



**DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:	)	
	)	
-----	)	ADP Case No. 06-22360
SSN: -----	)	
	)	
Applicant for Public Trust Position	)	

**Appearances**

For Government: Julie R. Edmunds, Esq., Department Counsel  
For Applicant: *Pro Se*

March 24, 2008

**Decision**

CURRY, Marc E., Administrative Judge:

On June 22, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under Guidelines F and E. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR on October 3, 2007.<sup>1</sup> She admitted SOR subparagraphs 1.f, 1.j, and 1.m, denied the remainder, and requested a hearing. I received the case assignment on December 6, 2007. DOHA issued a notice of hearing on January 11, 2008, and I convened the hearing as scheduled on January 29, 2008.

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<sup>1</sup>Applicant's initial answer was incomplete and undated. The government allowed her additional time to amend it.

During the hearing, I received six government exhibits, three Applicant exhibits, and Applicant's testimony. At the close of the hearing, I left the record open at Applicant's request to allow her to submit additional documents. Within the time allotted, she submitted two additional exhibits. The government had no objections to their admissibility, and I incorporated them into the record. DOHA received the hearing transcript (Tr.) on February 14, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to a sensitive position is denied.

### **Findings of Fact**

Applicant is a 30-year-old married woman with three children ages 11, 5, and 2. She has a high school education. Since September 2005, she has worked for a health insurance company as a claims analyst. According to her employer, she "meets quality standards consistently" (Exhibit 3 at 4).

Between 2002 and 2007, Applicant accrued 14 delinquent debts in the approximate amount of \$23,800. Ten, totalling approximately \$3,900 (SOR subparagraphs 1.a, 1.c through 1.e, 1.g through 1.i, 1.k, 1.l, and 1.n), are insurance copayments incurred for her children's medical care<sup>2</sup> (Tr. 25-26, 44). She initially denied these bills. After the SOR's issuance, she contacted the hospital where her family had received medical treatment over the years. She discovered that the hospital had erroneously listed these bills in her 5-year old son's name instead of hers (Exhibit E). In early 2008, after the hospital corrected the discrepancy, she arranged a payment plan consisting of \$50 monthly payments (Tr. 44). She has made one payment so far (Tr. 25).

Applicant owes \$449 to the remaining medical creditor (SOR subparagraph 1.b). She does not recognize the creditor. Recently, she attempted to ascertain whether she owed the debt to the hospital where her family had received medical treatment over the years. The hospital had no record of this bill (Exhibit E).

The SOR alleges another medical delinquency (subparagraph 1.o). It does not identify a specific creditor, and Applicant denied it.

Applicant purchased a used car in May 2002 (Exhibit 3 at 4). Shortly thereafter, she began experiencing an unusual amount of maintenance problems<sup>3</sup> (Tr. 21). She then returned it to the dealer who provided her with another car (*Id.*). It was Applicant's understanding that the car loan would remain the same. She drove the replacement for two years, making steady loan payments.

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<sup>2</sup>All had serious ear, nose and throat problems as toddlers that required, among other things, tonsilectomies, ear tube insertions, and adenoid removal (Tr. 51).

<sup>3</sup>Among other things, the dashboard fell off (Exhibit 4 at 4).

In September 2004, Applicant was laid off, and was unemployed through August 2005 (Exhibit 1 at 3). Because she was unable to afford car payments, she voluntarily arranged for it to be repossessed (Tr. 33, Exhibit 3 at 3). The dealer then resold it, leaving an approximately \$8,500 deficiency (Answer to SOR Subparagraph 2.j, Tr. 21).

In June 2006, the loan company of the car Applicant had returned to the dealer in 2002 informed her that she owed \$8,800 (SOR subparagraph 1.f, Exhibit 4 at 4). Applicant told the creditor about the 2002 transaction with the dealer, and asserted she had no responsibility to pay for it. The creditor continued to contend that she owed the debt. During a 2006 meeting with an investigator from the U.S. Office of Personnel Management (OPM), Applicant said she was going to retain an attorney to resolve this disputed account (*Id.*). There is no record evidence of her either retaining an attorney or taking any other steps to resolve it.

In 1998, Applicant opened a credit card account with a department store. She used it to purchase children's clothing. It grew delinquent in approximately September 2004 after she was laid off. By January 2007 she owed approximately \$2,900. She then arranged a payment plan consisting of \$50 monthly payments. She made the first in February 2007 (Exhibit 3 at 9). After approximately five months, she stopped making payments because she got behind on other bills (Tr.53).

Applicant and her husband have been separated "off and on" (Tr. 55) for several years. Currently, they have been apart for two months. His financial contribution to the family has been sporadic (*Id.*).

Applicant completed a Questionnaire for Public Trust Positions (SF 85P) in September 2005. She answered "no" to Question 22 requiring her to list any delinquencies 180 or more days overdue when the application was completed.

### **Policies**

When evaluating an applicant's suitability to have access to sensitive information, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. According to AG ¶ 2(c), the entire process is a scrutiny of a number of variables known as the "whole person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the Applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate,

or mitigate facts admitted by applicant or proven by Department Counsel . . .” The Applicant has the ultimate burden of persuasion as to obtaining a favorable decision.

## **Analysis**

### **Guideline F, Financial Considerations**

Under this guideline, “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, [or] trustworthiness . . .” (AG ¶ 18). Moreover, “an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds” (*Id.*).

Applicant’s financial problems trigger the applicability of AG ¶ 19(a), “an inability or unwillingness to satisfy debts,” AG ¶ 19(c), “a history of not meeting financial obligations,” and AG ¶ 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” apply.

Applicant’s debts did not become delinquent until after she was laid off in 2004. She arranged payment plans for the credit card, and nearly all of the medical bills. She also arranged for her car to be voluntarily repossessed when she realized she would not be able to afford payments. AG ¶ 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,” applies.

Applicant was unable to adhere to the credit card payment plan. Also, she has only been making payments toward the satisfaction of the consolidated hospital delinquency bill for one month, and has not developed a plan to satisfy the deficiency resulting from the 2004 voluntary repossession of her car. Consequently, it is too soon to ascertain whether her financial problems are under control. AG ¶ 20(c), “. . . there are clear indications that the problem is being resolved or is under control,” does not apply.

Applicant’s failure to get her finances under control does not diminish the sincerity of her efforts. Her ability to make further progress was hampered by the lack of a consistent contribution from her husband. Therefore, although her efforts were unsuccessful, I conclude they were in good-faith. AG ¶ 20 (d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” applies.

Applicant disputes SOR subparagraph 1.f relating to an alleged deficiency from a repossession in 2002. She returned the vehicle to the dealer only after discovering major defects shortly after she purchased it. She reasonably believed that she was no longer responsible for the loan payments on the lemon vehicle after she returned it to

the dealer, and began making payments on the car she received in exchange. Nevertheless, she did not provide any documented proof to substantiate the basis of this dispute, nor any evidence of actions to resolve the issue. AG ¶ 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,” does not apply.

The government’s allegation, listed in SOR subparagraph 1.o, that Applicant owes “a medical provider” \$137, without identifying the creditor, is vague and overbroad. I conclude it does not generate a security concern.

## **Personal Conduct**

Under this guideline, “conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability [and] trustworthiness . . .” Here, Applicant’s SF 85P omissions raise the issue of whether AG ¶ 16(a), “deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities,” applies.

Applicant’s explanation that she was unaware of the debts listed in SOR subparagraphs 1.a, 1.c through 1.e, 1.g through 1.i, 1.k, 1.l, and 1.n is credible in light of the creditor’s admitted billing discrepancy. I conclude the omission of these debts do not constitute falsifications.

I conclude Applicant’s explanation that she was unaware of the delinquency listed in SOR subparagraph 1.b when she completed the SF 85P was credible in light of the evidence she provided documenting her efforts at identifying it. She did not falsify SOR subparagraph 1.b.

Applicant disputes the debt listed in SOR subparagraph 1.f. Consequently, she did not falsify the SF 85P by not listing it.

The government did not prove that Applicant’s car note, as referenced in SOR subparagraph 1.j, had been delinquent for 180 days when she arranged for the car’s voluntary repossession. I conclude that its omission from the SF 85P does not constitute a falsification.

Applicant’s 11-month unemployment immediately preceded her stint with her current employer. She completed the SF 85P within one week of being hired. Given her testimony that she lost control of her debts during the layoff, it is not credible that she would forget the credit card delinquency when completing the SF 85P. I conclude her omission of the delinquency listed in SOR subparagraph 1.m constitutes a falsification, and that AG ¶ 16 (a) applies without mitigation.

## **Criminal Conduct**

Under this guideline, “criminal activity creates doubt about a person’s judgment, reliability, and trustworthiness.” Applicant’s falsification on her SF 85P was a one-time, technical violation of criminal law. It is not indicative of any broader propensity toward criminal behavior. Consequently, she has mitigated the criminal conduct security concern.

## **Whole Person Concept**

Under the whole person concept, the Administrative Judge must evaluate an Applicant’s eligibility for a security clearance by considering the totality of the Applicant’s conduct and all the circumstances. The Administrative Judge should consider the nine adjudicative process factors listed at AG ¶ 2(a): “(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) extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent 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.” Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept.

Applicant’s delinquencies were caused by circumstances beyond her control. Although she has made sincere efforts to satisfy them, the overwhelming majority are still outstanding, and I am not persuaded that she will be able to adhere to a long-term debt repayment plan.

Applicant’s judgment and reliability are further called into question by her falsification of her SF 85P. Upon considering the applicable disqualifying and mitigating conditions in light of the whole person concept, I conclude Applicant’s eligibility for access to a sensitive position must be 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
Subparagraphs 1.a - 1.n:	Against Applicant
Subparagraph 1.o:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT

Subparagraph 2.a:	Against Applicant
Paragraph 3, Guideline J:	FOR APPLICANT
Subparagraph 3.a:	For Applicant

**Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for occupying a sensitive position. Eligibility is denied.

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MARC E. CURRY  
Administrative Judge