

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant’s case in mitigation is missing evidence ins support of her claim that she is trying to pay the overdue bills. Hher partial payment of one listed debt in September 2006 represents a step in the right direction, but fails to meet her ultimate burden of persuasion that the financial guideline. Should be found in her favor. The personal conduct guideline is found against Applicant as well, because she offered insufficient evidence2 for me to conclude she did not understand the question (debts over 180 days delinquent) on her security form in April 2005. Application for public trust position is denied.

CASENO: 06-18029.h1

DATE: 07/11/2007

DATE: July 11, 2007

In Re:	)	
	)	
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SSN: -----	)	ADP Case No. 06-18029
	)	
Applicant for Public Trust Position	)	
	)	

**DECISION OF ADMINISTRATIVE JUDGE  
PAUL J. MASON**

**APPEARANCES**

**FOR GOVERNMENT**

Candace L. Le’i, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's case in mitigation is missing evidence in support of her claim that she is trying to pay the overdue bills. Her partial payment of one listed debt in September 2006 represents a step in the right direction, but fails to meet her ultimate burden of persuasion that the financial guideline should be found in her favor. The personal conduct guideline is found against Applicant as well, because she offered insufficient evidence for me to conclude she did not understand the question (debts over 180 days delinquent) on her security form in April 2005. Application for public trust position is denied.

### **STATEMENT OF CASE**

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a trustworthiness position for Applicant. On February 1, 2007, under Executive Order 10865 and Department of Defense Directive 5200.6, with revised Adjudicative Guidelines, effective September 1, 2006, DOHA issued a Statement of Reasons (SOR) detailing the reasons for its security concerns raised under the financial considerations guideline (Guideline F), and the personal conduct guideline (Guideline E) of the Directive. In her answer dated February 23, 2007, Applicant requested a decision be made on the record in lieu of a hearing.

A copy of the Government's File of Relevant Material (FORM, the Government's evidence in support of the SOR) was sent to Applicant on March 28, 2007. She received the FORM on April 7, 2007. Applicant's response to the FORM was due by May 7, 2007. No response was received. The case was assigned to me for decision on June 13, 2007.

### **FINDINGS OF FACT**

The SOR alleges financial considerations and personal conduct. Applicant admitted in her answer (Item 3) seven of eight factual allegations under the financial guideline. She denied subparagraph 1.f. indicating she paid the debt on January 25, 2007. I find against Applicant under subparagraph 1.f. as she provided no documentation, e.g., a receipt, a bank statement, a statement from the creditor, to verify the debt had been paid. Applicant is 26 years old and employed as a Clerk Specialist III for a defense contractor. She seeks a trustworthiness position. She has held nine jobs between 1999 and March 2005.

The eight overdue debts, consisting of credit cards and utilities, total \$14,314.00. The debts were converted to a delinquent status between December 2003 and October 2004.

The only information pertaining to the debts listed in the SOR is found in Applicant's answers to interrogatories (Item 5), dated November 15, 2006, that is included in the FORM. The interrogatories specifically asked her to explain action taken to resolve her debts. The government asked her to document any payments and/or correspondence received from the collection agency or original creditor. She provided a documented payment of \$150.00 to SOR creditor 1.f. on September 24, 2006. She noted that SOR 1.f. was the only creditor she was able to make a payment to. I find

her next statement, "I've come into more financial responsibilities than stated before when I first started my interview regarding these debts," is her acknowledgment she had delinquent debts which she did not report in her public trust application (PTA, Item 4) in April 2005.

The last page of Item 5 also includes Applicant's estimate of her monthly expenses that total about \$1,755.00 a month, subtracted from her net monthly income of \$1,800.00 a month. Applicant concluded her response to Item 5 with a statement:

I'm trying my hardest to take care of my financial obligations, but with such a small pay scale and other necessities that I have to pay for living expenses is hard to do when most of your money goes to trying to live. I will continue to take care of these financial responsibilities to the best that I can, but for now, I can only take care of one thing at a time. I will send more information when I can to show you that I will be trying to resolve my debts. (Item 5)

Applicant submitted her PTA (Item 4) on April 5, 2005. In response to question 20 (over 180 days delinquent on any loan of financial obligation), she answered "NO." In her response to the SOR, subparagraph 2.a., Applicant provided two statements. Her first statement is "I admit to providing the truth when asked the question." Apparently, this statement constitutes her opinion of how she answered the allegations under paragraph 1.

Her second statement is, "I didn't understand the question, so I guess I admit at making this mistake. My apologies." I take her statement to mean that Applicant misunderstood the question. The volume of information that she furnished in the security application tells me she had a reasonable amount of time to complete the form. The four debts (subject matter of the allegation) became delinquent between December 2003 and October 2004. I do not find the omissions unintentional.

Applicant provided no character evidence regarding her job performance or her conduct away from the job. The only documentation of repayment of any of the creditors is the payment in September 2006 to SOR 1.f.

## **POLICIES**

Enclosure 2 of the Directive sets forth guidelines containing disqualifying conditions (DC) and mitigating conditions (MC) that should be given binding consideration in making security clearance determinations. These conditions must be considered in every case along with the general factors of the whole person concept. However, the conditions are not automatically determinative of the decision in any case nor can they supersede the Administrative Judge's reliance on his own

common sense.

### **Burden of Proof**

Initially, the government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualifies, or may disqualify, the applicant from being eligible for access to classified information. *See Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988) “[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant’s security suitability.” ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *See Egan*, 481 U.S. at 531; *see* Directive E2.2.2.

### **Financial Considerations**

The focus of this guideline is handling money matters in a financially responsible manner.

### **Personal Conduct (Guideline E)**

This guideline addresses conduct during the security investigation that involves questionable judgment, untrustworthiness or dishonesty.

### **CONCLUSIONS**

Financial accounts become delinquent<sup>1</sup> for one or two reasons. The first reason is negligence or oversight in not paying debts. The second reason is there are matters or events outside the person’s control that keep them from paying their debts. There are financial tools, e.g., counseling, consolidation plans, Chapter 7 bankruptcy, to help the debtor recover from financial trouble in a responsible manner. Documented efforts of contacting the creditor to advise them of the debtor’s plight may not seem important. On the contrary, the action shows the debtor is concerned about her indebtedness, and is making documented attempts to face her obligations in a responsible, mature manner. A recurring failure to pay debts places the person at risk of committing acts of poor judgment to generate funds. The two disqualifying conditions that raise security concerns include financial considerations (FC) disqualifying conditions (DC) 19.a. (*inability or unwillingness to satisfy debts*) and FC DC 19.c. (*a history of not meeting financial obligations*). FC DC 19.a. is

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<sup>1</sup> An account reaches a delinquent status when the debtor stops making payments as required under the contractual terms of the account.

applicable due to the fact eight debts totaling approximately \$14,314.00 have not been paid. FC DC 19.c. is applicable because there is a history of accounts becoming delinquent since 2003.

One or more of five mitigating conditions (MC) may apply to remove the security concerns associated with Applicant's indebtedness. However, whether analyzed individually or collectively, there is insufficient, underlying evidence to cast aside the security concerns brought on by Applicant's financial difficulties. 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 or good judgment*) does not mitigate since the eight debts are still delinquent, and there is no evidence demonstrating the underlying behavior leading to the delinquencies has changed.

FC MC 20.b. (*the conditions that resulted in the financial problem were largely beyond the person's control, and the individual acted responsible under the circumstances*) does not apply as there is no evidence of sudden loss of employment or marital discord. The fact that Appellant changed jobs nine times between 1999 and 2005 could be interpreted a few ways. Applicant has not provided any explanations for why she changed jobs, and I cannot speculate as to the reason for the job changes. Accordingly, I cannot assign any extenuating or mitigating weight to FC MC 20.b. FC MC 20.c. (*the person received or is receiving counseling and/or there are clear indications that the problem is being resolved or under control*) cannot be considered either because there is no evidence of counseling.

FC MC 20.d. (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) recognizes Applicant's partial payment to SOR 1.f. in September 2006. However, Applicant still owes the eight debts and has not provided any idea of how she intends to resolve the debts. Statements of intention are credible when they are followed by action. Without evidence showing a plan is underway to address the past due debts, Applicant has not persuaded me that the FC guidelines should be found in her favor.

The personal conduct (PC) guideline refers to dishonesty or questionable judgment exhibited during the security investigation. Applicant's omission of her past due debt information from her PTA falls within PC DC 16.a. (*deliberate omission or falsification of relevant facts from any personnel security questionnaire used to determine trustworthiness*). My finding is supported by (1) the plain meaning of the question, (2) the recency of the delinquent debts, and (3) the volume of information Applicant provided in most sections of the PTA, specifically the sections showing her employment history, and the places she lived. The PC guideline is found against Applicant.

The formal findings against Applicant under the FC and PC guidelines have included an evaluation of the circumstances of this case under the whole person concept found at paragraph 2.a., 2.b., and 2.c. of the Directive. Though Applicant incurred a few of the debts just after she reached 21, she has done extremely little to repay the debts. There is no evidence she has even contacted the creditors. The lack of counseling or a plan to eliminate the remaining overdue debts foreshadows continued financial problems in the future.

**FORMAL FINDINGS**

Paragraph 1 (Financial Considerations, Guideline F):	AGAINST THE APPLICANT
Subparagraph a.	Against the Applicant.
Subparagraph b.	Against the Applicant.
Subparagraph c.	Against the Applicant.
Subparagraph d.	Against the Applicant.
Subparagraph e.	Against the Applicant.
Subparagraph f.	Against the Applicant.
Subparagraph g.	Against the Applicant.
Subparagraph h.	Against the Applicant.

Paragraph 2 (Personal Conduct, Guideline E):	AGAINST THE APPLICANT.
Subparagraph a.	Against the Applicant.

**DECISION**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant in a trustworthiness position. Application for public trust position is denied.

Paul J. Mason  
Administrative Judge