

KEYWORD: Financial; Personal Conduct; Criminal Conduct

DIGEST: Applicant, a single parent, obtained credit cards to purchase merchandise and incurred medical bills while a college student. She then ignored payment of her bills. She has matured since her college graduation six years ago. In the last year, she assumed responsibility for payment of her delinquent debt. She has systematically paid her debts, one or two at a time. She did not intentionally falsify her answers on her SF-85P. She has mitigated the government's concerns regarding her finances. The government did not establish its case under Guidelines E and J. Eligibility is granted.

CASENO: 06-17864.h1

DATE: 04/30/2007

DATE: April 30, 2007

In re:)	
)	
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SSN: -----)	ADP Case No. 06-17864
)	
Applicant for Public Trust Position)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
MARY E. HENRY**

APPEARANCES

FOR GOVERNMENT

Richard Stevens, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, a single parent, obtained credit cards to purchase merchandise and incurred medical bills while a college student. She then ignored payment of her bills. She has matured since her college graduation six years ago. In the last year, she assumed responsibility for payment of her delinquent debt. She has systematically paid her debts, one or two at a time. She did not intentionally falsify her answers on her SF-85P. She has mitigated the government's concerns regarding her finances. The government did not establish its case under Guidelines E and J. Eligibility is granted.

STATEMENT OF CASE

On November 7, 2004, 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").¹ On November 29, 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), Guideline E (Personal Conduct), and Guideline J (Criminal Conduct).

In a sworn statement dated December 28, 2006, Applicant responded to the SOR allegations and requested a hearing. DOHA assigned this case to me on February 8, 2007, and issued a notice of hearing on March 2, 2007. At the hearing on March 21, 2007, Applicant indicated that she received the notice of the hearing 15 days prior to the hearing. I conducted the hearing as scheduled.² The government submitted seven exhibits (GE) which were marked and admitted into the record as GE 1-7, without objection. Applicant submitted 16 exhibits (App Ex), which were marked and admitted as App Ex A-P, without objection. Applicant testified on her own behalf. DOHA received the hearing transcript (Tr.) on April 10, 2007.

FINDINGS OF FACT

In her SOR response, Applicant admits to all the SOR allegations under Guideline F, except subparagraphs 1.p and 1.q. She denies all of the allegations under Guidelines E and J. 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.

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.

²Tr. at 11.

Applicant, a 29-year-old woman employed as a claims processor and project leader for a Department of Defense contractor, seeks a position of public trust. She has worked for her employer for more than four years. She has a two-year-old daughter, for whom she provides support.³

Applicant graduated from high school in 1996. She attended college from 1996 through 2001, graduating with a Bachelor of Arts degree in 2001. As a college student, she obtained credit cards, which she used to purchase various items. She ignored paying the credit card bills, which are now more than seven years old. She also experienced some medical problems while in school and incurred bills, which she ignored and are many years delinquent. She based her attitude towards her paying her bills at this time on immaturity.⁴

After college graduation, she worked one year as a resident counselor for a child and family services organization. She left that position for her current job. Her co-workers describe her as professional, courteous, trustworthy, and a person of integrity and commitment. In her most recent evaluation, her employer rated her overall at meets expectations.⁵

A review of Applicant’s credit reports dated July 10, 2003, December 10, 2004, August 24, 2006, and the SOR shows 19 unpaid debts totaling \$8,635. The current status of these debts is as follows:⁶

SOR ¶	TYPE OF DEBT (COLLECTION DATE)	AMOUNT	CURRENT STATUS
1.a	Medical bill (2000)	\$ 65.00	Paid ⁷
1.b	Medical bill (2000)	\$ 137.00	Unpaid
1.c	Medical bill (2000)	\$ 48.00	Unpaid
1.d	Department store account (2001)	\$ 732.00	Payment Plan. Fully paid May 2007 ⁸
1.e	Medical bill (2001)	\$ 52.00	Paid ⁹

³GE 1 (Applicant’s security clearance application) at 1; Tr. at 36, 48-49.

⁴GE 1, *supra* note 3, at 2; Tr. at 37-38.

⁵App Ex A (January 2007 performance evaluation) at 4; App Ex B (Letter, dated March 13, 2007); App Ex C (Letter, dated March 18, 2007).

⁶GE 5 (Credit report, dated July 10, 2003); GE 6 (Credit report, dated December 10, 2004); and GE 7 (Credit report, dated August 24, 2006).

⁷App Ex P (Payment receipt from creditor, dated January 24, 2007).

⁸App Ex E (Letter dated February 7, 2007, February 28, 2007, copy of payment check).

⁹App Ex M (Copy of account statement from creditor, dated January 24, 2007 and copy of bank statement showing payment).

1.f	Credit card (2001)	\$1,263.00	Unable to locate information on account from creditor ¹⁰
1.g	Medical bill (2002)	\$ 215.00	Paid ¹¹
1.h	Retail store account (2002)	\$ 573.00	Paid ¹²
1.i	Telephone bill (2002)	\$ 249.00	Paid ¹³
1.j	Collection account (2002)	\$2,327.00	Negotiated settlement, payment to be begin July 2007 ¹⁴
1.k	Medical bill (2002)	\$ 192.00	Paid ¹⁵
1.l	Medical bill (2003)	\$ 351.00	Paid ¹⁶
1.m	Department store (2003)	\$ 392.00	Paid ¹⁷
1.n	Telephone bill (2003)	\$ 340.00	Unpaid, to pay in next three months ¹⁸
1.o	Medical bill (2003)	\$ 215.00	Same as allegation 1.g
1.p	Credit card (2003)	\$ 160.76	Paid ¹⁹
1.q	Telephone bill (2004)	\$ 634.00	Unpaid ²⁰
1.r	Telephone bill (2004)	\$ 297.00	Unpaid, to pay April 2007 ²¹

¹⁰App Ex H (Memo from Applicant).

¹¹App Ex L (Letter dated January 25, 2007 and copy of bank statement showing payment).

¹²App Ex D (Letter, dated March 1, 2007 and January 20, 2007, copy of payment check).

¹³App Ex J (Letters dated February 28, 2007 and March 6, 2007, copy of bank statement showing payment).

¹⁴App Ex N (Memo from Applicant)

¹⁵App Ex M (Copy of account statement from creditor, dated January 24, 2007 and copy of bank statement showing payment).

¹⁶*Id.*

¹⁷App Ex I (Letters dated January 20, 2007 and March 1, 2007, copy of payment check).

¹⁸App Ex K (Memo from Applicant).

¹⁹App Ex G (Correspondence from creditor in 2006) at 4.

²⁰App Ex O (memo from Applicant).

²¹*Id.*

1.s	Store account (2006)	\$ 392.00	Paid. Unable to locate delinquent account with creditor. ²²
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Applicant and her daughter live with her mother. She pays her mother \$230 a month in rent and pays all the necessary living expenses for them. In addition to her usual living expense, about a year ago, she started repaying her delinquent debts, one or two at a time. She receives no child support from her daughter’s father. During the course of her relationship with her daughter’s father, Applicant and he shared a cell phone service. The unpaid phone bill in allegation 1.q is that account. He refuses to pay the debt or any part of it. Applicant is trying to negotiate some payment from him. She realizes the importance of good credit and paying bills on time. She expressed a desire to be a good example for her daughter on this issue.²³

On December 12, 2002, Applicant completed her first questionnaire for a position of public trust (SF-85P). She answered “yes” to question 22b and listed one credit card debt. Subsequent to completing her application, she met with an investigator, who discussed her delinquent debts with her. She signed a sworn statement on November 5, 2003. She acknowledged all but three of the debts discussed and listed in her July 2003 credit report. She lacked financial resources at this time to repay these debts, most of which she incurred as an irresponsible college student.²⁴

Applicant completed a second SF-85P on November 8, 2004. She answered “no” to question 22b, which asked if she “was now over 180 days delinquent on any loan or financial obligation?” She did not list any debts discussed with the investigator in 2003, although she acknowledged talking with the investigator about her debts at the hearing. When answering this question, she did not think about past debts or retrieve a copy of her credit report and review it for old, unpaid debts. She considered only her current bills, which were timely.²⁵

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.”²⁶ In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and

²²App Ex F (Memo from Applicant); GE 5, *supra* note 6, shows this account as unpaid and has the account number listed in the memo. GE 7 and GE 6, *supra* note 6, at 2 indicate that at least one account referenced in this memo is closed. The other account is no longer listed and presumed paid.

²³Tr. at 38-39, 73-74.

²⁴GE 2 (Questionnaire for a Position of Public Trust, dated and signed on December 12, 2002) at 9; GE 3 (Applicant’s signed and sworn statement, dated November 5, 2003) at 1-5.

²⁵GE 2 (Interrogatories to Applicant and her answers, signed and sworn on October 6, 2006) at 6; Tr. at 40-42.

²⁶*Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).

procedures for safeguarding classified information and determining trustworthiness within the executive branch.

The revised Adjudicative Guidelines set forth disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. An administrative judge need not view the revised adjudicative guidelines as inflexible ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, are intended to assist the administrative judge in reaching fair and impartial common sense decisions. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the revised AG should be followed whenever a case can be measured against this policy guidance. In addition, each trustworthiness decision must be based on the relevant and material facts and circumstances, the whole-person concept, and the factors listed in the Directive. Specifically, these are: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (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 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.²⁷

The sole purpose of a trustworthiness determination is to decide if it is clearly consistent with the national interest to grant or continue an applicant's eligibility for a position of public trust.²⁸ The government has the burden of proving controverted facts.²⁹ The burden of proof is something less than a preponderance of the evidence.³⁰ Once the government has met its burden, the burden shifts to the applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against her.³¹ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.³² Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.³³ 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.

²⁷Directive, revised Adjudicative Guidelines (AG) ¶2(a)(1)-(9).

²⁸ISCR Case No. 96-0277 at 2 (App. Bd., July 11, 1997).

²⁹ISCR Case No. 97-0016 at 3 (App. Bd., December 31, 1997); Directive, Enclosure 3, ¶ E3.1.14.

³⁰*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

³¹ISCR Case No. 94-1075 at 3-4 (App. Bd., August 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.

³²ISCR Case No. 93-1390 at 7-8 (App. Bd. Decision and Reversal Order, January 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.

³³ Directive, ¶ E2.2.2.

It did not establish a *prima facie* case under Guideline E - Personal Conduct and Guideline J - Criminal Conduct.

Financial Considerations

Under Guideline F, the “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.) The credit reports reflect several old, unpaid debts, most of which applicant acknowledged. She incurred the majority of these debts when she was a college student. Because of the age of these debts, their delinquent status, and her past attitude towards debt payment, Applicant showed an inability or unwillingness to pay her debts. Based on the evidence of record, the government established the applicability of DC ¶ 19 (a) *inability or unwillingness to satisfy debts* and DC ¶ 19 (c) *a history of not meeting financial obligations*.

Applicant’s debt developed as a result of irresponsible financial behavior while a college student. She has not presented any evidence which indicates that her delinquent debts were the result of conditions beyond her control. MC ¶ 26 (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* does not apply.

Although Applicant never met with a financial counselor, she contacted most of the creditors to whom she owed money and made arrangements to pay her debts. She has paid many of her smaller debts in full. As her finances permit each month, she pays one or more of her remaining delinquent debts. She made arrangements to pay two of her debts on a monthly basis with one being currently paid, and the second debt repayment to begin in July 2007. She has acted in good faith to resolve her unpaid debts. She otherwise lives within her financial means. 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* and MC ¶ 20 (d) *the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts* apply. She is not required to be debt free; rather she must manage her income and expenditures in a reasonable and prudent manner, which she is doing. She provided sufficient evidence to mitigate the government’s concerns regarding her finances. Guideline F is found in favor of Applicant.

Personal Conduct

Under Guideline E, 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) Under DC ¶ 16 (a), the government established that Applicant omitted a material fact from her SF-85P when she answered “no” to question 22b. She denies, however, that she deliberately falsified her answer to this question. When a falsification allegation is controverted, the government has the burden of proving it. Proof of an omission, standing alone, does not establish or prove an applicant’s intent or 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 intent or state of mind at the time the omission occurred.³⁴ For DC ¶ 16 (a) *deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire* . . . to apply, the government must establish that Applicant's omission, concealment or falsification in her answer was deliberate.

Applicant credibly testified that she did not think about her old debts when completing the 2004 SF-85P application. Two years earlier, she admitted overdue debt when completing her SF-85P, and reviewed all her past due debts with the investigator. She did not attempt to hide this information at the time. In light of her admissions in 2002 and 2003, and the government's knowledge of these admitted debts, she had no realistic reason to conceal these debts when completing her more recent SF-85P. I find that she did not intentionally falsify her answer to question 22b. Guideline E is found in favor of Applicant.

Criminal Conduct

In light of my findings under Guideline E, the government cannot establish a violation of 18 U.S.C. § 1001 based on allegation 2.a. I find in favor of Applicant under Guideline J.

Whole Person Analysis

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 her 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.

As a college student, Applicant obtained credit cards to purchase items she wanted, then ignored paying the bills. She did the same with medical bills she incurred. She acted irresponsibly about her debts. Since graduating from college six years ago, she has matured. She has worked for the same company for over four years and is the sole provider for her young daughter. In the last year, she started repaying her very old delinquent debt. Because she cannot repay all her debt in one lump sum, she has chosen to repay one or two bills at a time. By this decision, she has systematically paid many of her bills. She negotiated two payment plans for larger debts, one which she is paying and one to begin payment shortly. She has assumed responsibility for her old debts, while remaining timely on her current bills.

The creditors for the unpaid bills in allegations 1.b, 1.c, 1.f, and 1.j of the SOR are barred from collecting these debts under the State in which she resides 3-year statute of limitations. *See* State Code.

³⁴*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)).

Ann. § 15-3-530.³⁵ Thus, she receives partial credit for resolution of her debt. The State Court of Appeals succinctly explained the societal and judicial value of application of the statute of limitations:

Statutes of limitations embody important public policy considerations in that they stimulate activity, punish negligence and promote repose by giving security and stability to human affairs. The cornerstone policy consideration underlying statutes of limitations is the laudable goal of law to promote and achieve finality in litigation. Significantly, statutes of limitations provide potential defendants with certainty that after a set period of time, they will not be ha[iled] into court to defend time-barred claims. Moreover, limitations periods discourage plaintiffs from sitting on their rights. Statutes of limitations are, indeed, fundamental to our judicial system.

Carolina Marine Handling, Inc. v. Lasch, 609 S.E.2d 548, 552 (Ct. App. 2005) (internal quotation marks and citations omitted).

Elimination of these delinquent debts through the statute of limitations has ended her potential vulnerability to improper financial inducements because she is no longer “financially overextended”, but it does not negate her past conduct in not paying her outstanding debts. To her credit, she has acted responsibly by paying many old bills barred from collection under the statute of limitations. She has also developed a payment plan for one very old bill. By so doing, she has demonstrated her ability to act responsibly for her old debts. In recent years, she has not incurred excessive unpaid debt and has curtailed her spending habits.

Applicant performs her duties well and is respected by her co-workers for her work ethic and integrity. I have weighed the mitigating factors, her change in attitude towards her finances, her assumption of responsibility for her old debt and her failure to list her debts in her most recent trustworthiness application. I find that the overwhelming weight of the evidence indicates that she is a person of integrity, who is trustworthy. She would not act in a manner which would harm her employer or the government. There is little likelihood she would violate these privacy rights because of her existing debt problems. I conclude she has mitigated the trustworthiness concerns pertaining to financial considerations. The personal conduct and criminal conduct concerns are not substantiated.

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:

SOR ¶ 1-Guideline F: Subparagraphs a-s:	FOR APPLICANT For Applicant
SOR ¶ 2-Guideline E: Subparagraph a:	FOR APPLICANT For Applicant

³⁵See ISCR Case No. 04-07360 at 2 (App. Bd. Sept. 26, 2006) (stating partial credit was available under FCMC 6 for debts being resolved through garnishment).

SOR ¶ 3-Guideline J:
Subparagraph a:

FOR APPLICANT
For Applicant

DECISION

In light of all of the evidence presented in this case, it is clearly consistent with the national interest to grant Applicant eligibility for assignment to sensitive duties. Eligibility is granted.

Mary E. Henry
Administrative Judge