

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant accrued \$12,402 in delinquent debts through nine unpaid consumer accounts. She also failed to disclose her debts more than 180 days past due as required by question 20 of a Public Trust Position Application (SF 85P) she submitted in December 2004. Her omission of her debts from the SF 85P was not intended to be a false answer or to mislead the government. Her debts resulted from her divorce in 2001, and she has not experienced any delinquencies since. Available information is sufficient to mitigate the security concerns about her personal conduct and her finances. Eligibility for an ADP I/II/III position is granted.

CASENO: 06-09176.h1

DATE: 04/24/2007

DATE: April 24, 2007

In re:)	
)	
)	
-----)	ADP Case No. 06-09176
SSN: -----)	
)	
Applicant for ADP I/II/III Position)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
MATTHEW E. MALONE**

APPEARANCES

FOR GOVERNMENT

Jennifer Goldstein, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant accrued \$12,402 in delinquent debts through nine unpaid consumer accounts. She also failed to disclose her debts more than 180 days past due as required by question 20 of a Public Trust Position Application (SF 85P) she submitted in December 2004. Her omission of her debts from the SF 85P was not intended to be a false answer or to mislead the government. Her debts resulted from her divorce in 2001, and she has not experienced any delinquencies since. Available information is sufficient to mitigate the security concerns about her personal conduct and her finances. Eligibility for an ADP I/II/III position is granted.

STATEMENT OF THE CASE

On December 6, 2004, Applicant submitted a Public Trust Position Application (SF 85P). After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding¹ that it is clearly consistent with the national interest to grant Applicant a position of trust. On August 23, 2006, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns addressed in the Directive under Guideline E (personal conduct) and Guideline F (financial considerations).

Applicant timely responded to the SOR, and requested a hearing. The case was assigned to me on November 16, 2006. I convened a hearing on January 10, 2007, at which the parties appeared as scheduled. The parties stipulated to the admission of all eleven exhibits proffered by the government (Gx. 1- 11). Applicant testified and introduced 18 exhibits (Ax. A - R), of which 17 were admitted.² DOHA received the transcript (Tr.) on January 18, 2007.

FINDINGS OF FACT

The government alleged in the SOR that Applicant is delinquent on nine unpaid accounts totaling \$12,402 as follows: an AT&T account in collection status for \$298 (SOR ¶ 1.a); a Direct Digital satellite TV account in collection status for \$133 (SOR ¶ 1.b); an unpaid bill to a pizza restaurant in collection status for \$121 (SOR ¶ 1.c); an account in collection status for an unspecified original creditor for \$298 (SOR ¶ 1.d); an AT&T Broadband account in collection status for \$213 (SOR ¶ 1.e); a charged off credit union account for \$8,371 (SOR ¶ 1.f); a charged off account to Finger Hut for \$980 (SOR 1.g); a charged off RCA account for \$1,786 (SOR ¶ 1.h); and a past due collection account to an unspecified original creditor for \$202 (SOR ¶ 1.i). The government also alleged that Applicant deliberately falsified her response to question 20 of her SF 85P (debts currently more than 180 days past) by answering “no,” thereby omitting the debts alleged in SOR ¶¶ 1.a through 1.i (SOR ¶ 2.a).

Applicant admitted with explanations the allegations in SOR ¶¶ 1.a, 1.d - 1.g, and 1.i.³ In addition to her admissions, after a thorough review of the transcript and exhibits, I make the following findings of relevant fact:

Applicant is 33 years old and has worked since November 2004 for a health care and medical insurance company contracted to manage medical insurance claims and information for TriCare, the Department of Defense (DoD) medical insurance system for military personnel and their families. After working as a claims processor for a vision care provider from May 1999 until May 2004, she was laid off with a three month severance package. She relied on state unemployment benefits for

¹ Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.

² I sustained Department Counsel’s objection to Ax. H on grounds of relevance. (Tr., 34 - 39) For possible use on appeal, it is included in the case file along with Ax. A - G and I - R.

³ On its face, her response to SOR ¶ 2.a is an admission, but the accompanying explanation with respect to intent, the gravamen of the allegation, is a denial.

about one month before obtaining her current job. Applicant was previously employed by a temp agency from December 1996 until May 1999.⁴

Applicant is a single mother of two children, ages 8 and 14. She was married until December 31, 2001. In June 2001, Applicant left her husband, taking their children with her, because of her ex-husband's physical abuse of Applicant and his use of drugs. During the six months between their separation and the official end of the marriage, Applicant obtained a protective order against her ex-husband, but he violated that order and was jailed for it. Additionally, after they separated, her ex-husband and his girlfriend lived in the marital home, tried to forge checks against Applicant's bank account, ran up long distance phone bills (SOR ¶ 1.a), added premium services to their digital cable television account, took the cable box with him when he left the marital home as their divorce became final (SOR ¶ 1.b), and generated other debts (SOR ¶ 1.c), for which both Applicant and her ex-husband were liable, but without Applicant's knowledge or consent.

As part of the divorce decree,⁵ of the debts listed in the SOR, Applicant was assigned responsibility for the AT&T debt in SOR ¶ 1.a. However, she was only required to pay \$72. The remainder of the listed balance stemmed from her ex-husband's long distance calls. Consistent with the somewhat unique state laws on marital property in Applicant's state, the court retained jurisdiction over the debts listed at SOR ¶¶ 1.d (a collection account for an unpaid gas credit card), 1.f (a car loan for their minivan), 1.g (a catalogue account the couple used to buy Christmas gifts during their marriage), and 1.h (a past due medical bill from the birth of her younger child that should have been covered by her ex-husband's insurance). Thus, if a creditor wished to be paid, the court would decide how much the Applicant and/or her ex-husband would pay. There is no indication any of the creditors has tried to collect since the divorce became final.

The divorce decree resolved the division of financial obligations by allowing Applicant to pay her ex-husband \$1,200 as an "Equalizing Payment." She liquidated her 401K savings to make this payment.⁶ Also, as part of the divorce decree, and to completely separate her interests from those of her ex-husband, Applicant turned back to the finance company the aforementioned minivan, the loan for which her ex-husband's mother had co-signed. The resulting deficiency after re-sale was \$9,098.65; however, even though Applicant made no further payments on this loan, the balance was reduced to \$8,371 before it was charged off in October 2001.⁷ Applicant thinks her ex-mother-in-law made payments on the debt after the repossession.

Applicant's ex-husband was also ordered to pay Applicant \$499 each month in child support, but he has not done so. Nor has he paid for half of his children's day care, medical, dental or other expenses as ordered. A personal financial statement (PFS) Applicant submitted when interviewed in April 2005 by a government investigator showed she earned \$2,560 after deductions each month. Expenses, such as rent, insurance, food, utilities, and other miscellaneous costs totaled about \$1,775 each month. Applicant was also paying \$262 in monthly car payments. A student loan with a balance

⁴ Gx. 1.

⁵ Ax. G; Ax. I.

⁶ Ax. I; Ax. J.

⁷ Ax. C; Ax D; Ax G; Gx. 3; Gx. 4; Gx. 5; Gx. 9.

of \$5,128 is in deferral. The PFS reflected about \$522 in net cash available each month after expenses. At hearing, Applicant testified that she has paid off the aforementioned car loan. She also stated she lives with her boyfriend, who earns about \$700 every two weeks.⁸

Applicant has no knowledge of the broadband internet account referred to in SOR ¶ 1.e. Also, the collection account listed in SOR ¶ 1.i is for an unpaid medical or dental account attributable to care her ex-husband received. The balance is now over \$560. The digital television account (SOR ¶ 1.b) remains unpaid because Applicant has been unable to determine if the cable box her ex-husband took had been credited back to the account.

As to her efforts to pay or otherwise resolve the debts listed in the SOR, Applicant testified that after the divorce she offered to make minimal payments to the catalogue company debt (SOR ¶ 1.g), but the creditor wanted more than she could afford at the time. Her debts were thereafter charged off and she did not address them further until the SOR was issued. She also looked into filing for bankruptcy protection, but was told the accounts were so old that bankruptcy would be an ineffective way to resolve her credit. Instead, she has focused on rebuilding her credit through buying and paying off her car and by avoiding additional delinquencies. She further testified that none of the listed creditors in the SOR have tried to collect on the debts.⁹

On November 30, 2004, Applicant submitted an SF 85P. In response to question 20 (“Your Financial Record - 180-Day Delinquencies. Are you now over 180 days delinquent on any loan or financial obligation? (Include loans or obligations funded or guaranteed by the Federal Government.)”), Applicant answered “no.”¹⁰ She received advice and assistance in filling out her questionnaire from a company “trainer,” a human resources employee who was helping several employees complete their applications. The trainer interpreted question 20 for Applicant to mean she only needed to declare delinquent federal loans. This understanding was based on the language of the question when compared to question 19 (“Your Financial Record - Bankruptcy, Liens, Judgements. 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 judgement rendered against you for a debt?”), which she and the trainer understood was aimed at accounts such as those listed in the SOR, but only if they were the subject of a lien or judgment.¹¹

Applicant is well-regarded at work. Associates who have know her since 2004 speak highly of her work ethic, honesty, reliability, and her character as a single mother.¹²

POLICIES AND BURDEN OF PROOF

⁸ Tr., 56, 59.

⁹ Tr. 55, 57 - 58.

¹⁰ Gx. 1.

¹¹ Answer to SOR; Tr., 49 - 50.

¹² Ax. R.

The Directive sets forth adjudicative guidelines¹³ to be considered in evaluating an applicant's suitability for access to sensitive information.¹⁴ Each trustworthiness determination must reflect consideration of both disqualifying conditions (DC) and mitigating conditions (MC) under each adjudicative issue applicable to the facts and circumstances of each case.¹⁵ Each determination must also reflect a fair and impartial common sense consideration of all available relevant and material information,¹⁶ and it must reflect the adjudication process outlined in the Directive at Section E2.2.1.¹⁷ The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to sensitive information.

Trustworthiness determinations are intended solely to resolve whether it is clearly consistent with the national interest¹⁸ for an applicant to receive or continue to have access to sensitive information. The government bears the initial burden of producing admissible information on which it based the preliminary decision against the applicant. Additionally, the government must be able to prove controverted facts alleged in the SOR. If the government meets its burden, the burden then

¹³ Directive, Enclosure 2.

¹⁴ A memorandum from Carol A. Haave, Deputy Under Secretary of Defense for Counterintelligence and Security to DOHA Director, *Adjudication of Trustworthiness Cases* (Nov. 19, 2004), directed that adjudication of trustworthiness cases for ADP I, II, and III positions be resolved using the provisions of the Directive rather than, as originally drafted, DoD Regulation 5200.2-R, *DoD Personnel Security Program*, as amended (Regulation). Positions designated as ADP I or ADP II are classified as sensitive positions in section AP10.2.1 of the Regulation. ADP III positions are nonsensitive positions. (Regulation, AP102.3.1) By virtue of the aforementioned memorandum, however, even though they are nonsensitive positions, ADP III cases are treated in the same way and adjudicated under the same guidelines and procedures as ADP I and II cases.

¹⁵ Also, Appendix 8 of the Regulation sets forth the adjudicative policy, as well as the disqualifying conditions and mitigating conditions associated with each guideline. DoD contractor personnel are afforded the adjudication procedures contained in the Directive. (Regulation, C8.2.1)

¹⁶ Directive, 6.3.

¹⁷ "The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination. In evaluating the relevance of an individual's conduct, the adjudicator should consider the following factors:

- E2.2.1.1. The nature, extent, and seriousness of the conduct;
- E2.2.1.2. The circumstances surrounding the conduct, to include knowledgeable participation;
- E2.2.1.3. The frequency and recency of the conduct;
- E2.2.1.4. The individual's age and maturity at the time of the conduct;
- E2.2.1.5. The voluntariness of participation;
- E2.2.1.6. The presence or absence of rehabilitation and other pertinent behavioral changes;
- E2.2.1.7. The motivation for the conduct;
- E2.2.1.8. The potential for pressure, coercion, exploitation, or duress; and
- E2.2.1.9. The likelihood of continuation or recurrence;"

¹⁸ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988). See also, Regulation, C6.1.1.1 ("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.")

shifts to the applicant to refute, extenuate or mitigate the government's case. As with security clearances, no one has a "right" to such access.¹⁹ Thus, an applicant bears a heavy burden of persuasion. Access to sensitive information is a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest in ensuring each applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect sensitive information pertaining to the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the government.²⁰

CONCLUSIONS

Personal Conduct. Under Guideline E, a security concern may arise if it is shown an applicant has exhibited questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations. Such conduct may indicate the person may not properly safeguard classified information.²¹ Here, the government questioned Applicant's trustworthiness by alleging she deliberately "falsified material facts on a Security Clearance Application, Standard Form 85P, executed by [her] under date December 6, 2004" by answering "no" to question 20, as discussed above (SOR ¶ 2.a).

Applicant is seeking an ADP I/II/III position of trust, not a security clearance. Further, the SF 85P produced by the government in support of this allegation was signed and submitted by Applicant on November 30, 2004. Nonetheless, Applicant did not contest the allegation based on these errors. While she admitted the fact of her omission, she denied the gravamen of the allegation; that is, that she intended by her omission to deceive or mislead the government about her financial problems. I conclude that the date listed in SOR ¶ 2.a is a typographical error, and that Department Counsel submitted sufficient information to show that these omissions and inaccuracies exist.

Based on available information, Guideline E DC 2²² must be considered. However, Applicant demonstrated she lacked the intent to falsify or mislead, as required by the plain language of DC 2 when she completed her SF 85P. Her explanation of her understanding of the question, when taken together with the advice she received and the wording of the question about student or federal loans, was both plausible and credible. In light of all of the information probative of this issue, DC 2 does not apply, and I conclude Guideline E for Applicant.

Financial Considerations. Under Guideline F, an applicant who is financially overextended through delinquent debt and poor personal financial management may be at risk of engaging in

¹⁹ See *Egan*, 484 U.S. at 528, 531.

²⁰ See *Egan*; Directive, E2.2.2.

²¹ Directive, E2.A5.1.1.

²² Directive, E2.A5.1.2.2. 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, or award fiduciary responsibilities;

illegal acts to generate funds to resolve their fiscal difficulties.²³ Applicant incurred several debts during her marriage that have gone unpaid since 2001, when her divorce decree was issued. She was unable to pay those debts for several years, but her most recent PFS shows she has a positive cash flow that would enable her to address at least some of the listed debts. These facts warrant consideration of Guideline F disqualifying condition (DC) 1²⁴ and DC 3.²⁵

By contrast, through Applicant's divorce decree it appears she may no longer be liable for some of the listed debts. Specifically, she paid her ex-husband \$1,200 from her 401K retirement savings plan to settle her share of some of the marital debts, and the debts listed at SOR ¶¶ 1.a, 1.d, 1.g, and 1.h, which total \$3,362, were retained by the court in case creditors came looking for their payments. It appears none of them did. Jurisdiction over the \$8,371 deficiency after re-sale of the minivan which Applicant returned (SOR ¶ 1.f), was also retained by the court through the divorce decree. As a co-signer on the car note, Applicant's ex-mother-in-law was also liable for this debt. Additionally, Applicant has no knowledge of the debts in SOR ¶¶ 1.c and 1.e (totaling \$334), and the \$202 debt in SOR ¶ 1.i resulted from her ex-husband's medical care after they separated. This leaves only the \$131 digital television account (SOR ¶ 1.b) unaccounted for. Applicant avers this, too, was a result of her ex-husband's actions after they separated but before he left the marital abode.

Rather than unnecessarily assume full responsibility for the debts she and her husband generated during their marriage, she has, since 2001, focused on rebuilding her credit and avoiding further delinquencies. To that end, she has paid off a car loan, has no credit cards, has a job that pays her well, and she has a positive cash flow. She has done this despite her ex-husband's failure to pay support and other expenses as ordered in the divorce. Because of the circumstances surrounding her divorce, I have considered Guideline F mitigating condition (MC) 3.²⁶ In the five years since her divorce Applicant has not taken any recent action to resolve the listed debts of which she was aware, primarily because she understood many of the debts were resolved through her divorce decree.

In light of all of the information probative of this issue, it is unclear for what debts Applicant is responsible. At worst, she and her ex-husband may be subject to a division of these obligations by the court that issued their divorce decree. However, there is no indication their creditors have been trying to collect on the listed debts. Applicant is not now financially overextended, and the listed debts are not recent, requiring consideration of MC 1.²⁷ The mere presence of unpaid debts does not automatically disqualify one from holding a sensitive position, and the debts in this case are not a source of pressure on Applicant to obtain funds through illegal or other inappropriate measures. I conclude Guideline F for the Applicant.

²³ Directive, E2.A6.1.1.

²⁴ Directive, E2.A6.1.2.1. A history of not meeting financial obligations;

²⁵ Directive, E2.A6.1.2.3. Inability or unwillingness to satisfy debts;

²⁶ Directive, E2.A6.1.3.3. 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);

²⁷ Directive, E2.A6.1.3.1. The behavior was not recent;

Whole Person. In evaluating Applicant’s case, I have also considered the adjudicative process factors collectively referred to as the “whole person” concept.²⁸ Applicant is a mature adult, who carries a heavy responsibility in caring for her two children. The circumstances that resulted in the debts in the first place stemmed from the end of her marriage, and she has taken steps to improve her financial standing so as to avoid similar problems in the future. As a matter of common sense, the facts presented in this case do not pose an unacceptable risk to the interests of national security.

FORMAL FINDINGS

Formal findings regarding each SOR allegation are as follows:

Paragraph 1, Guideline F (Financial):	FOR THE APPLICANT
Subparagraph 1.a:	For the Applicant
Subparagraph 1.b:	For the Applicant
Subparagraph 1.c:	For the Applicant
Subparagraph 1.d:	For the Applicant
Subparagraph 1.e:	For the Applicant
Subparagraph 1.f:	For the Applicant
Subparagraph 1.g:	For the Applicant
Subparagraph 1.h:	For the Applicant
Subparagraph 1.i:	For the Applicant
Paragraph 2, Guideline E (Personal Conduct):	FOR THE APPLICANT
Subparagraph 2.a:	For the Applicant

²⁸ See note 17, supra.

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's request for eligibility for assignment to a sensitive position. Eligibility is granted.

Matthew E. Malone
Administrative Judge