR ¶ 1.j, but disputes the amount. No proof of resolution was provided.

The debt in SOR ¶ 1. k was placed for collection in March 2006. Applicant does not recognize the creditor. No proof of resolution was provided. The debt in SOR ¶ 1.m was for delinquent state taxes for tax year 2001. She repaid this debt.<sup>5</sup>

Applicant stated that she sent her mother, who was living in State A, money to pay some of her creditors, after she had left the state. Applicant had periods of unemployment. She returned to State A from approximately June 16, 2002 to July 2002, because her father died and she tended to her mother. She did not provide any information as to what actions she took to research her debts while she was in State A. Applicant was in a car accident on July 25, 2002, and suffered injuries that caused her to miss work for over a year. In May 2006, her car was stolen and totaled and she incurred the expense of towing and dumping the vehicle.<sup>6</sup>

Applicant stated:

“I admit that I have bills, but was not aware that they were delinquent because I had failed to update the billers with my most current address information. Therefore, my mail had continued to go to my [State A] address, where my mother resides, since I had no permanent address yet established in [State B] at the time. However, I did

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<sup>3</sup>*Id.*

<sup>4</sup>Response to Form received March 5, 2007.

<sup>5</sup>GE 3.

<sup>6</sup>The information in this paragraph is from Applicant’s Response to the FORM, March 5, 2007.

continue to send money to my mother to help pay for my bills and it never occurred to me then that my bills continued to be outstanding.”<sup>7</sup>

Applicant also stated that she paid some bills but did not keep the documentation to substantiate her claim. She stated that with regard to sending money to her mother she can produce her personal checks as proof, but did not do so.<sup>8</sup> She did not provide any information from her mother that such an arrangement had been made and her mother took over the responsibility for paying Applicant’s bills. In response to question 20 on her SF 85P that inquired whether Applicant had any debts that were delinquent for more than 180 days, she answered “no.” Many of Applicant’s debts were in a charged off status prior to her moving. I do not find Applicant’s statements to be credible and find she deliberately and intentionally failed to provide accurate information on her SF 85P.

### POLICIES

The adjudicative guidelines set out in the Regulation are used to make ADP trustworthiness determinations. Department of Defense contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination may be made.<sup>9</sup>

An individual may not be assigned to perform sensitive duties unless a competent security authority determines it is clearly consistent with the interests of national security to do so.<sup>10</sup> Positions designated as ADP I or ADP II are classified as sensitive positions.<sup>11</sup> ADP III positions are “nonsensitive positions.”<sup>12</sup> However, DOHA has been directed to apply the due process provisions of the Directive for all trustworthiness determinations under ADP I, II, and including ADP III positions by a memorandum from the Deputy Undersecretary of Defense (Counterintelligence and Security) dated November 19, 2004. Thus, even though ADP III positions are nonsensitive, they are treated in the same way and adjudicated under the same guidelines and procedures as ADP I and II cases.

“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.”<sup>13</sup> Appendix 8 of the Regulation sets forth adjudicative policy , as well as the disqualifying conditions (DC) and

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<sup>7</sup>GE 3 at p. 1.

<sup>8</sup>Response to Form received March 5, 2007.

<sup>9</sup>Regulation ¶ C8.2.1.

<sup>10</sup>Regulation ¶ C2.1.2.

<sup>11</sup>Regulation ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3.

<sup>12</sup>Regulation ¶ C3.1.2.2.

<sup>13</sup>Regulation ¶C6.1.1.1.

mitigating conditions (MC) under each guideline. Department of Defense contractor personnel are afforded the adjudicative procedures contained in the Directive.<sup>14</sup>

“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>15</sup> Each eligibility determination must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Regulation. Specifically these are: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the individual’s age and maturity at the time of the conduct; the voluntariness of participation; the presence or absence of rehabilitation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; and the likelihood of continuation or recurrence. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.<sup>16</sup> The government has the burden of proving controverted facts.<sup>17</sup> The burden of proof is something less than a preponderance of evidence.<sup>18</sup> Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.<sup>19</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>20</sup> These same burdens of proof apply to trustworthiness determinations for ADP positions.

No one has a right to a security clearance<sup>21</sup> and “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>22</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.<sup>23</sup> The decision to deny an individual a security

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<sup>14</sup>Regulation ¶ C8.2.1.

<sup>15</sup>Regulation Appendix 8 at 132.

<sup>16</sup>ISCR Case No. 96-0277 at 2 (App. Bd. Jul. 11, 1997).

<sup>17</sup>ISCR Case No. 97-0016 at 3 (App. Bd. Dec. 31, 1997); Directive, Enclosure 3, ¶ E3.1.14.

<sup>18</sup>*Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

<sup>19</sup>ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.

<sup>20</sup>ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.

<sup>21</sup>*Egan*, 484 U.S. at 531.

<sup>22</sup>*Id.*

<sup>23</sup>*Id.*; Directive, Enclosure 2, ¶ E2.2.2.

clearance is not necessarily a determination as to the loyalty of an applicant.<sup>24</sup> 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 clearance.

Based upon consideration of all the evidence, I find the following adjudicative guidelines most pertinent to the evaluation of the facts in this case:

Financial Considerations-a security concern exists when a person has significant delinquent debts. 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 information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

Personal Conduct-a security concern exists when conduct involving questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

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

## CONCLUSIONS

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

Based on all the evidence, Financial Considerations Disqualifying Condition (FC DC) 1 (*a history of not meeting financial obligations*) and FC DC 3 (*inability or unwillingness to satisfy debts*) apply in this case. Applicant has accumulated delinquent debts over a significant period of time, that she has not paid. She moved from State A in May 2001. Many of her debts were delinquent prior to her move. Some were delinquent subsequent to her move. Most of her debts remain unpaid and unresolved.

I considered all the Financial Considerations Mitigating Conditions (FC MC), and especially considered FC MC 1 (*the behavior was not recent*), FC MC 2 (*it was an isolated incident*), FC MC 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)*), FC MC 4 (*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*), and FC MC 6 (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*). Applicant's delinquent debts are recent because most of them have not been paid or are unresolved. Due to the number of debts they are not isolated. Therefore, FC MC 1 and 2 do not apply.

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<sup>24</sup>Executive Order 10865 § 7.

Many of Applicant's debts were charged off or put in a collection status prior to her move. Applicant did have significant events occur in her life that were beyond her control, such as her father passing away, a car accident that caused her injuries, unemployment, and her car being stolen. However, these all occurred after she moved and after her debts were already delinquent. They certainly impacted her ability to repay her debts, but the fact is she had not addressed any of the debts prior to the SOR being issued and prior to her misfortune. She has been steadily working since November 2004, but did not address her delinquent debts. Therefore, I find FC MC 3 does not apply.

Applicant has not provided evidence she is receiving financial counseling nor are there clear indications that the problem is being resolved. She has paid two debts and made promises to pay others. She claimed she was repaying or would begin repaying certain debts, but failed to provide proof of her payments. Applicant has contacted the creditors, but there is not a clear indication that her debts are being resolved or that she has initiated a good faith effort to repay her debts. Applicant did not provide documentation to show she has made payments to creditors she claimed she was repaying or was planning on repaying. Therefore, I am unable to apply FC MC 4 or 6.

Based on all the evidence, Personal Conduct Disqualifying Condition (PC DC) 2 (*the deliberate omission, concealment, or falsification of relevant and material 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 determination*) applies. Appellant deliberately and intentionally falsified her SF 85P by failing to list she had delinquent debts. It is not credible to believe that when she filled out her trustworthiness application in December 2004, that she did not believe she had any overdue debts. She admitted that she had bills when she left State A in May 2001, but then says she did not know they were delinquent because she failed to provide a current address to her creditors. Her debts were charged off in January 2000, July 2000, September 2000 (a judgment was entered), February 2001, May 2001, June 2001, and June 2006 (two accounts). The other debts were sent to collection in November 2001 (two accounts), April 2004, and March 2006. It is not credible to believe she was unaware of her delinquent debts. When debts are charged off it is usually after creditors have exhausted their attempts to get the debtor to repay the debt. Those attempts would have occurred prior to Applicant leaving the state. The fact she failed to provide a forwarding address raises issues. If she was aware that she had debts, she also had a responsibility to provide the creditors with an address. Applicant claims she gave her mother money to repay her debts. She obviously was in contact with her mother during this time and had a responsibility to follow through on ensuring the debts were repaid. She failed to provide any evidence from her mother to support an arrangement with her mother to repay all of her debts. It is not credible to believe that Applicant left State A totally unaware that she had any delinquent debts considering many were delinquent and in a charged off status prior to her departure. I find Applicant was aware she had debts and they were delinquent before she moved and deliberately failed to list them on her SF 85P.

I have considered all of the Personal Conduct Mitigating Conditions (PC MC) and especially considered PC MC 2 (*the falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily*), PC MC 3 (*the individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts*), PC MC 5 (*the individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or pressure*) and find they do not apply. I find that the falsification is recent because it has to do with her trustworthiness application. The falsification occurred on Applicant's SF 85P.



However, Applicant continues to maintain she was unaware of the delinquent debts despite the evidence. There is no evidence Appellant voluntarily provided the correct information before being confronted with the facts. Applicant has not provided any evidence that she has taken positive steps to reduce or eliminate vulnerability to coercion or pressure. After considering all of the evidence, I find that Applicant knew when she filled out the SF 85P that she had some delinquent debts and she failed to reveal them as required. I find PC MC 1, 3 and 5 do not apply.

### **The Whole Person Analysis**

In all adjudications, the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I considered all the evidence provided and also considered the "whole person" concept in evaluating Applicant's trustworthiness. I considered Applicant's periods of unemployment and steady employment since 2004. I considered what actions she took to resolve and repay her delinquent debts prior to the SOR and subsequent to it. She has paid two debts and apparently has an arrangement to repay another, although she did not provide proof that she has continued to repay the debt. She promises to repay certain others. I considered the misfortunes that have occurred in her life. I also considered the dates of the delinquent debts and that many were years old and were not addressed until the SOR was issued. I also considered that Applicant failed to notify her creditors that she was moving. Applicant has provided minimum documentation to support she is repaying her debts. I find Applicant has failed to mitigate the trustworthiness concerns raised by the financial considerations and personal conduct concerns. 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 favorable trustworthiness determination. Accordingly, Guideline F and Guideline E are decided against Applicant.

### **FORMAL FINDINGS**

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

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:	Against Applicant
Subparagraph 1.f:	Against Applicant

Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	For Applicant
Subparagraph 1.m:	For Applicant
Paragraph 2. Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

**DECISION**

In light of all of the circumstances in this case, it is not clearly consistent with the interests of national security to grant or continue Applicant's eligibility for an ADP I/II/III position. Eligibility is denied.

Carol G. Ricciardello  
Administrative Judge