

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant has approximately 32 delinquent debts, an approximate total of \$33,433. A Chapter 13 bankruptcy filed in January 2001 was dismissed in May 2004 for failure to make plan payments. Applicant's debts are caused, in part, by a lack of medical insurance, periods of unemployment, and her husband's inability to work. Personal conduct concerns were mitigated because Applicant's failure to list all of her delinquent debt on her trustworthiness application was not material in that she listed her Chapter 13 bankruptcy, putting the government on notice of her financial problems. She failed to mitigate the trustworthiness concerns raised under financial considerations since she provided no plan as to how she was going to resolve her delinquent debts. Applicant's eligibility for assignment to a sensitive position is denied.

CASENO: 06-17862.h1

DATE: 04/27/2007

DATE: April 27, 2007

_____ )	
In re: )	
)	
----- )	ADP Case No. 06-17862
SSN: ----- )	
)	
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 has approximately 32 delinquent debts, an approximate total of \$33,433. A Chapter 13 bankruptcy filed in January 2001 was dismissed in May 2004 for failure to make plan payments. Applicant's debts are caused, in part, by a lack of medical insurance, periods of unemployment, and her husband's inability to work. Personal conduct concerns were mitigated because Applicant's failure to list all of her delinquent debt on her trustworthiness application was not material in that she listed her Chapter 13 bankruptcy, putting the government on notice of her financial problems. She failed to mitigate the trustworthiness concerns raised under financial considerations since she provided no plan as to how she was going to resolve her delinquent debts. Applicant's eligibility for assignment to a sensitive position is denied.

## STATEMENT OF CASE

On August 26, 2005, Applicant submitted an application for a position of public trust, an ADP I/II/III position. 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").<sup>1</sup> On September 22, 2006, 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 of the revised Adjudicative Guidelines (AG) issued on December 29, 2005, and implemented by the Department of Defense effective September 1, 2006.

In a sworn statement dated November 13, 2006, Applicant responded to the SOR allegations and elected to have her case decided on the written record, in lieu of a hearing. Department Counsel submitted the government's file of relevant material (FORM) on December 14, 2006. The FORM was mailed to Applicant on December 18, 2006, and received on December 28, 2006. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant responded on January 16, 2007. The case was assigned to me on February 22, 2007.

On March 7, 2007, it was discovered Applicant was not sent a copy of the revised AG, effective September 1, 2006. On March 7, 2007, I issued an order sending Applicant a copy of the revised AG, effective September 1, 2006 and gave her the opportunity to submit additional documents and/or comments within 30 days upon receipt of the revised AG. She received a copy of the revised adjudicative guidelines on March 16, 2007. She forwarded additional comments on April 9, 2007, which were received on April 20, 2007.

## FINDINGS OF FACT

In her SOR response, Applicant denies the allegations in SOR ¶¶ 1.n, 1.ff, 1.ii, and 2.a and admits 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 27-year-old woman employed with a Department of Defense contractor who is seeking a position of public trust. She has been married since August 1995 and has one child, age 11.<sup>2</sup>

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<sup>1</sup> 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.

<sup>2</sup> Item 4.

On August 26, 2005, Applicant completed a public trust position application (SF 85-P).<sup>3</sup> In response to question "22a. Your Financial Record - 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 answered "Yes" and listed that she had filed for Chapter 13 bankruptcy in January 2001. In May 2004, the Chapter 13 was dismissed due to her failure to make payments on the plan.<sup>4</sup>

In response to question "22b. 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, "Yes" and listed two hospital bills. Her background investigation revealed 34 delinquent accounts with a total approximate balance of \$33,433.<sup>5</sup> Out of these accounts, 26 accounts were over 180 days delinquent.<sup>6</sup>

The delinquent accounts included a \$2,917 account delinquent since February 2000 (SOR ¶ 1.b); a \$396 account placed for collection in May 2000 (SOR ¶ 1.c); a \$608 judgment entered in August 2000 (SOR ¶ 1.d); a \$5,099 account charged off in September 2000 (SOR ¶ 1.e); a \$10,252 delinquent account related to a vehicle repossession in November 2000 (SOR ¶ 1.f); a \$5,099 account charged off in February 2001 (SOR ¶ 1.g); a \$1,083 account placed for collection in February 2001 (SOR ¶ 1.h); a \$74 account placed for collection in June 2002 (SOR ¶ 1.i); a \$45 account placed for collection in June 2002 (SOR ¶ 1.j); a \$64 account placed for collection in August 2002 (SOR ¶ 1.k); a \$195 account placed for collection in September 2002 (SOR ¶ 1.l); a \$144 satellite television account placed for collection in October 2002 (SOR ¶ 1.m); a \$925 account placed for collection in July 2003 (SOR ¶ 1.n); a \$164 account placed for collection in November 2003 (SOR ¶ 1.o); a \$1,850 home gift account placed for collection in January 2004 (SOR ¶ 1.p); a \$395 account placed for collection in February 2004 (SOR ¶ 1.q); a \$71 account placed for collection in February 2004 (SOR ¶ 1.r); a \$71 account placed for collection in February 2004 (SOR ¶ 1.s); a \$126 furniture store account delinquent since May 2004 (SOR ¶ 1.t); a \$180 account placed for collection in May 2004 (SOR ¶ 1.u); a \$60 account placed for collection in May 2004 (SOR ¶ 1.v); a \$299 account placed for collection in July 2004 (SOR ¶ 1.w); a \$1,225 credit card account charged off in July 2004 (SOR ¶ 1.x); a \$14,046 account placed for collection in September 2004 (SOR ¶ 1.y); a \$48 account placed for collection in September 2004 (SOR ¶ 1.z); a \$58 account placed for collection in January 2005 (SOR ¶ 1.aa); a \$397 account placed for collection in February 2005 (SOR ¶ 1.bb); a \$300 account, placed for collection in February 2005 (SOR ¶ 1.cc); a \$722 account placed for collection in April 2005 (SOR ¶ 1.dd); a \$247 account placed for collection in April 2005 (SOR ¶ 1.ee); a \$108 account placed for collection in November 2005 (SOR ¶ 1.ff); a \$344 utility account placed for collection in December 2005 (SOR ¶ 1.gg); a \$999 credit card

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<sup>3</sup> Item 4.

<sup>4</sup> Response to FORM, dated January 16, 2007; Item 4; Item 5 at 1; Item 6 at 2.

<sup>5</sup> Items 5 and 6.

<sup>6</sup> SOR ¶¶ 1.a - 1.aa.

account closed in January 2006 (SOR ¶ 1.hh); and a \$173 telephone account placed for collection in February 2006 (SOR ¶ 1.ii).<sup>7</sup>

Applicant denies the debt alleged in SOR ¶ 1.n. She is not familiar with the debt. She claims the debt alleged in SOR ¶ 1.ff has been paid in full but provided no proof verifying that it was paid. She denies the telephone company debt alleged in SOR ¶ 1.ii. She still has an account with the telephone company and believes her phone would have been disconnected if the debt was valid. She provided a copy of her most recent phone bill indicating she is current on her account.<sup>8</sup> She indicates the debts alleged in SOR ¶¶ 1.f and 1.y are the same debt. She also indicates the debts alleged in SOR ¶¶ 1.e and 1.g are the same debt.<sup>9</sup> The credit reports reveal the same account numbers for these accounts.<sup>10</sup> The debts in SOR ¶¶ 1.f and 1.y and SOR ¶¶ 1.e and 1.g appear to be duplicates of each other. As such, I find for Applicant with respect to SOR ¶¶ 1.f and 1.g.

Many of the debts were included in Applicant's Chapter 13 bankruptcy. The bankruptcy was dismissed since Applicant stopped making payments on the plan. She claims they could no longer afford the payments. There is no evidence that she made any payments towards these accounts once the bankruptcy was dismissed due to lack of payments.<sup>11</sup>

In her response to the File of Relevant Material, Applicant indicates that she married her husband in 1995 at the age of 15. He was 18. They had their son that same year. In 1997, they purchased two cars in Applicant's name. They had good jobs at the time. In 1999, Applicant lost her accounting job. Her company was purchased by another company in another city. Her accounting position was deleted. Her husband lost his job a few months later. They returned their cars to the dealership because they could not afford the payments. She found a lesser paying job but they could not afford health insurance. As a result, they incurred a lot of hospital bills.<sup>12</sup>

Applicant's husband suffers from back problems and has been unable to work a steady job as a result. In February 2004, they both found jobs that paid well but still did not have health insurance. Applicant's company had health insurance but she declined health insurance because she thought it was too expensive. Her husband was not eligible for health insurance with his company until September 2004. In July 2004, her husband was severely injured in a car accident. They incurred a lot of medical expenses because they had no health insurance. Her husband has been

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<sup>7</sup> *Id.*

<sup>8</sup> Additional Comments received on April 20, 2007, March 25, 2007, phone bill.

<sup>9</sup> Item 3.

<sup>10</sup> Items 4 and 5.

<sup>11</sup> Response to FORM, dated January 16, 2007.

<sup>12</sup> *Id.*

unable to work due to his medical problems. He filed for disability in 2006 but the claim was denied. He is appealing.<sup>13</sup>

Applicant has no money left over to make payments towards her delinquent debts. She is the sole supporter of her family. She believes that she has demonstrated that she is trustworthy during her one year and five months of employment with her company. She indicates taking her job away will not help her situation. It will only make things worse.<sup>14</sup> In her April 20, 2007, submission Appellant indicated she talked with a couple attorneys regarding her debts. She was advised to file for Chapter 7 bankruptcy because she owes more than her yearly income. She intends to go through credit counseling in the future.<sup>15</sup>

Applicant did not try to hide her financial situation when filling out her trustworthiness application. Question 22b provided only two lines to list delinquent debts so she listed her two most recent debts. Later, when she was interviewed in conjunction with her background investigation, she fully disclosed the extent of debts and how she encountered financial problems.<sup>16</sup>

## 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.”<sup>17</sup> 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. The revised Adjudicative Guidelines (AG) set forth potentially disqualifying conditions (DC) and mitigating conditions (MC) 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 classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

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<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> Additional Response received on April 20, 2007.

<sup>16</sup> Item 3.

<sup>17</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).

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.

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.”<sup>18</sup> An administrative judge must apply the “whole person concept,” and consider and carefully weigh the available, reliable information about the person.<sup>19</sup> 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.<sup>20</sup>

Each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the adjudicative process factors listed in ¶ 6.3 of the Directive, and AG ¶ 2(a).

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.<sup>21</sup> Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts.<sup>22</sup> An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.”<sup>23</sup> Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.<sup>24</sup> The same rules apply to trustworthiness determinations for access to sensitive positions.

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<sup>18</sup> Directive, ¶ E2.2.1.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> Directive, ¶ E3.1.14.

<sup>22</sup> Directive, ¶ E3.1.15.

<sup>23</sup> ISCR Case No. 01-20700 at 3 (App. Bd. December 19, 2002).

<sup>24</sup> Directive, ¶ E2.2.2.

## CONCLUSIONS

### **Financial Considerations**

Based on all the evidence, Financial Considerations Disqualifying Condition (FC DC) ¶19(a) (*inability or unwillingness to satisfy debts*) and FC DC ¶19(c) (*a history of not meeting financial obligations*) apply to Applicant's case. Applicant has numerous delinquent debts with a total approximate balance of \$33,433. Many of these debts have been delinquent for several years. Based on her income and her husband's inability to work, she is unable to pay the debt.

I considered the Financial Considerations Mitigating Conditions (FC MC). Applicant has a significant amount of delinquent debt that remains unresolved. 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 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 financial problems began when she lost a well paying job in 1999. I also considered that her husband's health issues and his car accident in July 2004, prevented him from working on a steady basis. I considered the fact that Applicant incurred a lot of medical expenses since they had no health insurance. However, I also considered that Applicant opted not to enroll in her employer's health insurance program claiming it was too expensive. Her choice not to enroll in health insurance contributed to the added expenses incurred at the time of her husband's car accident. MC 3 applies, in part, but I give it less weight since one must consider whether the individual acted responsibly under the circumstances. There are explanations for Applicant's financial issues, but she has no current plan to resolve her financial situation.

FC MC ¶20(c) (*the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or under control*) does not apply. There is no evidence in the record indicating Applicant attended financial counseling. Although she attempted to resolve her financial situation by filing for Chapter 13 bankruptcy in January 2001, she failed to keep up with the payments on her Chapter 13 plan and her bankruptcy was dismissed in 2004. In her additional response received on April 20, 2007, she indicated that she plans to attend financial counseling in the future. Currently, all of the debt remains delinquent. Applicant's financial situation remains the same and 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 not applicable. Although she filed for Chapter 13 bankruptcy, she did not follow through with the payment plan. Applicant provided no evidence that she has taken steps to repay her delinquent creditors or resolve her accounts since her Chapter 13 was dismissed in May 2004. Since she failed to comply with the terms of her Chapter 13 repayment plan and has no plan for resolving her outstanding debts, I cannot conclude that she made a good-faith effort to resolve her debts.



Applicant has not mitigated the financial considerations trustworthiness concerns. 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 denies that she intentionally falsified material facts on a public trust application, dated August 26, 2005, in response to question 22b regarding whether she had delinquent debts that were over 180 days old. She answered, "yes" and listed two medical accounts but not did list her other delinquent debts (SOR ¶¶ 1.b through 1.cc). She explained that she did not list all of the debts because there were only two lines on the trustworthiness application to list debts so she listed her two most recent debts. She fully discussed all of her debts when she was interviewed by the OPM investigator conducting her background investigation. I find she did not intend to hide her financial situation from the government. In response to question 22a on the same public trust application, she listed the fact that she filed for Chapter 13 bankruptcy in January 2001. Although she was not thorough when listing her specific delinquent debts, she gave the federal government notice that she had financial problems when she indicated that she filed for Chapter 13 bankruptcy. I find Applicant had no intent to deliberately falsify her trustworthiness application by withholding the extent of her delinquent debt. Guideline E is decided for 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. Applicant has failed to mitigate the trustworthiness concern raised by her extensive delinquent debt. 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:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	Against Applicant
Subparagraph 1.n:	Against Applicant
Subparagraph 1.o:	Against Applicant
Subparagraph 1.p:	Against Applicant
Subparagraph 1.q:	Against Applicant
Subparagraph 1.r:	Against Applicant
Subparagraph 1.s:	Against Applicant
Subparagraph 1.t:	Against Applicant
Subparagraph 1.u:	Against Applicant
Subparagraph 1.v:	Against Applicant
Subparagraph 1.w:	Against Applicant
Subparagraph 1.x:	Against Applicant
Subparagraph 1.y:	Against Applicant
Subparagraph 1.z:	Against Applicant
Subparagraph 1.aa:	Against Applicant
Subparagraph 1.bb:	Against Applicant
Subparagraph 1.cc:	Against Applicant
Subparagraph 1.dd:	Against Applicant
Subparagraph 1.ee:	Against Applicant
Subparagraph 1.ff:	Against Applicant
Subparagraph 1.gg:	Against Applicant
Subparagraph 1.hh:	Against Applicant
Subparagraph 1.ii:	Against Applicant

Paragraph 2. Guideline E: FOR APPLICANT

Subparagraph 2.a: For 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