

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant incurred old, delinquent debt during her marriage. Much of the unpaid debt identified as a potential problem resulted from her estranged husband's financial decisions after they separated and the remainder from her inability to work for several years while caring for a seriously ill small child. With the exception of \$800, her old debt is barred from collection by the statute of limitations. She has mitigated the government's concerns about her finances. The government did not establish that she intentionally falsified her answers when completing her questionnaire for a position of public trust. Eligibility is granted.

CASENO: 06-19448.h1

DATE: 05/03/2007

DATE: May 3, 2007

In re:)	
)	
)	
-----)	ADP Case No. 06-19448
SSN: -----)	
)	
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 incurred old, delinquent debt during her marriage. Much of the unpaid debt identified as a potential problem resulted from her estranged husband's financial decisions after they separated and the remainder from her inability to work for several years while caring for a seriously ill small child. With the exception of \$800, her old debt is barred from collection by the statute of limitations. She has mitigated the government's concerns about her finances. The government did not establish that she intentionally falsified her answers when completing her questionnaire for a position of public trust. Eligibility is granted.

STATEMENT OF CASE

On September 27, 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 December 14, 2006, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision. The SOR, which is in essence the administrative complaint, alleged trustworthiness 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. DOHA recommended the case be referred to an administrative judge to determine whether eligibility for a position of trust should be granted, continued, denied, or revoked. On January 2, 2007, Applicant submitted a notarized, sworn statement in response to the allegations. She 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 22, 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 five exhibits (GE), which were marked and admitted into the record as GE 1-5 without objection. Applicant submitted four exhibits (App Ex), which were marked and admitted as App Ex A-D without objection. Applicant testified on her own behalf. I held the record open until April 12, 2007, to allow Applicant to submit further documents, which she did. Applicant submitted 11 additional documents, which were marked and admitted as App Ex E-O without objection. DOHA received the hearing transcript (Tr.) on April 10, 2007.

FINDINGS OF FACT

In her SOR response, Applicant admitted to the SOR allegations under Guideline F, subparagraphs 1.a-1.f and 1.k-1.m. She denied the remaining Guideline F allegations. She neither

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 8.

admitted nor denied the Guideline E allegation.³ 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, a 27-year-old woman, who works as a claims associate for a Department of Defense contractor, seeks a position of public trust. She has worked for her employer more than two years. Her employer recently required her to sign a confidentiality agreement, which states that if she discloses confidential information that she will be fired from her job and subjected to any and all remedies available under civil law.⁴

In 1999, Applicant married a young man in the military. They moved to Germany, where she gave premature birth to twins, a son and a daughter, in August 2000. In October 2001, she returned to the United States with the children. Her husband traveled with her, but returned to his duty station in Germany. She intended to rejoin him at his next duty station, but he called her to say he did not want to be married. Thereafter, she lived with her parents for almost two years before moving to her current location.⁵

Shortly after her return to the United States, Applicant learned that her daughter suffered from a life-threatening lung disease. The doctors diagnosed her daughter with idiopathic pulmonary hemosiderosis (bleeding into her lungs). Because of her daughter's illness, she did not work for two years. Her estranged husband did not voluntarily send her financial support after he returned to Germany. She eventually obtained assistance with procuring a regular monthly income allotment from his military pay. She also received medical care as a military dependent. At some later time, her estranged husband separated from the military, but she does not know when. Her income allotment and medical coverage then stopped.⁶

While in Germany, she and her husband purchased a car. Both signed the installment agreement. When she left Germany, her husband retained possession of the car. He took the car from Germany to his next duty station in Italy.⁷ When he left Italy, he left the car there. She does not know what happened to the car. She learned from the security investigator that her husband stopped making the monthly payments on the car and that an arrearage on this loan existed.⁸

Early in her marriage, Applicant and her husband incurred several credit accounts for jewelry and clothing, including the accounts listed in allegations 1.a-1.e of the SOR. Applicant timely paid these bills initially. Although she testified that she paid these bills until she left Germany, the credit

³Applicant's response to the SOR, dated January 2, 2007.

⁴GE 1 (Applicant's Questionnaire for Public Trust Position, dated September 27, 2004) at 1, 4; App Ex N (Confidentiality Agreement, dated February 1, 2007) at 1-2; Tr. at 15-16.

⁵Tr. at 15-16, 44-47.

⁶*Id.* at 15-16, 47-50.

⁷She understood that her husband would ship the car to her. He never did. Tr. at 30-31.

⁸*Id.* at 30-31, 44-45.

reports of record indicate that two bills were delinquent by late 2000 and the remaining three bills were delinquent by July 2001. She has not paid these bills since her return to the United States more than five years ago.⁹

Applicant incurred the three medical bills listed in allegations 1.f, 1.l and 1.m while a military dependent. She understood that the bills should have been paid by the insurance carrier covering her claims as a military dependent. She does not know why the bills were not paid. She, however, has not paid the bills, of which two are more than three years old. Currently, her employer provides her with medical insurance. Her daughter's ongoing pulmonary condition is stable and managed. The expenses related to her treatment are paid through medicaid.¹⁰

In 2004, a family court determined that her estranged husband should pay her child support in the amount of \$560 a month. Over the next year, he occasionally paid this amount or some much smaller amount. Since 2005, she has not received any child support from him. She filed for divorce in February 2007. She seeks custody of the children and child support.¹¹

Applicant submitted six earnings statements covering December 19, 2006 through March 11, 2007. She earns approximately \$2,088 a month in gross income, including overtime pay. Her net monthly pay averages \$1,537, including overtime. Her estimated monthly expenses total approximately \$1,700.¹²

Applicant denied the debts alleged in subparagraphs 1.g through 1.j, stating that these debts, which total more than \$32,000, belonged to her estranged husband. He accepted sole responsibility for these debts in a sworn affidavit, but did not provide any evidence of payment. Applicant has not paid either of the two remaining debts, one of which is four years old. She denied owing the other debt, which is alleged in allegation 1.n. While she was at work, the manager at her former apartment called the police because the manager thought an intruder had broken into Applicant's apartment. The police knocked the door down to enter her apartment. Now the property owner seeks payment for this damage, which Applicant disputes. Applicant has been unsuccessful in her attempts to contact anyone to resolve this problem. She recently participated in an employer sponsored 12-week class on managing her credit issues. She has not contacted any creditor to discuss repayment of her debts, as she does not have any money to pay her debts. She has no credit cards. The credit report does not reflect new unpaid debt in three years, except for the contested debt in allegation 1.n. and the medical bill she believed paid in allegation 1.m.¹³

When Applicant completed her SF-85P on September 27, 2004, she answered "no" to question 22b, which asked if she "was now over 180 days delinquent on any loan or financial

⁹GE 4 (Credit report, dated November 19, 2004); GE 5 (Credit report, dated August 29, 2006); Tr. at 27-29.

¹⁰GE 4, *supra* note 9; GE 5, *supra* note 9; Tr. at 29-33, 38-39.

¹¹App Ex D (Divorce papers); Tr. at 48-52.

¹²App Ex O (Earnings statements) at 1-6; Tr. at 39-41.

¹³App Ex A (Husband's sworn affidavit, dated February 9, 2007) at 1-3; App Ex C (Verification of course enrollment); Tr. at 27-34, 41, 68-69.

obligation?” She denied falsifying her answer at the hearing. She did not list any of her delinquent debts identified in her credit reports. She misread the question, which she indicates was her error. Because she misread the question, she did not understand the information being requested of her.¹⁴

Applicant regularly receives awards for her customer service. Her friends and co-workers describe her as a hard worker, loving and caring mother who acts very responsibly with her children, reliable, dependable, and honest. Her employer rated her twice as meets expectations; nonetheless, her performance evaluations indicate an improvement in her performance from her first rating period to her second rating period.¹⁵

Applicant applied for a house through Habit for Humanity. Habit for Humanity accepted her application, as she meet all the financial and volunteer requirements established under this program to qualify for a home. She is on a waiting list and anticipates a new home in a year or so. She expects her mortgage payment to be about one-half of her current rent and her electric bill to decrease.¹⁶

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.”¹⁷ 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. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. The adjudicative guidelines at issue in this case are:

Guideline F - Financial Considerations - An individual who is financially overextended is at risk of having to engage in illegal or unethical acts to generate funds to meet financial obligations. Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligation to protect classified or sensitive information. Behaving responsibly or irresponsibly

¹⁴GE 2 (Interrogatories to Applicant and her answers, signed and sworn on October 16, 2006) at 7; Tr. at 41, 60.

¹⁵App Ex B (Employment service recognition awards); App Ex F (Letter, dated March 23, 2007); App Ex H (Undated letter); App Ex I (Letter, dated March 28, 2007); App Ex J (Letter, dated April 4, 2007); App Ex K (Letter, dated April 5, 2007); App Ex L (Performance review, dated January 2006); App Ex M (Performance review, dated January 2007).

¹⁶App Ex E (Letter, dated April 10, 2007); App Ex G (Letter, dated March 30, 2007); Tr. at 42.

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

in one aspect of life provides an indication of how a person may behave in other aspects of life.

Guideline E - Personal Conduct - Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

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.¹⁸ An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person.¹⁹ 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.²⁰

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

CONCLUSIONS

¹⁸ Directive, ¶ E2.2.1.

¹⁹ *Id.*

²⁰ *Id.*

²¹ Directive, ¶ E3.1.14.

²² Directive, ¶ E3.1.15.

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

²⁴ Directive, ¶ E2.2.2.

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, It, however, did not establish a *prima facie* case under Guideline E - Personal 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 old, delinquent debts, most of which applicant acknowledged. She incurred the majority of these debts during her marriage. Because of the age of these debts and their delinquent status, 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 incurred most of her debt while married. Subsequent to her separation from her husband in 2001, her estranged husband refused to pay the car loan, a joint debt, even though he had the car. He also charged excessively on his military charge accounts, which were joint accounts. He acknowledged that he owes these debts, although he has not provided any evidence of payment. Applicant recently filed for divorce. She does not intend to remain married, thus the debt problems created by her estranged husband’s spending habits is not likely to reoccur. She does not use credit cards and lives austere. She is a reliable and dependable employee and a responsible parent. MC ¶ 20(a) *the behavior . . . occurred under such circumstances that it is unlikely to reoccur and does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment applies in part.*²⁵

The arrearage on some of Applicant’s older, unpaid debt continued because when her daughter first became seriously ill in 2001, she did not work for two years while she cared for her daughter. Her estranged husband refused to voluntarily provide child support for his children. Later, her estranged husband stopped making the monthly car payment, and left the car in Italy, unbeknownst to her. He also continued to incur credit debt on his military credit cards, which he has not paid. Since the car loan and the military credit cards were joint debts created by her estranged husband’s decisions, 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 applies.*

Applicant has not met with a financial counselor, but she has taken a credit counseling course offered by her employer to learn how to repay old debt and improve her credit rating. She, however, has not contacted her creditors to arrange payment of her debts, as she lacks any money to comply with any agreement. 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* do not apply. While she is not required to be debt free, she must manage her income and expenditures in a

²⁵See 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).

reasonable and prudent manner. At this time, she lives month to month. If she incurs any unexpected expenses, she does not have money to pay for any additional expenses. Her situation will improve in the next two years, once she moves into her new home, and if her estranged husband starts paying her child support. The fact that her finances most likely will improve in the future is not grounds to apply these mitigating conditions.

Applicant denied owing the debts alleged in paragraphs 1.g through 1.j and 1.n of the SOR. Her estranged husband has acknowledged that he owes the debts related to his military credit cards and the car repossession. As to the repair debt for the broken door, Applicant has not provided any documentation which reflects what challenges she made to this debt. MC ¶ 20 (e) *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* has some applicability.²⁶

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 sensitive information. Of special interest is any failure to provide truthful and candid answers during the trustworthiness process or any other failure to cooperate with the trustworthiness 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 denied, 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.²⁷ 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 misread this question, which was an error on her part. When discussing her debt issues with the investigator, she learned that her husband had not paid the car loan and other debts related to his military accounts. Thus, since she was unaware of these debts, she could not hide them from the government. Likewise, she did not attempt to hide her other debts. I find that she did not intentionally falsify her answer to question 22b. Guideline E is found in favor of Applicant.

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

²⁶The remaining financial considerations mitigating condition set forth in AG 20 (f) does not apply in this case.

²⁷See 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)).

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.

When she married, Applicant and her husband incurred credit debt, some of which they timely paid. Since her separation from him over five years ago, she has struggled to support herself and her children with the basic necessities of living. The record lacks any evidence that she resorted to illegal activities to obtain money to pay her bills. Her daughter suffers from a life-threatening illness. When this illness was first diagnosed, Applicant could not work. Now that her daughter's health is being managed, she works and earns enough money to keep her basic living expenses paid. She sought help with child support through the courts, but her estranged husband has refused to comply with the court order. She is again seeking the court's help in obtaining child support, income which would ease her financial problems if received.

The creditors for the unpaid bills, including store accounts, a car repossession, and medical bills, in allegations 1.a through 1.l of the SOR are barred from collecting these debts under the State in which she resides 3-year statute of limitations. *See* State Code. Ann. § 15-3-530.²⁸ 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[le]d 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". Applicant's inability to pay her bills resulted from unemployment when her daughter became seriously ill and her husband's spendthrift ways after their separation in 2001, not because she decided she did not want to pay her bills. As her daughter's condition stabilized, she returned to work. She has assumed full parenting responsibilities for her children. She is a reliable and dependable employee even with her responsibilities as a single parent with a chronically ill child. She pays her current bills and refuses to use credit cards. She has not incurred excessive unpaid debt in the last three or four years.

²⁸p. 7, n. 25.

Applicant performs her duties well and is respected by her co-workers for her reliability, dependability and honesty. Customers compliment her work. I have weighed the mitigating factors, the reasons for her debts, her current family situation, her efforts to maintain a home for her children, her estranged husband's acknowledgment of sole responsibility for \$32,000 of old debt, and the positive recommendations against her inability to pay her old debts, totaling approximately \$5,000. 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 the privacy rights she has agreed to protect because of her existing debt problems. I conclude she has mitigated the trustworthiness concerns pertaining to financial considerations. The personal conduct concern is 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-n:	FOR APPLICANT For Applicant
SOR ¶ 2-Guideline E: 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