

KEYWORD: Financial; Personal Conduct; Criminal Conduct

DIGEST: Applicant is 47 years old, the divorced mother of four children, and is a claims processor for a Government contractor in the health care business. In the past she had six bad check charges over 12 years, filed Chapter 7 bankruptcy in 1997 and 2005, and provided information truthfully on her SF 85P and to a Government investigator. Applicant mitigated the financial considerations, personal conduct, and criminal conduct trustworthiness concerns. Eligibility for a public trust position is granted.

CASENO: 06-15533.h1

DATE: 08/27/2007

DATE: August 27, 2007

In re:	)	
	)	
	)	
-----	)	ADP Case No. 06-15533
SSN: -----	)	
	)	
Applicant for Public Trust Position	)	
	)	

**DECISION OF ADMINISTRATIVE JUDGE  
PHILIP S. HOWE**

**APPEARANCES**

**FOR GOVERNMENT**

D. Michael Lyles, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is 47 years old, the divorced mother of four children, and is a claims processor for a Government contractor in the health care business. In the past she had six bad check charges over 12 years, filed Chapter 7 bankruptcy in 1997 and 2005, and provided information truthfully on her SF 85P and to a Government investigator. Applicant mitigated the financial considerations, personal conduct, and criminal conduct trustworthiness concerns. Eligibility for a public trust position is granted.

## STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a position of trust for Applicant<sup>1</sup>. On December 26, 2006, DOHA issued a Statement of Reasons<sup>2</sup> (SOR) detailing the basis for its decision—trustworthiness concerns raised under Guideline F (Financial Considerations), Guideline E (Personal Conduct), and Guideline J (Criminal Conduct) of the revised Adjudicative Guidelines of the Directive issued on December 29, 2005, and implemented by the Department of Defense, effective September 1, 2006. Applicant answered the SOR in writing on January 22, 2007, and elected to have a hearing before an administrative judge. The case was assigned to me on May 2, 2007. On June 27, 2007, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a trustworthiness determination for Applicant. The Government and the Applicant submitted exhibits that were admitted into evidence. Applicant requested additional time to submit exhibits, and I granted her request. The Department had no objection to the admission of those exhibits, and they were admitted into evidence as Exhibits B to D. DOHA received the hearing transcript (Tr.) on July 11, 2007.

## FINDINGS OF FACT

Applicant's admissions to the SOR allegations are incorporated as findings of fact. After a complete and thorough review of the evidence in the record, and full consideration of that evidence, I make the following additional findings of fact:

Applicant is 47 years old, divorced, and has four children. The two oldest children are in their twenties, and the two youngest are 16 and 14 years of age. Applicant works for a defense contractor in the health management business as a claims processor. Applicant was divorced in May 2004. Recently, she has been ill with colon cancer. She returned to full-time work after being on medical leave for eight months until May 2007, and now works 10 hours daily to earn extra money when her employer offers overtime opportunities. Her monthly net income is \$1,200, and her monthly expenses for herself and the two minor children living with her are \$1,035. (Tr. 42-44, 48, 52, 59, 68; Exhibit 1)

Applicant has six arrests for issuing or writing worthless checks, that is, checks for which she had insufficient funds to pay them when the merchant to whom she wrote them tried to collect on them. The first charge occurred on March 30, 1992, and was dismissed the same day after Applicant paid the check. The next check charge was May 4, 1992, and was dismissed in June 1993. The third arrest was April 21, 1997, and Applicant was found guilty, ordered to pay restitution, to serve community service, and given one year's probation. The fourth arrest was July 15, 2000. The state court found her guilty, and fined her \$85, and ordered her to pay \$550 restitution. Her fifth

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<sup>1</sup>Adjudication of trustworthiness cases for ADP I, II, and III positions are resolved using the provisions of DoD Directive 5220.6 (Directive), pursuant to the memorandum from Carol A. Haave, Deputy Under Secretary of Defense for Counterintelligence and Security to DOHA Director, *Adjudication of Trustworthiness Cases* (Nov. 19, 2004).

<sup>2</sup>Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and the Directive.

arrest was on September 11, 2002, and she was found guilty, fined \$208, and ordered to pay restitution and a service charge. Her final arrest was on August 24, 2004, which was later dismissed. She paid the check. Applicant claims her former husband and she had a joint checking account, and they failed to inform each other when one of them wrote a check, leading to insufficient money being in the account. After her divorce in 2004, she had a joint checking account with her oldest child, and that situation caused the last insufficient check charge. Now Applicant has a sole checking account for herself, and no further insufficient check charges have occurred. Applicant consults with a debt counselor to learn how to better manage her finances. (Tr. 30, 32, 46, 53, 54, 58, 73 74; Exhibits 1, 3, 4, D)

Applicant filed Chapter 7 bankruptcy in July 1997. She and her husband were discharged in bankruptcy in October 1997. Applicant later filed a new bankruptcy action, a Chapter 13 bankruptcy, on April 13, 2002. Her liabilities at that time were \$68,641.09. Applicant does not remember what circumstances caused her and her husband to have such debt, but their house was destroyed by fire in 1997, and they did not have insurance. This amount might include the mortgage balance and various other debts they had at the time. Applicant failed to make the required payments to the trustee and her petition was dismissed. Next, she filed a Chapter 7 bankruptcy action on June 18, 2004, with liabilities of \$14,078. The bankruptcy court dismissed this action on November 19, 2004, after Applicant failed to pay the filing fees. Finally, she again filed a Chapter 7 bankruptcy on April 8, 2005, when her liabilities were \$19,150. This bankruptcy case was discharged on July 28, 2005, and her liabilities were eliminated. (Tr. 54-56; Exhibits 4, 5)

Applicant and her family lived in an apartment for a number of years on a month to month tenancy. The monthly rent ultimately was \$750. She had not paid it for several months when she decided to move out. The landlord sued in small claims court for the rent until he rented the apartment again. The settlement amount was \$1,297, half to be paid by Applicant and half by her former husband. The amount has not been paid. Applicant admitted she has no formal plan to repay the landlord, but she will pay him the money owed when she can afford to do so. The landlord obtained a judgment against Applicant in April 2006. While this debt remained unpaid, Applicant was able to find \$1,500 to finance the eighth grade trip of her youngest child to Washington, D.C. Her daughter raised some money by babysitting and fundraisers, but the balance of \$1,500 Applicant paid for her daughter. (Tr. 41, 42, 53, 56, 77)

Applicant worked for a glass company as a salesperson before taking her present job. She worked at that job for several months. On May 3, 2004, she attended a meeting with her supervisor. She claims he made an inappropriate comment about another employee, and she told him to not make such comments. She told him she could make a sexual harassment complaint. On Friday, May 7, 2004, Applicant was terminated from that employment. The local police went to the glass company to take a complaint against Applicant on May 18, 2004. The supervisor alleged that Applicant, between July 10, 2003, when she started work there, and May 7, 2004, when terminated, stole gift cards valued between \$2,000 and \$3,000, took \$150 from the petty cash fund, and made \$67.66 in unauthorized credit card purchases. A criminal complaint was issued on March 9, 2005, by the local prosecuting attorney for theft from a business. Applicant was not arrested by the police for this offense, receiving a summons instead. Applicant hired an attorney to represent her in that action. On June 20, 2005, this criminal complaint was dismissed on the motion of the county prosecutor. As part of the company's action against Applicant, her supervisor opposed Applicant obtaining unemployment compensation. The state hearing officer determined Applicant was

discharged, but the discharge was not for misconduct connected with her employment. On administrative appeal, the state agency again found Applicant truthfully denied all allegations of misconduct at the May 7, 2004, meeting with her supervisor, and she had not received any warnings about any alleged misconduct from the employer. The appeal decided on July 27, 2004, held Applicant was not discharged for theft, and could receive unemployment benefits. Applicant obtained the compensation in July 2004. Meanwhile, she filed a sexual harassment charge with the state and federal equal rights commissions. That complaint was withdrawn in July 2005, when the parties reached a settlement that included a \$3,000 payment to Applicant. She later used that money to pay some debts and contribute to her oldest daughter's wedding. Applicant claimed that she thought in her own mind she had "filed" the sexual harassment charge when she told her supervisor on May 3, 2004, to cease making inappropriate statements. She believed she was fired in retaliation for making that statement. There was no court order that Applicant have no contact with her former employer. (Tr. 18-40, 59, 60, 70, 71; Exhibits 1, A, B, C)

Applicant completed a Questionnaire for Public Trust Position (SF 85P) on October 25, 2004. She made changes to it on February 18, 2005, at the request of her employer's personnel department. Applicant answered Question 12 ("Your Employment Record") by admitting she was fired from one job in the previous seven years in May 2004, from the glass company, for filing "a sexual harassment claim," not stating, according to the SOR, that she was fired because of charges of theft from a business brought by her employer. She also answered Question 20 ("Your Police Record") by admitting she was "arrested, charged with, or convicted of" three offenses in the past seven years. She admitted three worthless check offenses in January 2003, February 2001, and May 2000. She did not list the theft from a business charge, and the charge on August 24, 2004, for issuing a bad check. In August 2005, Applicant was interviewed by a Government investigator. She cannot remember exactly what was discussed, but thought she told the investigator about the theft from a business charge. The investigator did not tell her he had information from the glass company about the termination of her employment. Applicant told him she was discharged because of the sexual harassment claim. After the settlement of that case in July 2005, Applicant understood she was not to discuss its terms and conditions. The SF 85P in Question 20 provides three spaces for listing an applicant's police record. It does not advise an applicant to use additional pages, as Questions 9-11 do. By the time Applicant answered Question 20 in October 2004, the worthless check charge was dismissed. The theft charge did not occur until March 2005, and the state unemployment compensation hearing officers rendered their findings that Applicant's discharge by the glass company was not due to misconduct related to her employment. By August 2005, when she spoke with the Government investigator, that charge was dismissed. (Tr. 35-40; Exhibits 1, B)

Applicant currently has two credit cards she uses. One has a \$200 limit, the other one a \$250 limit. She charges her prescription medicines on them. She uses them to try to rebuild her credit. Her discussions with the debt counselor includes discussions on how to pay these debts to improve her credit score. (Tr. 57, 65, 66)

## POLICIES

As Commander in Chief, the President has “the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information.” *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information with Industry* § 2 (Feb. 20, 1960). By direction of the Under Secretary of Defense for Counterintelligence and Security, adjudications of cases forwarded to DOHA by the Defense Security Service or the Office of Personnel Management (OPM) for a trustworthiness determination shall be conducted under the provisions of the Directive. Eligibility for a position of trust is predicated upon the applicant meeting the guidelines contained in the Directive and a finding it is clearly consistent with the national interest to do so. See Directive ¶ 2.3. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his trustworthiness determination.” See Directive ¶ E3.1.15

The adjudication process is based on the whole person concept. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline that must be carefully considered in making the overall common sense determination required. The decision to deny an individual eligibility to occupy a position of trust is not necessarily a determination as to the loyalty of the applicant. See Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a such a determination.

In evaluating the trustworthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. Those assessments include: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (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 (See Directive, Section E2.2.1. of Enclosure 2). Because each case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible to occupy a position of trust. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant’s trustworthiness suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996). All that is required is proof of facts and circumstances that indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at \*\*6-8 (App. Bd. 2001). Once the Government has established a *prima facie* case by substantial evidence, the burden shifts to the applicant to rebut,

explain, extenuate, or mitigate the facts. *See* Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that is clearly consistent with the national interest to grant or continue his trustworthiness determination. ISCR Case No. 01-20700 at 3 (App. Bd. 2002). “Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.” Directive ¶ E2.2.2

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

**Guideline F: Financial Considerations: The Concern:** Failure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which could raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts. ¶18

**Guideline E: Personal Conduct: The Concern:** Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process. ¶15

**Guideline J: Criminal Conduct: The Concern:** Criminal activity creates doubt about a person’s judgment, reliability, and trustworthiness. By its very nature, it calls into question a person’s ability or willingness to comply with laws, rules and regulations. ¶30

## CONCLUSIONS

**Guideline F:** Applicant’s actions causing trustworthiness concerns are that she wrote six bad checks on a joint account with her husband and daughter between 1992 and 2004, that she filed two Chapter 7 bankruptcies in 1997 and 2005 (she has a Chapter 13 bankruptcy filing in 2002 and a Chapter 13 bankruptcy in 2004 which were dismissed), that she was charged in 2005 for theft from a business in 2004 after being discharged by her employer, and she has not paid a judgment from April 2006 obtained by a former landlord. The Disqualifying Conditions (DC) applicable are Financial Considerations Disqualifying Condition ¶19.a. (inability or unwillingness to satisfy debts), ¶19.c. (a history of not meeting financial obligations), and ¶19.d. (deceptive or illegal financial practices such as employee theft, check fraud, and expense account fraud).

Applicant explained the bad check charges as resulting from poor, not intentional or evil, financial practices with her husband and eldest child with whom she had joint checking accounts. The checkbook was not balanced and Applicant wrote checks without knowing her husband had written other checks. The oldest charge was in March 1992, and the last one with her husband was in September 2002. They are not recent. The 2004 charge was with her daughter on the joint account, and that incident was three years ago. Now, Applicant has a single account in her name

only, and the problem has not reoccurred. All the checks were paid, and the 2004 charge was dismissed.

Applicant had debts she and her husband could not pay in 1997, so they used the Federal Bankruptcy law to eliminate those debts. That procedure is a legitimate way to resolve debts. The filings in 2002 under Chapter 13 was an attempt to pay her debts. She was divorced in May 2004, a month before she filed the June 2004, Chapter 7 bankruptcy. The continuation of that action was the April 2005, Chapter 7 bankruptcy. These actions were related to her divorce, and were a legitimate procedure to eliminate her debts resulting from that marriage. She cannot file Chapter 7 bankruptcy again by law for another five years, at least.

Applicant's current financial situation is aggravated by being off work due to her colon cancer treatments for the eight months prior to May 2007. Also, her net monthly income is \$1,200, which is about \$16,000 annually. She supports two children and herself. She does not have the money at present to pay her former landlord, but commits to paying him in conjunction with her former husband. She paid or discharged in bankruptcy all her other debts, and I conclude she will pay this debt as she promised to do. The money paid to send her daughter on her eighth grade trip could have been used for this purpose, but she exercised her judgment to give her daughter the one-time opportunity to visit the Federal Capital with her classmates. That decision is an understandable one by a mother.

The remaining allegation in the SOR under this trustworthiness concern is the theft from a business charge. I considered the evidence submitted, and find nothing persuasive to support the allegation. First, Applicant was not arrested in 2003 or in 2004 on this charge. The criminal complaint was dismissed in June 2005, three months after the public prosecutor filed it, so the prosecutor obviously thought he could not prove the charges. Applicant was found not to have been discharged for misconduct relating to theft by the state unemployment compensation hearing officers. Applicant was discharged less than a week after she made a claim of sexual harassment to her supervisor. She later filed a formal complaint with the state and federal agencies that handle such claims. It was later settled for \$3,000, paid by her employer. I looked at the evidence attached to the criminal complaint and conclude it is hearsay at its worst, not supported by any detailed objective financial analysis of the employer's allegations, and is so closely linked to Applicant's charge of sexual harassment to raise the issue that retaliation was a factor in her discharge, not financial misconduct.

Applicant also is working with a debt counselor in her town. She is trying to live within her means and avoid further financial difficulties as she tries to reestablish her credit.

The Financial Considerations Mitigating Conditions (MC) applicable are ¶20.a. (the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment), ¶20.b (the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances), ¶20.c. (the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control), and ¶20.d (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts). Applicant's divorce,



cancer, discharge in 2004, and subsequent unemployment contributed to her financial problems, all factors beyond her control. Her bad check writing situation extended over 12 years, but ended three years ago with her using a single checking account. She has changed her behavior pattern, and is attempting, with the counselor's help, to reestablish her credit and live within her means. Her financial situation appears to be under control, as she has taken steps to resolve her debts.

**Guideline E:** The personal conduct trustworthiness concern is questionable judgment and dishonesty for issuing bad checks and the theft from business charge in 2005. The second concern is the alleged falsification of Applicant's answers to Questions 12 and 20 on her SF 85P, and the alleged omission of material facts during an August 2005 interview with a Government investigator.

The theft from the business charge was alleged in the SOR erroneously as having occurred in 2003 (it happened in 2004 and 2005), involving an arrest which it did not, and the entry of a court order to Applicant not to contact her former employer that does not exist. The underlying evidence and analysis concerning this allegation was discussed under the Financial Considerations guideline. The charge was not founded on persuasive evidence, and resulted from an effort by her former employer to blame her for misconduct for which she could be terminated. Applicant did not engage in conduct involving questionable judgment or dishonesty in this situation.

The series of six worthless checks written between 1992 and 2004 occurred because Applicant and her husband could not balance their joint checking account by keeping each other informed as to what checks were written and for what amount. It was inattentiveness, failure to communicate, and clerical errors, not willful and deliberate check fraud that caused this series of events.

The last group of allegations under this guideline is that Applicant did not answer questions on her SF 85P honestly. She answered each question on the form based on the information she knew to be true and accurate. Question 12 regarding her employment history she answered correctly and honestly. She disclosed she was terminated in May 2004, because she filed a sexual harassment charge against her employer. The evidence shows that event occurred. The theft from business charge was created by her employer to justify their action. The settlement of the sexual harassment charge shows it had a valid basis. Applicant believed that she was fired because she made an accusation of sexual harassment, and the facts support her interpretation and show she provided the correct answer to Question 12. Her answer also put the Government on notice that there was a termination situation it needed to investigate more thoroughly.

Question 20 sought all arrests, charges, and convictions in the past seven years. Applicant again disclosed three bad check arrests. That disclosure was the honest and correct disclosure. When she completed the SF 85P in October 2004, and added to it in February 2005, there were no criminal charges concerning the theft pending or on file. Furthermore, Applicant believed she was terminated by that employer because of the sexual harassment charge she made, not any criminal action. That action occurred in March 2005. The last bad check charge in August 2004, was dismissed and Applicant paid the check. In her mind the matter was resolved without an arrest, charge, or conviction. Finally, the SF 85P, Question 20, had three blocks into which an employee may enter arrests, etc., and provided no guidance on charges greater in number than three, or additional space for the entry of other information in Question 20. Applicant completed what she was told to complete. There was no deliberate falsification in the answers Applicant gave.

One of the final allegations under this guideline is that Applicant did not disclose to the Government investigator in August 2005, her “arrest in July 2003 for Theft in a Business Setting” referring to subparagraph 1.f. of the SOR. In fact, there was no such arrest in July 2003, involving Applicant, because July 2003, was when she was hired by that employer. There was no arrest in the list of offenses in Exhibit 2 for that date. Applicant was not arrested, but merely charged in a criminal complaint in March 2005. She thinks she told the investigator about the incident, but by then the complaint had been dismissed in June 2005. She also had the sexual harassment claim settlement in July 2005, which she believed she was required to keep confidential. Her explanations are credible when examined against the sequence of events, coupled with the full disclosures she made throughout her SF 85P, and the two-year passage of time since her interview.

On the first examination of the SOR allegations, it would appear Personal Conduct Disqualifying Conduct (DC) under ¶16.a (involving deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, or determine trustworthiness), ¶16.b (deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, or other official government representative), and ¶16.c (credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not safeguard protected information) apply. SOR Paragraph 2 interrelates the financial and job termination allegations in Paragraph 1 as the basis for the deliberate falsification and failure to disclose allegations contained in Paragraph 2.

However, I discussed in the Financial Considerations and analysis under this guideline why I conclude the Personal Conduct Mitigating Conditions (MC) under this guideline are more persuasive. The disclosures she made, and the changes in her life, make the MC more applicable and persuasive than the DC. Those MC are ¶17.d (the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur, and ¶17.f (the information was unsubstantiated or from a source of questionable reliability). Applicant is the only signer on her checking account now, having changed her behavior and obtained financial counseling. The bad checks have not occurred in the past three years. She is now divorced and living on her own, which makes the likelihood of similar problems recurring minimal. She is innocent of the theft charge made by her former employer, and the charges were unsubstantiated and the reliability of the information from her former employer is suspect. She did not deliberately falsify her SF 85P answers to Questions 12 and 20, instead making full disclosures to those questions and all others on the form.

**Guideline J:** The criminal conduct trustworthiness concern is based on Applicant’s alleged deliberate failure to make full disclosures on her SF 85P to Questions 12 and 20, and to the Government investigator in August 2005 about her July 2003 arrest (that did not occur in fact). These acts are alleged in the SOR to violate 18 U.S.C. §1001, a felony, for knowingly and willfully making a false statement to any department or agency of the Federal Government.

Were any Criminal Conduct Disqualifying Conditions to be applicable, they would (DC) ¶31.a (a single serious crime or multiple lesser offenses) and ¶31.c. (allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted). But I conclude they are not applicable for the reason Applicant made full disclosure as set forth on the SF 85P, and did not knowingly and willfully make a false statement to the Government.

The Criminal Conduct Mitigating Conditions (MC) applicable to this trustworthiness concern are ¶32.c (evidence that the person did not commit the offense), and ¶31.d (there is evidence of successful rehabilitation, including but not limited to the passage of time without recurrence of criminal activity, and a good employment record). I discussed previously under the Personal Conduct concern my conclusion that Applicant did not deliberately falsify her answers to these same questions. I conclude also that she did not knowingly and willfully lie to the Government under this Federal statute. She made full disclosure as requested on the SF 85P, and the theft charge was dismissed on the motion of the prosecutor as it was not supported by the evidence contained in Exhibit A from the prosecutor's office.

### **Whole Person Analysis**

“The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a" trustworthiness decision. Directive ¶2. “Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.” *Id.* In evaluating Applicant's case, I have considered the adjudicative process factors listed in the Directive ¶2.

Applicant raised four children, is divorced, and now has cancer. She had financial difficulties in the past, including a fire which destroyed her home in 1997, and has resolved them using the Federal bankruptcy law. She cannot use it again by law for at least five years. Her bad checks were the result of not paying attention to the constant need to balance her joint checking account with her former husband. While six incidents occurred over 12 years, she has not had another one in three years now that she has a single checking account solely under her control. She is innocent of the theft charge because it was an unfounded accusation. She promises to pay the one outstanding debt she has, a judgment to her former landlord. Having paid or resolved her other debts, she is likely to pay this debt. She obtained financial counseling to help her reestablish her credit and live within her means. She is trying to rehabilitate herself financially. Her recent bout with cancer and her divorce adversely affected her ability to repay her debts, but now she has cleared away through bankruptcy her old debts and has returned to full-time work. She has two children remaining under her care because they are minors. She told the truth on her SF 85P and discussed her May 2004, termination with the Government investigator. Applicant is clearly trying to exercise responsibility in her daily life. Her testimony is credible and persuasive on each of the issues raised, and is supported by the facts.

Therefore, I conclude the financial considerations trustworthiness concern for Applicant. I conclude the personal conduct trustworthiness concern for Applicant. Next, I conclude the criminal conduct trustworthiness concern for Applicant. Lastly, the whole person concept I conclude for Applicant.

**FORMAL FINDINGS**

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline F:                   FOR APPLICANT

    Subparagraphs 1.a to 1.1:       For Applicant

Paragraph 2. Guideline E:               FOR APPLICANT

    Subparagraphs 2.a to 2.d:       For Applicant

Paragraph 3. Guideline J:               FOR APPLICANT

    Subparagraph 3.a:               For Applicant

**DECISION**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for assignment to sensitive duties. Her application for eligibility for a Public Trust position is granted.

Philip S. Howe  
Administrative Judge