

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant filed for Chapter 13 bankruptcy in June 2005. In July 2006, the bankruptcy was dismissed. Applicant owes the IRS for unpaid income taxes for tax years 1999, 2000, 2001, 2002, 2003, and 2004. She has resolved or entered into repayment plans pertaining to several of her debts. However, she continues to have issues dealing with financial irresponsibility. Her student loan account is past due and six debts alleged in the SOR remain unresolved. Trustworthiness concerns remain due to Applicant's financial problems and her deliberately misleading statement to an investigator pertaining to the status of her Chapter 13 debt repayment plan. She has not met her burden to mitigate the trustworthiness concerns raised under financial considerations and personal conduct. Applicant's eligibility for an assignment to a sensitive position is denied.

CASENO: 06-16875.h1

DATE: 09/26/2007

DATE: September 26, 2007

In re:)	
)	
-----)	
SSN: -----)	ADP Case No. 06-16875
)	
Applicant for Public Trust Position)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
ERIN C. HOGAN**

APPEARANCES

FOR GOVERNMENT

Julie R. Edmunds, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant filed for Chapter 13 bankruptcy in June 2005. In July 2006, the bankruptcy was dismissed. Applicant owes the IRS for unpaid income taxes for tax years 1999, 2000, 2001, 2002, 2003, and 2004. She has resolved or entered into repayment plans pertaining to several of her debts. However, she continues to have issues dealing with financial irresponsibility. Her student loan account is past due and six debts alleged in the SOR remain unresolved. Trustworthiness concerns remain due to Applicant's financial problems and her deliberately misleading statement to an investigator pertaining to the status of her Chapter 13 debt repayment plan. She has not met her burden to mitigate the trustworthiness concerns raised under financial considerations and personal conduct. Applicant's eligibility for an assignment to a sensitive position is denied.

STATEMENT OF CASE

On October 3, 2005, 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 Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended (the "Directive"); and the Revised Adjudicative Guidelines, approved December 29, 2005, and effective September 1, 2006.¹ On February 1, 2007, 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 March 21, 2007, Applicant responded to the SOR allegations and elected to have her case decided on the written record, in lieu of a hearing. Her response was received by the Defense Office of Hearings and Appeals on March 23, 2007. On April 16, 2007, Department Counsel requested a hearing pursuant to paragraph E3.1.7 of the Directive. The case was assigned to me on August 3, 2007. A Notice of Hearing was issued on August 6, 2007, scheduling the hearing for August 29, 2007. The hearing was held as scheduled. The government offered nine exhibits which were admitted as Government (Gov) Exhibits 1-9 without objection. Applicant offered 10 exhibits which were admitted as Applicant Exhibits (AE) A-J without objection. The record was held open until September 12, 2007, to allow Applicant the opportunity to submit additional documents. On September 5, 2007, Applicant requested an additional week to submit additional documents. Her request was granted until September 19, 2007. Applicant timely submitted a ten-page document which was marked and admitted as AE K without objection. The transcript (Tr.) was received on September 12, 2007.

FINDINGS OF FACT

In her SOR response, Applicant denies the allegation in SOR ¶ 1.i and admits to all the remaining SOR 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.

Applicant is a 37-year-old woman employed with a Department of Defense contractor who is seeking a position of public trust.² She is single and has no children.³ She is trained as a nurse and is currently a case manager with a healthcare company that works on a government contract. She has worked for the company for approximately two years.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.

² Tr. at 6; Gov 1.

³ Tr. at 63.

⁴ Tr. at 64.

On October 3, 2005, Applicant completed a public trust position application (SF 85-P).⁵ In response to question "19. Your Financial Record - Bankruptcy, Liens, Judgments. In the last 7 years have you, or a company over which you exercised some control, filed for bankruptcy, been declared bankrupt, been subject to a tax lien, or had a legal judgment rendered against you for a debt?" Applicant listed a bankruptcy filed on August 10, 2005.⁶

Applicant filed for bankruptcy on June 29, 2005.⁷ The following debts were included in Applicant's Chapter 13 bankruptcy: a \$500 account owed to a loan company (SOR ¶ 1.b, Tr. at 46; Gov 6 at 5); a \$100 account owed to a water company (SOR ¶ 1.c, Tr. at 47-48); a student loan account, approximate balance \$12,000 (SOR ¶ 1.d; Tr. at 48; Gov 3 at 7); a \$1,000 medical account (SOR ¶ 1.e; Tr. at 49; Gov 6 at 5); a \$2,000 medical account (SOR ¶ 1.f; Tr. at 49-50; Gov 6 at 5); a \$1,105 credit card account (SOR ¶ 1.g; Tr. at 50; Gov 3 at 3; Gov 2 at 3); a \$14,873 automobile loan (SOR ¶ 1.h; Tr. at 51-53; Gov 3 at 2; Gov 5 at 2; Gov 6 at 3, 10; AE D); a \$10,000 automobile loan (SOR ¶ 1.i; Tr. at 51-53; Gov 2 at 2); a \$3,000 mortgage account (SOR ¶ 1.j; Tr. at 53; Gov 2 at 2); a \$700 credit card account (SOR ¶ 1.k, Tr. at 53; Gov 6 at 5); and a \$2,071 computer account (SOR ¶ 1.l; Tr. at 54; Gov 2 at 2; Gov 3 at 2; Gov 6 at 2).

Applicant also owes the Internal Revenue Service approximately \$24,672 for unpaid taxes and penalties for tax years 1999, 2000, 2001, 2002, 2003 and 2004.⁸

On February 22, 2006, Applicant was interviewed by an investigator in conjunction with her background investigation. The investigator asked her for more information about her bankruptcy. She told the investigator that she filed for bankruptcy in July 2005. She also told him that she pays \$715 a month to a bankruptcy trustee, and is current on her payments.⁹

On February 24, 2006, the investigator reviewed Applicant's bankruptcy records at the U.S. Bankruptcy court. The records indicate that Applicant was required to pay \$822 per month toward her Chapter 13 bankruptcy. She owed a total of \$46,854. She began making payments on August 8, 2005. The record indicates that Applicant was approximately \$1,861 in arrears as of February 2006.¹⁰

At hearing, Applicant admits that when she was interviewed by the investigator, she was aware that she was behind at least one payment towards her Chapter 13 plan. She thought that she

⁵ Gov 1.

⁶ Gov 1 at question 19.

⁷ Gov 7.

⁸ Gov 4; Gov 5 at 2; Gov 6 at 2; AE B.

⁹ Tr. at 26-27; Gov 8.

¹⁰ Tr. at 28-31; Gov 9.

could rectify the matter by making a payment bringing her Chapter 13 plan up-to-date.¹¹ She admits that part of the reason she did not disclose that she was behind on her Chapter 13 payment plan was out of concern over her trustworthiness position.¹² In the future, should she fill out a trustworthiness application, she intends to provide truthful information. She has learned a painful lesson.¹³

Applicant voluntarily dismissed the bankruptcy in July 2006.¹⁴ She decided to sell her condominium and pay for some debts with the profits of the sale. She made approximately \$30,000 on the sale of the condominium.¹⁵ Her bankruptcy attorney advised her to make payments towards her car, the IRS debt and a \$300 state debt. He advised her not to arrange payments with her other creditors unless they contacted her.¹⁶ She paid \$5,000 towards her auto loan and \$8,000 towards her federal taxes.¹⁷ She paid the \$300 state tax debt and \$500 towards some credit cards. She spent all of the \$30,000 that she made from the sale of her condominium.¹⁸

On November 6, 2006, a federal tax lien in the amount of \$24,672 was entered against Applicant for unpaid income taxes for tax years 1999, 2000, 2001, 2002, 2003 and 2004.¹⁹ On December 5, 2006, Applicant entered into a repayment agreement with the IRS. She agreed to pay \$600 per month due on the 10th of each month with payments starting on January 10, 2007.²⁰ She claims that she is making timely payments towards her repayment agreement. Two weeks prior to the hearing, she sent a request for revision to the IRS asking that her payments be reduced to \$500 per month.²¹ No documentation was provided indicating that Applicant is making timely payments on her IRS debt.

Applicant testified at the hearing that she requested a forbearance on her student loan for approximately one year.²² She testified that prior to her forbearance request, she paid approximately \$160 per month towards her student loans. It was her belief that the forbearance request was

¹¹ Tr. at 43-44; 64-65.

¹² Tr. at 65.

¹³ Tr. at 66.

¹⁴ Gov 7.

¹⁵ Tr. at 44-45.

¹⁶ Tr. at 45; Response to SOR; *see also* Gov 5 at 2.

¹⁷ Gov 6 at 13.

¹⁸ Tr. at 45.

¹⁹ Gov 4, AE B.

²⁰ AE B.

²¹ Tr. at 55.

²² Tr. at 48-49; Gov 8.

approved.²³ Post-hearing, she provided a copy of a request for forbearance, dated July 31, 2007.²⁴ The balance on her student loan is \$18,545.80. She is approximately \$1,249 past due on her student loan payments.²⁵ She is attempting to work a payment plan to catch up on her arrears.²⁶

Applicant's automobile loan (SOR ¶ 1.h) is now up-to-date. She paid \$5,000 toward the automobile loan after her bankruptcy was dismissed.²⁷ She has been making regular payments and the automobile loan is no longer delinquent.²⁸ The automobile loan alleged in SOR ¶ 1.i is a duplicate of the automobile loan alleged in SOR ¶ 1.h.²⁹

The debt alleged in SOR ¶ 1.j which was related to condo fees and other expenses was satisfied at the time Applicant sold her condominium.³⁰

The debts alleged in SOR ¶¶ 1.b, 1.c, 1.e, 1.f, 1.g, 1.k, and 1.l remain unresolved. None of the creditors have contacted Applicant and she has not contacted the creditors in order to resolve these accounts. She claims that the accounts with SOR ¶¶ 1.e and 1.f are the same.³¹ There is nothing in the record evidence that indicates these are two separate medical accounts. I find for Applicant with respect to SOR ¶ 1.e.

Applicant states that cause for her financial problems was due to overspending and living beyond her means.³² She attended two financial counseling sessions approximately two years prior to filing bankruptcy.³³ Based on the advice of her attorney, she is waiting for her creditors to contact her before attempting to resolve her delinquent accounts.³⁴

²³ Tr. at 67.

²⁴ AE K at 6.

²⁵ AE K at 7-8.

²⁶ AE K at 2, 8.

²⁷ Tr. at 45.

²⁸ AE D; Gov 6 at 3, 9; AE K at 9.

²⁹ Tr. at 52-53.

³⁰ Tr. at 53; Gov 6 at 11-12

³¹ Tr. at 49-50.

³² Tr. at 63.

³³ Tr. at 57.

³⁴ Tr. at 54.

Applicant's monthly take home pay is \$3,200.³⁵ Post-hearing, she submitted a budget. Her total monthly expenses are approximately \$2,350.³⁶ Based on these figures, she has approximately \$850 left over each month after expenses. Her budget does not include her \$600 monthly payment towards the IRS debt or her monthly car payment of \$471.90.³⁷ Including the monthly tax payment and the car payment, Applicant has a negative balance of \$221.90.

Applicant's supervisor comments that Applicant has consistently demonstrated "a high degree of competency, dependability, and professionalism in her daily work" She states she is a valuable employee.³⁸ Applicant often gets favorable remarks from clients.³⁹ She has received several letters of appreciation and awards.⁴⁰ Her performance reports have been favorable. Her most recent evaluation which closed out on March 31, 2007, indicates that she consistently meets and often exceeds day to day expectations.⁴¹

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."⁴² 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 and the Revised Adjudicative Guidelines, effective September 1, 2006. The Revised Adjudicative Guidelines 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 - 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 can raise questions about an individual's reliability, trustworthiness and ability to protect

³⁵ Tr. at 56; Gov 8 at 2.

³⁶ AE K at 10.

³⁷ See Tr. at 55-58, AE B and AE K at 9.

³⁸ AE H.

³⁹ AE J.

⁴⁰ AE A.

⁴¹ AE C; AE I.

⁴² *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).

classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.⁴³

Guideline E - Personal Conduct - 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.⁴⁴

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.”⁴⁵ An administrative judge must apply the “whole person concept,” and consider and carefully weigh the available, reliable information about the person.⁴⁶ 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.⁴⁷

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.⁴⁸ Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts.⁴⁹ An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.”⁵⁰ Any doubt as to whether access to classified information is clearly consistent with national security will be

⁴³ Revised Adjudicative Guidelines, ¶ 18.

⁴⁴ Revised Adjudicative Guidelines, ¶ 15.

⁴⁵ Directive, ¶ E2.2.1.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ Directive, ¶ E3.1.14.

⁴⁹ Directive, ¶ E3.1.15.

⁵⁰ ISCR Case No. 01-20700 at 3 (App. Bd. December 19, 2002).

resolved in favor of the national security.⁵¹ 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.

Financial Considerations

Based on all the evidence, Financial Considerations Disqualifying Conditions (FC DC) ¶ 19(a) (*Inability or unwillingness to satisfy debts*) and ¶ 19(c) (*A history of not meeting financial obligations*) apply to Applicant's case. Applicant has numerous delinquent debts including a \$24,000 tax debt for unpaid taxes related to tax years 1999 - 2004. In addition, she currently has six unresolved delinquent debts with a total approximate balance of over \$6,400. Many of these debts have been delinquent for several years. She is in the process of requesting a forbearance on her student loan account. Currently, the student loan account is past due \$1,249.

FC DC ¶ 19(c) (*indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt*) also applies. Applicant admits that her financial problems were the result of her irresponsible and spending habits and living beyond her means.

Several Financial Considerations Mitigating Conditions (FC MC) potentially apply. Applicant has a history of financial irresponsibility spanning several years. She still has significant financial problems. Therefore, I cannot apply FC MC ¶ 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*).

There is no evidence to support the application of FC MC ¶ 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*). Applicant's problems were not caused by circumstances beyond her control.

FC MC ¶ 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*) also does not apply. Applicant received financial counseling a few years prior to filing bankruptcy. Although, she has resolved some of her accounts and has taken steps to enter into the payment plans with the IRS and her student loans, it is too soon to conclude that her financial problems are under control based on her track record of financial irresponsibility. She recently entered into a payment plan with the IRS. Applicant's student loan accounts are currently delinquent and not in forbearance. Applicant has six

⁵¹ Directive, ¶ E2.2.2.

other unresolved delinquent accounts. Her monthly budget indicates that her expenses are more than her income. As such, I conclude her financial situation is unlikely to be resolved in the future.

FC MC ¶ 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) is applicable, in part. Applicant has brought her automobile loan payments up to date. She resolved the debt is SOR ¶ 1.j. She is attempting to repay her IRS and student loan debts. However, several accounts remain unresolved and Applicant has made no attempt to resolve the accounts. As such, I give FC MC ¶ 20(d) less weight.

Although Applicant has taken steps to resolve her financial problems, her financial situation remains unstable. She has not mitigated the financial considerations trustworthiness concern. Guideline F is decided against Applicant.

Personal Conduct

Personal conduct under Guideline E is always a trustworthiness concern because it asks the central question if 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.

In this case, Applicant told the investigator assigned to conduct her background investigation that she was current on her Chapter 13 repayment plan while knowing that she was at least one payment behind. She told the investigator that she was current because she thought she could bring the Chapter 13 repayment plan up to date. She was concerned about her application for a trustworthiness position. Personal Conduct Disqualifying Condition (PC DC) ¶ 16(b) (*deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative*) applies. Applicant maintains that she did not intend to mislead the investigator about the status of her Chapter 13 payment plan, but admits that she knew her payments towards the Chapter 13 plan were delinquent when she was interviewed by the investigator. She told him that she was current on her payment plan despite knowing this. Although, she claims she had no intent to mislead, she deliberately provided false information to the investigator.

I find none of the personal conduct mitigating conditions (PC MC) apply to Applicant's case. PC MC ¶ 17(a) (*the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts*) does not apply. Applicant never attempted to correct the misleading information provided to the investigator.

PC MC ¶ 17(c) (*the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment*) is not applicable. Applicant's admission that she misled the investigator casts doubt on her reliability, trustworthiness and good judgement. Her explanation that she intended to make payments towards the Chapter 13 to bring it current is not a sufficient justification for lying to the investigator. Applicants are required to provide truthful and correct information to the government during their background investigations.

Applicant did not meet her burden to mitigate the trustworthiness concerns raised by her deliberate misleading statement provided to the investigator conducting her background investigation. Guideline E is concluded against Applicant.

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. While Applicant has favorable performance reviews and is highly regarded by her supervisors and coworkers, trustworthiness concerns remain due to her deliberate misleading statements to the investigator conducting her background investigation, her history of financial irresponsibility, and her current unstable financial situation. Based on the evidence in the record, it is not clearly consistent with the national interest to grant Applicant eligibility for assignment to sensitive duties. Eligibility is denied.

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:

Paragraph 1. Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	Against Applicant

Paragraph 2. Guideline E:

AGAINST APPLICANT

Subparagraph 2.a:

Against Applicant

DECISION

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

Erin C. Hogan
Administrative Judge