

KEYWORD: Financial; Criminal Conduct; Personal Conduct

DIGEST: Applicant has had financial problems since about 1999, due in part to inadequate income. She has taken no steps to address her delinquent debt reportedly totaling \$37,628 as of February 2007. Judgment and trustworthiness concerns are also raised by her criminal assault with a gun in September 1999, and her failure to report known delinquencies on her application for a public trust position. It is not clearly consistent with the national interest to grant her a position of public trust.

CASENO: 06-13511.h1

DATE: 06/13/2007

DATE: June 13, 2007

In re:)	
)	
-----)	ADP Case No. 06-13511
SSN: -----)	
)	
Applicant for ADP I/II/III Position)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
ELIZABETH M. MATCHINSKI**

APPEARANCES

FOR GOVERNMENT

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

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has had financial problems since about 1999, due in part to inadequate income. She has taken no steps to address her delinquent debt reportedly totaling \$37,628 as of February 2007. Judgment and trustworthiness concerns are also raised by her criminal assault with a gun in September 1999, and her failure to report known delinquencies on her application for a public trust position. It is not clearly consistent with the national interest to grant her a position of public trust.

STATEMENT OF THE CASE

On August 16, 2004, Applicant submitted an application for a position of public trust. The Defense Office of Hearings and Appeals (DOHA) declined to grant the application under Department of Defense Regulation 5200.2-R, *Personnel Security Program*, dated January 1987, as amended and modified (“Regulation”), and Department of Defense Directive 5220.6 (Directive), *Defense Industrial Personnel Security Clearance Review Program*, dated January 1992, as amended and modified (“Directive”).¹ In a Statement of Reasons (SOR), dated August 22, 2006, DOHA proposed to deny or revoke access to a sensitive position for Applicant because of conduct alleged under Guideline F (Financial Considerations), Guideline J (Criminal Conduct), and Guideline E (Personal Conduct) of the adjudicative guidelines. Applicant answered the SOR on September 21, 2006, and elected to have a decision on the written record without a hearing. Her answer was considered incomplete, in part because she did not indicate whether she wanted a hearing. On October 12, 2006, Applicant resubmitted her original answer, adding to her original response to question ¶ 3.a and requesting a decision based on the written record without a hearing.

The government submitted a File of Relevant Material (FORM) on February 22, 2007, consisting of 10 exhibits (Items 1-10). On February 23, 2007, DOHA forwarded a copy of the FORM to Applicant and instructed her to respond within 30 days of receipt. Applicant submitted no rebuttal by the April 4, 2007, due date. The case was assigned to me on May 2, 2007, to consider whether it is clearly consistent with the national interest to grant Applicant a position of trust.

FINDINGS OF FACT

DOHA alleged Applicant owes \$38,122 in delinquent debt (¶¶ 1.a through 1.l); was sentenced to ten years (suspended), and five years probation for a September 1999 assault and battery of a high and aggravated nature (¶ 2.a); falsified her August 2004 Questionnaire for Public Trust Positions (SF 85P) by not disclosing her delinquent debt in response to question 22(b) concerning whether she was over 180 days delinquent on any debts (¶ 3.a), and committed thereby a felony violation of 18 U.S.C. § 1001 (¶ 2.b). In her Answer of October 12, 2006, Applicant admitted the indebtedness, which she could not pay as she was struggling to support two children as a single parent. She denied any intentional falsification of her SF 85P and explained she thought the inquiry pertained to new debts. Applicant added that when the September 1999 “incident” happened, she reported it.

Applicant’s admissions to delinquent debt and to the September 1999 assault are incorporated as findings of fact. After a thorough review of the documents before me for consideration, I make the following additional findings:

¹By memorandum from the Deputy Under Secretary of Defense (Counterintelligence and Security) dated November 19, 2004, DOHA was authorized to utilize the procedures of DoD Directive 5220.6 to resolve contractor cases forwarded to it by the Defense Security Service (DSS) or the Office of Personnel Management (OPM) for trustworthiness determination, including those involving ADP-I, ADP-II, and ADP-III positions. Applicant’s trustworthiness is adjudicated under the revised adjudicative guidelines set forth in Appendix 8 of Department of Defense Regulation 5200.2-R, *Personnel Security Program*, dated January 1987, as amended and modified (“Regulation”).

Applicant is a 30-year-old single mother of two children, ages 6 and 10. She has been employed by a TRICARE benefits administrator since August 1998. On graduating from high school in 1994, Applicant went to work as a packer for a retail confectioner where she stayed until her present employment.

In mid-September 1999, Applicant was out with her fiancé visiting a mutual friend when she got into an altercation with another woman who had been involved with her fiancé. Fearful because the other woman was with four men, Applicant reached for a gun that was in the glove compartment of her vehicle. A scuffle ensued between Applicant and the other woman, during which the woman was shot in the chin. Although Applicant maintained the gun went off accidentally, she was arrested for assault and battery with intent to kill, a felony. In court in March 2000, she was convicted of assault and battery of a high and aggravated nature, and sentenced to ten years in prison, suspended, placed on five years probation, and fined \$100.² Applicant was required to report to her probation officer once every three months. In April 2000, Applicant and her fiancé married,³ and in December 2000, they had a son.

On September 3, 2003, Applicant was interviewed by an Office of Personnel Management (OPM) investigator about her criminal assault. Applicant indicated that the gun went off accidentally during a scuffle, but she was arrested for assault and battery with intent to kill. She indicated she was currently serving five years of unsupervised “parole,” with which she was in compliance.

On August 16, 2004, Applicant executed an application for a public trust position (SF 85P). She listed her conviction and five-year probation for the September 1999 assault in response to question 20 [“In the last 7 years, have you been arrested for, charged with, or convicted of any offense(s)? (Leave out traffic fines of less than \$150).”]. She checked off “No” to inquiries concerning her financial record, including question 22.b [“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 check of Applicant’s credit on August 20, 2004, revealed several bad debts: a \$351 charged off balance on a clothing store charge account due since November 1999 (¶ 1.a); a voluntary repossession of a vehicle in 2000 with a \$13,000 debt balance (¶ 1.b); a \$183 jewelry store debt placed for collection in March 1999 (not alleged); a MasterCard balance of \$477 in collection since December 2002 (¶ 1.h); a personal loan debt of \$230 in collection since February 2002 (¶ 1.d); a personal loan debt of \$158 in collection since November 2002 (¶ 1.g); a personal loan debt of \$82 placed for collection in December 2000 (¶ 1.c); a medical debt of \$32 in collection since December 2000 (not alleged), and a furniture store debt of \$165 rated 120 days or more past due (¶ 1.i). A personal loan account with a high credit of \$490 was rated as 120 days or greater past due, but with a zero balance as of December 2001 (not alleged). Applicant had paid other loans according to terms,

²In the jurisdiction where it occurred, assault and battery with intent to kill is a felony punishable up to 20 years in prison. S.C. Code Ann. § 16-3-620. Assault and battery of a high and aggravated nature, a lesser included offense of assault and battery with intent to kill, is a common law misdemeanor punishable by up to ten years in prison. It has been defined as the unlawful act of violent injury to another accompanied by circumstances of aggravation such as the use of a deadly weapon. Malice is an element of assault with intent to kill but not of assault and battery of a high and aggravated nature, although malice can be present. *See e.g., State v. Fennell*, 531 S.E.2d 512 (2000).

³Applicant’s first child, who was born before the marriage, bears her spouse’s last name.

including a secured loan of \$2,435. Her loan of \$34,231 opened in May 1999 for a manufactured home, was being repaid timely at \$365 per month (¶1.k) as of July 2004. She was also making her \$312 monthly payments on a \$14,996 car loan that she had recently taken out in June 2004.

On March 9, 2005, Applicant was again interviewed by an OPM special investigator, this time about her finances. Applicant's attention was directed to the adverse credit information on her record. She did not dispute owing the furniture debt (¶ 1.i), the clothing store debt (¶ 1.a), the \$183 jewelry store debt (not alleged), the MasterCard debt (¶ 1.h), the \$230 personal loan debt (¶ 1.d), the \$82 personal loan debt (¶ 1.c), or the \$32 medical debt in collection (not alleged). She contested the claimed \$13,000 deficiency balance on her auto loan (¶ 1.k) following the voluntary repossession of her vehicle, because she had been told that she owed \$4,000 following the resale of the car. Applicant also disputed owing \$490 on a personal loan that had been reported as 120 days or more delinquent but with a zero balance (not alleged), as the debt had been paid in full in 2001. Applicant provided a wage earning statement showing net pay of \$630.55 for 80 hours. After payment of monthly expenses, including \$515.05 for her home, \$312 on her car loan, and \$50 toward a \$430 medical bill, she estimated a net monthly remainder of \$32.05.⁴ She reported no income from her spouse.⁵ Applicant acknowledged that finances were tight from month to month. She admitted she had informed the companies attempting to collect on the debts that she cannot afford to pay them. Applicant expressed her intent to seek professional assistance to consolidate her debt. Applicant indicated she had not disclosed her debts "on case papers" because she misunderstood the question. Since her credit problems were a private matter, they were not common knowledge among her friends and colleagues, but she denied any susceptibility to blackmail, coercion, or pressure.

More recent checks of Applicant's credit on May 12, 2006, and February 22, 2007, revealed little progress toward resolving her delinquent debt and some new debt that had not been reported previously. A cellular telephone debt of \$243 had been placed for collection in December 2004 (¶ 1.j). Another phone service provider had placed a \$190 unpaid balance for collection in November 2005 (¶ 1.l). Two medical debts of \$92 and \$96 had been placed for collection in August and September 2004, respectively (not alleged). Applicant's MasterCard debt of \$477 had an updated collection balance of \$720 as of May 2006 and \$793 as of February 2007 (¶¶ 1.f and 1.h likely same debt). The secured loan for her home had been placed for collection in April 2005 with a \$22,443 balance (¶ 1.k). A personal loan taken out in April 2002 had been charged off in the amount of \$159 (¶ 1.e). An electric utility provider placed a \$142 debt balance for collection in October 2006 (not alleged). The auto lender continued to report a deficiency balance of \$13,000 following the repossession of her vehicle (¶ 1.b). Although the furniture retailer reported a zero balance as of December 2006 (¶ 1.i), it was because of a charge off. There was no report of any payment on that account since March 2003. The clothing store debt (¶ 1.a) had been dropped from her credit report by February 2007, but there was no evidence of payment.

⁴Applicant indicated grocery costs of only \$100 per month, which does not seem like much for herself, two children, and possibly her spouse.

⁵In September 2006, Applicant indicated she was a single parent. It is not clear whether her spouse just not contributing to the household income as of March 2005 or he and Applicant had already separated. Applicant reported no income from child support.

Applicant continued to make her payments on the vehicle loan taken out in June 2004. By January 2007, she had reduced the \$14,996 loan balance to \$6,146. In December 2006, Applicant incurred a new consumer credit debt of \$493, to be repaid in \$28 installments.

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. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). To be eligible for assignment to sensitive duties, an applicant must meet the security guidelines set forth 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.” Regulation ¶ C6.1.1.1.

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. Regulation ¶ C8.2.1. Appendix 8 of the Regulation sets forth the adjudicative guidelines, as well as the specific factors disqualifying and mitigating conditions for determining eligibility for access to classified information and assignment to sensitive duties. In evaluating the trustworthiness of an applicant, the administrative judge must apply the “whole person concept,” and consider and carefully weigh the available, reliable information about the person in light of the adjudicative process factors: 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. Regulation AP8.

CONCLUSIONS

Guideline F—Financial Considerations

An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. (Regulation AP8, Guideline F). Despite consistent employment since she graduated from high school, Applicant has struggled financially. As reflected in her credit reports, Applicant owed about \$14,622 in delinquent debt (¶¶ 1.a, 1.b, 1.c, 1.d, 1.e, 1.g, 1.h, and 1.i) by 2003. She took out a car loan of \$14,996 in June 2004, and while she managed to make her \$312 monthly payments, she continued to fall behind in her obligations. Over the August/September 2004 time frame, \$188 in medical debt was referred for collection. In December 2004, a \$243 cellular phone debt was sent for collection. By the first quarter of 2005, she had defaulted on her secured loan for manufactured housing and a \$22,443 balance was placed for collection. Her record of financial problems raises concerns under disqualifying condition (DC) (1), *A history of not meeting financial obligations* and DC (3), *Inability or unwillingness to satisfy debts*.

Applicant's financial difficulties are due in part to personal decisions that were within her control, such as her purchase of a vehicle in June 2004. Yet, as of February 2005, Applicant was being paid an hourly wage of \$10.50 from her job with the TRICARE claims processor. Assuming a regular 40 hour work week, her annual income before deductions was less than \$22,000. She had a positive monthly remainder as of March 2005, but \$32.05 is an insignificant amount for a single parent with two minor children. There is no evidence that she could count on financial support from her spouse, whether or not they were still together. By September 2006 if not before, she was supporting her two children on her own. Mitigating condition (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)*, applies in that her ability to address her debts was compromised by lack of income.

Ongoing financial pressures may present an unacceptable risk, even if debts are incurred or left unsatisfied due to factors outside of one's control. As of March 2005, Applicant described her financial status as stable, although finances were tight. She averred she was meeting all of her credit obligations but for the acknowledged delinquencies (§§ 1.a, 1.d, 1.e, 1.h, and 1.i). However, the evidence shows otherwise. Only one month later, her loan for manufactured housing was charged off in the amount of \$22,443. As recently as October 2006, a utility services debt of \$142 was referred for collection. Even if the deficiency balance for the repossessed vehicle is about \$4,000 rather than the \$13,000 listed on her credit report, she still owes delinquent debt in excess of \$28,000. There is little guarantee that she will be able to get out of financial difficulty in the near future. Applicant has not yet displayed the good personal financial judgment that must be demanded of those persons in a position of public trust. In December 2006, she took on new debt of \$493, apparently for furnishings.

Guideline J—Criminal Conduct and Guideline E—Personal Conduct

A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness. (Regulation AP 8, Guideline J). The government's case under Guideline J is established by her assault conviction for shooting another woman during a scuffle in September 1999. There is no evidence she intended to kill her victim, but she showed extremely poor judgment in grabbing a gun when she had not been threatened with deadly force. DC (1), *Allegations or admission of criminal conduct*, and DC (2), *A single serious crime or multiple lesser offenses*, are clearly pertinent to an evaluation of Applicant's trustworthiness.

Seven years have passed since the incident without a recurrence, and there is no indication that Applicant ever violated her probation. However, her subsequent criminal false statement on her application for public trust position precludes the favorable consideration of MC (1), *The criminal behavior was not recent*, MC (2), *The crime was an isolated incident*, and/or MC (6), *There is clear evidence of successful rehabilitation*. Applicant responded negatively on her August 16, 2004, SF 85P to question 22.b [“Are you now over 180 days delinquent on any loan or financial obligation? Include loans or obligations funded or guaranteed by the Federal Government.”]. Just four days later, a check of her credit revealed several unresolved delinquencies (§§ 1.a, 1.b, 1.c, 1.d, and 1.h) that should have been listed in response to question 22b. Applicant has consistently claimed that she “misunderstood the question.” She did not elaborate as to the nature of her misunderstanding when she was interviewed about her debts in March 2005. In September 2006, she indicated she thought it pertained to “new debts.” While Applicant was making her payments on her recently opened car

and manufactured housing loans, she knew that some of her long past due accounts were in collection. She admitted in March 2005 that collection agencies had been in contact with her and she told them that she could not pay the debts. Furthermore, she disputed the \$13,000 deficiency balance for the repossessed car on the basis that the car had been sold after the repossession and she had been told she owed \$4,000. Her denial of any intentional omission is not credible under the circumstances. By omitting known delinquencies from her SF 85P, she violated 18 U.S.C. § 1001.⁶ DC (2) must be considered irrespective of the fact that she has not been criminally charged for violating that federal law.

A knowing false statement to the government raises personal conduct concerns as well. *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.* (Regulation AP8, Guideline E). Personal conduct 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, applies.*

The judgment concerns raised by a lack of candor can be overcome by a timely, voluntary rectification (*see* MC (3), *The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts*). There is no evidence of any attempt at rectification by Applicant before her interview of March 2005. Even if I were to conclude that her disclosures to the OPM investigator were sufficiently prompt, MC (3) is not satisfied when admissions are after confrontation. The only information of her interview comes from her affidavit where she indicated, “Input from a published credit bureau report was brought to my attention” (Item 7), which suggests some element of confrontation was involved. Reform of the personal conduct and criminal conduct concerns is not sufficiently established where Applicant remains unwilling to acknowledge the willful concealment of her indebtedness when she completed her application for a public trust position.

⁶18 U.S.C. § 1001 provides in part:

(a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowing and willfully: (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact; (2) makes any materially false, fictitious, or fraudulent statement or representation; or (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry; shall be fined under this title or imprisoned not more than 5 years, or both.

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 eligible for a security clearance, or as applied to a trustworthiness case, a position of trust (AP8). Applicant's history of financial problems, her criminal assault, and her deliberate false statement on her application for a trust position, raise very significant concerns about her judgment, reliability, and trustworthiness (The nature, extent, and seriousness of the conduct, The frequency and recency of the conduct). Applicant's earnings have been barely enough to support herself and her two children. Yet, even these difficult life circumstances cannot justify a failure to be up-front about her financial situation. Reform is not demonstrated where she has allowed a recent electric services debt to go to collection and has yet to take responsibility for her decision to conceal her debts from the government (The presence or absence of rehabilitation and other pertinent behavioral changes).

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: ⁷	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	Against Applicant
Paragraph 2. Guideline J:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	Against Applicant
Paragraph 3. Guideline E:	AGAINST APPLICANT
Subparagraph 3.a:	Against Applicant

⁷This debt is an updated collection balance of the account in ¶ 1.h and does not represent an additional debt. An adverse finding is returned because she has not made any efforts to address it.

DECISION

In light of all of the circumstances in this case, it is not clearly consistent with the national interest to grant Applicant a position of trust.

Elizabeth M. Matchinski
Administrative Judge