

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant is a 38-year-old employee of a defense contractor seeking eligibility for a position of public trust. After her debts were discharged in bankruptcy, she accumulated more delinquent debt which she has not paid, or explained how she accumulated the delinquent debt. She did not list debts over 180 days past due on her application even though she knew about the debts. She has not mitigated security concerns for financial considerations and personal conduct. Eligibility for a position of public trust is denied.

CASENO: 06-22354.h1

DATE: 05/31/2007

DATE: May 31, 2007

In Re:  ----- SSN: -----  Applicant for Public Trust Position	) ) ) ) ) ) ) )	ADP No. 06-22354
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**DECISION OF ADMINISTRATIVE JUDGE  
THOMAS M. CREAN**

**APPEARANCES**

**FOR GOVERNMENT**  
Julie R. Edmunds, Esq., Department Counsel

**FOR APPLICANT**  
*Pro Se*

**SYNOPSIS**

\_\_\_\_\_ Applicant is a 38-year-old employee of a defense contractor seeking eligibility for a position of public trust. After her debts were discharged in bankruptcy, she accumulated more delinquent debt which she has not paid, or explained how she accumulated the delinquent debt. She did not list debts over 180 days past due on her application even though she knew about the debts. She has not mitigated security concerns for financial considerations and personal conduct. Eligibility for a position of public trust is denied.

### **STATEMENT OF THE CASE**

On December 29, 2006, the Defense Office of Hearing and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to deny an application for a position of public trust for Applicant. The action was taken under Department of Defense Regulation 5200.2-R, *Personnel Security Program* (January 1987), as amended (Regulation), and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), using the Revised Adjudicative Guidelines (AG), issued by the President on December 29, 2005, and implemented by the Department of Defense on September 1, 2006. The revised guidelines were provided to Applicant and she was aware that the case would be adjudicated under those guidelines. Applicant acknowledged receipt of the SOR on January 10, 2007. The SOR alleges security concerns under Guideline F (Financial Considerations), and Guideline E (Personal Conduct). Applicant answered the SOR in writing on January 23, 2007, admitting six and denying two of the factual allegations under Guideline F, and denying the factual allegation under Guideline E. She elected to have the matter decided on the written record in lieu of a hearing.

Department Counsel submitted the Government's written case on February 21, 2007. Applicant received a complete file of relevant material (FORM) on February 27, 2007, and was provided the opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. She did not provide any further information. The case was assigned to me on April 30, 2007.

### **FINDINGS OF FACT**

Applicant is a 38-year-old employee of a defense contractor who submitted a Questionnaire for Public Trust Position on December 26, 2005.<sup>1</sup> Subsequent investigation reveals that Applicant had a bankruptcy petition granted in 1996, and accumulated delinquent debt thereafter.<sup>2</sup>

Applicant admitted, and credit reports confirm, she filed a Chapter 7 bankruptcy petition in 1996. Her debts were discharged in August 1996.<sup>3</sup>

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<sup>1</sup>Item 4.

<sup>2</sup>Item 5; Item 6.

<sup>3</sup>Item 6, at 2.

Applicant admitted, and credit reports confirm, that she had accounts placed in collection in 2003 for \$164 to Time Warner, and for \$416 to AT&T. Applicant admits, and credit reports confirm, that an account of \$4,529 for rent due a landlord was placed for collection in December 2004. Applicant admits, and credit reports confirm, that she had a debt for \$3,430 charged off in November 2002, and placed for collection by Providian in November 2005. Applicant admits, and credit reports confirm, she has a debt of \$7,017 for the balance due on a car repossessed in December 2005. Applicant admits, and credit reports confirm, she has an account for \$433 with a cell phone company placed for collection in March 2006. Applicant presented no information concerning payments made on any of these accounts.<sup>4</sup>

Applicant denies a medical debt for \$318 placed for collection in May 2004. She stated she plans to inquire about the debt on her next visit to the doctor.<sup>5</sup> Applicant also denies a debt for \$51 placed for collection in November 2004. She is not sure of the debt since she has not received notification from the store or agency or an attempt to collect the debt.<sup>6</sup>

Applicant noted that at one time she had a two-income household. She claims her husband spent money outside household needs. She and her husband separated and then divorced, and she had to support the household on only her income. Her apartment was burglarized and items stolen before she had renter's insurance. She became homeless for a short time in 2004. She stated she has every intention of paying her delinquent debts, but due to her work and commuting schedule, she is unable to find a part-time job.<sup>7</sup> Applicant's Questionnaire for Public Trust Position shows she had almost continuous employment from March 1998 to present.<sup>8</sup>

Applicant answered "NO" to question 22(b) on her Questionnaire for Public Trust Position asking if she was now over 180 days delinquent on any loan or financial obligation. At the time, Applicant was more than 180 days delinquent on at least four debts. In response to the SOR, Applicant stated her student loan was in deferment and she was in the process of switching from one loan company to another. Her student loan is current and this is confirmed by credit reports. Her student loan is not listed in the SOR as an eligibility concern. She stated she did not blatantly lie concerning her debts when completing the form.

## 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 . . .

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<sup>4</sup>Items 3, 5, and 6.

<sup>5</sup>Item 3.

<sup>6</sup>*Id.*

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

<sup>8</sup>Item 4 at 3.

that will give that person access to such information.”<sup>9</sup> Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.<sup>10</sup>

The Directive sets out the adjudicative guidelines for making decisions on security clearances and eligibility for a position of public trust. The new Adjudicative Guidelines set forth eligibility for positions of public trust, and lists the disqualifying conditions and mitigating conditions for each guideline. Each eligibility decision must be fair, impartial, and a commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Directive and Regulation.

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. An administrative judge must apply the “whole person concept,” and consider and carefully weigh the available, reliable information about the person.<sup>11</sup> 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 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 of recurrence.<sup>12</sup>

A person granted eligibility for a position of public trust enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants such eligibility. The decision to deny an individual eligibility for a position of public trust is not necessarily a determination as to the loyalty of the applicant.<sup>13</sup> It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for granting such eligibility.

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the Applicant from being eligible for a position of public trust.<sup>14</sup> Thereafter, Applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts.<sup>15</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>16</sup> The government is under no duty to

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<sup>9</sup>*Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>10</sup>Directive ¶ E2.2.1.

<sup>11</sup>*Id.*

<sup>12</sup>Directive ¶¶ E2.2.1.1 through E2.2.1.9.

<sup>13</sup>*See* Exec. Or. 10865 § 7.

<sup>14</sup>Directive ¶ E3.1.14.

<sup>15</sup>ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15.

<sup>16</sup>ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

present evidence to disprove any Adjudicative Guideline mitigating condition, and an administrative judge cannot assume or infer that any particular mitigating condition is applicable merely because the government does not present evidence to disprove that particular mitigating condition.<sup>17</sup> “[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.”<sup>18</sup> “Any doubt as to whether access to classified information (or eligibility for a position of public trust) is clearly consistent with national security will be resolved in favor of the national security.”<sup>19</sup>

Based upon a consideration of the evidence, I find the following adjudicative guidelines most pertinent to the evaluation of the facts in this case:

Guideline F - 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.

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.

Conditions that could raise eligibility concerns and may be disqualifying, as well as those which would mitigate eligibility concerns, pertaining to the adjudicative guidelines are set forth and discussed in the conclusions section below.

## CONCLUSIONS

I carefully considered all of the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

Applicant’s delinquent debts reported by credit reports and admitted by Applicant brings the matter within Financial Considerations Disqualifying Conditions (DC) ¶ 19(a) *Inability or unwillingness to satisfy debts*, DC ¶ 19(b) *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*, DC ¶ 19(c) *a history of not meeting financial obligations*, and DC ¶ 19(e) *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*. Bankruptcy is a legal and

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<sup>17</sup>ISCR Case No. 99-0597 (App. Bd. Dec 13, 2000).

<sup>18</sup>ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993))

<sup>19</sup>*Egan*, 484 U.S. at 531; see Directive ¶ E2.2.2.

permissible means of resolving indebtedness. However, the circumstances leading to the bankruptcy and an individual's financial actions after the bankruptcy must be examined to determine their suitability and eligibility for a position of public trust. Applicant provided no explanation how or why each delinquent debt was accumulated. She accumulated debt because she was spending more than she had the ability to pay. I conclude the above disqualifying conditions have been established.

Appellant's answer to the SOR raises Financial Consideration Mitigating Conditions (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 judgement*, and 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 debts are current since she has not paid or resolved them. The debts became delinquent under normal circumstances in 2002, 2003, 2004, 2005, and are still delinquent. She continued spend and accumulate delinquent debt despite her inability to meet her obligations. Applicant raises the separation and divorce from her husband as a condition beyond her control causing the financial issues. However, other than raising the fact of the separation and divorce, she does not connect how the condition caused the delinquent debts or resulted in her inability to minimally begin repayment plans. The separation or divorce are conditions that she could not control, but staying within the limits of her financial resources were within her control. She had many years to begin repaying even the smallest debts and has not. She does not raise any information to show she acted responsibly under the circumstances. The mitigating conditions do not apply.

I considered all of the other Financial Considerations Mitigating Condition, and determine none apply. Applicant did not present any information on any financial counseling she sought or received so 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 is under control*, does not apply. Applicant presented no information concerning any attempt to repay any of the debts so MC ¶20(d) *the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*, does not apply. Applicant admitted to the debts and took no action to pay or resolve them. Applicant presented no information raising any other mitigating condition, so she has failed to carry her burden. I conclude Applicant has not mitigated the security concerns for financial considerations.

Applicant's failure to list on her public trust application all debts past due over 180 days brings the matter under Personal Conduct DC ¶ 16(a) *the deliberate omission, concealment, or falsification of relevant and material facts from the personal security questionnaire, personal history statement, or similar form used to conduct investigations . . . determine security clearance eligibility or trustworthiness*. Some of Applicant's debts were in collection for two to three years before she completed the questionnaire. She acknowledged the debts and was not making payments on them. I find based on all of the evidence, including Applicant's claim her divorce caused her financial hardship, that she was aware of her delinquent debts over 180 days past due. Her false answer to the question was deliberate and misleading. I find Applicant deliberately failed to provide correct information in response to question 22b on the public trust position application.

I carefully considered all of the circumstances in light of the "whole person" concept. I conclude Applicant is not eligible for a position of public trust.

**FORMAL FINDINGS**

Formal findings for or against Applicant on the allegations 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. thru 1.h.:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a.:	Against Applicant

**DECISION**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national security to grant or continue eligibility for assignment to sensitive duties for Applicant. Eligibility is denied.

Thomas M. Crean  
Administrative Judge