

KEYWORD: Financial

DIGEST: Applicant mitigated financial security concerns relating to delinquent debts arising from family debts incurred in 2002 and 2003 by completion of bankruptcy proceedings in 2006. He has re-financed a motorcycle debt on which he is making regular payment. All other debts have been satisfied. Applicant has held a security clearance for nearly 30 years both as a civilian and during 18 years of active duty in the Navy without incident. Clearance is granted.

CASENO: 06-15121.h1

DATE: 04/27/2007

DATE: April 30, 2007

_____)	
In re:)	
)	
-----)	ADP Case No. 06-15034
SSN: -----)	
)	
Applicant for ADP I/II/III Position)	
_____)	

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

APPEARANCES

FOR GOVERNMENT

Richard Stevens, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant incurred significant, unpaid debt when she used credit cards to finance medical treatment for her uninsured, alcoholic husband. She often works two jobs, which pay her a modest income. She lives within her financial means. She has mitigated the government's concerns about her finances under the whole person concept as her unpaid debt belongs to her estranged husband. The government did not establish that she intentionally falsified her answers on her SF-85P. Eligibility for a position of trust is granted.

STATEMENT OF CASE

On August 18, 2004, Applicant submitted an application for a position of public trust, an ADP I/II/III position. 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 17, 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 11, 2006, Applicant responded to the SOR allegations. She requested a hearing on February 5, 2007. On February 7, 2007, the government filed a Motion to Amend the SOR. DOHA assigned this case to me on February 8, 2007, and issued a notice of hearing on March 2, 2007. At the hearing on March 21, 2007, Applicant indicated that she received the notice of the hearing 15 days prior to the hearing. I conducted the hearing as scheduled.² After argument, I granted the government's Motion to Amend the Statement of Reasons with Applicant's agreement. The language "paragraph 3-614, DoD Regulation 5200.2-R and" in the first paragraph of the SOR is deleted.³

The government submitted five exhibits (GE) which were marked and admitted into the record as GE 1-5, without objection. Applicant submitted 7 exhibits (App Ex), which were marked and admitted as App Ex A-G, without objection. Applicant testified on her own behalf. DOHA received the hearing transcript (Tr.) on April 12, 2007.

FINDINGS OF FACT

In her SOR response, Applicant admits to all the SOR allegations under Guideline F. She admits an incorrect answer on her SF-85P under Guideline E, but she denies intentional falsification.⁴

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 9.

³Tr. at 10.

⁴Applicant's response to the SOR, dated September 11, 2006.

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.

Applicant, a 54-year-old woman and high school graduate, works as a records clerk for a Department of Defense contractor, and seeks a position of public trust. She has worked for her employer for almost 10 years.⁵

Applicant married 27 years ago. At that time, she worked in the banking industry. In 1989, she, her husband and her son moved from their home in the north to the south. After this, she started working two jobs, one job full-time and the other job part-time, in the retail industry, earning a modest income. Four years later, she returned to the banking industry until she started her current employment in August 1997. She worked part-time at a grocery store for awhile, and for the last several years during the summer months, she also works part-time at a local marina and restaurant.⁶

Since moving in 1989, Applicant provided the primary financial support to the family. Her husband is an alcoholic, who has worked on and off for the last 18 years.⁷ For the last one and half years, her husband has resided in a nursing home, but she does not know where. She has not had any contact with him for awhile and prefers not to have any contact with him. Her son is 25 years old and recently moved back into her home for moral support. She has an 18-month-old grandson.⁸

Applicant purchased a trailer home, where she lives. She depends on her son for transportation because she cannot afford a car. She used his car to drive to the hearing. She has high blood pressure, but cannot afford to pay for her prescriptions nor can she afford to pay for a divorce.⁹

Applicant's employment provided her with medical insurance. She could not afford to purchase the additional coverage for her husband. In the last ten years, her husband's alcoholism required more visits to the emergency room and admissions to the hospital for medical treatment. Since he had never had medical insurance when he got sick, they charged his bills on joint credit cards. They also charged a \$3,500 car purchase on one of their credit cards about 12 years ago. Five years ago, she and her husband contacted a counseling service to consolidate their credit debt. Because the debt was her husband's, the debt consolidation company deducted the monthly payment from her husband's pay check. When he again lost his job, the payments ended. She lacked the resources to continue with the monthly payment on his debt.¹⁰

Applicant's current net monthly income is approximately \$1,100 a month. She receives no support from her husband. Her monthly expenses total \$996, and include a mortgage of \$200, lot rent

⁵GE 1 (Applicant's questionnaire for a position of public trust, dated August 18, 2004) at 1, 3.

⁶App Ex B (Letter, dated March 1, 2007); Tr. at 21-22.

⁷He also used OxyContin to get a high. Tr. at 39.

⁸Tr. at 22, 23, 25, 37.

⁹Tr. at 23, 26, 31-32, 41.

¹⁰Tr. at 28-31, 36-37.

of \$290, utilities at \$135, food at \$200, insurance at \$121, and \$50 on a credit card, leaving \$104 a month for all other expenses. She estimates her blood pressure medicine would cost about \$80 a month. She has only one credit card at this time. She lives modestly.¹¹

The SOR lists four unpaid and delinquent credit card debts, totaling \$25,226. These credit card debts paid her husband's medical expenses over a number of years. The credit card debts listed in allegations 1.a, 1.b and 1.c are more than three years old. The debt listed in allegation 1.d is less than three years old. She has not paid any of this debt, nor has she contacted the creditors to make arrangements to pay her debts since she and her husband consolidated some of their debts.¹²

Applicant completed a SF-85P on August 18, 2004 at the office with a group of co-workers. She did not have her personal financial records with her when she did. She answered "no" to question 22b, which asked if she "was now over 180 days delinquent on any loan or financial obligation?" She had no intent to falsify her answer, but simply forgot to list her old debts, which are identified in the SOR. At that time, her home situation had deteriorated. Because of his alcoholism and attendant illnesses, her husband created problems at home both financially and emotionally. She found herself overwhelmed with the problems.¹³

Applicant's team director describes her as hardworking, efficient, extremely competent with excellent team rapport, and a good communicator. Her co-workers and a friend describe her as dedicated, dependable, reliable, honest, and caring. Her supervisor at her summer job also describes her as reliable, trustworthy, and dedicated. In this job, she has responsibility for preparing bank deposits and counting the money at the end of the business day. She knows that she works with sensitive information as a records clerk, but does not understand how someone could access it and use it. The record contains no evidence, reflecting Applicant's misuse of sensitive information or a failure to follow the rules.¹⁴

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."¹⁵ 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.

¹¹App Ex G (Applicant's budget); Tr. at 32.

¹²Tr. at 28-29.

¹³Response to SOR, *supra* note 4; Tr. at 32, 33, 41-45.

¹⁴App. Ex B, *supra* note 6; App Ex C (Letter, dated March 15, 2007); App Ex D (Undated letter); App Ex E (Undated letter); App Ex F (Letter, dated March 14, 2007); Tr. at 45-46.

¹⁵ *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).

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.

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.¹⁶ An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person.¹⁷ 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.¹⁸

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.¹⁹ Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts.²⁰ An applicant "has the ultimate burden of demonstrating that it is clearly consistent

¹⁶ Directive, ¶ E2.2.1.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Directive, ¶ E3.1.14.

²⁰ Directive, ¶ E3.1.15.

with the national interest to grant or continue his security clearance.”²¹ Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.²² The same rules apply to trustworthiness determinations for access to sensitive positions.

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate adjudicative factors, I conclude the following with respect to the allegations set forth in the SOR:

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 four unpaid, delinquent debts from her estranged husband's medical treatment, which are significant. For most of these debts, she did not make an effort to resolve them as she lacks the financial resources to pay these debts.

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 her four delinquent debts remain outstanding. She incurred these debts over several years. The debts remained unpaid, therefore they are recent.

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's husband suffers from alcoholism. He could not hold a job for any length of time because of his drinking nor could he obtain medical insurance. As a result, when he needed medical treatment for the effects of his drinking, he and his wife paid the bills with credit cards. Her husband is now in a nursing home and has been for at least 18 months. He does not provide any financial support to her and does not provide any funds to pay these credit card debts, which are for his medical expenses. His failure to provide financial support and to obtain medical insurance contributed significantly to her current financial situation, which is the result of financial expenses incurred because of his medical treatment for alcoholism.

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*) has some applicability. Applicant and her husband contacted a credit counseling agency about five years ago. With the agency's help, they consolidated their debts. The repayment money came out of her husband's pay check until he lost his job. Because of her limited income, she had no ability to continue with these monthly payments. As a result, the debts remain unpaid.

²¹ ISCR Case No. 01-20700 at 3 (App. Bd. December 19, 2002).

²² Directive, ¶ E2.2.2.

FC MC E2.1.3.6 (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) does not apply. 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 pay these debts when she is financially able, she is unlikely to be able to pay her debts anytime in the future. She has not contacted any of the creditors to resolve her debts.²³

She does, however, receive some credit in the whole person analysis, *infra*, for the application of the 3-year State statute of limitations, which applies to allegations 1.a, 1.b and 1.c of the SOR debts. *See* State Code. Ann. § 15-3-530.²⁴ The 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[le]d 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.

²³The 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 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.).

²⁴*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).

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

Elimination of 75% of her delinquent debt load through the statute of limitations has ended her potential vulnerability to improper financial inducements to pay these debts 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 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 22b. She denies, however, that she deliberately falsified her answer to this question, stating that she forgot about her debts when she completed the form. 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.²⁵ 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 . . .*) to apply, the government must establish that Applicant’s omission, concealment or falsification in her answer was deliberate. Applicant credibly testified that she forgot about the unpaid debts because of her emotional stress from her problems at home and her husband’s drinking. In addition, her testimony that she did not have her personal records with her when she completed her SF-85P is reasonable, given that her employer required her to complete the form in an afternoon at the workplace. 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.

²⁵See 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)).

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. However, her debts arose not because she did not work or over spent her income on frivolous items, but because her income is relatively modest, even with two jobs, and insufficient to meet unexpected bills. Her estranged husband is an alcoholic who, as his disease progressed, could not hold steady employment. He had no medical insurance because he did not work, and she could not afford to carry him as a dependant on her insurance. His drinking lead to more medical treatment and bills. They paid these bills with credit cards because they did not have ready cash to pay the bills. Although they are still legally married, her husband no longer lives with her and does not provide her with any financial support. She lives modestly and not beyond her monthly income. She has no car and must rely on her son for transportation. She has forgone her blood pressure medicine, because she cannot afford to pay for it. She has only one credit card, which she regularly pays.

Because much of her debt has been eliminated through the statute of limitations, her potential vulnerability to improper financial inducements because she is “financially overextended” no longer exists. She did not ignore her debts and wait for them to expire under a statute of limitations. Rather, she could not pay the debts created by her estranged husband’s conduct because she had no money. Her present income does not provide her with extra money to pay her estranged husband’s medical bills, which are the basis of her old debts. She does have enough money to meet her current basic living expenses. In recent years, she has not incurred excessive unpaid debt and does not spend her money unwisely.

Applicant performs her duties well and is respected by her co-workers and supervisors for her work ethic and integrity. I have weighed the mitigating factors, her current spending habits and income, and her failure to list her debts in her trustworthiness application against the likelihood that she would compromise sensitive information. I find that the overwhelming weight of the evidence indicates that she is a person of integrity, who is trustworthy. Despite her constant financial struggle, she has not and would not act in a manner which would harm her employer or the government. There is little likelihood she would violate these privacy rights because of her existing debt problems. I conclude she has mitigated the trustworthiness concerns pertaining to financial considerations. The personal conduct concern is not substantiated. I conclude that she is eligible for a trustworthiness determination.

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-d:	FOR APPLICANT For Applicant
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SOR ¶ 2-Guideline E: Subparagraph a:	FOR APPLICANT For Applicant
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DECISION

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