

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant is a 47-year-old employee of a federal government contractor. She owes more than \$22,000 in delinquent debts. Applicant did not intentionally falsify her security clearance application as alleged, because she believed her answer to the pertinent question was correct. Applicant mitigated the personal conduct concern, but failed to mitigate the financial considerations concerns. Eligibility is denied.

CASENO: 06-12766.h1

DATE: 07/11/2007

DATE: July 11, 2007

In re:

SSN: -----

Applicant for ADP I/II/III Position

ADP Case No. 06-12766

**DECISION OF ADMINISTRATIVE JUDGE
EDWARD W. LOUGHRAN**

APPEARANCES

FOR GOVERNMENT

Ray T. Blank, Jr., Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 47-year-old employee of a federal government contractor. She owes more than \$22,000 in delinquent debts. Applicant did not intentionally falsify her security clearance application as alleged, because she believed her answer to the pertinent question was correct. Applicant mitigated the personal conduct concern, but failed to mitigate the financial considerations concerns. Eligibility is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue Applicant's eligibility for an ADP I/II/III position. As required by Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program* (Regulation), dated January 1987, as amended, and DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, DOHA issued a Statement of Reasons (SOR) on July 31, 2006, detailing the basis for its decision—concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of the Regulation. Applicant answered the SOR in writing on August 14, 2006, and elected to have the case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on March 29, 2007. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant received the FORM on April 10, 2007, and responded with additional material on May 29, 2007. The case was assigned to me on June 25, 2007.

FINDINGS OF FACT

Applicant is a 47-year-old employee of a federal government contractor. She has been employed by the same company since 1990. Applicant holds a bachelor's degree. She is married, and has two children.¹

Applicant developed financial problems some time in 2002, or before. In August 2002, Applicant enrolled in a debt management plan (DMP) from a credit counseling service to address her debts. The program called for Applicant to pay \$480 per month into a trust account. The DMP took \$25 per month as a fee, and disbursed the remainder to Applicant's creditors. Some type of credit counseling was also involved. The original balance of the listed debts in the DMP was \$19,277. Applicant did not submit her entire history of payments through this plan. Documentation submitted shows a payment of \$480 in February 2003, with an estimated balance at that time of her listed debts as \$16,547. Applicant's documents show payments totaling \$2,880 made between July 2003 and March 2004, with the estimated balance in March 2004 at \$12,452.²

Applicant submitted a Questionnaire for Public Trust Positions, Standard Form 85P (SF-85P), on August 16, 2004. Question 22b asked, "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."³ Applicant stated she believed at the time and continues to believe this was a correct answer because she was not 180 days delinquent on any accounts

¹Item 4; Applicant's response to FORM.

²Item 2; Applicant's response to FORM.

³Item 4 at 7.

because of the payments made to her creditors through the DMP, as addressed above.⁴ A letter from the credit counseling service states that “[o]nce a creditor accepts a proposal, late payments stop, interest rates reduce; accounts are re-aged.”⁵ Under these circumstances, Applicant’s interpretation of the question was reasonable. I find Applicant did not intentionally falsify her SF-85P.

Applicant provided a statement for her background investigation in May 2005. She acknowledged owing several debts and stated:

My husband and I were working with a credit counseling agency and we were paying \$542 per month to catch up the delinquencies. My husband was laid off about 2 ½ years ago and we had to lower the payment to the credit counselor. We are paying \$225 per month and they are being applied to [creditor in SOR ¶ 1.f] and [creditor in SOR ¶ 1.b]. We are trying to pay 2 accounts at a time until all are paid.⁶

Applicant’s documents show \$225 payments to the DMP in March, July, and August 2005. The estimated total balance of the listed debts in the DMP in October 2005, was \$12,133. The credit counseling service reported in a May 2007 letter that the last disbursement to Applicant’s creditors occurred in December 2005. Applicant made additional payments directly to the creditors.⁷

Applicant denied owing the debt in SOR ¶ 1.a. She stated she never had an account with this company. The debt is listed as a medical debt in the amount of \$222, to a dentist. Applicant admitted she had medical debts. She stated she paid some of her medical debts, and disputed others. This debt appears on credit bureau reports (CBR) of October 7, 2004, and May 19, 2006. The date of last activity is listed as February 2000.⁸ The debt does not appear on the two most recent credit reports, possibly because the debt is now more than seven years old.⁹ I find Applicant is responsible for this debt.

The debt in SOR ¶ 1.b, in the amount of approximately \$1,562, is for a computer Applicant purchased. This debt was included in Applicant’s DMP. The DMP documents show an estimated balance of \$510, as of October 2005. Applicant settled this account for \$730 on April 11, 2007.¹⁰

The debt in SOR ¶ 1.c is a collection account in the amount of approximately \$9,841. Applicant stated this is a collection agency collecting for a credit card company. The debt to the original creditor was included in Applicant’s DMP. The DMP documents show an estimated balance of \$6,464, as of October 2005. Additional payments were made directly to the creditor, or a

⁴Item 2; Applicant’s response to FORM.

⁵Applicant’s response to FORM.

⁶Item 5 at 2.

⁷Item 2.

⁸Item 2; Item 5 at 1; Item 6 at 2; Item 7 at 5.

⁹Item 8; Applicant’s response to SOR.

¹⁰Item 2; Applicant’s response to SOR.

collection agency on the creditor's behalf. A collection agency letter of August 2005, shows a payment of \$150, and a balance of \$7,368. The CBR of May 19, 2006, shows a balance of \$9,841. The balance is listed as \$11,347 on the CBR dated March 29, 2007. Applicant submitted a CBR dated May 29, 2007, with her response to the SOR. This CBR shows the last payment in April 2007, and a balance of \$11,556.¹¹

The debts in SOR ¶¶ 1.d and 1.e, are debts to the same bank, but with different account numbers, in the amounts of approximately \$3,209 and \$2,614, respectively. In her response to the SOR, Applicant admitted to a debt to this bank, but stated the two debts were duplicates and that she only had one account with this bank. A debt to this bank was included in Applicant's DMP. The DMP documents show an estimated balance of \$1,576, as of October 2005. Additional payments were made directly to the creditor. The CBR of May 29, 2007, only shows a balance due on the account in SOR ¶ 1.d, as \$3,773.¹² I find that Applicant does not currently owe the debt alleged in SOR ¶ 1.e.

The debt in SOR ¶ 1.f is to a financial institution in the amount of \$3,456. In her May 2005 statement, Applicant admitted she had a credit card with this company, and listed an account number. She stated she used the card to pay for car repairs.¹³ The debt to this financial institution with this account number was included in Applicant's DMP. A debt to a financial institution which has a similar name, with a different account number, was also included in Applicant's DMP.¹⁴ The DMP documents show an estimated balance of the debt in SOR ¶ 1.f, of \$1,089, as of October 2005. In her response to the FORM, Applicant submitted evidence that she paid the debt to the financial institution with the similar name through a collection agency on April 11, 2007, in the amount of \$1,165. Applicant submitted a CBR with her response to the SOR. This CBR lists the balance of the debt in SOR ¶ 1.f, as \$4,557.¹⁵ I find Applicant paid a debt to an institution with a similar name to that alleged in SOR ¶ 1.f. I find she still owes the debt as alleged in SOR ¶ 1.f.

The debt in SOR ¶ 1.g is to a credit card company in the amount of approximately \$2,187. Applicant admitted to this debt in her response to the SOR, and stated she was making payments of \$10 per month on this debt. The debt was included in Applicant's DMP. The DMP documents show an estimated balance of \$518, as of October 2005. In her response to the FORM, Applicant wrote of this debt, "inaccurate information, account has been updated to show a 0 balance." The CBR Applicant submitted with her response to the SOR tells a different story. It lists the balance of this debt as \$2,177.¹⁶

¹¹Items 2, 8; Applicant's response to FORM.

¹²Item 2; Applicant's response to FORM.

¹³Item 5 at 1.

¹⁴Item 2. The two financial institutions appear to be branches of the same corporation.

¹⁵Items 2, 5-8; Applicant's response to FORM.

¹⁶Item 2; Applicant's response to FORM.

The debt in SOR ¶ 1.h, in the amount of approximately \$1,457, appears to be to a collection agency collecting on behalf of a financial institution. The CBR of March 29, 2007, lists this debt and in the same entry, identifies the financial institution that has the similar name to the debt in SOR ¶ 1.f, as addressed above. In her response to the SOR, Applicant stated this debt was addressed in the DMP under the institution with the similar name to the debt in SOR ¶ 1.f. The CBR of May 29, 2007, shows a zero balance on this account. While it is not totally clear, I believe Applicant paid this debt with the check to the collection agency on April 11, 2007, in the amount of \$1,165, as discussed above in the paragraph discussing SOR ¶ 1.f.¹⁷

The total amount currently owed by Applicant on the above accounts is approximately \$22,285. Applicant's financial issues have not impacted her job performance. Her performance evaluations have been excellent, and she recently received a promotion.¹⁸

POLICIES

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.¹⁹ Positions designated as ADP I or ADP II are classified as sensitive positions.²⁰ ADP III positions are "nonsensitive positions."²¹ However, DOHA has been directed by a memorandum from the Deputy Undersecretary of Defense (Counterintelligence and Security) dated November 19, 2004, to apply the due process provisions of the Directive for all trustworthiness determinations under ADP I, II, and including ADP III positions. 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."²² The government has the burden of proving controverted facts.²³ The burden of proof is something less than a preponderance of evidence.²⁴ 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

¹⁷Item 2; Applicant's response to FORM.

¹⁸Applicant's response to FORM.

¹⁹Regulation ¶ C2.1.2.

²⁰Regulation ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3.

²¹Regulation ¶ C3.1.2.2.

²²Regulation ¶C6.1.1.1.

²³ISCR Case No. 97-0016 at 3 (App. Bd. Dec. 31, 1997); Directive, Enclosure 3, ¶ E3.1.14.

²⁴*Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

against him or her.²⁵ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.²⁶ The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.²⁷ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.²⁸ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant. 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.²⁹ The same rules apply to trustworthiness determinations for access to sensitive positions.

Department of Defense contractor personnel are afforded the adjudicative procedures contained in the Directive.³⁰ Additionally, each decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the adjudicative process factors listed in the Directive and the Regulation.

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

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

Guideline F: Financial Considerations

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.

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 extensive delinquent debts that remain unpaid.

I have 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*

²⁵ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.

²⁶ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.

²⁷ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

²⁸*Id.*; Directive, Enclosure 2, ¶ E2.2.2.

²⁹Exec. Or. 10865 § 7.

³⁰Regulation ¶ C8.2.1.

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 has a number of debts that remain unpaid. FC MC 1 and FC MC 2 do not apply.

In her statement in May 2005, applicant wrote that her husband was laid off from work approximately two and a half years earlier, causing them to lower their payments to the DMP. This is the only evidence submitted of a condition that was largely beyond Applicant's control. There were no details about how long her husband was out of work, or the status of his current employment. Applicant's husband was laid off after Applicant contracted with the credit counseling service, so it was not the cause of her initial financial problems. I find FC MC 3 applicable, but because of the lack of further details, I give it only limited weight.

Applicant received some counseling from the credit counseling service. The nature and extent of the counseling is unclear. Applicant still owes more than \$22,000. She did not provide sufficient information for a finding that there are clear indications that her financial problems are being resolved or are under control. Applicant has not established FC MC 4.

Applicant made payments on her debts for some time through the DMP. She also made payments on some of her debts directly to the creditors. She has recently paid or settled two debts. However, Applicant's still owes more than \$22,000, which is about \$3,000 more than she listed as the balance of her debts when she initiated the DMP in 2002. Based upon the limited evidence presented, I find FC MC 6 partially applicable.

Guideline E: Personal Conduct

Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

Based on all the evidence, I have considered 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, or award fiduciary responsibilities*).

In order to support a falsification allegation under Guideline E, there must first be a finding that the answer on the questionnaire was incorrect or factually false. There was no finding in this case that Applicant provided an incorrect or factually false answer to the question alleged in the SOR. Even if the answer was incorrect, that alone is not dispositive of the issue of Applicant's falsification. The mere proof of an omission or an incorrect answer, standing alone, does not establish or prove an applicant's intent or state of mind when the omission or incorrect response

occurred.³¹ Applicant answered the question correctly, at least within her interpretation of the question. No Personal Conduct Disqualifying Condition is applicable. I conclude Guideline E in her favor.

Whole Person Analysis

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. Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination. In evaluating Applicant's case, I have considered the adjudicative process factors listed in the Directive and the Regulation. I have also considered all the evidence, and every finding of fact and conclusion discussed above.

Applicant has an excellent record for the company which has employed her since 1990. The facts and circumstances surrounding how Applicant fell into financial difficulties were never revealed. Her financial situation caused her to enroll in a debt management plan through a credit counseling service in 2002. She did not provide the complete history of her payments through the DMP. Her husband was laid off from work at some point in about 2002 or 2003, causing them to lower their payments to the DMP, but no evidence was submitted about how long her husband was unemployed, or the status of his current employment. Applicant stopped utilizing the DMP in December 2005. No information was submitted as to why Applicant stopped paying her debts through the DMP. Applicant paid or settled several of the debts. Two of the checks were issued on April 11, 2007, the day after Applicant received the FORM. Even considering the recent payments, Applicant owes approximately \$22,285, which is about \$3,000 more than she owed when she initiated the DMP in 2002. Applicant did not submit sufficient information for a determination that her financial problems are behind her.

After weighing the disqualifying and mitigating conditions and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the concerns based on her financial issues.

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:	For Applicant

³¹See, e.g., ISCR Case No. 05-03472 at 6 (App. Bd. Mar. 11, 2007).

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:	For Applicant
Paragraph 2. Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

DECISION

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

Edward W. Loughran
Administrative Judge