

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant incurred 20 delinquent debts totaling more than \$27,000 as a result of her unemployment from October 2001 to April 2004. Evidence presented at the hearing established that nine debts were paid, and five were unpaid. She testified that six additional debts were paid but produced no evidence of payment. She did not disclose the debts on her application for a trustworthiness determination, but presented evidence that she had been overseas for a substantial time and was unaware of her credit history. She refuted the allegations of falsifying her application, but she has not mitigated trustworthiness concerns based on financial considerations. Clearance is denied.

CASENO: 06-17672.h1

DATE: 08/23/2007

DATE: August 23, 2007

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In re:)	
)	
-----)	ADP Case No. 06-17672
SSN: -----)	
)	
Applicant for Trustworthiness Determination)	
_____)	

**DECISION OF ADMINISTRATIVE JUDGE
LEROY F. FOREMAN**

APPEARANCES

FOR GOVERNMENT

John B. Glendon, Esq., Department Counsel

FOR APPLICANT

Pro se

SYNOPSIS

Applicant incurred 20 delinquent debts totaling more than \$27,000 as a result of her unemployment from October 2001 to April 2004. Evidence presented at the hearing established that nine debts were paid, and five were unpaid. She testified that six additional debts were paid but produced no evidence of payment. She did not disclose the debts on her application for a trustworthiness determination, but presented evidence that she had been overseas for a substantial time and was unaware of her credit history. She refuted the allegations of falsifying her application, but she has not mitigated trustworthiness concerns based on financial considerations. Clearance is denied.

STATEMENT OF THE CASE

On September 28, 2006, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its preliminary decision to deny Applicant a favorable trustworthiness determination. This action was taken under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive); Department of Defense Regulation 5200.2-R, *Personnel Security Program* (Jan. 1987), as amended and modified (Regulation); and the revised adjudicative guidelines approved by the President on December 29, 2005, and implemented effective September 1, 2006 (AG). The SOR alleged security concerns raised under Guidelines F (Financial Considerations), E (Personal Conduct), and J (Criminal Conduct).

Applicant answered the SOR in writing on December 6, 2006 and elected to have a hearing before an administrative judge. The case was assigned to me on July 9, 2007, and heard on July 19, 2007, as scheduled. I kept the record open until August 6, 2007, to enable both sides to submit additional evidence. Department Counsel submitted additional evidence, and it has been admitted as Government Exhibit (GX) 6. Applicant did not submit any additional evidence. DOHA received the hearing transcript (Tr.) on July 30, 2007.

FINDINGS OF FACT

Applicant's admissions in her answer to the SOR and at the hearing are incorporated into my findings of fact. I make the following findings:

Applicant is a 52-year-old computer trainer. She worked for a defense contractor from November 2004 to June 2007, and she submitted her application for a trustworthiness determination during that period of employment. She also owns a business involved in computer training. The debt alleged in SOR ¶ 1.a arose when she was unable to pay the rent on her office space (Tr. 57).

Applicant is now working as an independent contractor, training employees of a private sector business. A previous employer has asked her to work on a defense contract as soon as she finishes her current 10-week project. Her current private-sector project does not require a clearance, but her previous (now future) employer requires her to have a clearance when she begins working on the defense contract. She has never held an ADP clearance.

Until October 2002, Applicant was the operations manager for a corporate staffing company, earning about \$65,000 per year. Her company went out of business as a result of the terrorist attacks on September 11, 2001, and she was unemployed until April 2004. In August 2004, she contacted a credit counseling service, but her job ended in October 2004, and she terminated her relationship with the service. Her failure to continue working with the credit counseling service is alleged in SOR ¶ 1.v. As a result of her periods of unemployment, she incurred 20 delinquent debts. The evidence regarding the debts alleged in the SOR is summarized in the following table.

SOR	Debt	Amount	Status	Record
1.a	Office rent	\$1,754	Paid.	GX 5; Tr. 91-92
1.b	Car repossession	\$7,811	Unpaid; creditor declined Applicant's offer of installment payments.	Tr. 61-62
1.c	Cell phone	\$1,410	Unpaid.	Tr. 64
1.d	Credit card	\$1,449	Unpaid.	Tr. 66-67
1.e	Damage to rental car	\$527	Disputed, but Applicant provided no documentation.	Tr. 67
1.f	Bad check	\$90	Applicant testified it was paid, but had no documentation.	Tr. 69-70
1.g	State taxes	\$579	Applicant testified it was paid, but had no documentation.	Tr. 70-71
1.h	Credit card	\$2,447	Paid.	GX 4 at 5; Tr 72
1.i	Furniture	\$3,380	Applicant testified she was making payments, but she had no documentation.	Tr. 73
1.j	Credit card	\$425	Paid.	GX 4 at 5; Tr. 75
1.k	Credit card	\$68	Paid.	Same as SOR ¶ 1.j
1.l	Computer	\$1,003	Applicant testified it was paid, but had no documentation.	Tr. 77
1.m	Telephone bill	\$136	Applicant promised to pay within two weeks.	Tr. 78
1.n	Bad check	\$106	Applicant testified it was paid, but had no documentation.	Tr. 78-79
1.o	Collection account	\$3,382	Same debt as SOR ¶ 1.i.	GX 4 at 4; Tr. 74
1.p	Cable box	\$133	Paid.	GX 4 at 5; Tr. 79-80

1.q	Credit card	\$1,296	Applicant testified it was paid, but had no documentation.	GX 4 at 5; Tr 82
1.r	Credit card	\$1,061	Settled.	GX 4 at 5; Tr. 83-84
1.s	Credit card	\$763	Settled.	GX 4 at 5; Tr. 83
1.t	Credit card	\$1,159	Settled.	GX 4 at 5; Tr. 83
1.u	Credit card	\$1,577	Paid.	GX 4 at 5; Tr. 84

Applicant incurred the cell phone debt in SOR ¶ 1.d when she opened an account for her former fiancé/companion. He repeatedly promised to settle the account but has not. The account has been unpaid since September 2003. At the hearing, Applicant promised to contact the creditor and settle the account (Tr. 64-65). She provided no post-hearing evidence of settlement.

Applicant disputed the debt arising from damage to a rental car (SOR ¶ 1.e). She denied causing any damage to the car. She provided no documentation of the dispute.

I kept the record open until August 6, 2007, to enable Applicant to provide documentation that the debts in SOR ¶¶ 1.f, 1.g, 1.i, 1.l, 1.m, 1.n, and 1.q were resolved. At the hearing, she promised to provide documentation, but I received nothing from her.

Applicant’s contract with her current employer required worldwide travel. She was working at various overseas locations, had been away from home for about six months, and had not seen her credit report when she completed her security clearance application. She depended on family members to forward her mail. She returned from overseas in June 2006. She denied intentionally omitting information about her debts from her application.

POLICIES

The adjudicative guidelines for security clearances are also used to make ADP trustworthiness determinations. 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. Regulation ¶ C8.2.1.

Positions designated as ADP I and ADP II are classified as “sensitive positions.” 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.” Regulation ¶ C6.1.1.1.

“The adjudicative process is an examination of a sufficient period of a person’s life to make an affirmative determination that the person is an acceptable security risk.” AG ¶ 2(a). Each eligibility determination must be a fair, impartial, and commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the adjudicative guidelines. An

administrative judge should consider: (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. *Id.*

In security clearance cases, the government must initially present substantial evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information. Directive ¶ E3.1.14. "Substantial evidence" is "more than a scintilla but less than a preponderance." *See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 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. These same burdens of proof apply to trustworthiness determinations for ADP positions.

CONCLUSIONS

Guideline F: Financial Considerations

The concern under this guideline is as follows: "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 classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds." AG ¶18.

A disqualifying condition under AG ¶ 19(a) is raised where there is an "inability or unwillingness to satisfy debts." AG ¶ 19(c) is raised when there is "a history of not meeting financial obligations." Applicant's financial history is sufficient to raise AG ¶¶ 19(a) and 19(c).

AG ¶ 19(b) is a two-pronged condition that is raised where there is "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." This condition is not raised, because there is no evidence of frivolous or irresponsible spending. Applicant's history of delinquent debts began when she lost her job.

AG ¶ 19(e) is raised when there is "consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis." This condition is not raised. Applicant appears to have been living within her means when she incurred the debts. When she lost her job, she was no longer able to pay them.

AG ¶ 19(g) is raised by “failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.” Although applicant owes the state taxes alleged in SOR ¶ 1.g, the record reflects that she filed a return, and there is no evidence of fraud. I conclude AG ¶ 19(g) is not raised.

Since the government produced substantial evidence to raise the disqualifying conditions in AG ¶¶ 19(a) and 19(c), the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it is never shifted to the government. *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

Security concerns based on financial problems can be mitigated by showing that “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.” AG ¶ 20(a). This condition is not established because Applicant had multiple delinquent debts, some of which are still unresolved.

Security concerns under this guideline also can be mitigated by showing that “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.” AG ¶ 20(b). Both prongs, i.e., conditions beyond the person’s control and responsible conduct, must be established. Applicant’s loss of employment established the first prong. However, she returned to the work force almost three years ago and still has not resolved the debts alleged in SOR ¶¶ 1.b, 1.c, 1.d, and 1.m. She promised to provide documentation showing resolution of the debts alleged in SOR ¶¶ 1.f, 1.g, 1.i, 1.l, 1.n, and 1.q; but she provided nothing, even though the record was kept open to enable to do so. I conclude the second prong of AG ¶ 20(b) is not established.

Security concerns under this guideline also can be mitigated by showing that “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” AG ¶ 20(d). Applicant resolved several of her delinquent debts, but others remain unresolved. Her failure to take advantage of the opportunity to present post-hearing evidence suggests a lack of a sense of urgency in righting her financial ship. I conclude this condition is not established.

Security concerns under this guideline also can be mitigated by showing “the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.” AG ¶ 20(e). Applicant testified that she disputed the damage to a rental car alleged in SOR ¶ 1.e, but she offered no documentation of the dispute and no evidence of her actions to resolve the issue. This condition is not established.

The record reflects that the debts alleged in SOR ¶¶ 1.i and 1.o are the same debt. When the same conduct is alleged twice in the SOR under the same guideline, one of the duplicative allegations should be resolved in Applicant’s favor. *See* ISCR Case No. 03-04704 (App. Bd. Sep. 21, 2005) at 3 (same debt alleged twice). Accordingly, I resolve SOR ¶ 1.o. in Applicant’s favor.

Guideline E: Personal Conduct

The concern under this guideline is as follows: “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.” AG ¶ 15.

The relevant disqualifying condition in this case is “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.” AG ¶ 16(a).

When a falsification allegation is controverted, as in this case, the government has the burden of proving it. An omission, standing alone, does not prove an applicant's state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant's state of mind at the time of the omission. *See* ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004) (explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004)).

Applicant's explanation for omitting mention of her delinquent debts on her application is plausible. Having considered all the evidence, heard her testimony, and observed her demeanor, I conclude she did not intentionally falsify her application. If her haphazard approach to her hearing in this case is any indication, the omissions from her application were more likely the product of haste and inattention than any intent to conceal or deceive. I conclude that AG ¶ 16(a) is not raised, and no other disqualifying conditions under this guideline are raised.

Guideline J: Criminal Conduct

The concern raised by criminal conduct is that it “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.” AG ¶ 30. Conditions that could raise a security concern and may be disqualifying include “a single serious crime or multiple lesser offenses.” AG ¶ 31(a).

It is a felony, punishable by a fine or imprisonment for not more than five years, or both, to knowingly and willfully make any materially false, fictitious, or fraudulent statement or representation in any matter within the jurisdiction of the executive branch of the government of the United States. 18 U.S.C. § 1001. Security clearances are matters within the jurisdiction of the executive branch of the government of the United States. A deliberately false answer on a security clearance application is a serious crime within the meaning of Guideline J. For the reasons set out under Guideline E above, I conclude Applicant did not violate 18 U.S.C. § 1001. No disqualifying conditions under this guideline are raised.

Whole Person Analysis

In addition to considering the specific disqualifying and mitigating conditions under each guideline, I have also considered the general adjudicative guidelines in the Regulation. I have

considered: (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 applicant'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. AG ¶ 2(a)(1)-(9).

Applicant is a mature, articulate, well-educated adult. At the hearing, she presented herself as a high-energy, fast-moving, multitasking woman. She has good intentions, but has not expended the time and attention required to repair her bad credit. She remains vulnerable to pressure, coercion, exploitation, or duress.

After weighing the disqualifying and mitigating conditions under Guidelines F, E, and J, and evaluating all the evidence in the context of the whole person, I conclude Applicant has rebutted the allegations under Guidelines E and J, but she has not mitigated the trustworthiness concerns based on financial considerations. Accordingly, I conclude she has not carried her burden of showing that it is clearly consistent with the interests of national security to grant her a favorable trustworthiness determination.

FORMAL FINDINGS

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

Paragraph 1. Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	For 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:	Against Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	For Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	Against Applicant
Subparagraph 1.n:	Against Applicant
Subparagraph 1.o:	For Applicant
Subparagraph 1.p:	For Applicant
Subparagraph 1.q:	Against Applicant
Subparagraph 1.r:	For Applicant
Subparagraph 1.s:	For Applicant
Subparagraph 1.t:	For Applicant

Subparagraph 1.u:	For Applicant
Paragraph 2. Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant
Paragraph 3. Guideline J:	FOR APPLICANT
Subparagraph 3.a:	For Applicant

DECISION

In light of all of the circumstances 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.

LeRoy F. Foreman
Administrative Judge