



**DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of: )  
)  
) ADP Case No. 06-17325  
)  
)  
Applicant for Public Trust Position )

**Appearances**

For Government: Nichole Noel, Esquire, Department Counsel  
For Applicant: *Pro Se*

April 7, 2009

**Decision**

ANTHONY, Joan Caton, Administrative Judge:

I have carefully reviewed the administrative file, pleadings, and exhibits in this case and conclude that Applicant failed to mitigate security concerns under the Financial Considerations and Personal Conduct adjudicative guidelines. Eligibility for access to sensitive information is denied.

Applicant submitted her Questionnaire for Public Trust Positions (SF 85P) on June 12, 2005. On May 22, 2008, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing the trustworthiness concerns under the Financial Considerations and Personal Conduct adjudicative guidelines. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program*, dated Jan. 1987, as amended (Regulation), and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

On June 20, 2008, Applicant answered the SOR in writing. She requested that her case be determined on the record in lieu of a hearing. The Government compiled its File of Relevant Material (FORM) on January 6, 2009. The FORM contained documents identified as Items 1 through 10. By letter dated January 9, 2009, 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 received the file on January 20, 2009. She did not submit any additional information or file any objections within the required time period. The case was assigned to me for a decision on March 24, 2009.

### **Findings of Fact**

The SOR contains 22 allegations under Guideline F, Financial Considerations, and one allegation under Guideline E, Personal Conduct. (SOR ¶¶ 1.a. through 1.v; SOR ¶ 2.a.) In her Answer to the SOR, Applicant admitted all Guideline F allegations, and she admitted the Personal Conduct allegation. She also stated: "I would not knowingly falsify a statement [and] jeopardize my job." Her admissions are incorporated herein as findings of fact. (Item 1; Item 2.)

Applicant is 43 years old, married, and the mother of three daughters, ages 15, 18, and 20. In addition to supporting her children, Applicant is responsible for the support of one grandchild. She is employed as a certified pharmacy technician by a government contractor. (Item 4; Item 5.)

Applicant is a high school graduate. She has been married since 1991 and employed as a pharmacy technician since 1991. Applicant's husband works as a carpenter. He is an alcoholic. Applicant and her husband have been separated and reconciled many times during their marriage. In March 2008, Applicant reported that her husband had injured his hand at work in July 2007. As a result, he was unemployed and collecting Workman's Compensation. The injury required three surgeries. (Item 4; Item 5; Item 6.)

Applicant has a history of financial delinquencies. In March 2003, Applicant and her husband petitioned for Chapter 13 bankruptcy protection. They agreed to make payments of \$400 per month to the bankruptcy trustee. They made approximately three payments before concluding they could not afford to continue. The Chapter 13 bankruptcy was dismissed before confirmation. (SOR ¶ 1.a; Item 6; Item 7.)

The SOR alleged, and Applicant admitted, that she owed approximately \$189,346 in delinquent debt to 21 creditors. Twelve of the debts are delinquencies arising between 2000 and 2003. Three additional debts were placed in collection status in 2001, 2005, and 2006. Two additional debts were placed in charged-off status in 2001 and 2002. Moreover, Applicant is responsible for two judgments, entered against her in 2001 and 2002, a home foreclosure in 2002, and a state tax lien, filed in January 2006. (Item 1.)

In an interview with an authorized investigator, Applicant said her husband handled the family's finances and was responsible for paying their bills. She attributed the foreclosure and her many financial delinquencies to her husband's alcoholism, unstable work habits, and financial irresponsibility. She stated that her husband neglected to timely file their state and federal income taxes, which resulted in tax liens. She provided a copy of her earning statement for December 2007 showing a bi-weekly wage garnishment of \$105 in favor of the federal government for unpaid federal taxes. (Item 1; Item 5 at 12; Item 6 at 4.)

In response to DOHA interrogatories, Applicant stated she had an agreement with the Internal Revenue Service to satisfy delinquent federal taxes. In her answer to the SOR, Applicant stated that she planned to file for Chapter 7 bankruptcy protection at some unspecified time. (Item 2; Item 5.)

Applicant executed a SF-85P on June 12, 2005. In response to Question 22a on the SF-85P, she reported her 2003 Chapter 13 bankruptcy filing. Question 22b on the SF-85P reads: "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. The SOR alleged that Applicant deliberately falsified the SF-85P by failing to report 18 financial delinquencies, which remained unresolved as of January 7, 2008. (Item 4.)

In her answer to the SOR Applicant stated that she did not understand Question 22b. She stated that she thought the question referred to monthly household bills. (Item 2.)

In an interview with an authorized investigator in July 2007, Applicant reported that her net monthly income was \$2,389 and her husband's net monthly income was \$2,320, for a total net monthly household income of \$4,709. She listed her monthly fixed expenses as follows: rent: \$1,015; groceries: \$643; clothing: \$100; utilities: \$308; car expenses: \$229; medical expenses: \$25; and miscellaneous expenses: \$250. She reported one monthly household debt, an automobile loan of \$1,000. She stated she paid \$250 a month on the auto loan. She reported as assets two vehicles valued at \$2,000. Her monthly remainder was \$1,899. (Item 6 at 6.)

Nothing in the record suggests that Applicant has pursued or received financial credit counseling.

### **Policies**

Positions designated as ADP I and ADP II are classified as "sensitive positions." (See Regulation ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3.) "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." (See Regulation ¶ C6.1.1.1.) The Deputy Under Secretary of Defense (Counterintelligence and Security) Memorandum, dated November 19, 2004, indicates trustworthiness

adjudications will apply to cases forwarded to DOHA by the Defense Security Service and Office of Personnel Management. Department of Defense contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination may be made. (See Regulation ¶ C8.2.1.)

When evaluating an applicant's suitability for a public trust position, the administrative judge must consider the disqualifying and mitigating conditions in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's over-arching adjudicative goal is a fair, impartial and common sense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to [sensitive] information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion as to obtaining a favorable trustworthiness decision.

A person who seeks access to sensitive information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to sensitive information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of sensitive information.

Section 7 of Executive Order (EO) 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *a/so* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## Analysis

### Guideline F, Financial Considerations

The trustworthiness concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

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 [sensitive] information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise trustworthiness concerns. Under AG ¶ 19(a), an "inability or unwillingness to satisfy debts" is potentially disqualifying. Similarly under AG ¶ 19(c), "a history of not meeting financial obligations" may raise security concerns. Applicant accumulated considerable delinquent debt and was unable or unwilling to pay her financial obligations. The evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate trustworthiness concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where "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." Applicant's financial delinquencies arose in about 2000 and 2001. In 2002, her home went into foreclosure, and she continued to accumulate debt. In 2006, a tax lien was filed against her by her state of residence. As of January 7, 2008, Applicant had failed to pay or settle the delinquent debts alleged in the SOR.

While Applicant's financially delinquent behavior began several years ago, it continues unresolved at the present time, is likely to recur, and casts doubt on her current reliability, trustworthiness, and good judgment. Accordingly, I conclude that AG ¶20(a) does not apply to the facts of Applicant's case.

Under AG ¶ 20(b), it may be mitigating where "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." As noted above, Applicant's financial problems arose in 2000 and 2001 and have continued for the past eight years. Her husband, a carpenter, is an alcoholic and has been frequently unemployed, most recently after an injury to his hand in 2007. He has been irresponsible in handling the family finances. During a substantial part of the time she had financial delinquencies, Applicant was steadily employed. While her husband's alcoholism, unemployment, and financial irresponsibility might have been beyond

Applicant's control, she offered no explanation for her failure to contact her creditors and to resolve or settle her financial delinquencies over a period of many years. I conclude that she failed to act responsibly in identifying and resolving her substantial debts. I find that AG ¶ 20(b) applies only in part as a factor for consideration in this case.

Evidence that "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" is potentially mitigating under AG ¶ 20(c). Similarly, AG ¶ 20(d) applies where the evidence shows "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." Applicant has not received financial counseling. Even though she had a monthly net remainder, she failed to use those resources to pay her delinquent debt. Accordingly, I conclude that AG ¶ 20 (c) does not apply to the facts of Applicant's case. Because she has not made good-faith efforts to pay or resolve her delinquent debts, AG ¶20 (d) does not apply to the facts of her case. AG 20(e) is also inapplicable.

### **Guideline E, Personal Conduct**

AG ¶ 15 explains why personal conduct is a security 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.

When Applicant completed and signed her SF-85P in June 2005, she responded "no" to a question asking if she was 180 days delinquent on any loan or financial obligation. The SOR alleged that Applicant's response to the financial question on her SF-85P showed she had deliberately falsified material facts by failing to admit and disclose numerous delinquent debts. Applicant stated she misunderstood the question and thought it related to her monthly household obligations.

This information raises a security concern under AG ¶ 16(a), which reads as follows: "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, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities."

Applicant's disqualifying personal conduct might be mitigated if "the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts." AG ¶17(a).

Applicant did not make good-faith efforts to correct the omissions before being confronted with the facts. She denied her answer constituted deliberate falsification, and she offered no explanation for her failure to acknowledge or report on her SF-85P long-standing financial delinquencies that totaled over \$189,000.

Applicant was aware of her financial problems in 2003 when she and her husband filed for Chapter 13 bankruptcy protection. She was also aware of their inability after about four months to pay \$400 each month to the bankruptcy trustee, resulting in the dismissal of their Chapter 13 petition in September 2003. Based on her on-going financial problems, she knew of her delinquent debts when she executed her SF-85P in June 2005. I conclude that her falsification in response to Question 20b was deliberate.

### **Whole Person Concept**

Under the whole person concept, the administrative judge must evaluate an applicant's eligibility for a public trust position by considering the totality of the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (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 extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent 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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a public trust position must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant's husband is an alcoholic, frequently unemployed, and irresponsible with money. Applicant has lived with this situation for many years. She has been steadily employed since 1991. However, despite her own steady income and a monthly remainder, she failed to budget her resources to satisfy her many delinquent debts, which now total over \$189,000.

Applicant's delinquent debt is substantial and on-going. She has not sought financial counseling, and she provided no evidence that she understood the seriousness of her financial vulnerability or how to repair it. She provided no evidence that she knew how to avoid financial difficulties in the future. She provided no evidence that she had taken any action to pay even the smallest of her delinquent debts.

Applicant may find it beneficial to seek professional financial counseling and legal advice about resolving her debts and acquiring financial stability in the near term. She

can reapply for a security clearance one year after the date that this decision becomes final. If she wishes, she can produce new evidence that addresses the Government's current security concerns.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a public trust position. For all these reasons, I conclude Applicant failed to mitigate the trustworthiness concerns arising from her financial delinquencies and personal conduct.

### **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
Subparagraphs 1.a through 1.v:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a public trust position. Eligibility for access to sensitive information is denied.

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JOAN CATON ANTHONY  
Administrative Judge