

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant has a history of failing to meet her financial obligations dating back to the late 1990s. As of the date she answered the SOR, she had 10 accounts, totaling approximately \$20,676 that have been delinquent for many years. Applicant's evidence is insufficient to show she is in control of her finances, is not overextended, and that she has a track record of financial responsibility. Furthermore, she deliberately falsified her application for a public trust position. Eligibility for assignment to public-trust position is denied.

CASENO: 06-14343.h1

DATE: 04/17/2007

DATE: April 17, 2007

In re:	)	
	)	
	)	
-----	)	ADP Case No. 06-14343
SSN: -----	)	
	)	
Applicant for ADP I/II/III	)	
	)	

**DECISION OF ADMINISTRATIVE JUDGE  
JUAN J. RIVERA**

**APPEARANCES**

**FOR GOVERNMENT**

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

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant has a history of failing to meet her financial obligations dating back to the late 1990s. As of the date she answered the SOR, she had 10 accounts, totaling approximately \$20,676 that have been delinquent for many years. Applicant's evidence is insufficient to show she is in control of her finances, is not overextended, and that she has a track record of financial responsibility. Furthermore, she deliberately falsified her application for a public trust position. Eligibility for assignment to public-trust position is denied.

## **STATEMENT OF THE CASE**

On July 31, 2006, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct).<sup>1</sup> The SOR informed Applicant of the reasons why DOHA recommends Applicant's case be submitted to an administrative judge for a determination that she is not eligible to occupy an ADP I/II/III position.<sup>2</sup>

On September 8, 2006, Applicant answered the SOR (Answer).<sup>3</sup> She admitted the SOR allegations under ¶¶1.a - 1.f, 1.h, and 1.i. She denied the allegations under ¶¶1.g, 1.j, and 2.a, provided explanations, and requested a decision without a hearing. On January 10, 2007, Department Counsel prepared a File of Relevant Material (FORM) which was mailed to Applicant on January 12, 2007. She acknowledged receipt of the FORM on January 23, 2007, and did not object to anything contained in the FORM or submit additional information for consideration within the 30-day period provided to her. The case was assigned to me on March 22, 2007.

## **PROCEDURAL ISSUES**

The government moved to amend the SOR by deleting from its first paragraph the words "paragraph 3-614, Department of Defense Regulation 5200.2-R and." The motion is granted without objection.

## **FINDINGS OF FACT**

Applicant's admissions to the SOR allegations are incorporated herein as findings of facts. After a thorough review of the pleadings and the evidence, I make the following additional findings of facts:

Applicant is a 26-year-old employee of a Department of Defense (DoD) contractor. She has worked for her current employer since December 2004.<sup>4</sup> She is single, and has a three-year-old daughter. There is no evidence Applicant has mishandled or compromised classified information while at her current job.

---

<sup>1</sup> Government Exhibit (GE) 1.

<sup>2</sup> See Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960, as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992) (Directive), as amended. A memorandum from the Deputy Under Secretary of Defense (Counterintelligence and Security) to Director, Defense Office of Hearings and Appeals (DOHA), dated November 19, 2004 states DOHA shall utilize provisions of the Directive to resolve contractor cases involving trustworthiness determinations.

<sup>3</sup> Government Exhibit (GE) 2 (Applicant's answer to the SOR).

<sup>4</sup> GE 4 (Questionnaire for Public Trust Positions (SF85P), dated December 8, 2004), unless indicated otherwise, is the source for the facts in this paragraph.

In March 2004, Applicant submitted a Questionnaire for Public Trust Positions, Standard Form (SF) 85P. She answered “No” to question 22b, and failed to list any debts that were more than 180 days delinquent. The subsequent background investigation addressed Applicant’s financial situation and included the review of her December 2004 (GE 5), June 2006 (GE 6), and January 2007 (GE 7) credit bureau reports (CBR).

In her September 2006 answers to the SOR (GE 2), Applicant admitted all the financial allegations with the exception of SOR ¶¶1.g and 1.j. Concerning ¶ 1.g, she stated that if the debt concerned a Master card or Visa credit card account she would admit it. Regarding ¶1.j, she claimed to have no knowledge of the account and stated she would have to find information about it. Concerning ¶2.a, she explained “she did not know the Federal government had anything to do with credit cards.” (GE 2)

The delinquent/charged off debts alleged in the SOR have the following collection assignment and/or charged off dates:<sup>5</sup> ¶1.a - the collection assignment date was June 1999; ¶1.b - the collection assignment date was November 1999; ¶1.c - the date of last action was June 2001 and the charged off date was February 2002; ¶1.d - the date of last action was August 2001, with a charged off date of January 2002; ¶1.e - the date of last action was June 2001; ¶1.f - the date of last action was September 2002; ¶1.g - the date of last action was November 2001; ¶1.h - the date of last action was June 2002; ¶1.i - the date of last action was November 2003; and ¶1.j - the collection date was June 2005.

According to her SF 85P, she was employed from August 1996 to November 2003, unemployed from November 2003 to December 2004, and employed from December 2004 to the date of the hearing. She presented no evidence to show that she was taking care of/resolving her debts in the form of canceled checks, receipts of payments, and settlement agreements with creditors. Nor did she present evidence to explain how she acquired her debts; why they became delinquent; what circumstances beyond her control, if any, prevented her from paying her delinquent debts; what efforts, if any, she has taken to pay, settle, or resolve the debts; the status of her current financial situation; or whether she has participated in financial counseling; or whether she has taken any measures to avoid future financial problems.

## **POLICIES**

The Directive sets forth adjudicative guidelines which must be considered in evaluating an Applicant’s suitability for a public trust position. The administrative judge must take into account both disqualifying and mitigating conditions under each adjudicative guideline applicable to the facts and circumstances of the case. The guidelines are not viewed as inflexible ironclad rules of law. The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an Applicant. Each decision must reflect a fair and impartial common sense consideration of the factors listed in Section 6.3 of the Directive, and the whole person concept.

---

<sup>5</sup> The information in this paragraph was gathered from the credit bureau reports GE 5-7.

Having considered the record evidence as a whole, I conclude Guideline F (Financial Considerations)<sup>6</sup> and Guideline E (Personal Conduct)<sup>7</sup> are the applicable relevant adjudicative guidelines.

### **BURDEN OF PROOF**

The purpose of a security clearance decision is to resolve whether it is clearly consistent with the national interest to consider an applicant suitable for a public trust position.<sup>8</sup> A person who holds a public trust position enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest to ensure each applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the national interests as his or her own.

The government has the initial burden of proving controverted facts alleged in the SOR. To meet its burden, the government must establish by substantial evidence<sup>9</sup> a prima facie case that it is not clearly consistent with the national interest for the applicant to have access to classified information. The responsibility then shifts to the applicant to refute, extenuate or mitigate the government's case. Because no one has a right to a security clearance, the applicant carries a heavy burden of persuasion.<sup>10</sup> The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information in favor of protecting national security.<sup>11</sup> The same rules apply in trustworthiness determinations.

### **CONCLUSIONS**

Under Guideline F (Financial Considerations), a security concern exists when a person has significant unpaid debts. An individual who is financially overextended is at risk to engage in illegal or unethical acts to generate funds to meet financial obligations.<sup>12</sup> Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his/her obligation to protect classified information. Behaving responsibly or irresponsibly in one aspect of life can often indicate how a person may behave in other aspects of life.

---

<sup>6</sup> Directive, ¶ E2.A6.1.1.

<sup>7</sup> Directive, ¶ E2.A5.1.1.

<sup>8</sup> See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

<sup>9</sup> ISCR Case No. 98-0761, at p. 2 (December 27, 1999)(Substantial evidence is more than a scintilla, but less than a preponderance of the evidence.); ISCR Case No. 02-12199, at p. 3 (April 3, 2006)(Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record.); Directive, ¶ E3.1.32.1.

<sup>10</sup> *Egan*, 484 U.S. 518, at 528, 531.

<sup>11</sup> See *Egan*; Directive, ¶ E2.2.2.

<sup>12</sup> Directive, ¶ E2.A6.1.1.

It was Applicant's responsibility to refute, extenuate or mitigate the government's allegations against her. She failed to provide sufficient evidence to do so. Based on the limited evidence provided, I conclude that as of January 2007 (the day she acknowledged receipt of the FORM) Applicant had 10 delinquent/charged off accounts that are still outstanding, owing approximately \$20,676. Applicant's financial problems are recent, not isolated, and ongoing. Applicant's unwillingness or inability to honor her financial obligations is evidenced by the delinquent debts she has been carrying for years, and her failure to show meaningful efforts to repay creditors or otherwise resolve her financial situation. Financial Considerations Disqualifying Condition (FC DC) E2.A6.1.2.1: *A history of not meeting financial obligations*; and FC DC E2.A6.1.2.3: *Inability or unwillingness to satisfy debts*, apply in this case.

In January 2007, Applicant was provided with a copy of the FORM in which the government strongly argued that Applicant had failed to demonstrate she had resolved the debts alleged in the SOR, that she was financially solvent, that she had a track record of financial responsibility, and/or that circumstances beyond her control mitigated her financial condition. Notwithstanding the government's concerns, Applicant did not answer the FORM and failed to provide documents to mitigate the concerns.

Applicant raised facts that may be considered as circumstances beyond her control, i.e., her 13 months period of unemployment. Notwithstanding, under the totality of the circumstances of her case, Applicant failed to provide sufficient information to support the applicability of Financial Considerations Mitigating Conditions (FC MC) 3: *the conditions that resulted in the behavior were largely beyond the person's control* (e.g., loss of employment, a business turndown).<sup>13</sup> Applicant failed to provide sufficient information to support the applicability of any of the Financial Considerations Mitigating Conditions (FC MC).

Applicant's evidence is not sufficient to show she has dealt responsibly with her financial obligations. She presented no evidence of meaningful efforts taken to resolve her debts before receipt of the SOR (i.e., paid debts, settlements, negotiations, payment plans, budgets, financial assistance/counseling). She failed to present sufficient evidence to show she is not overextended or that her financial problems will not be a concern in the future. Applicant's financial history and lack of favorable evidence preclude a finding that she has established a track record of financial responsibility. Applicant's available evidence is not sufficient to demonstrate she has taken control of her financial situation and is capable of overcoming her financial difficulties.

Under Guideline E, personal conduct is always a security concern because it asks the ultimate question – whether a person's past conduct instills confidence the person can be trusted to properly safeguard classified information. An applicant's conduct is a security concern if it involves questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations. Such behavior could indicate that the person may not properly safeguard classified information.<sup>14</sup>

---

<sup>13</sup> Directive, ¶ E2.A6.1.3.3.

<sup>14</sup> Directive, ¶ E2.A5.1.1.

The government established that Applicant failed to disclose the debts alleged in SOR ¶¶1.a - 1.i in her response to SF 85P question 22b. Applicant's explanation in her answer to SOR ¶2.a (that she did not know that the Federal government had anything to do with credit cards), in addition to her age, level of education, employment, the number and value of her debts, and the fact that she acquired the debts, convinces me she deliberately failed to disclose the delinquent debts. It is not likely that she could have forgotten all of her delinquent debts. Furthermore, Applicant clearly demonstrated a lack of interest in establishing her financial responsibility. Considering all the available evidence in this case, I find Applicant did intend to falsify her SF 86 and to mislead the government. Personal Conduct Disqualifying Condition (PC DC) 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, applies.*

I carefully considered the applicability of all the Personal Conduct Mitigating Conditions and conclude that none apply. The evidence available in this case is not sufficient to support the applicability of any of the mitigating conditions.

I have carefully weighed all evidence, and I applied the disqualifying and mitigating conditions as listed under the applicable adjudicative guidelines. I specifically considered Applicant's answer to the SOR, and the fact that there is no evidence that she ever mishandled or caused the compromise of classified information. Considering all available information, and the whole person concept, I find Applicant has not mitigated the Financial Considerations and Personal Conduct security concerns.

### **FORMAL FINDINGS**

Formal findings regarding each SOR allegation as required by Directive Section E3.1.25 are as follows:

Paragraph 1, Financial Considerations (Guideline F) Subparagraphs 1.a - 1.j	AGAINST APPLICANT Against Applicant
Paragraph 2, Personal Conduct (Guideline E) Subparagraphs 2.a	AGAINST APPLICANT Against Applicant

## **DECISION**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's eligibility for assignment to a public-trust position. Eligibility is denied.

Juan J. Rivera  
Administrative Judge