

KEYWORD: Financial, Personal Conduct

DIGEST: During her marriage, Applicant and her husband used credit to purchase goods. When his work hours significantly declined, they could not pay their bills. After they separated, Applicant lived on her income alone. She obtained the services of a credit counselor to work out a resolution of her old debts; and developed a payment plan with one creditor. She pays her current bills and lives within her financial means. She did not intentionally falsify her answers on the questionnaire. She has mitigated the government's concerns under Guidelines F and E. Eligibility for trustworthiness is granted.

CASENO: 06-14616.h1

DATE: 04/11/2007

DATE: April 11, 2007

In re:)	
)	
)	
-----)	ADP Case No. 06-14616
SSN: -----)	
)	
Applicant for ADP I/II/III Position)	

**DECISION OF ADMINISTRATIVE JUDGE
MARY E. HENRY**

APPEARANCES

FOR GOVERNMENT

Ray T. Blank, Jr., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

During her marriage, Applicant and her husband used credit to purchase goods. When his work hours significantly declined, they could not pay their bills. After they separated, Applicant lived on her income alone. She obtained the services of a credit counselor to work out a resolution of her old debts; and developed a payment plan with one creditor. She pays her current bills and lives within her financial means. She did not intentionally falsify her answers on the questionnaire. She has mitigated the government's concerns under Guidelines F and E. Eligibility for trustworthiness is granted.

STATEMENT OF CASE

On October 2, 2003, Applicant submitted an application for a position of public trust, an ADP I/II/III position, which she resubmitted on August 18, 2004 and resigned on October 24, 2004. The Defense Office of Hearings and Appeals (DOHA) declined to grant the application under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended (the "Directive").¹ On August 25, 2006, DOHA issued Applicant a Statement of Reasons (SOR) detailing the basis for its decision. The SOR, which is in essence the administrative complaint, alleged security concerns under Guideline F (Financial Considerations), and Guideline E (Personal Conduct).

In a sworn statement dated September 22, 2006, Applicant responded to the SOR allegations and requested a hearing. DOHA assigned this case to me on December 21, 2006. DOHA issued a notice of hearing on January 29, 2007, which Applicant received about a week before the hearing. At the hearing on February 15, 2007, Applicant waived her right to 15 days notice of the hearing, which was conducted as scheduled. The government submitted six exhibits (GE), which were marked and admitted into the record as GE 1-6 without objection. Applicant submitted 12 exhibits (App Ex) which were marked and admitted into the record as App Ex A-L without objection. She testified on her own behalf. The record was held open until March 8, 2007, to allow Applicant to submit further documents, which she timely did. She submitted 12 additional documents, which were marked and admitted as App Ex M-X without objection. DOHA received the hearing transcript (Tr.) on March 9, 2007.

FINDINGS OF FACT

In her SOR response, Applicant admitted to SOR allegations 1.c, 1.d, 1.k, and 1.l under Guideline F. She also admitted 1.b and 1.j under Guideline F, but denied the amount owed. She denies all of the remaining allegations under Guideline F and the Guideline E allegations. Applicant's admissions are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.²

¹ This action was taken under Executive Order 10865, dated February 20, 1960, as amended; and Memorandum from the Deputy Under Secretary of Defense Counterintelligence and Security, titled "Adjudication of Trustworthiness Cases," dated November 19, 2004.

²Tr. at 30, 33; Response to SOR, dated September 22, 2006.

Applicant, a 34-year-old woman seeking a position of public trust, works as a claims associate for a Department of Defense contractor. She has worked for her employer for 10 years. She is a high school graduate with technical college training. She married in 1999 and separated from her husband around Christmas of 2001.³

Financial Considerations

During her marriage, Applicant and her husband purchased cars and established credit accounts based on their income. Her husband's work hours declined from 48 to 60 hours a week to 30 hours a week. The resulting loss of income impacted their ability to pay their bills. They voluntarily returned one car to the note holder for resale, as they could not meet the monthly payment. The note holder repossessed another car, when they failed to meet the monthly payments. They also got behind in other bills. Their financial problems also impacted their marriage.⁴

A review of Applicant's credit reports dated October 20, 2001, May 11, 2004, June 14, 2006, and the SOR shows 12 unpaid debts totaling \$28,576. The current status of these debts is as follows:⁵

SOR ¶	TYPE OF DEBT (date)	AMOUNT	CURRENT STATUS
1.a	Collection account (2000)	\$ 386.00	Unpaid - Applicant does not recognize debt ⁶
1.b.	Credit card (2001)	\$ 1,092.00	Unpaid - Disagrees with amount, owes \$250 ⁷
1.c	Internet bill (2002)	\$ 102.00	Unpaid
1.d	Mail order account (2002)	\$ 987.00	Unpaid
1.e	Dish Network bill (2000)	\$ 92.00	Unpaid
1.f	Collection account (2000)	\$ 348.00	Unpaid ⁸

³GE 1 (Questionnaire for Public Trst Positions, dated August 18, 2004); Tr. at 30, 33.

⁴Tr. at 30, 33-34, 41-42, 58-59, 63, 72-75.

⁵GE 4 (Credit report, dated October 20, 2001); GE 5 (Credit report, dated May 11, 2004); and GE 6 (Credit report, dated June 14, 2006).

⁶Response to SOR; Tr. at 38.

⁷Tr. at 38.

⁸GE 3 (Interrogatory answers, dated July 5, 2006) at 6; Tr. at 40.

1.g	Loan (2003)	\$ 2,893.00	Unpaid (balance based on 2004 credit report, not \$4,585.63 as alleged in SOR)
1.h	Automobile voluntary repossession (2003)	\$ 7,149.00	Paying \$100 a month ⁹
1.i	Automobile repossession (2003)	\$13,567.00	Unpaid
1.j	Store account (2003)	\$ 1,666.00	Unpaid - disagrees with amount owed ¹⁰
1.k	Cable bill (2003)	\$ 159.00	Unpaid
1.l	Medical bill (2005)	\$ 135.00	Unpaid

Applicant's gross monthly pay is \$2,425 plus occasional overtime. Her net monthly pay varies, but is approximately \$2,137. Her monthly expenses include \$610 for rent, \$70 for electricity, \$60 for cable, \$60 for telephone, \$140 for gasoline, \$103 for insurance, \$220 for food, \$200 for car payment, and \$100 on debt payment for total monthly expenses of \$1,563. She did not include miscellaneous expenses or clothing, which I estimate at \$100. She also provides her elderly, ill, and retired father \$200 a month towards the cost of his prescription drugs. With these additional costs, she has about \$300 a month available to pay her debts. She has no credit cards. She anticipates a significant income tax refund which she plans to use to pay some of her debt.¹¹

In early 2006, Applicant retained the services of a credit counseling agency to help resolve her credit problems. She paid this agency a fee, but cannot determine with clarity exactly what debts have been resolved, if any. The credit counseling agency advised her that several debts had been removed from her credit report. She also challenged some of the debts listed on her credit reports.¹²

Personal Conduct

On October 2, 2003 and August 18, 2004, Applicant completed a Public Trust Position Application (SF 85-P). She answered "yes" to question 22. Your Financial Record b- "Are you now over 180 days delinquent on any loan or financial obligation? (Include loans or obligations funded

⁹App Ex N (Letter, dated September 22, 2005) at 1.

¹⁰App Ex T (On Line dispute filing with credit agency, undated).

¹¹App Ex M (Earnings and leave statements, dated March 2, 2007 and February 2, 2007); App Ex W (2006 federal and state tax returns); Tr. at 35-40.

¹²App Ex O (Undated letter from credit counselor) at 1; App Ex P (Application for credit counseling, dated March 4, 2006) at 1; App Ex Q (Copy of notice of on line challenge to debt, date June 5, 2006); App Ex T, *supra* note 10; Tr at 30, 69-70, 72, 78-79, 88.

or guaranteed by the Federal Government.),” and listed one debt. She did not list any of the other debts identified in the SOR.¹³

Applicant believed that since both cars had been repossessed and sold, she did not owe any additional money on her debt. Because she had not seen a credit report, she did not remember the other delinquent debts at the time she completed her application, although she acknowledged that she had known about these debts in the past. Her management directed staff to complete the questionnaire as best they could and to guesstimate when they did not know an answer.¹⁴

Applicant’s performance review for 2005 rated her at sometimes exceeds expectations and for 2006 rated her at the highest end of meets expectations. One manager describes her as an excellent customer service representative. A co-worker describes her as conscientious and energetic, with a commitment to her work and to others. She is described as a person of integrity, and a person who now understands the need to manage her finances diligently.¹⁵

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.”¹⁶ In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information and determining trustworthiness within the executive branch.

To be eligible for a security clearance or access to sensitive information, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. The adjudicative guidelines at issue in this case are:

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. Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligation to protect classified or sensitive information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

¹³ Gov. Ex. 1, *supra* note 3, at 7; GE 2 (Questionnaire for Position of Trust, dated October 2, 2003) at 7.

¹⁴Tr. at 75, 77.

¹⁵App Ex A (Performance review, dated February 8, 2005); App Ex B (Performance review, dated February 8, 2006); App Ex C (Letter, dated January 3, 2007; App Ex D (Undated letter); App Ex J (Letter, dated January 1, 2007).

¹⁶ *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).

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.

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

"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.¹⁷ An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person.¹⁸ An administrative judge should consider the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.¹⁹

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information.²⁰ Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts.²¹ An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."²² Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.²³ The same rules apply to trustworthiness determinations for access to sensitive positions.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. The government has established a *prima facie* case for disqualification under Guideline F - Financial Considerations, and Guideline E - Personal Conduct.

¹⁷ Directive, ¶ E2.2.1.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Directive, ¶ E3.1.14.

²¹ Directive, ¶ E3.1.15.

²² ISCR Case No. 01-20700 at 3 (App. Bd. December 19, 2002).

²³ Directive, ¶ E2.2.2.

Financial Considerations

Based on all the evidence, Financial Considerations Disqualifying Conditions (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 to Applicant's case. Applicant has many unpaid, delinquent debts. For most of these debts, she did not make an effort to resolve them.

I considered the Financial Considerations Mitigating Conditions (FC MC). I cannot apply FC MC E2.A6.1.3.1 (*The behavior was not recent*), and FC MC E2.A6.1.3.2 (*The behavior was isolated*) because she still carries a significant amount of outstanding delinquent debts for a variety of bills. She incurred these debts over several years. Applicant has not paid any of the small debts she acknowledges are hers.

FC MC 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)*) applies in part. Applicant and her husband obtained credit to finance purchases, primarily new car purchases. When his income declined by almost 50%, they encountered difficulty with paying their bills. This financial strain led to their separation, and a reduced household income for Applicant, who became her own sole support. With only her income, she cannot pay all her debts at one time.

FC MC E2.A6.1.3.4 (*The person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or under control*) applies. About one year ago, Applicant contacted a credit counseling agency to help resolve her credit problems. Through this agency, she challenged some of the debts listed on her credit report. Her challenges resulted in a deletion of some debts from her credit reports. She pays her current bills timely, and has not incurred any significant delinquent debt since 2003.

FC MC E2.1.3.6 (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) is applicable in part. A promise to pay in the future is not sufficient to mitigate the financial considerations concern or evidence of a good faith effort to repay debt. Although Applicant has indicated that she will use her substantial tax return to pay some of her smaller debts, she has not shown that she has done so. She entered into a payment plan with one creditor in September 2005 and made at least one payment. She, however, has not established she continually and timely makes the agreed upon payments.²⁴

²⁴The Board has previously explained what constitutes a “good faith” effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of Financial Considerations Mitigating Condition 6, an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant’s debts. The Directive does not define the term ‘good-faith.’ However, the Board has indicated that the concept of good-faith ‘requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.’ Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of Financial Considerations

She does, however, receive some credit in the whole person analysis, *infra*, for the application of the 3-year South Carolina statute of limitations, which applies to 11 of her 12 unpaid SOR debts. *See* S.C. Code. Ann. § 15-3-530.²⁵ The South Carolina Court of Appeals succinctly explained the societal and judicial value of application of the statute of limitations:

Statutes of limitations embody important public policy considerations in that they stimulate activity, punish negligence and promote repose by giving security and stability to human affairs. The cornerstone policy consideration underlying statutes of limitations is the laudable goal of law to promote and achieve finality in litigation. Significantly, statutes of limitations provide potential defendants with certainty that after a set period of time, they will not be ha[iled] into court to defend time-barred claims. Moreover, limitations periods discourage plaintiffs from sitting on their rights. Statutes of limitations are, indeed, fundamental to our judicial system.

Carolina Marine Handling, Inc. v. Lasch, 363 S.C. 169, 175-76, 609 S.E.2d 548, 552 (S.C. Ct. App. 2005) (internal quotation marks and citations omitted).

Elimination of her delinquent debt load through the statute of limitations has ended her potential vulnerability to improper financial inducements because she is no longer “financially overextended,” but it does not negate her past conduct in not paying her outstanding debts.

Personal Conduct

Personal conduct under Guideline E is always a trustworthiness concern because it asks the central question does a person's past conduct justifies confidence the person can be trusted to properly safeguard classified and/or sensitive information. Deliberate omission, concealment, or falsification of a material fact in any written document or oral statement to the government when applying for a

Mitigating Condition 6.

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)). In ISCR Case No. 99-9020 at 6 (App. Bd. Dec. 1, 1999), the Appeal Board specifically addressed application of the statute of limitations, stating a “person who decides not to honor his or her debts may be able to avoid paying those debts until they are legally uncollectible because the statute of limitations has run. Reliance on the running of a statute of limitations would be a legally permissible course of action. However, it would not demonstrate a good-faith effort to resolve one’s debts that would fall under the meaning of Financial Considerations Mitigating Condition 6.” *See* ISCR Case No. 03-10880 (App. Bd. June 24, 2005); ISCR Case No. 01-09691 (App. Bd. Mar. 27, 2003) (stating an applicant must do more than merely cite the statute of limitations to obtain the full benefit of FC MC 6). *See also* ISCR Case No. 01-09691 at 3 (App. Bd. Mar. 27, 2003) (“[E]ven if a delinquent debt is legally unenforceable under state law, the federal government is entitled to consider the facts and circumstances surrounding an applicant’s conduct in incurring and failing to satisfy the debt in a timely manner.”); ISCR Case No. 98-0349 at 2-3 (App. Bd. Feb. 3, 1999) (even though an applicant’s delinquent debts were not legally collectible because of the statute of limitations, that fact did not preclude the Administrative Judge from considering the applicant’s failure to resolve the delinquent debts before the statute of limitations ran). *Cf.* ISCR Case No. 01-04425 at 3-4 (App. Bd. May 17, 2002) (adverse Guideline F conclusions possible where applicant chose not to pay her delinquent debts, waited until her creditors ceased trying to collect those delinquent debts, and they were eventually dropped from her credit report.).

²⁵*See* ISCR Case No. 04-07360 at 2 (App. Bd. Sept. 26, 2006) (stating partial credit was available under FCMC 6 for debts being resolved through garnishment).

security clearance or in other official matters is a trustworthiness concern. It is deliberate if it is done knowingly and willfully.

Under Guideline E, the government established that Applicant omitted material facts from her SF-85P when she answered question 20 b. She denies, however, that she deliberately falsified her answer to this question, arguing that she did not know she still owed money on her repossessed cars and that she did not remember the other debts. When a falsification allegation is controverted, the government has the burden of proving it. Proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant's intent or state of mind at the time the omission occurred.²⁶ For Personal Conduct Disqualifying Conditions (PC DC) E2.A5.1.2.2 (*The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire*) and PC DC E2.A5.1.2.3 (*Deliberately providing false or misleading information concerning relevant and material matters to an investigator*) to apply, the government must establish that Applicant's omission, concealment or falsification in her answers was deliberate. Applicant credibly testified that she believed that once she voluntarily returned her car to the note holder and the car was sold, she no longer owed any money on the car note. She also held this same belief regarding the car that was involuntarily repossessed. In addition, her testimony that she did not review her credit report prior to completing her SF-85P is reasonable, as the average individual is not likely to obtain a credit report to complete an application. Thus, Applicant did not deliberately falsify her trustworthiness application. The government has not established its case under Guideline E.

Whole Person Analysis

In all adjudications, the protection of our national security is the paramount concern. The objective of the trustworthy determination process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for assignment to sensitive duties. 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 have considered all the evidence and the "whole person" in evaluating Applicant's trustworthiness. As noted above, Applicant's lengthy history of failing to meet her financial obligations, and inability or unwillingness to satisfy her debts raises serious trustworthiness concerns. She is 34 years old, and sufficiently mature to be fully responsible for her conduct. During her marriage, she and her husband used credit to purchase cars and others items. Their inability to continue with their monthly debt payments started when her husband's work hours decreased by almost 50%. When she and her husband separated, she had to assume full responsibility for her normal living expenses and her debts, plus some responsibility for joint marital debts. Given her limited income, she had to make choices about how to use her limited resources. She chose to pay her living expenses, which she timely does. To her credit, she provides a significant amount of money

²⁶See ISCR Case No. 03-09483 at 4 (App. Bd. Nov.17, 2004)(explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004)).

each month to help pay for her father's expensive prescription drugs, money which would otherwise be available to pay her old debts. She stopped using credit cards to purchase items. She timely pays her monthly bills, including her rent. She incurred only one unpaid debt after 2003.

She sought help to resolve her debt through credit counseling. This avenue has not provided the assistance she had hoped. The absence of significant, new delinquent debt over the last three years and compliance with a budget are additional factors which evidence rehabilitation, positive behavior changes, and self-discipline in regards to her finances. The potential for pressure, coercion, exploitation, or duress is low because she is current on her recent debts, and has been steadily employed for the last 10 years. She is very conscious of her income limitations and has shown an ability to live within her monthly income. Her attitude about her finances and her adherence to her budget support a determination of trustworthiness.

In sum, in the absence of unanticipated and unusual expenses, the likelihood of new debt problems is low. Applicant has not only stated an intent to resolve her delinquent debts, she has developed a payment plan for one large debt, even though she is not legally required to pay this debt or her other delinquent debts because of the South Carolina 3-year statute of limitations. Although all of the 12 SOR debts remain unpaid, there is little likelihood that this unpaid debt would present a security clearance problem as she is not legally liable for 11 of these debts. She is a long-term employee with a good performance record. She has not been disciplined for violation of patient privacy issues and there is little likelihood she would violate these privacy rights because of her existing debt problems. After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole person,²⁷ I conclude she has mitigated the trustworthiness concerns pertaining to financial considerations, and the personal conduct concerns are not substantiated.

FORMAL FINDINGS

Formal Findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

SOR ¶ 1-Guideline F: Subparagraphs a-l:	FOR APPLICANT For Applicant
SOR ¶ 2-Guideline E: Subparagraph a-b:	FOR APPLICANT For Applicant

DECISION

²⁷See ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006).

In light of all of the evidence presented in this case, it is clearly consistent with the national interest to grant Applicant eligibility for assignment to sensitive duties. Eligibility is granted.

Mary E Henry
Administrative Judge