

KEYWORD: Criminal Conduct; Financial; Personal Conduct

DIGEST: When he executed and signed a Questionnaire for Public Trust Positions (SF-85P) in August 2004, Applicant deliberately falsified his answer to Question 20 by denying that in the past seven years he had been arrested, charged with, or convicted of any offenses when, in fact, he had been arrested and charged with drawing and uttering fraudulent checks, and he was convicted of one count of drawing and uttering a fraudulent check in June 2004. He also deliberately falsified his answer to Question 22b on the SF-85P by denying he was over 180 days past due on any debts. Applicant failed to mitigate security concerns under the Criminal Conduct, Financial Considerations, and Personal Conduct Guidelines. Eligibility is denied.

CASENO: 06-15502.h1

DATE: 04/20/2007

DATE: April 20, 2007

In Re:)	
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-----)	ADP Case No. 06-15502
SSN: -----)	
)	
Applicant for ADP I/II/III Position)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
JOAN CATON ANTHONY**

APPEARANCES

FOR GOVERNMENT

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

FOR APPLICANT

Pro Se

SYNOPSIS

When he executed and signed a Questionnaire for Public Trust Positions (SF-85P) in August 2004, Applicant deliberately falsified his answer to Question 20 by denying that in the past seven years he had been arrested, charged with, or convicted of any offenses when, in fact, he had been arrested and charged with drawing and uttering fraudulent checks, and he was convicted of one count of drawing and uttering a fraudulent check in June 2004. He also deliberately falsified his answer to Question 22b on the SF-85P by denying he was over 180 days past due on any debts. Applicant failed to mitigate security concerns under the Criminal Conduct, Financial Considerations, and Personal Conduct Guidelines. Eligibility is denied.

STATEMENT OF THE CASE

On August 19, 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*, (Jan. 1987), as amended (the "Regulation"), and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended (the "Directive"). On August 23, 2006, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision. The SOR alleges security concerns raised under the Criminal Conduct, Financial Considerations, and Personal Conduct guidelines of the Directive. A copy of the Directive was provided to Applicant. The Criminal Conduct, Financial Considerations, and Personal Conduct guidelines of the Directive and the Criminal Conduct, Financial Considerations, and Personal Conduct adjudicative guidelines at Appendix 8 of the Regulation are, for all practical purposes, identical.

Applicant answered the SOR in writing on September 25, 2006, and requested that his case be determined on the record in lieu of a hearing. The Government compiled its File of Relevant Material (FORM) on February 7, 2007. The FORM contained documents identified as Items 1 through 9. By letter dated February 9, 2007, a copy of the FORM was forwarded to Applicant, with instructions to submit any additional information and/or objections within 30 days of receipt. Applicant timely filed additional information. On March 29, 2007, the case was assigned to me for a decision.

FINDINGS OF FACT

The SOR contains 24 allegations of disqualifying conduct under the Criminal Conduct, Financial Considerations, and Personal Conduct Guidelines of Appendix 8 of DoD 5200.2-R. Ten allegations relate to criminal conduct; twelve allegations relate to financial considerations, and two allegations relate to personal conduct. In his answer to the SOR, Applicant admitted nine allegations under the Criminal Conduct guideline and denied one allegation. He admitted eleven allegations under the Financial Considerations guideline, and neither admitted nor denied one allegation. He denied one allegation and admitted one allegation under the Personal Conduct guideline. He noted mitigating conditions. Applicant's admissions are incorporated as findings of fact.

Applicant is 39 years old and employed as a computer operator by a defense contractor. He earned a high school diploma in June 1985, and he has worked for his present employer since June 1987. He is unmarried. (Item 4; Answer to FORM at 1.)

Applicant submitted a signed Questionnaire for Public Trust Positions (SF-85P), which he dated August 19, 2004, and October 8, 2004. He certified, with his signature, the following statement:

My statements on this form, and any attachments to it, are true, complete, and correct to the best of my knowledge and belief and are made in good faith. I understand that a knowing and willful false statement on this form can be punished by fine or imprisonment or both (See section 1001 of title 18, United States Code.)

Question 20 on the SF-85P reads, in pertinent part, as follows: “**Your Police Record** 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.)” Applicant answered “no” to Question 20. (Item 4 at 7.)

Question 22 on the SF-85P addresses an applicant’s financial record. Question 22b asks: “Are you now over 180 days delinquent on any loan or financial obligation? Include loans or obligations funded or guaranteed by the Federal Government.” Applicant answered “no” to Question 22b. (Item 4 at 7.)

Applicant has a history of criminal activity. In June 1995, he was arrested and charged with two counts of drawing and uttering a fraudulent check of less than \$500. (SOR allegation 1.a.) In August 1995, he was found guilty on both counts and sentenced to pay a fine of approximately \$396 on each count and court costs of \$20. (Item 5 at 2; Item 6 at 1-2.)

In December 1995, Applicant was arrested and charged with one count of drawing and uttering a fraudulent check of less than \$500 in October 1995. In January 1996, he was found guilty and sentenced to pay a fine of approximately \$396 and court costs of \$20. (SOR allegation 1.b.) (Item 5 at 2; Item 6 at 2.)

In April 1996, Applicant was arrested and charged with three counts of drawing and uttering a fraudulent check of less than \$500 in October 1995. In June 1996 he was found guilty on one count and sentenced to pay a fine of about \$208 and court costs of \$20. The remaining two counts were dismissed. (SOR allegation 1.c.) (Item 5 at 2; Item 6 at 2.)

In May 1996, Applicant was arrested and charged with two counts of drawing and uttering a fraudulent check of less than \$500 in March 1996. In June 1996, Applicant was found guilty on both counts and sentenced to pay a fine of approximately \$396 on each count and court costs of \$20. (SOR allegation 1.d.) (Item 5 at 2; Item 6 at 2.)

In July 1996, Applicant was arrested and charged with driving under a suspension. In August 1996, he was found guilty and sentenced to pay a fine of approximately \$376. (SOR allegation 1.e.) (Item 6 at 3.) Also in July 1996, Applicant was arrested and charged with two counts of drawing and

uttering a fraudulent check of less than \$500. In August 1996, he was found guilty on one count and sentenced to pay a fine of approximately \$376. (SOR allegation 1.f.) (Item 5 at 3; Item 6 at 3.)

In January 1997, Applicant was arrested and charged with drawing and uttering a fraudulent check. (SOR allegation 1.g.) (Item 5 at 3; Item 6 at 3.) In September 1998, Applicant was arrested and charged with drawing and uttering a fraudulent check in May 1998. (SOR allegation 1.h.) (Item 5 at 3; Item 6 at 3.)

In October 2000, Applicant was arrested and charged with bank fraud in August 2000.¹ (SOR allegation 1.i.) (Item 5 at 3; Item 6 at 3; Answer to FORM at 1.) In May 2004, Applicant was arrested and charged with three counts of drawing and uttering a fraudulent check of less than \$500 in December 2003. In June 2004, he was found guilty on one count and sentenced to pay a fine of approximately \$396. The remaining two counts were dismissed. (SOR allegation 1.j.) (Item 5 at 3; Item 6 at 3; Applicant's Answer to SOR.)

Applicant's criminal conduct was alleged in ¶¶ 1.a. through 1.j. of the SOR. Applicant admitted the allegations at ¶¶ 1.a. through 1.h. and allegation 1.j. He denied the allegation at ¶ 1.i. and stated he was not arrested in the jurisdiction cited in the allegation. The record does not support DOHA's assertion that Applicant was found guilty of the crime charged in ¶ 1.i. and sentenced to pay a fine of an unspecified amount. (Item 5 at 3; Item 6 at 3.) The evidence shows Applicant was arrested in August 2004 after completing his SF-85P and charged with one count of drawing and uttering a fraudulent check in December 2003. This arrest and charge were not alleged in the SOR. (Item 5 at 3; Item 6 at 4.)

Applicant also has a history of financial delinquencies, some of which date to at least 2001. The SOR identified approximately \$14,500 in debts owed by Applicant. He admitted eleven of the twelve financial delinquencies alleged in the SOR. He neither admitted nor denied the allegation at ¶ 2.c., identifying a debt of \$70 which was placed in collection status when a check he presented for payment was returned. The debt is shown as unpaid as of June 27, 2006, and February 2, 2007 (Item 8; Item 9.)

Applicant's credit report for October 2004, shows several debts as more than 180 days delinquent: ¶¶ 2.f., 2.i., 2.j., 2.k., and 2.l. Other debts alleged by DOHA and admitted by Applicant demonstrate on-going financial delinquencies. ¶¶ 2.a., 2.b., 2.d., 2.e., 2.g., and 2.h. Nothing in the record suggests Applicant has sought financial counseling.

Applicant denied deliberately falsifying material facts in his answer to Question 20 on the SF 85P. (SOR allegation ¶ 3.a.) He stated he didn't know that drawing and uttering a fraudulent check under \$500 was a felony. (Answer to FORM at 1.)² He denied the arrest, charge, and conviction alleged in SOR ¶ 1.i. but provided no evidence to rebut the allegation. He admitted SOR

¹Applicant denied he was arrested, charged, or convicted in the matter. The Government presented credible evidence to corroborate the SOR allegation that Applicant had been arrested and charged with bank fraud. (Items 5 and 6.) The Government's evidence did not support a finding that Applicant was found guilty of the charge and sentenced to a fine of an unspecified amount.

²Question 20 asks an applicant to list any arrests, charges, and convictions in the last 7 years and does not draw distinctions between misdemeanors and felonies.

allegation 1.j., but he denied responsibility for the conduct. He said the criminal acts were committed by his friend, but he offered no evidence to rebut the allegation. (Applicant's Answer to FORM at 1.) Applicant admitted deliberately falsifying his response to Question 22b on the SF-85P.

POLICIES

The ADP adjudication process extends only to sensitive positions. Positions designated as ADP I or ADP II are classified as sensitive positions; ADP III positions are not. Regulation ¶ AP 10.2. By memorandum dated November 19, 2004, the Deputy Under Secretary of Defense for Counterintelligence and Security directed DOHA to extend the adjudicative process to ADP III positions as well.

“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. Appendix B of the Regulation sets forth the adjudicative policy, as well as the disqualifying conditions (DC) and mitigating conditions (MC) associated with each guideline. DoD contractor personnel are afforded the adjudication procedures contained in the Directive. Regulation ¶ C8.2.1.

CONCLUSIONS

Criminal Conduct

The Government's concern under the Criminal Conduct Guideline of the Regulation is that a history or pattern of criminal activity creates doubt about an individual's judgment, reliability, and trustworthiness. Two conditions could raise a security concern and may be disqualifying: Disqualifying Condition (DC) (1): *any conduct, regardless of whether the person was formally charged* and DC (2): *a single serious crime or multiple lesser offenses*.

Applicant was charged with drawing and uttering fraudulent checks on eight separate occasions between June 1995 and May 2004. He was charged and convicted of driving under a suspended license and was sentenced to pay a fine. He was also arrested and charged with bank fraud, although he disputed the location of the jurisdiction where the arrest took place. Applicant's actions demonstrate a pattern of criminal conduct and raise concerns under DC 1 and DC 2.

Three Mitigating Conditions (MC) under the Criminal Conduct Guideline might apply to Applicant's conduct. His criminal conduct might be mitigated if it was not recent (MC 1), if his crime was an isolated incident (MC 2), and if he demonstrated clear evidence of successful rehabilitation (MC 5). However, Applicant's most recent charge of criminal behavior occurred in 2004, making it relatively recent, especially when viewed against his established pattern of criminal conduct dating to 1995. Additionally, his crimes were multiple and not isolated, and there is no clear

evidence of successful rehabilitation. Accordingly, I conclude that MC 1, MC 2, and MC 5 are inapplicable.

Applicant denied SOR allegation 1.i., and the Government did not provide substantial credible evidence to prove Applicant was convicted and sentenced of the crime alleged. Accordingly, I conclude SOR allegation 1.i. for Applicant.

Financial Considerations

The Government's concern under the Financial Considerations Guideline of the Regulation is that individuals who are financially overextended and unable or unwilling to pay their just debts may try to generate funds by engaging in illegal acts. Applicant has a history of not meeting his financial obligations, and his financial history suggests an inability or unwillingness to satisfy his debts. Additionally, Applicant has engaged in deceptive or illegal financial practices, including bank fraud and drawing and uttering fraudulent checks. Applicant's conduct raises security concerns under Disqualifying Conditions (DC) 1, 2, and 3 of the Financial Considerations Guideline.³

Four Mitigating Conditions could potentially apply to Applicant's conduct. His disqualifying conduct could be mitigated under Mitigating Condition (MC) 1 if it was not recent. If Applicant's conduct was an isolated incident, then MC 2 might apply. MC 3 might apply Applicant had received or was receiving financial counseling and there were clear indications that his financial problems were begin resolved or were under control. MC 6 might apply if Applicant had initiated a good-faith effort to repay his overdue creditors or to otherwise resolve his debts. None of these Mitigating Conditions apply to the facts of Applicant's case.

The Government has established, through Applicant's admissions and the record evidence, a *prima facie* case that Applicant is financially overextended and has engaged in deceptive and illegal financial practices. Applicant provided no credible evidence to rebut or mitigate the financial concerns specified in the SOR and identified as disqualifying conditions under the Financial Considerations Guideline of the Regulation.

Personal Conduct

In the SOR, DOHA alleged Applicant deliberately falsified his answers to Questions 20 and 22b on SF-85P form he executed and signed in August 2004. (SOR allegations ¶¶ 3.a. and 3.b.) In his answer to the SOR, Applicant denied he had deliberately failed to acknowledge and list his police record in response to Question 20. He disputed the identify of the jurisdiction in which he was arrested for bank fraud. He also stated that a friend wrote the fraudulent checks which resulted in his arrest, charge and conviction on one count of drawing and uttering a fraudulent check (under \$500) in June 2004.

³DC 1 reads: "A history of not meeting financial obligations." DC 2 reads: "Deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust." DC 3 reads: "Inability or unwillingness to satisfy debts."

The record shows multiple arrests for drafting and uttering fraudulent checks, including a conviction about two months before Applicant executed and signed his SF-85P. Applicant admitted nine of the ten criminal acts alleged in the SOR. This conduct occurred while he was working for his current employer. Applicant had a strong motive not to reveal his criminal conduct, and his denial that he deliberately falsified his answer to Question 20 lacks credibility. He admitted he deliberately falsified his response to Question 22b by denying he had debts that were over 180 days past due.

Under Disqualifying Condition (DC) 2 of the Personal Conduct Guideline, a security concern is raised by *the deliberate omission, concealment, or falsification of relevant and material facts from any personal 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*. A security concern is raised under DC 4 of the Regulation by *personal conduct or concealment of information that increases an individual's vulnerability to coercion, exploitation, or pressure*. Applicant was aware of his multiple arrests and criminal conduct. He was also aware of his financial delinquencies since at least 2001, but he had neither sought financial counseling nor developed a plan to pay his creditors. After completing his SF-85P in August 2004, he signed a certification attesting that his answers to the applications were true, complete, correct and made in good faith. His conduct raises concerns under DC 2 and DC 4 of the Personal Conduct Guideline.

Several Mitigating Conditions (MC) might apply to Applicant's conduct. If the falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily, MC 2 might apply. If the individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts, then MC 3 might apply. If the individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or pressure, then MC 5 might apply.

An applicant's financial history is material to a determination of his or her eligibility for access to sensitive information. With respect to the Personal Conduct alleged in SOR subparagraph 3.a., Applicant's statements that his falsifications were not deliberate lacked credibility. He omitted and concealed relevant and material information about his police record and financial delinquencies in response to Questions 20 and 22b, bringing his conduct under DC 2. He did not make a prompt, good-faith effort to correct the falsifications before being confronted with the facts, and thus MC 3 does not apply. Applicant's falsifications were recent and not isolated incidents, and he did not supply the correct information voluntarily. Thus MC 2 does not apply.

Applicant's deliberate concealment of his police record and financial delinquencies increased his vulnerability to coercion, exploitation, or duress. He has not taken positive steps to reduce or eliminate his vulnerability to coercion, exploitation, or duress, and thus MC 5 does not apply. With respect to the Personal Conduct Guideline conduct alleged in the SOR, the Government has established its case.

Whole Person Analysis

Appendix 8 of the Regulation requires that the adjudicative process examine a sufficient period of a person's life to make an affirmative determination that the person is an acceptable

security risk. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. In determining an individual's eligibility for assignment to sensitive duties, an administrative judge must not only assess conduct under the adjudicative guidelines, but he or she must also carefully weigh a number of variables known as the whole person concept. The factors to be considered in a whole person analysis include 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 for continuation or recurrence.

Applicant's criminal conduct and failure to pay his debts over a period of many years raises serious security concerns. Applicant, a high school graduate, was a mature adult when he deliberately falsified his SF-85P by failing to acknowledge his police record and his financial delinquencies. He repeatedly drafted and uttered fraudulent checks over a nine-year period. His chronic criminal conduct and his unwillingness to acknowledge and carry out his legal duties to pay his just debts suggest he may not take his legal duty to carry out sensitive duties seriously. His current situation suggests his financial difficulties are likely to continue.

In all adjudications, the protection of our national security is the paramount concern. Adjudications regarding eligibility for assignment to sensitive duties are not intended to assign guilt or to impose further punishment for past transgressions. Rather, the objective of the process is the fair-minded, common sense assessment of a person's trustworthiness and fitness for assignment to sensitive duties. Indeed, the "whole person" concept recognizes we should view a person by the totality of his or her acts and omissions, including all disqualifying and mitigating conduct. Having done so, I conclude Applicant should not be entrusted with eligibility for assignment to sensitive duties. In reaching my decision, I have considered the evidence as a whole, including the appropriate factors and guidelines in Department of Defense Directive, 5220.6., as amended, and Department of Defense Regulation 5200.2-R, as amended.

FORMAL FINDINGS

My conclusions as to each allegation in the SOR are:

Paragraph 1, Criminal Conduct:	AGAINST APPLICANT
Subparagraphs 1.a. through 1.h:	Against Applicant
Subparagraph 1.i.:	For Applicant
Subparagraph 1.j.:	Against Applicant
Paragraph 2, Financial Considerations:	AGAINST APPLICANT
Subparagraphs 2.a. through 2.l.:	Against Applicant
Paragraph 3, Personal Conduct:	AGAINST APPLICANT

Subparagraphs 3.a. and 3.b.: Against Applicant

DECISION

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant eligibility for assignment to sensitive duties. Eligibility is denied.

Joan Caton Anthony
Administrative Judge